



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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TRUMP MARKS LLC,

Plaintiff,

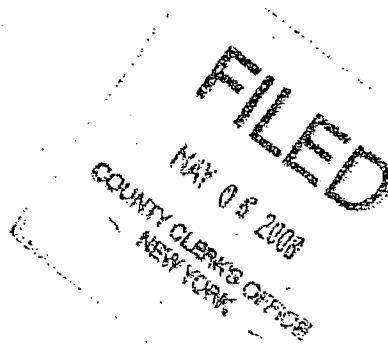
Index No. 08601372

-against-

VERIFIED COMPLAINT

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each said
individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN INDIVIDUALS
AND/OR UNKNOWN ENTITIES CONSTITUTING THE
REMAINING MEMBERS OF CRESCENT HEIGHTS
DIAMOND, LLC,

Defendants.
-----X



Plaintiff, Trump Marks LLC ("Trump Marks" or "Plaintiff"), by its attorneys, Meister
Seelig & Fein LLP, as and for its verified complaint (the "Complaint") against defendants
Crescent Heights Diamond, LLC ("Crescent"), Sonny Kahn ("Kahn"), Russell W. Galbut
("Galbut"), Bruce A. Menin ("Menin," and, together with Kahn and Galbut, collectively, the
"Named Members"), and Those Unknown Individuals and/or Entities Constituting the remaining
members of Crescent Heights Diamond, LLC (collectively the "Unknown Members"), alleges as
follows:

THE PARTIES

1. Plaintiff Trump Marks LLC is a Delaware Limited Liability Company with
its principal place of business at Trump Tower, 725 Fifth Avenue, New York, New York 10022.

2. Plaintiff, controls and is in the business of licensing, certain United States Trademarks (collectively, the "Trump Trademarks") covering real estate and related services and other rights, in the name, trademark, service mark, designation, and identification "TRUMP."

3. The Trump Trademarks were registered and are owned by Donald J. Trump, a world-renowned and preeminent builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields.

4. Defendant Crescent is a Delaware Limited Liability Company with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137.

5. Defendant Crescent, along with its affiliate, Crescent Heights of America, LLC, are engaged in the business of, among other things, building and developing first class residential condominium properties throughout the world.

6. Defendant Sonny Kahn is an individual having an address at 5940 North Bay Road, Miami Beach, Florida.

7. Defendant Kahn, on information and belief, is now a member of the defendant Crescent and was a member of Crescent in January 2008.

8. Defendant Russell W. Galbut is an individual having an address at 5225 Collins Avenue PH-8, Miami Beach, Florida.

9. Defendant Galbut, on information and belief, is now a member of defendant Crescent and was a member of Crescent in January 2008.

10. Defendant Bruce A. Menin is an individual having an address at 71 Townline Road, Wainscott, New York.

11. Defendant Menin, on information and belief, is now a member of defendant Crescent and was a member of Crescent on January 2008.

12. The Unknown Members, designated as such pursuant to CPLR Section 1024, are those remaining individuals and/or entities, beyond the Named Members, who now own a membership interest in defendant Crescent and owned such membership interest in January 2008.

JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in this court pursuant to Section 17(a) of the agreement giving rise to this action (described in paragraph 14 below). Under Section 17(a) of said agreement, the parties specifically agreed and consented to any suit, action or proceeding arising out of or in connection with a dispute under said agreement being brought exclusively in a Federal Court or New York State Court located in the State of New York, New York County, and irrevocably waived any objection to venue in any such court, and any claim that any such action brought in any such court has been brought in an inconvenient forum.

BACKGROUND

14. On or about May 23, 2006, Plaintiff and defendant Crescent entered into a License Agreement (the "License Agreement") pursuant to which Plaintiff licensed to defendant Crescent the right to use the name "Trump Tower" together with an associated approved logo (collectively, the "Licensed Mark"), in connection with defendant Crescent's design, construction and marketing of condominium units in what was planned to be the tallest structure in Israel, a 70 story first class residential condominium property containing approximately 786,000 square feet, including residential and retail space (the "Tower Property"), which was to

be built by defendant Crescent on certain parcels of land then owned or to be acquired by defendant Crescent, located in Ramat Gan, Israel, to wit: Parcel 233 of block 6128, having a registered area of 547 square meters, parcel 476 of block 6128, having a registered area of 2,047 square meters, parcel 468 of block 6128, having a registered area of 9,249 square meters, and parcel 47 of block 6128, having a registered area 2,961 square meters (collectively, the "Land").

15. Effective May 23, 2006, Plaintiff and defendant Crescent entered into a First Amendment to License Agreement (the "First Amendment"), which, among other things, changed the Licensed Mark from "Trump Tower" to "Trump Plaza." A true and correct copy of the License Agreement and the First Amendment are collectively annexed hereto and made a part hereof as Exhibit A.

16. Pursuant to Section 5 of the License Agreement, and Exhibit A thereto, defendant Crescent was required to pay Plaintiff Royalties in connection with the sale of the condominium units at the Tower Property at a rate equal to 25% of the sale price per square foot for such condominium units in excess of \$550 (U.S.), net of any value added tax ("VAT"), including a non-refundable initial Royalty payment of \$1,000,000 (U.S.).

17. On or about April 30, 2007, defendant Crescent acquired title to all of the constituent parcels constituting the Land at a cost of approximately \$44 million (U.S.).

18. Plaintiff has complied with all of its obligations under the License Agreement.

19. Specifically, as required by the License Agreement, Plaintiff registered the Licensed Mark with the Israeli Trademarks Office in or about May, 2006.

20. Additionally, at the request of defendants, Plaintiff caused Donald J. Trump to promote, and integrally associate himself with, the Land and the Tower Property, through,

among other things, Mr. Trump acting as Keynote Speaker, via live satellite video feed, in the Israel Business Conference held on December 9-11, 2006, organized by Israel's leading business newspaper, Globes. Further, Mr. Trump's association with the Tower Property elicited substantial coverage from the press, and consequently promoted and enhanced the value of the Land.

21. In or about August 1, 2007, Plaintiff became aware that defendant Crescent was engaged in negotiations to sell the Land to a third party developer and thereby abandon and render impossible the performance of its obligations under the License Agreement, including but not limited to Crescent's obligation under Section 3(a) of the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property.

22. By letter dated August 2, 2007 (copy attached as Exhibit B hereto), Plaintiff warned defendant Crescent that a sale of the Land to a third party would result in defendant Crescent defaulting on its obligations under the License Agreement, and would cause substantial damage to Plaintiff, by reason of the failure of Plaintiffs to receive substantial Royalties, defendant Crescent's unjust enrichment and the severe reputational damage Plaintiff's brand would suffer from Donald J. Trump's abrupt and forced dissociation from the Tower Property project.

23. Defendant Crescent nevertheless went forward with and consummated the sale of the Land to a third party, Azorim Investment, Development and Construction Ltd. ("Azorim").

24. Upon information and belief, in or about January, 2008, defendant Crescent consummated the sale of the Land to Azorim for approximately \$80.2 Million (U.S.).

25. Defendant Crescent contends that the performance of its obligations under the License Agreement, including but not limited to its obligation under Section 3(a) thereof to design and build the Tower Property, was excused because, according to defendant Crescent, it was unable to procure the necessary approvals to permit the construction of the Tower Property, as a purely residential and retail property - as opposed to a mixed residential, retail and office (or other use) project - from the relevant Israeli authorities.

26. However, there is no provision in the License Agreement which states that the Tower Property, as ultimately approved and permitted by the relevant Israeli authorities, must not contain any office or other type of space (beyond residential or retail space).

27. Further, defendant Crescent knew, prior to entering into the License Agreement, that the zoning laws applicable to Land did not permit the Tower Property to be designed and approved as a purely residential and retail condominium tower as of right, without certain permits, approvals and/or variances being granted by the relevant Israeli authorities.

28. Notwithstanding defendant Crescent's advance knowledge that permits, approvals and/or variances were required to be procured from the relevant Israeli authorities in order for the Tower Property to be designed and constructed, defendant Crescent executed and delivered to Plaintiff the License Agreement, which contains, at Section 3(a) thereof, the unqualified obligation of defendant Crescent Heights to design and construct the Tower Property. There is no clause in the License Agreement which permits defendant Crescent to avoid its unconditional obligation under Section 3(a) of the License Agreement to design and build the Tower Project by selling the Land in the event the aforesaid permits, approvals and/or variances were not issued by the relevant Israeli authorities.

29. By executing and delivering the License Agreement as it was drafted, the parties evidenced their mutual agreement to allocate the risk of failing to procure the needed permits, approval and/or variances to and upon defendant Crescent.

30. At no time did Defendants consult with Plaintiff as to their alleged difficulties in obtaining approvals and entitlements for a purely residential and retail project, or otherwise seek Plaintiff's view or assistance as to how best to proceed.

31. In any event, defendants contracted to sell the Land in December, 2007, having purchased the Land only eight (8) months previously, and therefore defendants did not make bona fide efforts to obtain the necessary permits, approvals and/or variances from the relevant Israeli authorities.

32. Defendants were required under the License Agreement to construct the Tower Project so long as it included residential and retail space, even if it included office or other type of space, and to pay Plaintiff the Royalties due on the sale of condominium units therein.

33. By selling the Land to a third party after being warned by Plaintiff that doing so would result in defendant Crescent's breach of the License Agreement, defendant Crescent did so at its peril, with full knowledge of and assuming the risk of the liabilities it would thereby incur to Plaintiff, for the damages Plaintiff would sustain from defendant Crescent's resultant breach of the License Agreement.

34. By reason of the foregoing, defendant Crescent has breached and defaulted upon its obligations under the License Agreement and is liable and accountable to Plaintiff in damages.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract against Defendant Crescent)

35. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

36. The License Agreement constitutes a valid and enforceable contract between Plaintiff and defendant Crescent.

37. Plaintiff has fully performed all of its obligations under the License Agreement.

38. Defendant Crescent has breached the License Agreement by failing to honor and perform its obligations and promises thereunder, including failing to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement.

39. As a consequence of defendant Crescent's breach of the License Agreement, Plaintiff has been damaged in an amount to be determined at trial, such amount being not less than \$45,000,000 (U.S.), plus interest and costs.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant Crescent)

40. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

41. Pursuant to Section 17(a) of the License Agreement, the parties agreed that the License Agreement would be governed by the laws of the State of New York. Under applicable law, the License Agreement includes an implied covenant of good faith and fair dealing.

42. Defendant Crescent breached the implied covenant of good faith and fair dealing by selling the Land to a third party without having built the Tower Property, thereby frustrating

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the purpose of the License Agreement and depriving Plaintiff of the benefit of its bargain, and reaping a windfall profit for itself in excess of \$36 Million (U.S.)

43. As a direct and proximate result of the foregoing breach of the implied covenant of good faith and fair dealing, Plaintiff has been harmed in an amount to be determined at trial, such amount being not less than \$45,000,000 (U.S.), plus interest and costs.

AS AND FOR A THIRD CAUSE OF ACTION
(Indemnification against Defendant Crescent)

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

45. Pursuant to Section 11 of the License Agreement, defendant Crescent expressly agreed to indemnify and hold harmless Plaintiff from and against any and all losses suffered by defendant Crescent arising out of a breach by defendant Crescent of any of its obligations, or a default by defendant Crescent under, the License Agreement.

46. By failing to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent has breached the express promises made by it and thereby defaulted under the License Agreement.

47. In consequence, defendant Crescent is liable to Plaintiff for the losses, including reasonable attorneys' fees and disbursements, sustained by Plaintiff in bringing this action, which seeks redress for defendant Crescent's breach of and default under the License Agreement.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment against all Defendants)

48. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

49. By virtue of defendant Crescent's receiving from Plaintiff the benefit of Donald J. Trump's world renowned reputation as the preeminent developer of luxury residential properties, and associated expertise, contacts, skills, knowledge and information, defendant Crescent, through Donald J. Trump's association with and promotion of the Land and Tower Project, has been substantially and unjustly enriched.

50. Specifically, by virtue of Donald J. Trump's association with and promotion of the Land and Tower Project, including the importance to the worldwide market of Mr. Trump's identifying the Tel Aviv/Ramat market in general, and the Land as a prime development site in said market, in particular, defendant Crescent was able to, and did in fact, sell the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), after having acquired the Land less than eight (8) months previously for only \$44 Million (U.S.), which resulted in a windfall profit to defendants of approximately \$36,000,000.

51. The real estate market in Ramat Gan, Israel did not appreciate materially during the brief period defendant Crescent owned the Land (April to December, 2007) and certainly did not appreciate during that period to such a degree that the market value of the Land (to which defendant Crescent added no value as no entitlements were received) increased from \$44 Million to \$80.2 Million in less than eight months (April to December, 2007).

52. Defendants contend that because the License Agreement does not require the payment of any Royalty or other consideration to Plaintiff upon a sale of Land and because

(defendants contend) the requisite approvals and permits for the construction of the Town Property could not be procured from the relevant Israeli authorities, the License Agreement has not been breached.

53. By reason of the foregoing, equity and good conscience require that defendants make restitution to Plaintiff in an amount equal to the value of the benefit defendants unjustly received.

54. By reason of the foregoing, defendants have been unjustly enriched by virtue of defendant Crescent's sale of the Land (which it had purchased in 2007 for approximately \$44 million) for approximately \$80.2 million in 2007 (with a closing in January, 2008). This sale resulted in a windfall profit to defendant Crescent of approximately \$36,000,000, which windfall profit, on information and belief was thereafter distributed to the Named Members and Unknown Members. Further, said windfall profit was realized by virtue of the world renowned reputation of Donald J. Trump as the preeminent developer of luxury residential properties, and the associated expertise, contacts, skills, knowledge and confidential information of Plaintiff.

55. Plaintiff is therefore entitled to judgment requiring defendants to make restitution to Plaintiff of the windfall profit realized by defendant Crescent upon the sale of the Land, and thereafter, on information and belief, distributed to the Named Members and Unknown Members, in an amount to be determined by the Court, such amount being approximately \$36,000,000 plus interest and costs.

AS AND FOR A FIFTH CAUSE OF ACTION
(Fraudulent Conveyance pursuant to New York
Debtor and Creditor Law §§ 273-275 against all Defendants)

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

57. On or about May 23, 2006, Plaintiff and defendant Crescent entered into the License Agreement.

58. In or about January, 2008, in breach of its obligations under the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent sold the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), realizing a windfall profit of approximately \$36 Million (U.S.).

59. Upon information and belief, shortly after receiving the \$80.2 Million (U.S.) of proceeds from the sale of the Land to Azorim, defendant Crescent, a limited liability company, distributed the net proceeds from such sale, including the windfall profits it received on such sale, to the Named Members and the Unknown Members (the "Fraudulent Conveyance").

60. At the time it distributed the net proceeds of the said sale to the Named Members and the Unknown Members, defendant Crescent knew of its liability to Plaintiff for defendant Crescent's breach of the License Agreement, which liability therefore constituted a debt of defendant Crescent antecedent to the aforesaid conveyance of the net proceeds of the sale by defendant Crescent to the Named Members and the Unknown Members.

61. Defendant Crescent received either no consideration or failed to receive fair consideration for the Fraudulent Conveyance to the Named Members and the Unknown Members.

62. The Fraudulent Conveyance was done to delay, hinder and avoid creditors of defendant Crescent.

63. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration and rendered defendant Crescent insolvent or was made at a time when defendant Crescent was insolvent, in violation of Section 273 of the New York Debtor and Creditor Law.

64. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration and left defendant Crescent with an unreasonably small amount of capital with which to operate, in violation of Section 274 of the New York Debtor and Creditor Law.

65. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration at a time when defendant Crescent intended or believed that it would incur debts beyond its ability to pay them as they matured, in violation of Section 275 of the New York Debtor and Creditor Law.

66. By reason of the foregoing, Plaintiff demands that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received by defendant Crescent from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned by the Named Members and Unknown Members to defendant Crescent so

that it can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action.

AS AND FOR A SIXTH CAUSE OF ACTION
**(Fraudulent Conveyance pursuant to New York
Debtor and Creditor Law § 276 against all Defendants)**

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

68. Upon information and belief, the Fraudulent Conveyance was made by defendant Crescent with the actual intent to hinder, delay or defraud either present or future creditors of defendant Crescent, and did, in fact, hinder, delay and defraud Plaintiff.

69. By reason of the foregoing, Plaintiff demands that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received by defendant Crescent from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned by the Named Members and Unknown Members to defendant Crescent so that it can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action.

AS AND FOR A SEVENTH CAUSE OF ACTION
**(Attorneys' Fees pursuant to New York
Debtor and Creditor Law § 276-a against all Defendants)**

70. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

71. By reason of the foregoing, and pursuant to New York Debtor and Creditor Law Section 276-a, Plaintiff demands judgment against the Defendants for all of the costs and disbursements of this action, including its attorneys' fees herein.

AS AND FOR A EIGHTH CAUSE OF ACTION
(Wrongful Distributions in Violation of Section 18-607 of the
Delaware Limited Liability Company Act (or Section 508 of the New York Limited
Liability Company Act) against all Defendants)

72. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

73. Defendant Crescent is a limited liability company organized under the Delaware Limited Liability Company Act (the "Act").

74. On or about May 23, 2006, Plaintiff and defendant Crescent entered into the License Agreement.

75. In or about January, 2008, in breach of its obligations under the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent sold the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), realizing a windfall profit of approximately \$36 Million (U.S.).

76. Upon information and belief, shortly after receiving the \$80.2 Million of proceeds from the sale of the Land to Azorim, defendant Crescent, a Delaware limited liability company, distributed the net proceeds from such sale, including the windfall profits it received on such sale, to the Named Members and Unknown Members (the "Fraudulent Conveyance").

77. At the time it distributed the net proceeds of the said sale to the Named Members and Unknown Members, defendant Crescent and said distributees knew of defendant Crescent's liability to Plaintiff for defendant Crescent's breach of the License Agreement, which liability therefore constituted a debt of defendant Crescent antecedent to the aforesaid Fraudulent

Conveyance of the net proceeds of the sale by defendant Crescent to the Named Members and Unknown Members.

78. Defendant Crescent's distribution of the net proceeds of the sale of the Land to the Named Members and Unknown Members was a distribution made in violation of Section 18-607 (a) of the Act (or Section 508 of the New York Limited Liability Company Act, if the Court deems such act applicable), in that, at the time of the distribution, after giving effect to the distribution, all liabilities of defendant Crescent (other than certain liabilities to members and liabilities with respect to non-recourse debt), but including, in particular, its antecedent debt to Plaintiff for damages arising from its breach of the License Agreement, exceeded the fair value of the assets of defendant Crescent.

79. By reason of the terms of the License Agreement and Attorney Diamond's letter of August 2, 2007, among other things, the Named Members and the Unknown Members knew, at the time they received a distribution of the net proceeds of the sale from defendant Crescent, that said distribution violated Section 18-607(a) of the Act (or Section 508 of the New York Limited Liability Company Act, if the Court deems such act applicable), as aforesaid.

80. In consequence, the Named Members and the Unknown Members are liable to defendant Crescent to return the wrongful distributions they received from defendant Crescent of the net proceeds of the sale of the Land to Azorim, and Plaintiff is entitled to a judgment directing that said return be made, so that Plaintiff may have satisfaction of judgment for damages awarded to it in respect of defendant Crescent's breach of the License Agreement and unjust enrichment as alleged herein.

WHEREFORE, Plaintiff seeks judgment:

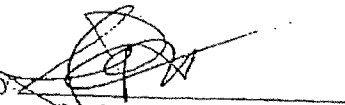
- (a) On the first cause of action for breach of contract as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$45,000,000, plus interest, costs and reasonable attorneys' fees;
- (b) On the second cause of action for breach of the implied covenant of good faith and fair dealing as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$45,000,000, plus interest, costs and reasonable attorneys' fees;
- (c) On the third cause of action for indemnification as against defendant Crescent, in an amount to be determined at trial, plus interest, costs and reasonable attorneys' fees;
- (d) On the fourth cause of action for unjust enrichment as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$36,000,000, plus interest, costs and reasonable attorneys' fees;
- (e) On the fifth cause of action for fraudulent conveyance as against all defendants pursuant to New York Debtor and Creditor Law Sections 273, 274 and 275, ordering that the conveyances by defendant Crescent to the Named Members and the Unknown Members of the net proceeds received from sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned to defendant Crescent by the Named Members and the Unknown Members, so that defendant Crescent can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action, plus interest, costs and reasonable attorneys' fees;
- (f) On the sixth cause of action for fraudulent conveyance as against all defendants pursuant to Debtor and Creditor Law Section 276, ordering that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned to defendant Crescent by the Named Members and Unknown Members, so that defendant Crescent can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action, plus interest, costs and reasonable attorneys' fees;
- (g) On the seventh cause of action for attorneys' fees pursuant to New York Debtor and Creditor Law Section 276-a as against all defendants, in an amount to be determined at trial, plus interest and costs; and

(h) On the eighth cause of action for wrongful distributions made in violation of Section 18-607 of the Delaware Limited Liability Company Act and/or Section 508 of the New York Limited Liability Company Act as against all defendants, ordering the Named Members and the Unknown Members to return to defendant Crescent the distributions the former received from the latter in respect of the net proceeds of the sale of the Land, so that Plaintiff may have satisfaction of the judgment awarded to Plaintiff on the first, second, third and fourth causes of action herein.

(i) All such other and further relief as this Court deems just and equitable.

Dated: New York, New York
May 5, 2008

MEISTER SEELIG & FEIN LLP

By: 
Stephen B. Meister, Esq.

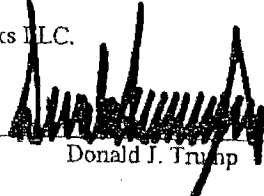
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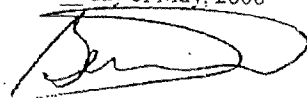
VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Donald J. Trump, being duly sworn, deposes and says as follows:

I am a member of Plaintiff Trump Marks LLC. I have read the within Verified Complaint, and the same is true to my knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true. The source of my belief is my personal knowledge of the matters set forth therein, my review of relevant documents and the books and records of Trump Marks LLC.


Donald J. Trump

Sworn to before me this
day of May, 2008


BERNARD R. DIAMOND
Notary Public, State of New York
No. 02014987017
Qualified in Westchester County
Commission Expires *Sept 30, 2018*





A

LICENSE AGREEMENT
BETWEEN
TRUMP MARKS LLC
LICENSOR,
AND
CRESCENT HEIGHTS DIAMOND, LLC
LICENSEE

Dated: New York, N.Y.
May 23, 2006

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Exhibits

- A Royalties
- B Power of Attorney
- C Restricted Area

LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the ^{23rd} day of May, 2006, between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor"), with a principal place of business at 725 Fifth Avenue, New York, New York 10022, and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company, ("Licensee"), with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137. The Licensor and Licensee may hereinafter sometimes be referred to as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Donald J. Trump, a world-renowned builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields, is the owner of certain United States Trademarks covering certain real estate services as well as certain other rights in the name, trademark, service mark, designation, and identification "TRUMP;" and

WHEREAS, pursuant to a certain License and Quality Control Agreement dated as of May 25, 2005, between Trump Marks LP, as licensor and Licensee as licensee, Licensor controls the licensing of the aforesaid Trump trademarks; has the exclusive right to grant the license to Licensee provided herein; and is the proper party to enter into this Agreement; and

WHEREAS, Licensee intends to (i) develop a building (the "Building") on certain land (the "Land") owned or to be acquired by Licensee, in Ramat Gan, Israel, which Land is legally described as: Parcel 233 of block 6128, having a registered area of 547 meters; parcel 476 of block 6128, having a registered area of 2047 meters; parcel 468 of block 6128, having a registered area of 9249 meters; parcel 47 of block 6128, having a registered area of 2961 meters; and all that is built on and attached to the said four parcels (the Land, together with the Building to be erected thereon, collectively the "Tower Property"), which, on completion of construction will include a first-class, luxury residential condominium component, which may include storage spaces (the "Storage Spaces") and garage spaces (the "Garage Spaces") (collectively, the "Residential Component") and, a retail component, which may include one or more restaurant units and one or more retail components of the type commonly located in similar projects, (collectively, the "Retail Component"); (ii) design, develop, construct and operate the Tower Property or portions thereof in the form of condominium ownership; and (iii) market, sell and/or lease the units forming part of the Residential Component and the Retail Component (individually, a "Unit" and collectively, the "Units") to be contained in the Building. All of the foregoing activities recited on subdivisions (i) through (iii) above, inclusive, to be performed in accordance with the "Trump Standard" (as herein defined) so as to maximize the value of the Tower Property for the benefit of Licensee and Licensor; and

WHEREAS, Licensee desires to use the name "Trump Tower"; which, together with any "Approved Logo" (as herein defined) is referred to herein as the "New Trump Mark"; and

WHEREAS, Licensor is willing to grant to Licensee the right to use the New Trump Mark in accordance with and subject to the terms, covenants and provisions of this Agreement.

NOW, THEREFORE, for One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Licensor and Licensee do hereby agree as follows:

1. License; Registration; Licensor Restriction

(a) Promptly after the date hereof, Licensor shall submit the New Trump Mark for registration (the "Registration") with The Israeli Trademarks Office (the "TIO"). Licensee acknowledges and agrees that Licensor shall not be liable or responsible to Licensee for any delay in or limitation imposed upon the New Trump Mark during the Registration process or any refusal by the TIO to register the New Trump Mark, and all of Licensee's obligations hereunder regarding the use of the New Trump Mark, including but not limited to Licensee's payment obligations hereunder shall remain in effect whether or not Registration of the New Trump Mark shall occur. Licensor shall have the right to register this Agreement with the appropriate Israeli authorities.

(b) Licensor hereby grants to Licensee, during the "Term" (as herein defined), a nonexclusive (subject to Section 1(g)), nonassignable (except as provided in Section 12(b) and (c) hereof), nontransferable right, without the right to grant sublicenses, to use the New Trump Mark alone or as part of the Approved Logo(s) solely for the purpose of identifying the Tower Property at its above-mentioned location, subject to all the terms, covenants and provisions of this Agreement. Licensee shall be required to, and hereby agrees to, use the New Trump Mark as the sole identification of the Building during the Term. Licensee shall also have the right to use the New Trump Mark in signage, print medium, television, radio, internet (the "Internet"), and other forms of promotional and publicity materials and facilities, solely with respect to the promotion of the Building, subject to all the terms, covenants and provisions of this Agreement. In connection with Licensee's exercise of the foregoing marketing rights, Licensor reserves the right to prohibit the making of representations on behalf of Licensor or Donald J. Trump, or the use of material which, in the judgment of Licensor, do not accurately reflect facts about Licensor and/or Donald J. Trump.

(c) Licensor hereby grants to Licensee, during the Term, the right to permit Residential Component Unit owners and lessees, and Retail Component Unit owners and lessees (collectively, "Occupants") to use the New Trump Mark solely for the purpose of identifying in advertising and promotion of their Residential and Retail Component Units in connection with offers to sell or lease such Units, and as the address of such Occupants at the Building. However, such right shall not permit the Occupants to use the New Trump Mark as part of the name or identification of such Occupants. Trade names such as "Trump Tower Restaurant" or "The Restaurant at Trump Tower" are not permitted or authorized hereunder. Licensee agrees that the foregoing rights and restrictions governing Licensee's and such Occupants' use of the New Trump Mark, including but not limited to its obligation to comply with the Trump Standard, and Licensor's access to the Building as provided in Paragraph 3(d) hereof, shall be set forth in:

(i) each contract of sale or lease, pursuant to which an Occupant shall acquire or lease a Unit from Licensor; and

(ii) each succeeding contract of sale, lease, or sublease pursuant to which an Occupant shall sell or otherwise transfer or lease its Unit or assign its lease or sublease its Unit; and

(iii) the bylaws of the Building (Takanon Habait Hameshulaf) (the "Bylaws") which shall be registered by Licensee with the Tel Aviv, Israel Land Registry, together with the registration of each purchasing Occupant's ownership of its Unit.

Each such contract of sale, lease, assignment, sublease and the Bylaws, and an English translation of each, shall be subject to the approval of Licensor. Licensee agrees to cooperate fully with, and furnish assistance to Licensor in any action by Licensor required to ensure that any use of the New Trump Mark by the Occupants complies with the terms and conditions of this Agreement.

(d) In connection with its identification and promotion of the Building, Licensee may propose to use certain composite trademark(s) and/or logos in association with and/or incorporating the New Trump Mark, including, but not limited to, a logo that substantially consists of distinctive design elements of the Building, (collectively, the "Proposed Logo" or "Proposed Logos"). Prior to any adoption and/or use of any Proposed Logo, Licensee shall submit a graphical representation of such Proposed Logo to Licensor precisely in the manner which Licensee intends such Proposed Logo to appear in commercial use. Following Licensee's submission of such Proposed Logo to Licensor, Licensor shall review such Proposed Logo within fifteen (15) days of receipt thereof, and if such Proposed Logo meets with Licensor's preliminary approval, Licensor shall commission its Israel trademark counsel to conduct a full trademark search and make an assessment as to the likely registrability and/or availability of such Proposed Logo for use. Licensee shall bear the costs incurred in the trademark clearance assessment of each Proposed Logo. Upon obtaining the assessment of counsel regarding clearance of any Proposed Logo, Licensor shall, in its reasonable discretion, within fifteen (15) days of receipt of counsel's said assessment, determine whether to approve such Proposed Logo. Licensor shall promptly notify Licensee in writing whether or not it is permitted to adopt and/or use any given Proposed Logo. Licensee may submit multiple alternative Proposed Logos at the same time, which shall proceed concurrently through the approval process, subject to the provisions of this Agreement. Licensee shall not adopt and/or use any Proposed Logo unless and until it obtains Licensor's approval, in writing, in the manner set forth in this subparagraph 1(d).

(e) If the Licensor approves any Proposed Logo, such Proposed Logo shall then be referred to as an "Approved Logo." At such time that the Licensor approves any Proposed Logo, in writing, Licensee acknowledges and agrees that Licensor shall own all right, title and interest in and to any and all Approved Logos and that Licensee's sole rights with respect thereto shall be to use such Approved Logos subject to, and in accordance with, the terms, covenants and provisions of this Agreement. If and when any Proposed Logo is approved in writing by Licensor in accordance with the terms of this Agreement, such Approved Logo will be considered as of the date of such approval as a New Trump Mark and will be subject to the terms and conditions of this Agreement. On termination of this Agreement, Licensor shall

assign to Licensee (in a form reasonably acceptable to Licensee) all of Licensor's right, title and interest in and to the Approved Logos adopted and used by Licensee, if any, but only that portion of such Approved Logos (the "Design Logos") that do not contain any element of the name "Trump" or can be readily separated and clearly distinguished from the name "Trump."

(f) Licensor shall file trademark applications for the New Trump Mark (other than Approved Logos), at Licensor's expense, in English and Hebrew, and each Approved Logo, at Licensee's expense, including the expense of any renewals of any such Registration, with the ITO in Classes 36 and 37. Applications for Approved Logos, if approved by the ITO, will be deemed a part of the New Trump Mark.

(g) Provided that Licensee is not in default of this Agreement after any applicable notice and cure period provided herein, and this Agreement is in full force and effect, then:

A. until the first to occur of (i) the date that is forty-two (42) months from execution of this Agreement; and (ii) the date upon which at least ninety (90%) percent of the Units available for sale to the public are subject to binding contracts of sale, Licensor will not license the name "Trump" for a residential condominium building, with or without storage spaces, garage spaces and retail areas, within the area of Tel Aviv, Israel shown cross-hatched on Exhibit C annexed hereto and made a part hereof (the "Restricted Area"); and

B. until the date that is twelve (12) months from the date hereof, Licensor will not license the name "Trump" for a "Condominium Hotel" (as herein defined).

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" name, other than the New Trump Mark, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that term is customarily used, or for any other use not expressly prohibited herein, anywhere in Tel Aviv or elsewhere in Israel.

D. For the purposes of this Paragraph 1(g) "Condominium Hotel" shall mean apartment hotels and/or suite hotels and/or apartment buildings (which may be residential condominium buildings) (x) in which the owners have the right to include their apartments or units in a rental program for predominantly transient occupancy, whether short-term, medium-term or long-term, with a majority of the apartments or units of the building anticipated, but not required, to participate in the rental program on a predominantly short-term transient occupancy basis; (y) which provide to such apartment or unit owners services customarily provided by a hotel, such as a registration desk, cleaning services and the like; and (z) which are professionally managed by an affiliate of Licensor or by a third-party manager.

(h) Licensor shall cause Donald J. Trump to make one (1) trip to the Tower Project (the "Trump Appearance"), at Licensee's expense for first class air transportation and first class accommodations and food, for no more than one (1) day of six (6) working hours, for

the promotion of the Tower Project to the public. The Trump Appearance shall occur on a date reasonably acceptable to the Parties, but consistent with Donald J. Trump's professional schedule.

(i) Any Internet website addresses obtained and utilized by Licensee with respect to the promotion of the Tower Property shall be subject to the approval of Licensor in writing, which approval shall not be unreasonably withheld or delayed; and if so approved, shall be issued exclusively in the name of Donald J. Trump, as the owner thereof.

2. Exclusions to License; Use of License

(a) Licensee recognizes and agrees that no rights, other than as expressly provided herein, to use the New Trump Mark are granted hereunder, whether as to activities, products, services, or otherwise. Solely for promotional purposes, Licensee may produce, sell or give away promotional items, décor elements, souvenir products, (e.g. pens, bathroom towels, tumblers and monogrammed clothing) and any items customarily sold in a spa (including but not limited to cosmetics, robes, slippers, and t-shirts, respectively), which bear the New Trump Mark, have been reasonably approved by Licensor as to design, development, marketing and sales, and conform to the Trump Standard. The following merchandising items shall be royalty-free during the term of this Agreement: (i) promotional give-aways, and (ii) any items purchased from Licensor or its designee. As for other merchandising items, including those sold in a sundries store or gift shop or a spa or other portions of the Tower Property, Licensee will pay or will cause any tenant, licensee or other operator thereof to pay, to Licensor royalties in respect of such sales in an amount equal to fifteen percent (15%) of all net sales after deduction of only Israeli Value Added Tax and returns (the "Sales Royalties"). Sales Royalties will be paid to Licensor quarter-annually within thirty (30) days of the close of each quarter. Payment of the Sales Royalties shall be accompanied by Licensee's statement certified by the Chief Financial Officer of Licensee as true and complete (the "Statement") in such detail as Licensor shall reasonably require, with respect to the Sales Royalties provided in such Statement. Licensee shall not have the right to use the New Trump Mark in connection with individual facilities within the Tower Property, or with any products or services sold or offered for sale in the Tower Property or elsewhere, except as provided herein, or if and as may subsequently be agreed to in writing by Licensor in Licensor's sole and absolute discretion.

(b) Licensee also recognizes and agrees that it has no other rights to the use of the name "Trump" other than in respect to the licensed New Trump Mark, and recognizes Licensor's sole and exclusive ownership of all proprietary rights in the name "Trump" and in the New Trump Mark. Licensee will not register nor attempt to register the New Trump Mark or "Trump" or any derivations or phonetic equivalents thereof, as a name, mark or otherwise. Licensee agrees neither to assert any claim to any goodwill, reputation, or ownership of the name "Trump" or in the New Trump Mark nor to contest the validity or ownership of the New Trump Mark. Licensee agrees that it will not do, or permit any act or thing to be done, in derogation of any of the rights of Licensor in connection with Licensee's use of the New Trump Mark either during the term of this Agreement or thereafter and that Licensee will not use the New Trump Mark except as licensed hereunder. Licensee further acknowledges and agrees that any goodwill associated with the use of the New Trump Mark shall inure directly and exclusively to Licensor.

(c) All uses of the New Trump Mark by Licensee shall faithfully reproduce the design and appearance of the New Trump Mark.

(d) At the request of Licensor, Licensee shall include the trademark designation legally required or useful for enforcement (e.g. "TM", "SM" or ®, as applicable) in connection with Licensee's use of the New Trump Mark.

(e) Except as specifically authorized under this Agreement, Licensee shall not use the New Trump Mark in whole or in part on or in connection with any other business and shall not permit or authorize any other person or entity to use the New Trump Marks in any manner.

(f) Licensor shall have the right to review and approve in writing, all promotional materials or any other materials (with an English translation) using the New Trump Mark prior to Licensee's use of such materials. Licensor shall within Licensor's reasonable discretion, review and approve such materials within ten (10) business days of its receipt of such materials; provide however, if Licensor shall fail to approve or shall reject any such submission within such ten (10) business day period and after three (3) days following an additional written notice to Licensor, sent upon the expiration of such ten (10) business day period, such submissions shall be deemed approved by Licensor. Notwithstanding the foregoing, in no event shall Licensee issue a press release concerning Licensor (or Donald J. Trump) without Licensor's prior written approval.

(g) Licensee agrees to ensure that, in such cases as Licensor may require, use or display of the New Trump Marks are in the manner sufficient to indicate that the New Trump Marks are owned by Licensor and are being used under license.

3. Trump Standard; Trump Standard Default; Power of Attorney. As a material inducement for the grant of the license provided herein, Licensee covenants and agrees with Licensor:

(a) to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property, in each case, with the level of quality and luxury associated with the premier, first class mixed-use residential condominium building known as the Akirov Building in Tel Aviv, Israel (the "Signature Property"); and

(b) at all times, to maintain, and ensure by the provisions of the Bylaws, and by each contract for the sale of a Unit and each lease and sublease of a Unit, that Licensee and each Occupant (hereinafter singularly, a "License Beneficiary," and collectively, "License Beneficiaries") maintain standards, with respect to the Tower Property, and the Residential and Retail Components thereof, as the case may be, that are at least equal to those standards of design, development, construction, marketing, sale, equipping, operation, repair and maintenance followed by the Signature Property (for the purposes of this Agreement, such standards as the date hereof, are collectively called the "Trump Standard").

(c) Using its commercially reasonable judgment, Licensor shall be the sole judge of whether a License Beneficiary is maintaining the Trump Standard, and if Licensor, in its

commercially reasonable judgment, determines that the Trump Standard is not being maintained or that a License Beneficiary has breached any other provision of this Agreement relating to the Trump Standard, (collectively, a "Trump Standard Default") Licensor may notify, as applicable, the License Beneficiary thereof in writing (the "Trump Standard Default Notice") and if the License Beneficiary shall fail to fully correct to Licensor's satisfaction any condition or cure any Trump Standard Default identified in the Trump Standard Default Notice, within thirty (30) days of the receipt of such Trump Standard Default Notice, Licensor may immediately terminate this Agreement and all rights licensed hereunder by notifying the License Beneficiary in writing of such termination; provided however, that so long as the Trump Standard Default cannot be cured solely by the payment of money and the License Beneficiary shall have commenced the curing of such Trump Standard Default within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, the License Beneficiary shall have such reasonable additional period of time as shall be reasonably necessary to cure such Trump Standard Default, but in no event more than the shorter of (i) one hundred twenty (120) days, or (ii) the number of days of "Unavoidable Delay" (as herein defined) that the License Beneficiary shall contemporaneously document in writing to Licensor.

(d) Licensor or its representatives shall at all times have access to, and the right to inspect, the Tower Property, interior and exterior (but excluding the interior of non-Licensee or its designees' privately owned units, unless authorized by such unit owners), and the procedures utilized by the License Beneficiaries, in the operation and maintenance of the Residential Component and Retail Component during normal business hours, on not less than twenty-four (24) hours notice, but without unreasonably interfering with the operation of the Tower Property, to confirm License Beneficiaries' compliance with the provisions of this Agreement.

(e) (i) Concurrently with the execution of this Agreement, Licensee shall execute and deliver to Licensor a Power of Attorney (the "Power") in the form and on the terms annexed hereto as Exhibit B and made a part hereof, in form sufficient for registration with the appropriate Israel governmental authority, pursuant to which Licensee irrevocably designates Licensor or its attorneys, as attorney-in-fact for Licensee, to execute and deliver on behalf of Licensee, any such documents as shall be required to cause the registration of this Agreement, as provided in Paragraph 1(a) hereof, to be cancelled in the event that this Agreement expires or is terminated for any reason and Licensee shall fail to commence an action (the "Action") to enjoin or contest the cancellation of the registration of this Agreement within thirty (30) days of such termination. In the event Licensee shall commence an Action, then Licensor may cause the registration of this Agreement to be cancelled upon the conclusion of such litigation.

(ii) Subject to the provisions of Subsection (i) above, Licensor agrees to register Licensee as an "authorized person" in accordance with Section 50 and 51 of the Israel Trademark Ordinance.

4. Delivery of Plans and Specifications to Licensor

(a) Licensee shall deliver to Licensor the following preliminary plans and specifications, information and other Trump Standard related items ("Preliminary Plans") for

the Building, for the Licensor's written approval and determination that they comply with the Trump Standards:

- (i) The engineering and design of the Building and all service systems of the Building;
- (ii) The exterior design of the Building, including, but not limited to the façade, signage, landscaping, access methods, and illumination;
- (iii) The interior signage, unit layouts and room counts;
- (iv) All furniture, fixtures, equipment, and appliances;
- (v) The sales and marketing plan for the Tower Property including sales office location and layout, sales staff training and sales collateral materials;
- (vi) The identity of the contractors proposed by Licensee for the construction of the Tower Property; provided, however, Licensor shall be deemed to approve any contractor that is acceptable to Licensee's institutional construction lender for the Building; and
- (vii) The manager(s) of the Tower Property; provided, however, Licensor shall be deemed to approve any manager that is acceptable to Licensee's institutional construction lender for the Building.

Within twenty (20) business days of receipt of the Preliminary Plans, Licensor will either approve the same or send a "Deficiency Notice" (as herein defined) to Licensee, whereupon Licensee shall prepare and deliver to Licensor revised Preliminary Plans ("Revised Preliminary Plans") which satisfy the Deficiency Notice. In the event Licensor does not deliver to Licensee an approval or issue a Deficiency Notice within twenty (20) business days of receipt of any Revised Preliminary Plans, Licensor shall be deemed to have approved the Revised Preliminary Plans.

(b) Prior to the commencement of the demolition of existing improvements or construction of the Tower Property, Licensee shall submit its final plans and specifications therefor (the "Final Plans and Specifications") including each of the items delineated in Subsection 4(a) (i) - (vii) hereof, to Licensor, to the extent not previously approved by Licensor in writing. Following Licensee's submission of such Final Plans and Specifications, Licensor shall review such Final Plans and Specifications within fifteen (15) business days of receipt thereof. Within fifteen (15) business days after review of the Final Plans and Specifications, Licensor shall deliver a report to Licensee, which either (1) approves, in writing, Licensee's Final Plans and Specifications or (b) identifies in detail and with particularity each portion of the Final Plans and Specifications that does not comply with the Trump Standard (the "Deficiency Notice") and specifies what changes need to be made to the Final Plans and Specifications before Licensor shall approve the Final Plans and Specifications; Licensee shall thereafter

diligently attempt to cure such deficiencies, and upon completion, shall re-submit the revised Final Plans and Specifications to Licensor. Upon obtaining the revised Final Plans and Specifications, Licensor shall review the same, and within ten (10) business days after receipt thereof, shall either: (x) approve the revised Final Plans and Specifications or (y) issue another Deficiency Notice. If the Parties reach an impasse such that the Revised Preliminary Plans or the Final Plans are not approved by Licensor after Licensor issues three (3) or more Deficiency Notices (with respect to each of the Revised Preliminary Plans and the Final Plans and Specifications), Licensor and Licensee shall each have the right to terminate this Agreement. Licensor agrees to work reasonably with Licensee to correct any deficiencies provided in a Deficiency Notice. Licensor and Licensee may exercise such right of termination by delivering written notice to the other (the "Termination Notice") within, but not later than, fifteen (15) business days after the third Deficiency Notice, whereupon this Agreement shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, Licensor shall be entitled to retain any portion of the Royalty paid to Licensor prior to the date of the termination of this Agreement. Once approved, Licensee shall construct or cause construction of the Tower Property in accordance with the Final Plans and Specifications, approved by Licensor, which shall adhere to and comply with the Trump Standard.

5. Royalty

(a) Licensee shall pay to Licensor for the rights granted to Licensee hereunder, the "Royalty" (as herein defined) set forth on Exhibit "A" annexed hereto and made a part hereof.

(b) In the event Licensee shall be required to withhold any taxes or other mandatory payments imposed by the State of Israel ("Licensor Local Tax Obligation"), and provided that at the time of the withholding there is a double taxation treaty in force between the State of Israel and the United States enabling the Licensor to obtain a credit in the United States with respect to such withholdings, Licensee shall pay such Licensor Local Tax Obligation on Licensor's behalf and furnish to Licensor the receipt, remittance voucher or other original evidence of such payment of any Licensor Local Tax Obligation so paid so that Licensor can apply for a corresponding tax credit in the United States. Licensee shall fully cooperate with Licensor and provide such information and records as Licensor may reasonably require in connection with any application to the tax authorities of Israel and/or the United States, including but not limited to, the obtaining of a credit for any Licensor's Local Tax Obligation paid in the State of Israel which Royalties and other payments are being made by Licensee to Licensor hereunder.

6. Term. The term of this Agreement (the "Term") shall commence on the date hereof and shall end on the first to occur of: (i) the expiration or earlier termination of this Agreement, as provided herein or (ii) the day upon which the Tower Property shall no longer be known by the New Trump Mark, and Licensor and Licensee have not agreed in writing or are not in substantive discussions for the use of a Trump Name as the name of the Tower Project.

7. Non-Trump Standard Default: Licensor's Default

(a) In addition to the provisions of Paragraph 3 hereof, Licensee shall be considered in default and Licensor may terminate this Agreement if Licensee shall default in (i) the payment of a sum of money and such default shall not be cured within a period of ten (10) days after written notice of such default is given by Licensor to Licensee, or (ii) except as otherwise provided in Section 3(c) hereof as they are related to a Trump Standard Default, the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensor to Licensee; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensee shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensee shall have such additional time as shall be reasonably necessary to cure such default, not to exceed sixty (60) days. During any such default by Licensee, any sum of money due hereunder shall accrue interest at the highest rate permitted by applicable law.

(b) Licensor shall be considered in default and Licensee may terminate this Agreement if Licensor shall default in the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensee to Licensor; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensor shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensor shall have such additional time as shall be reasonably necessary to cure such default, not exceeding sixty (60) days.

8. Licensor's Termination. In addition to any other right or remedy of Licensor hereunder, Licensor shall have the absolute right to terminate this Agreement and the rights licensed hereunder, upon ten (10) days prior written notice of such termination to Licensee, if

- (a) Licensee files a petition in bankruptcy or is adjudged bankrupt; or
- (b) a petition in bankruptcy is filed against Licensee and not discharged within sixty (60) days; or
- (c) Licensee becomes insolvent, or makes an assignment for the benefit of its creditors or any arrangement pursuant to any bankruptcy or like law; or
- (d) a receiver is appointed for Licensee or its business; or
- (e) a substantial portion of the Building is damaged or destroyed by fire or other casualty and the Building is not rebuilt in a diligent and expeditious manner and in compliance with the Trump Standard; or
- (f) the Tower Property or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Tower Property cannot be operated in a manner consistent with the Trump Standard; or

(g) Sonny Kahn, Russell W. Galbut and Bruce A. Menin (singularly, a "Principal" and collectively the "Principals") and any successor to any Principal approved by Licensor or permitted pursuant to Paragraph 12(c) hereof, cease collectively to own a majority of the direct or indirect interests in Licensee and to control the day to day activities of Licensee.

(h) The construction of the Building fails to commence within twenty-four (24) months from the date of this Agreement, unless such delay shall result from any strikes, lockouts or labor disputes, inability to obtain labor (but excluding all delays resulting from delays in obtaining permits for foreign workers that exist for more than ninety (90) days in the aggregate) or materials or reasonable substitutes thereof, acts of God, governmental restrictions, regulations or controls, terrorist, enemy or hostile government action, civil commotion, war, riot or insurrection, fire or other casualty or other events similar to the foregoing beyond the reasonable control of Licensee (collectively, "Unavoidable Delays") in which event such twenty-four (24) month period shall be deemed extended one (1) day for each day of Unavoidable Delay which is contemporaneously documented in writing to Licensor; or

(i) A Tofes 4 (Form 4) has not been issued for the Building within forty (40) months from the commencement of construction, except as a result of Unavoidable Delays, in which event, such thirty-six (36) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor; or

(j) Closings have not occurred or binding contracts with appropriate deposits have not been accepted by Licensee for at least seventy (70%) percent of the Units within forty (40) months from the date of commencement of construction, except as a result of Unavoidable Delays, in which event, such forty (40) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor.

(k) Licensee shall notify Licensor in writing of each Unavoidable Delay provided in subparagraphs (h) through (j) inclusive, above and the reasonably anticipated duration of the same, promptly after the occurrence of the same, otherwise such Unavoidable Delay shall be deemed waived.

(l) Notwithstanding the termination of this Agreement pursuant to any of its terms, Licensor shall be entitled to receive, and Licensee shall pay to Licensor all Royalties that have accrued to Licensor prior to the date of termination. Royalties due to Licensor pursuant to this Section 8 (l) shall be paid to Licensor on the delivery of possession of a Unit, and such obligations shall survive such termination. A Licensee Fee shall accrue to Licensor on date that a contract of sale or a lease of a Unit is entered into.

9. Licensee's Termination. Notwithstanding anything to the contrary herein, including but not limited to the provisions of Paragraph 7(b) hereof, Licensee shall have the right to terminate this Agreement upon ten (10) days prior written notice of such termination to Licensor if:

(a) the Building or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Building and land upon which it is located cannot be operated in a manner consistent with the Trump Standard; or

(b) prior to the sale of at least seventy (70%) percent of the Units in the Tower Property that are offered for sale to the public, Donald J. Trump (i) dies; (ii) becomes permanently incapacitated or otherwise ceases permanently to render services to Licensor; (iii) is no longer a principal of Licensor; (iv) is convicted of a felony; (v) files a petition in bankruptcy or is adjudged bankrupt; (vi) a petition in bankruptcy is filed against Donald J. Trump and not discharged within sixty (60) days; or (vii) becomes insolvent, or makes an assignment for the benefit of his creditors or any arrangement pursuant to any bankruptcy or like law.

(c) The termination of this Agreement pursuant to this Paragraph 9 shall not impair Licensor's right to receive the Royalty in respect of units for which purchase contracts and leases shall be entered into prior to the date of termination.

10. Discontinuation of Use of Marks. Upon the expiration or termination of this Agreement for any reason, Licensee will immediately undertake its best efforts to discontinue any and all uses of the Trump Marks, by itself and by any Occupant, and make and shall cause each Occupant to make, no further use of the same whatsoever. If Licensee or any Occupant fails to so discontinue all such use within ninety (90) days, Licensor shall be entitled to immediate injunctive relief in addition to damages and all other applicable remedies.

11. Licensee Indemnification. Licensee hereby agrees to indemnify, defend, and hold free and harmless Licensor, its members, shareholders, employees, representatives, directors, officers, and Donald J. Trump and its and his successors and assigns (collectively, "Licensor Indemnified Parties") from and against any and all causes of action (including, but not limited to, product liability actions, tort actions and actions of any Occupants) and reasonable out-of-pocket expenses, including, but not limited to, interest, penalties, attorney and third party fees, and all reasonable amounts paid in the investigation, defense, and/or settlement of any claims, suits, proceedings, judgments, losses, damages, costs, liabilities and the like, (collectively "Claims and Expenses") which may be suffered, incurred or paid by any Licensor Indemnified Party, arising in whole or in part, directly or indirectly, out of (i) Licensee's or its agents, servants, employees or contractors acts or omissions in breach or default of this Agreement or (ii) the design, construction, operation, maintenance or repair of the Tower Property; or (iii) any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, arising from any use of the Approved Logos or (iv) Licensee's or its agents, servants, employees or contractors failure to comply with any laws. The foregoing indemnification shall not apply to any Claims and Expenses resulting from the negligence or willful acts of any Licensor Indemnified Party.

12. Assignment

(a) Licensor may assign this Agreement without the prior consent of Licensee to Donald J. Trump or an entity controlled by Donald J. Trump, or any heir, successor or legal representative of Licensor or Donald J. Trump; provided the assignee assumes the terms and conditions of this Agreement and owns or controls the New Trump Mark. This Agreement and Licensee's use of the New Trump Mark hereunder shall inure solely to the benefit of Licensor and to any and all heirs, successors or assignees of Licensor who owns or controls the New Trump Marks.

(b) Licensee may assign this Agreement as collateral to an institutional construction lender (the "Lender") without the written consent of Licensor, provided that (i) the form and content of such assignment shall be reasonably acceptable to Licensor; and upon an event of default by Licensee under any such institutional construction loan the Lender shall, within thirty (30) days of the date upon which it legally obtains possession of the Tower Property, assume the obligations of Licensee hereunder. Until such time as the Lender shall assume the obligations of Licensee hereunder, it shall have no right or interest in or to the New Trump Mark.

(c) The Principals may by will or intestacy transfer their direct or indirect interests in Licensee to each other or to the spouses or children of the Principals, which transferees shall be bound by the terms and provisions of this Agreement.

13. Infringement; Licensor Indemnification

(a) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based solely on the use of the New Trump Mark (exclusive, however, of any Approved Design Logos) for which Registration has issued by the ITO pursuant to the terms of this Agreement, is instituted against Licensee, Licensor hereby agrees, subject to the other provisions of Section 1(a) and this Section 13(a), to indemnify, defend, and hold free and harmless Licensee, its employees, representatives, directors, officers, successors and permitted assigns from and against any and all such causes of action and reasonable out-of-pocket expenses, including, without limitation, interest, penalties, attorney and third party fees which may be suffered, incurred or paid by Licensee in connection therewith. Licensee agrees to cooperate with Licensor in the defense of such action and to take no actions of any kind regarding such claim without the express prior written consent of Licensor, such consent not to be unreasonably withheld or delayed. Licensor shall have the sole and absolute right to settle any such action and to negotiate and determine the settlement terms. Licensee shall take all steps reasonably recommended to mitigate its damages incurred, including the removal of any New Trump Mark from the Tower Property and discontinuance of any use of the New Trump Mark, if required by Licensor. The remedy provided in this paragraph shall be the sole and entire remedy of Licensee. However, Licensor shall not be responsible for any special, consequential or exemplary damages or projected lost sales or profit of Licensee or other costs, losses or expenditures of Licensee. Licensee shall promptly notify Licensor of any marks used by third parties that may be confusingly similar or otherwise damaging to the New Trump Mark, but shall take no other action of any kind with respect thereto, except by express prior written authorization of Licensor.

(b) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based on use of the New Trump Mark (exclusive of any Approved Design Logos) is instituted against Licensor, Licensor shall have, at Licensor's option, the right to: (i) defend itself against any such action, proceeding or claim; or (ii) enter into any settlement of any such action, proceeding or claim in its sole discretion.

14. Representations and Warranties: Covenants

(a) Licenser represents and warrants to Licensee that:

(i) Licenser has the power and authority and all necessary licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licenser of the Agreement does not and will not conflict with, or result in any breach or contravention of any contractual obligation to which Licenser is a party or any order, injunction, writ or decree of any governmental authority to which Licenser or its property is subject or violate any requirement of law.

(iii) Licenser has not granted to any third party any rights inconsistent with the license rights granted to Licensee hereunder.

(iv) This Agreement constitutes a legal, valid and binding obligation of Licenser, enforceable against Licenser in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(v) Licenser shall use its commercially reasonable efforts to protect and maintain in full force and effect, at its expense, (x) the New Trump Mark (exclusive of Approved Logos) in Israel, to the extent Registration has been issued by the ITO; and (y) in the United States, with respect to any registrations with the U.S. Patent and Trademark Office of the same trademark as the New Trump Mark (other than Approved Logos);

(vi) The New Trump Mark is free and clear of any and all liens and other encumbrances and will not be pledged or granted as a security interest during the term of this Agreement unless such pledge or security interest is subject to this Agreement.

(b) Licensee represents and warrants to Licenser that:

(i) Licensee is a duly organized, validly existing and in good standing under the laws of the State of Delaware. Licensee has the power and authority and all licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensee of this Agreement has been duly authorized by all necessary corporate action, and does not and will not contravene the terms of Licensee's charter documents, conflict with, or result in any breach or contravention of, any contractual obligation to which Licensee is a party or any order, injunction, writ or decree of any governmental authority to which Licensee or its property is subject or violate any requirement of law.

(iii) This Agreement constitutes legal, valid and binding obligations of Licensee, enforceable against Licensee in accordance with their respective terms, except as

enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(c) Licensee covenants with, warrants and represents to Licensor as follows

(i) Licensee is not now, nor shall it be at any time during the Term, an individual, corporation, partnership, joint venture, trust, trustee, limited liability company, unincorporated organization, real estate investment trust or any other form of entity (collectively, a "Person,") with whom a United States citizen or entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise. Neither Licensee nor any Person who owns an interest in Licensee is now nor shall be at any time during the Term a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.C. 5312 (a) (2) as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC or otherwise.

(ii) Licensee has taken, and shall continue to take during the Term, such measures as are required by applicable law to assure that the funds paid to Licensor hereunder, are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. Licensee is, and during the Term will be, in compliance with any and all applicable provisions of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sanctions 1956 and 1957.

15. Insurance. All insurance coverage shall be subject to Licensor's review and reasonable approval and shall include the following:

(a) Prior to Commencing Construction:

(i) Licensee's Contractors shall provide evidence of a Contractors All-Risk Policy providing Builders' Risk Coverage on a Completed Value Form and Third Party Liability with limits of \$100,000,000.

(ii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(iii) Licensee shall cause the Architect and Engineers to obtain and maintain Architect's and Engineer's Professional Liability Insurance during the period commencing on the date of the Architect's Agreement and expiring no earlier than twenty-four (24) months after the substantial completion of the Building. Such insurance shall be in an amount equal to at least \$5,000,000 per claim.

(b) Post Construction of the Building:

(i) Special Perils Insurance: Licensee shall maintain property insurance against all risks of loss to the Property customarily covered by so-called "All Risk" or "Special Perils Form" policies which shall include the following perils: building collapse, fire, flood, hurricane, lightning, malicious mischief, subsidence, terrorism, vandalism, loss of rents, water damage, windstorm, additional expense of demolition and increased costs of construction, including, without limitation, increased costs that arise from any changes in laws or other legal requirements with respect to such on restoration in a minimum amount of \$10,000,000; at least one hundred (100%) percent of the replacement cost value of the Improvements; and all tenant improvements and betterments that any lease requires.

(ii) Liability Insurance: Licensee shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall provide coverage of at least \$50,000,000 per occurrence and \$50,000,000 in the annual aggregate, per location. If any Liability Insurance also covers other location(s) with a shared aggregate limit, then the minimum Liability Insurance shall be increased to \$50,000,000. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability (including, without limitation, any liability assumed under any leases), and products and completed operations. All Liability Insurance shall name the Indemnified Parties as "Additional Insureds".

(iii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(c) Evidence, acceptable to Licensor, of the existence of all such insurance shall be given to Licensor at least every six (6) months during the Term hereof.

16. Notices: Any notice, election, request or demand which by any provision of this Agreement is required or permitted to be given or served hereunder shall be in writing and shall be given or served by (i) hand delivery against receipt; or (ii) by any nationally recognized overnight courier service providing evidence of the date of delivery; or (iii) by certified mail

return receipt requested, postage prepaid; or (iv) by facsimile transmission, provided it is also concurrently sent by mail as provided in (iii) above, in each case addressed to:

(a) Licensee:

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, Florida 33137
Attn: Sharon Christenbury, Esq.
Fax: 305-573-2315

with a copy to:

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

(b) Licensor:

Trump Marks LLC
c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022
Attention: Donald J. Trump
President
Fax: (212) 755-3230

With a copy to:

The Trump Organization LLC
725 Fifth Avenue
New York, New York 10022
Attention: Bernard R. Diamond
Executive Vice President and General Counsel
Fax: (212) 317-0037

or to such other address or addresses, or such other persons, as a party shall from time to time designate by notice given and delivered as aforesaid. Any notice shall be deemed to have been rendered or given: (w) on the date hand delivered (or when delivery is refused), unless such hand delivery was not on a Business Day (as herein defined) or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (x) on the date delivered by a courier service (or when delivery is refused), unless such delivery was not on a Business Day or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (y) three (3)

Business Days from the date deposited in the mail, if mailed as aforesaid; and (z) the date sent by facsimile transmission, provided a copy is concurrently sent in the manner provided in subsection (ii) above. For the purposes of this Paragraph 16, a "Business Day" shall mean a day on which business is transacted by the Bank of Israel.

17. Miscellaneous

(a) This Agreement shall be governed, both as to interpretation and enforcement, by the laws of the State of New York and, as necessary, in the courts in that State, without regard to any principles of conflicts of law. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the federal court or state court located in the County of New York in the State of New York, and each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or thereafter have to the laying of the venue of any such suit, action or proceeding in any such court of that any such suit, action or proceeding brought in any such court has been brought in an inconvenient form. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. The parties acknowledge that the courts of the State of New York are a convenient forum for a resolution of any disputes hereunder. Notwithstanding the foregoing, but in addition to the rights provided above, Licensor shall have the right, in its sole discretion, to apply for injunctive relief against Licensee in the courts of Israel and the courts of Israel shall have jurisdiction with respect thereto.

(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

(c) If any provision hereof, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remaining provision herein, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

(d) This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended except by an instrument in writing signed by a Licensor and Licensee. Failure of a party hereto to complain of any act, omission, course of action, or continued acts or omissions, no matter how long such may continue, shall not be deemed a waiver by said party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waiving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or a consent to any subsequent breach of this Agreement.

(e) Licensor and Licensee covenant and agree that, without the written consent of the other Party, unless, as specifically provided herein, as may be required by law, or in an action or proceeding to enforce this Agreement, they will not, under any circumstances,

disclose or permit to be disclosed the existence of this Agreement or any of its contents to any persons or entities for any purpose whatsoever, other than solely to their respective shareholders, directors, members, officers and other employees, attorneys, accountants, banks, lenders, (collectively, "Affiliated Parties"), in each such case, on a "need to know basis." All Affiliated Parties shall be deemed bound by the provisions of this Paragraph 17(e). In connection with any such permitted disclosure to any Affiliated Parties, Licensor and Licensee, as applicable, shall be liable to the other Party for the acts or omissions of their Affiliated Parties that are in violation of this Paragraph 17(e).

(f) Notwithstanding anything to the contrary contained herein, including but not limited to the provisions of Paragraph 3 hereof, Licensor shall not be responsible for and shall have no liability to Licensee or to any third parties for, any design, construction, repair, or operation, means, methods, techniques, sequences and procedures, or for security or safety precautions and programs, employed by or on behalf of Licensee with respect to the design, construction, repair, or operation of the Tower Property. It is further understood and agreed by Licensee that Licensor is not an architect, engineer, contractor, or other professional licensed by any state, city or municipal authority or any department or agency of any of the foregoing, and Licensor shall provide no services to Licensee in such capacity and shall have no liability to Licensee or to any third party as such. Any reviews, recommendations, approvals, and advice to be furnished by Licensor under this Agreement shall not be deemed to be warranties or guarantees or constitute the performance of professional services as aforesaid.

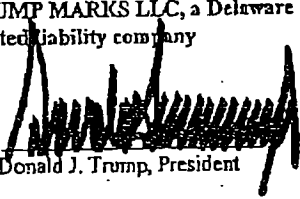
(g) The Recitals set forth above are incorporated herein as if set forth in full.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement which shall be effective as of the date first set forth above.

LICENSOR:

TRUMP MARKS LLC, a Delaware limited liability company

By: 
Donald J. Trump, President

LICENSEE:

CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company

By: Crescent Heights Diamond Holdings, LLC,
a Delaware limited liability company
Its managing Member

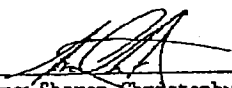

Name: Sharon Christenbury
Title: Vice President

EXHIBIT A

ROYALTIES

1. In consideration for Licensor's execution and delivery of this Agreement and the rights granted to Licensee hereunder, Licensee shall pay to Licensor amounts (singularly, the "Royalty" and collectively, the "Royalties") equal to the sum of:
 - (a) \$1,000,000.00 (U.S.), (the "Initial Payment") which shall be non-refundable and paid to Licensor on the date that Licensee shall be issued the initial construction permit for the commencement of construction of the Building, other than permits for demolition required under a pre-development loan, if any.
 - (b) An amount (the "Residential Incentive") equal to twenty-five (25%) percent of the amount by which the average of the U.S. dollar aggregate sales prices, including upgrading, for all units in the Residential Component that are offered for sale to the public (which shall not be less than ninety-five (95%) percent of all units in the Residential Component) equals or exceeds \$550.00 (U.S.) per "Residential Square Foot" (as herein defined), net of any applicable value added tax ("VAT") that is added to the purchase price; and
 - (c) An amount (the "Non-Residential Incentive") equal to ten (10%) percent of the sales price, net of any VAT, for each Storage Space, Garage Space and unit of the Retail Component (collectively, "Non-Residential Portions"); and
 - (d) An amount (the "Rental Incentive") equal to ten (10%) percent of the gross rental payments received by Licensee for residential units in the Residential Component or retail units (or portions thereof) in the Retail Component or for Storage Space or Garage Space, in each case less only any common area costs, including common utilities, taxes and operating expenses and other similar items that are passed through to the tenants, without premium or override added by Licensee.
 - (e) For the purposes of this Exhibit A, "Residential Square Foot" shall mean the area within each unit that is capable of being air-conditioned. In the event the Parties shall be required to utilize square meters as opposed to Residential Square Feet, as the appropriate measurement for purposes of this Exhibit A, then the Parties agree that each square meter shall equal 10.76391 square feet.
2.
 - (a) The Residential Incentive shall be computed and paid to Licensor (the "Interim Residential Payment"), less the amount of the Initial Payment, on the date upon which possession of eighty-five (85%) percent of the Residential Component Units that are offered for sale to the public have been delivered to the purchasers.

Upon the delivery of possession of the last of the Residential Component Units that are offered for sale to the public, Licensor and Licensee shall recompute the amount of the Residential Incentive for all Residential Component Units (the "Final Residential Computation"). If the Final Residential Computation is greater than the sum of all Interim Residential Payments, the positive difference shall be paid by Licensee to Licensor within ten (10) days of such computation. If the Final Residential Computation is less than the sum of the Interim Residential Payments, the difference shall be paid by Licensor to Licensee within ten (10) days following such computation.

- (b) The Non-Residential Incentive shall be paid to Licensor within five (5) days of Licensee's receipt of payment from the applicable purchasers.
 - (c) The Rental Incentive shall be paid to Licensor quarter annually in arrears with respect to each lease in effect during such quarter-annual period.
3. Licensor or its authorized representatives will have the right to inspect, copy and audit at reasonable times (but not more than twice during any calendar year), and upon reasonable advance notice to Licensee, both during and after the Term, such original books, records, purchase contracts, leases and other documents that serve as the basis for the determination of the Sales Royalties and the Royalties. Licensor agrees that the information contained in Licensee's books and records will be subject to the confidentiality provisions of paragraph 17(e) hereof. Any inspection or audit will be paid for by Licensor. However, in the event that any inspection or audit shows that Licensee has under-reported the Sales Royalties or the Royalties by two (2%) percent or more for any given period, then Licensee shall pay to Licensor within fifteen (15) days after receipt of the audit report, the deficiency in the Sales Royalties or Royalties as the case may be, together with interest thereon at the rate of nine (9%) percent per annum from the original due date to the date of payment; the actual cost of such inspection or audit and other reasonable costs incurred by Licensor. Within ten (10) days following the expiration of each month of the Term Licensee shall provide to Licensor, in form and content approved by Licensor, a report as to all residential and retail sales and leasing, including parking and storage, that occurred in the immediately preceding month.
4. In the event that any agreement for the sale or lease of any part of the Tower Property is set forth in New Israel Shekels, then for the purposes of calculating the Sales Royalties or the Royalties, the sales price (inclusive of all upgrades) and all rents shall be calculated according to the "representative rate" of the U.S. dollar, published by the Bank of Israel, as of the date of the execution of the sales or lease agreement.
5. All definitions used in this Agreement, to which this Exhibit "A" is an exhibit, shall be deemed incorporated herein.

EXHIBIT B

POWER OF ATTORNEY

(follows this cover page)

IRREVOCABLE POWER OF ATTORNEY

We, the undersigned, CRESCENT HEIGHTS DIAMOND, LLC of 25 Broad Street, New York, New York 10004, do hereby appoint Advocates Isaac Molho and/or Orrin Persky and/or David N. Shimron and/or Jakob Melcer and/or Michal Arlosoroff and/or Dov Abramowitz and/or Shai Ganor and/or Michael Rabello and/or Michal Shur-Ofry and/or Jonathan Friedland and/or Tal Rabel-Cohen and/or Shlomit Agmon and/or Gil Ephrati and/or Ranan Persky and/or Orna Gabay and/or Orit Malka and/or Yitzhak Goldstein and/or Rachel Shay and/or Judy Amidor and/or Eyal Zalikhia and/or Aharon Illouz and/or Roman Kogan and/or Inbal David, of Technology Park, Manahat, Jerusalem, Israel, jointly and severally (hereinafter: "Our Attorneys") to act jointly or severally as our true and lawful attorney or attorneys in fact and at law to act in our name and place and to do all that is necessary to CANCEL ANY REGISTRATION OF A TRADEMARK LICENSE(s), which may be registered with the Israeli Trademark Registrar, referring to trademark(s)/trademark application(s) in the name of Donald J. Trump and/or Trump Marks LLC., in which our name shall appear as licensee ("hereafter: Cancellation of Trademark License Registration")

Without derogating from the generality of the above, Our Attorneys shall be entitled to do the following for the above purpose:

1. To appear on our behalf and in our stead before any person, authority, institution, or office whether governmental, municipal, public or private—including, but not limited to, the Israeli Trademark Registrar.
2. To sign, execute, deliver, and acknowledge on our behalf and stead all requests, declarations, applications, forms, notices and other documents which shall be required for the purpose of Cancellation of Trademark License Registration.
3. To pay, on our behalf and stead and at our expense, all payments of any kind whatsoever for the purpose of Cancellation of Trademark License Registration.
4. This Power of Attorney shall be interpreted in the broadest manner so that our Attorney shall be able to, on our behalf and stead, execute any action that we ourselves and/or a person/persons acting on our behalf are legally entitled to do for the purpose of Cancellation of Trademark License Registration.
5. Any act executed and/or caused to be carried out by Our Attorney(s), on our behalf, in respect to this Power of Attorney, shall obligate us and our legal successors.
6. Since third party rights are dependent on this Power of Attorney, it shall be irrevocable, and we shall not be able to cancel it or change it. Furthermore, this Power of Attorney shall remain valid even if we become bankrupt, or enter into liquidation and/or any similar

proceedings, and shall bind our liquidators, trustees, receivers, and any other legal successors in title.

IN WITNESS WHEREOF, we have signed our name to this Power of Attorney specifically designated for the aforementioned purposes on this _____ day of May 2006.

CRESCENT HEIGHTS DIAMOND, LLC

By its authorized signatory:

Name:

Title:

Certification of Attorney:

I, the undersigned _____, of _____ as legal counsel to _____, hereby certify that the above are authorized signatories on behalf of _____ and that the signatures hereinabove duly bind _____.

Signature: _____

Name: _____, Esq.

Date: _____

~~SIGNATURE TO BE IDENTIFIED AND AUTHENTICATED BY CAROLINE~~



EXHIBIT C

THE RESTRICTED AREA

(follows this cover page)

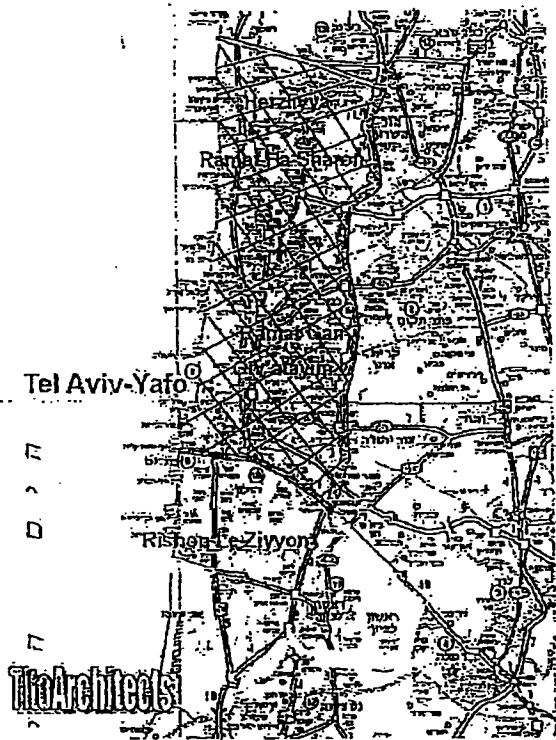


EXHIBIT C
THE RESTRICTED AREA
(The Restricted Area is crossed hatched)



FIRST AMENDMENT TO LICENSE AGREEMENT

This FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment") is made and entered into effective as of the 23rd day of May, 2006 by and between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor") and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company ("Licensee").

RECITALS:

- A. Licensor and Licensee entered into that certain License Agreement dated as of May 23, 2006 (the "Agreement").
- B. Pursuant to the terms and conditions of the Agreement, Licensor licensed to Licensee the right to use the trademark "Trump Tower" as the New Trump Mark for use in association with the Tower Property in Ramat Gan, Israel, pursuant to the terms and conditions of the Agreement.
- C. At Licensee's request, Licensor has applied for the registration of the trademark "Trump Plaza" with The Israeli Trademark Office in classes 36 and 37.
- D. Licensor and Licensee have agreed to amend the Agreement to provide that the New Trump Mark shall be "Trump Plaza", with the contingent right, as herein provided, for Licensee to use the trademark "Trump Tower" as the New Trump Mark if Licensee is prevented or prohibited from using the trademark "Trump Plaza" as the New Trump Mark.
- E. Defined terms not otherwise defined herein shall have the meaning set forth in the Agreement.

NOW THEREFORE, for and in consideration of \$1.00 and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree to amend the Agreement as follows:

1. Paragraph 4 of the Recitals to the Agreement is amended and restated as follows:

WHEREAS, Licensee desires to use the name "Trump Plaza" or in the alternative, "Trump Tower", if the use of "Trump Plaza" is prohibited as the result of a Supervening Event (as provided in and subject to Section 1(i) below); which together with any "Approved Logo" (as hereinafter defined) is referred to herein as the "New Trump Mark"; and

2. Paragraph 1 of the Agreement is amended to incorporate new Paragraphs 1(j), (k), (l) and (m) as follows:

(j) During the Term of this Agreement, the New Trump Mark shall be the trademark "Trump Plaza", together with any "Approved Logo", until such time as

(x) Licensee is prohibited from lawfully using the trademark "Trump Plaza" for any reason (including but not limited to, as the result of the enforcement of rights by a third party, the decision of a court, tribunal, or dispute resolution body of competent jurisdiction or other occurrence which prevents Licensee from using "Trump Plaza"), or (y) Licensee, based on the advice of counsel, reasonably believes the continued use of the "Trump Plaza" trademark could expose Licensee or Licensor to potential liability to a third party (collectively a "Supervening Event"). Upon the occurrence of a Supervening Event, Licensee shall have the right to notify Licensor in writing (a "Supervening Notice") of: (i) such Supervening Event, with reasonable documentation explaining the cause thereof, and (ii) that Licensee has elected to use the trademark "Trump Tower" as the New Trump Mark under this Agreement in lieu of "Trump Plaza," subject, however, to the provisions of Paragraph (k) below. Upon delivery of the Supervening Notice to Licensor, all references to the New Trump Mark in this Agreement shall be deemed to mean the "Trump Tower" trademark together with any "Approved Logo"; Licensee shall then have the immediate right to use the "Trump Tower" trademark in lieu of the "Trump Plaza" trademark; and Licensee shall phase out usage of the trademark "Trump Plaza" within a reasonable period of time, not exceeding ninety (90) days. If Licensee elects to use the "Trump Tower" trademark as described above, Licensee shall pay all costs and expenses associated with changing the name of the Tower Property from "Trump Plaza" to "Trump Tower", including signage, advertising, marketing, stationery etc.

(k) Notwithstanding anything to the contrary contained in this Agreement, in the event Licensee shall substitute "Trump Tower" for "Trump Plaza" as the New Trump Mark pursuant to the provisions of Section 1(j) above, and Licensee shall then be compelled to cease use of "Trump Tower" as the New Trump Mark as the result of a Supervening Event, Licensee shall have the right to elect to return to the use of "Trump Plaza" as the New Trump Mark in accordance with the terms of Section 1(j) above. If Licensee elects to return to use of "Trump Plaza" as described in the preceding sentence, Licensor shall have no liability to Licensee under this Agreement if Licensor's trademark rights to "Trump Plaza" are adversely affected ("Adverse Impact") solely as a result of Licensee ceasing use of "Trump Plaza" as the New Trump Mark during the period of time when Licensee had elected to use "Trump Tower" as the New Trump Mark. However, if an Adverse Impact on Licensor's trademark rights in the "Trump Plaza" trademark is caused by any act or omission of Licensor in violation of this Agreement (including but not limited to a failure to maintain the "Trump Plaza" trademark), the limitations on Licensor's liability as provided in the preceding sentence shall not apply and all applicable terms and conditions of this Agreement shall apply.

(l) Notwithstanding anything to the contrary contained herein, if, after expiration of the time period provided for in Section 1(g)A above, Licensor shall have the opportunity to use or license "Trump Plaza" or "Trump Tower" in the Restricted Area, Licensor shall notify Licensee in writing of such potential use ("Licensor Use Notice"). Licensee shall have thirty (30) days after receipt of the

Licensor Use Notice ("Election Period") to elect in writing whether "Trump Plaza" or "Trump Tower" shall be the New Trump Mark ("Licensee Election Notice"). From the date of the Licensee Election Notice, the New Trump Mark shall be the mark elected by Licensee in the Licensee Election Notice which shall be irrevocable, and Licensor, its affiliates and Donald J. Trump shall then have the right to use, for any purposes not prohibited herein, whichever of "Trump Plaza" or "Trump Tower" is not identified in the Licensee Election Notice. If Licensee shall fail to deliver the Licensee Election Notice prior to expiration of the Election Period, Licensee shall be deemed to have elected to use the New Trump Mark in use by Licensee on the date of the Licensor Use Notice.

(m) If at any time Licensee shall be prohibited from using both "Trump Plaza" and "Trump Tower" as the New Trump Mark as the result of a Supervening Event, Licensee shall have the right to use another "Trump" name trademark ("Replacement Mark"). The Replacement Mark shall be mutually agreed upon, using good faith, by both Licensor and Licensee, which agreement shall not be unreasonably withheld by either party. The determination of the Replacement Mark shall follow the applicable procedures of Paragraph 1(d) hereof. The Replacement Mark shall be agreed upon as promptly as practicable after Licensee is prohibited from using both "Trump Plaza" and "Trump Tower" as the New Trump Mark. Any such Replacement Mark shall be registered, maintained and used in accordance with the terms and conditions of this Agreement and any such Replacement Mark shall then be deemed the "New Trump Mark" as used herein. If Licensee elects to use the Replacement Mark as described above, Licensee shall pay all costs and expenses associated with the trademark assessment, application for trademark registration of, and changing the name of the Tower Property to, the Replacement Mark, including signage, advertising, marketing, stationery etc.

3. Paragraph 1(g) C of the Agreement is amended and restated as follows:

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" and/or "Trump International Hotel and Tower" names, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that term is customarily used, or any Condominium Hotel, or for any other use not expressly prohibited herein, anywhere in the State of Israel, including the Restricted Area. For the sake of clarity, it shall not be a violation by Licensor of any provision of this Agreement, if at the time the New Trump Mark shall be "Trump Tower" Licensor shall use or license others to use the name "Trump International Hotel and Tower" anywhere in the State of Israel, including the Restricted Area, for a hotel or Condominium Hotel.

4. Miscellaneous.

(a) Ratification. Except as herein specifically modified and amended by this Amendment, all of the terms, covenants and conditions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect.

(b) Agreement. Except insofar as reference to the contrary is made in any such instrument, all references to the "Agreement" in any future correspondence or notice between the parties shall be deemed to refer to the Agreement as modified by this Amendment.

(c) Binding Effect. Each person executing this Amendment personally represents and warrants to the other parties hereto that he/she is legally authorized to execute this Amendment as the binding obligation of such person.

(d) Counterpart Signatures. This Amendment may be executed in multiple counterparts, each of which shall constitute an original but when taken together shall constitute one and the same instrument.

(e) Recitals Incorporated. The Recitals to this Amendment set forth above are incorporated herein as if set forth in full.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have respectively executed this Amendment as of the day and year first above written.

LICENSOR:


TRUMP MARKS LLC,
a Delaware limited liability company

By: 
Donald J. Trump, President

LICENSEE:

CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company

By: Crescent Heights Diamond Holdings, LLC
a Delaware limited liability company,
its managing Member

By: 
Name: Sharon Christenbury
Title: Vice President





B

Trump Marks LLC

c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022

Bernard R. Diamond
Executive Vice President
& General Counsel
Direct dial (212) 715-7288
Direct fax (212) 317-0037
bdiamond@trumporg.com

Via Certified Mail, RRR, Facsimile
and Federal Express

August 2, 2007

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, FL 33137
Attention: Sharon Christenbury, Esq.
Fax:: 305-573-2315

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

Re: License Agreement ("License Agreement") dated May 23, 2006 between Trump Marks LLC, as Licensor and Crescent Heights Diamond, LLC, as Licensee

Dear Ms. Christenbury:

Reference is made to the License Agreement.

The capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the License Agreement.

As I am sure you are well aware, since the inception of the License Agreement, the well-publicized association of the "Trump" name with the anticipated "Tower Property" (as defined in the License Agreement) has generated intense interest among potential purchasers, investors, lenders and the general public, which, in turn, has led to a dramatic appreciation in the value of the Land.

It has come to the Licensor's attention that the Licensee has either sold the Land or is entertaining competing offers for the sale of the Land. By its actions the Licensee obviously seeks to profit handsomely from the association of the "Trump" name with the Land. Notably, in several recent conversations between senior representatives of the Licensee and the Licensor, the Licensee failed to disclose to the Licensor its aforesaid actions.

Sharon Christenbury
August 2, 2007
Page 2

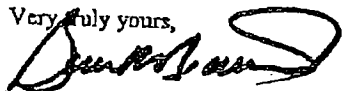
I remind you that among the numerous obligations of the Licensee under the License Agreement (and the inducement for the Licensor to execute and deliver the License Agreement to the Licensee) is the Licensee's covenant and agreement, among others, "...to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property" under the Trump brand.

Please be advised that any sale or other disposition of the Land by the Licensee, without the consent of the Licensor, will thwart the intent and purpose of the License Agreement to the Licensor's financial detriment, denying the Licensor the right to receive many millions of dollars in "Royalties", in violation of the License Agreement.

Any effort by the Licensee to assign the License Agreement to a purchaser of the Land, without the Licensor's consent, will constitute a separate material default by the Licensee under the License Agreement. In addition, the disassociation of the Trump name from the Tower Property as a result of any such unapproved sale, after the public acclaim that has resulted by reason of such association, will substantially damage the Trump name and reputation on a world-wide basis, for which the Licensor will hold the Licensee fully responsible.

I trust you will be guided accordingly.

Very truly yours,

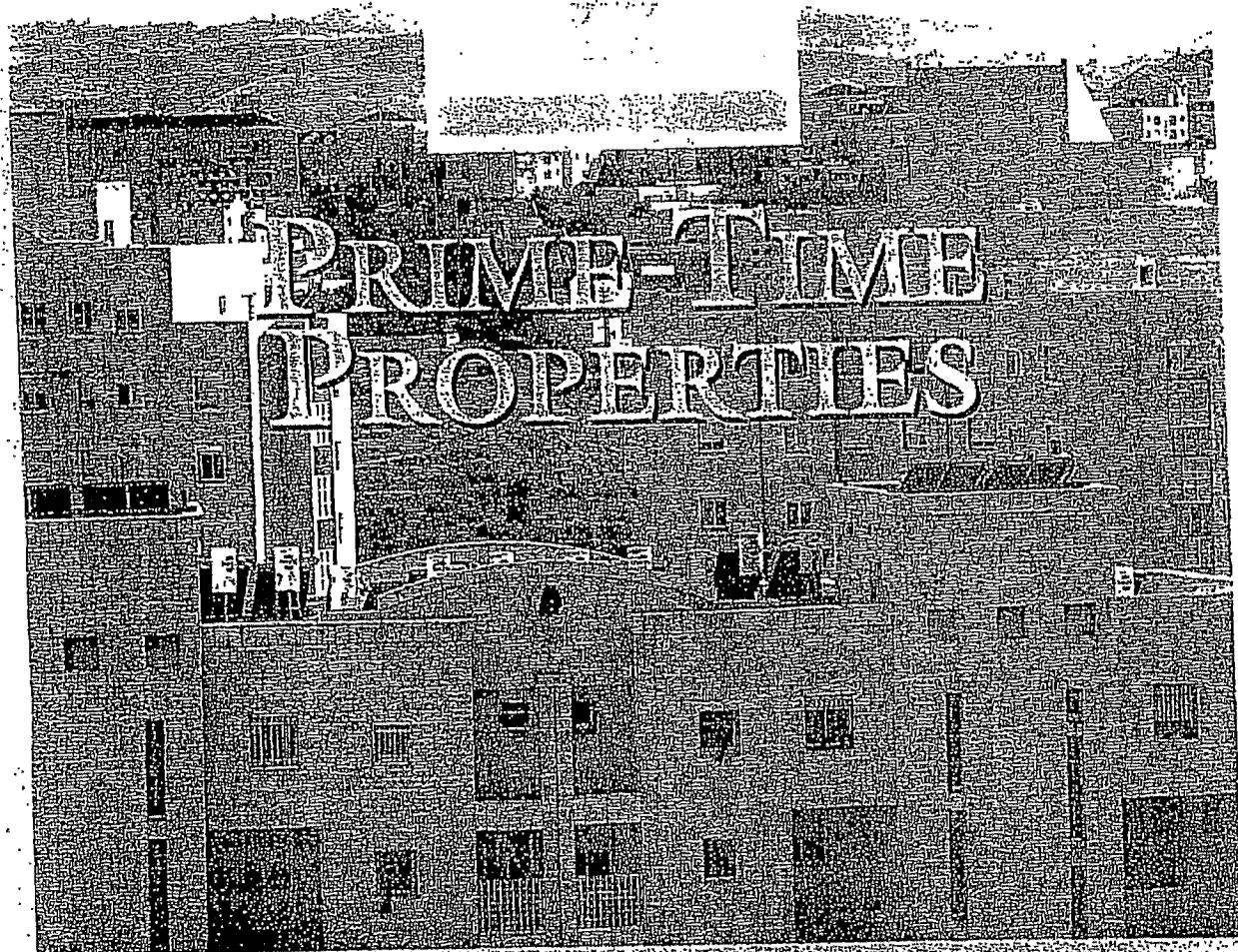

Bernard R. Diamond

BRD: mgs

cc: Donald J. Trump
Donald J. Trump, Jr.
Ivanka Trump
Eric Trump
Jay Goldberg, Esq. - *not sent*

ISRAEL REAL ESTATE

AN ADVERTISING SECTION OF THE JEWISH WEEK APRIL 7, 2006

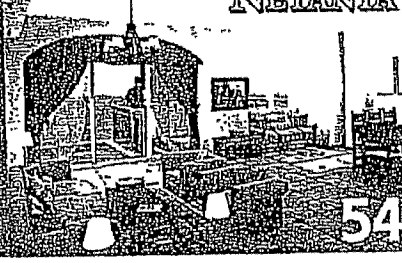
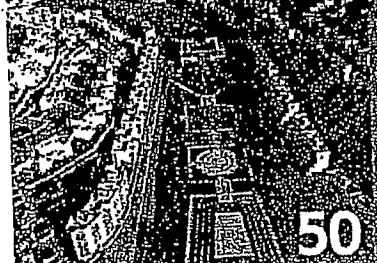


PRIME-TIME PROPERTIES

MODERN MAGIC

ENTICING ESTATES

NESTLED IN NETANYA



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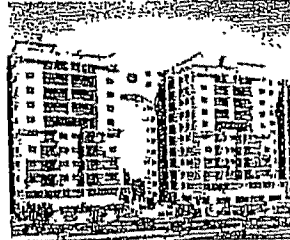
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54

Prime-Time Properties

With investors like Trump aboard, Israel is no longer a market for apprentices.

KEN STEPHENS
Special To The Jewish Week



Dori Towers is among the heavy projects going up in Modiin.

The Israeli real estate market is on the verge of an amazing transformation.

After local real estate industry statisticians showed that investors from North America, the United Kingdom and elsewhere in Europe purchased nearly \$1.8 billion of property in Israel in 2005, two of New York's most maverick building magnates — Donald Trump and Shaya Boymelgreen — ascertained that Israeli real estate developers weren't apprentices after all.

Trump recently announced plans to build an upscale apartment tower in downtown Ramat Gan opposite the Diamond Bourse (i.e. Exchange) and develop a megahotel and residential complex along Netanyahu's picturesque seacoast.

Boymelgreen has taken his ambitions one step further.

Two weeks ago he purchased a controlling interest in Azorim, one of Israel's largest business and residential construction firms. Then last week, Boymelgreen announced the purchase of a much-sought-after plot of land in the heart of Tel Aviv, where he intends to erect high-priced residential towers.

According to Israeli news reports, the real estate industry continues to be fueled

by three key market factors: local confidence in the growing economy, European anti-Semitism and an unprecedented aliyah spurt from North America, France and the United Kingdom.

"In places like Netanya and Jerusalem, there are no more so-called 'pioneers,'" a prominent real estate developer told The Jewish Week. "There are growing and well-organized expatriate Anglo [English-speaking] communities in Netanya, Jerusalem and Modiin. In fact, in some places like Nitzan Boulevard in Netanya or Ben Yehuda Street in Jerusalem, the English language is so prevalent you'd think you're in the middle of Trafalgar Square or downtown Manhattan.

"If one were to compare between the real estate booms in London and Israel, the prices are far more attractive for purchasing a piece of property overlooking the sea in Netanya. The other reality is that the stronger currencies in Europe like the euro and British sterling also makes purchases in Israel that much more inviting."

It seems nothing can shake Israel's real estate juggernaut, including the tenuous "cease-fire" with the Hamas-controlled Palestinian Authority.

ists and real estate buyers are consistently pumping large sums of money into the local economy, Jerusalem Mayor Uri Lupolinski is endeavoring to loosen the bureaucratic reigns and offer more plots of land, large and small, for development.

Several local and foreign hotel and residential developers such as Alfred Akroff (David Citadel Hotel) and the renowned Reichmann family of Canada are in the midst of creating five-star hotel-apartment complexes just outside the entrance to the Old City.

Akroff's company, Akroff (Israel) Ltd., is constructing the second portion of his spectacular Mamilla Project, which will also boast another hotel and a shopping promenade.

The Jewish Agency and the Jewish National Fund have been given a government mandate to develop the Galilee and Negev regions, in the north and south.

The Reichmanns are on the verge of restoring the landmark Palace Hotel to its former Jewish beauty. The Palace in its new incarnation will also feature a select number of impeccably designed apartments.

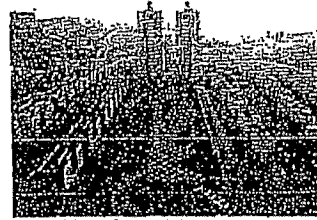
Just up the block from these hotels is one of the city's most spectacular new

residential complexes, Jerusalem of Gold, which already has attracted many buyers from North America.

Yoram Schechter, Jerusalem of Gold's project manager, says foreign investors want to purchase a piece of property that will offer them the same quality of life with which they grew up.

"We didn't invent anything new," Schechter says. "We've actually re-created the same luxurious standards that people are used to living in the diaspora countries."

"The truth is, with increased immigration from North America and the U.K., families are no longer looking to purchase a simple apartment. They are thinking about the fu-



Demand for real estate in Modiin has sent prices up nearly 20 percent in the past year.

HOT MARKETS

So where can potential buyers or investors find the best properties?

Israel's three fastest growing cities — Jerusalem, Netanya and Modiin — seem to be the best bets.

Jerusalem has consistently been a magnet for foreign tourists and investors, who not only want to reach out and touch Jewish history, they want to own a piece of the Holy City.

Recognizing that wealthy foreign tour-

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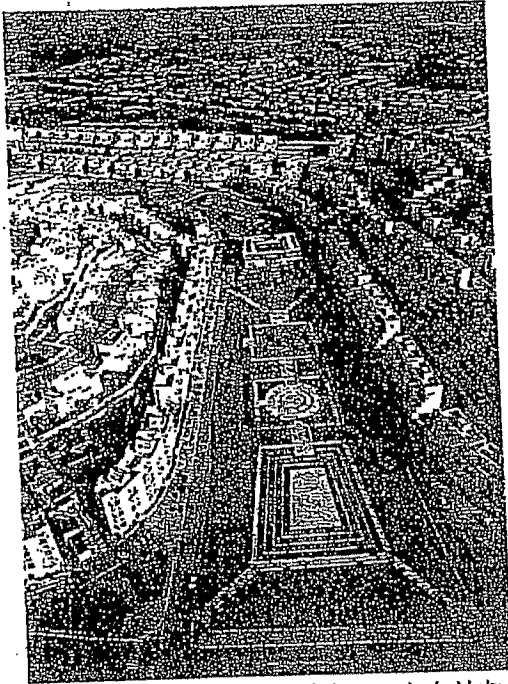
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Modiin, between Jerusalem and Tel Aviv, is the fastest growing Jewish city in Israel, according to government statistics.

ture — their children, the local community, integrating into society, etc.

Schechter says some people start out by purchasing an apartment and use it for business trips, then once they feel comfortable enough making a living in Israel, the entire family moves to Israel.

"We offer almost all of the same amenities as a five-star hotel, including a swimming pool, meetings rooms for business sessions and other events, a mikveh, and a spectacular four-story lobby," he says. "This is something that every family can be proud of because fine architecture is important to residents."

Netanya, which is located less than 30 minutes from downtown Tel Aviv, already boasts many attractive properties that are being built along or near the seaside promenade.

The developers of the Sea Opera apartment complex have received kudos from the local real estate industry for designing a project that was specifically tailored for the Anglo communities in North America and the U.K. A substantial number of ocean-view apartments have already been sold to North American olim and vacationers.

MODIIN MAGIC

According to Israel's Central Bureau of Statistics, Modiin, which is equidistant to Jerusalem and Tel Aviv, is the fastest-growing Jewish city.

Nearly two-dozen construction companies are in various phases of developing this "city in the country," which by the end of 2010 will boast a population approaching 100,000.

New immigrants from North America, the United Kingdom, South Africa and Australia are moving to Modiin in droves due to its easy proximity to Israel's two largest cities, the airport (12 minutes by car), affordable real estate and quality of life.

Within 18 months, Modiin will also feature a direct rail link to Jerusalem, Tel Aviv and the airport, as well as a major shopping mall.

Due to the increased numbers of North Americans who are looking to purchase apartments or cottages in Modiin, real estate prices in several neighborhoods have jumped nearly 20 percent in the past year.

Recognizing this trend, the Jewish Agency and the Jewish National Fund are actively encouraging potential new immigrants away from living in the center of the country. Both have been given a governmental mandate to develop the Galilee and Negev regions, in the north and south, to increase the Jewish population in Israel's periphery.

Following that call, the Jewish Agency is offering attractive incentive plans to potential English-speaking immigrants who wish to live in the Galilee or Negev regions, including discounted land rights and easy-term mortgages. ■

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From Pastoral Hills To Mediterranean Thrills

Israeli builders look to match investors to their attractive properties.

KEN STEPHENS
Special To The Jewish Week

While real estate properties in the metro Jerusalem region continue to attract large numbers of eager North American buyers, other attractive investment opportunities are available for both couples and families in Gush Etzion (Judca), the Shefela (Coastal Plain) and the central coastline areas.

These regions have become enticing alternatives for many buyers, who either cannot afford Jerusalem's soaring prices, wish to imbibe fresh country air or enjoy living near the beach.

The record-breaking numbers of new immigrants from North America via Nefesh B'Nefesh's aliyah programs — another 4,000 are expected to arrive in Israel this year — has also created unique marketing opportunities for a plethora of savvy real estate agencies.

Some of these agencies have recently hired English-speaking immigrants to sell their properties to investors and potential new olim from North America.

By offering a full range of services to people who speak

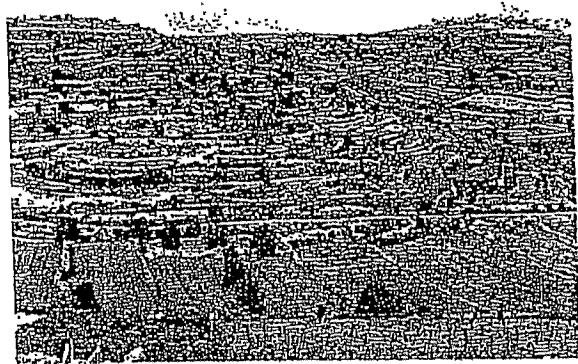
the "same language," these agencies are now practicing a previously unknown phenomenon in the Israeli marketplace — good business acumen.

One company has taken this concept a step further by opening a Midtown Manhattan office.

Anglo-Saxon USA, a subsidiary of Israel's Anglo-Saxon Real Estate owned by billionaire building and hotel magnate Lev Leviev (via his Africa-Israel conglomerate), opened a few months ago on Third Avenue.

Ori Degani, general manager of the U.S. operation, is decidedly upbeat about the prospects of selling Israeli properties to metro New York investors.

"The bottom line is that Jews want to buy homes and apartments in Israel," Degani said. "The fact that we have thousands of exclusive listings available in tandem with our offices in Israel provides us with a unique advantage. So the potential for succeeding is very high."



Nofel Kramlin, or "Vineyard Views," is an upscale project being built on one of the few remaining land allocations available to Efrat in Gush Etzion.

Degani says American buyers have expressed interest in purchasing properties in Jerusalem, Beit Shemesh, Modiin, Mevasseret Zion (a Jerusalem suburb), Tel Aviv and Netanya, where the English-speaking community is "wealthy and religious."

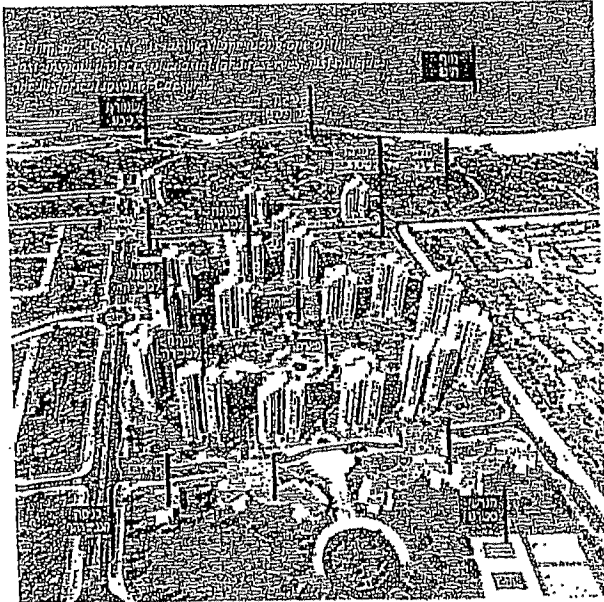
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Anglo-Saxon also offers legal and financial advice, Degani said, "making it easier for purchasers to receive mortgages. By providing a full range of services, we are making it that much simpler for people to make aliyah."

COUNTRY LIVING

In the 1980s Rabbi Shlomo Riskin of Lincoln Square Synagogue in Manhattan began his aliyah odyssey to the neophyte Judean town of Efrat in Gush Etzion. Since Rabbi Riskin's appointment as chief rabbi of Efrat nearly three decades ago, the town has transformed itself into one of the largest English-speaking communities in Israel.

Efrat, however, has nearly used up its "legal" land allocations from the Israeli government, and only a limited number of properties are still available. One is Nofei Kramim ("Vineyard Views").

"Nofei Kramim is an upscale project where the buyers can purchase a large plot of land and have the ability to either build one huge home or several smaller cottages," said Kim Levy, Nofei Kramim's sales and marketing representative. "This project represents one of the last opportunities to purchase a dream piece of property with unobstructed views of pastoral hills and vineyards in Efrat.

"The other advantages of living in Efrat are the friendly neighbors and easy access to Jerusalem, which is only 15 minutes away by car or bus."

The Shefelu boasts many burgeoning communities that are being built in and around one of the country's most fertile agricultural regions.

One of these communities is located in Ramat Beit Shemesh, where the Chazon and Qafili building company is putting the

finishing touches on its Ramat Kramim project. The spacious homes have been designed and tailored for the fast-growing English-speaking Orthodox community in Ramat Beit Shemesh.

SURE'S UP

Israeli building companies are also avidly looking to attract American couples and families to spectacular new projects that offer a "California lifestyle" along the Mediterranean coastline.

One such project is Hefsiha's Hofim ("Coasts"), which is taking shape along one of the last unspoiled pieces of coastal land reserves, just outside the historical town of Caesarea.

"We're actually targeting two types of American families — Israelis who are living in the USA and native Americans who are either looking for a second home in Israel (for vacations) or something more permanent," said Lior Asis, Hofim's sales and marketing representative.

Asis calls Hofim "an ideal project."

"We are building a beautiful community from scratch featuring all of the amenities — shopping, schools, synagogues, as well as direct access to the central [Tel Aviv] and northern [Haifa] parts of the country, both of which are only about 30 minutes away by car. Hofim is also a great investment because the project is comparatively cheaper than other sea-coast properties in nearby Tel Aviv and Herzliya," he said.

Because the project is located in a suburban locale, Hofim represents one of Hefsiha's most dynamic real estate challenges.

But as Asis noted, "Once people come and see for themselves just how beautiful this place is going to be, the project will undoubtedly sell itself." ■

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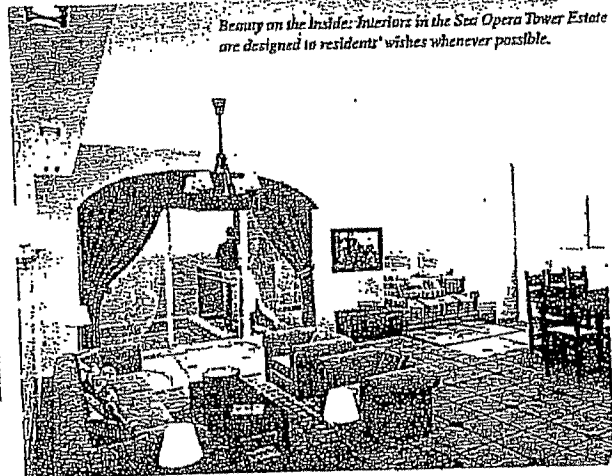
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ESTATE

AN ADVERTISING SECTION OF THE JEWISH WEEK



Beauty on the Inside: Interiors in the Sea Opera Tower Estate are designed to residents' wishes whenever possible.

Nestled In Netanya

Luxurious new Sea Opera estate offers
gracious living by the Mediterranean.

KEN STEPHENS
Special To The Jewish Week

The most modern amenities graced with a touch of nature, panoramic vistas of the coastline to the north and south, and scenic views of the surrounding verdant countryside — residents of the Sea Opera Tower Estate have them all.

This exciting real estate development in the northwestern part of Netanya, opposite the seashore, offers gracious living at its best.

Sea Opera, built on a 12,000-square-meter plot of land, will have 180 apartments in two towers. One of the towers has been completed and is occupied. Tower 2 will be completed next year.

Three-, four- and five-bedroom apartments, as well as spacious penthouses, all have breathtaking views.

The estate will also contain a 6,500-square-meter park, a swimming pool, and a well-equipped gym and spa area. As one would expect, underground parking is plentiful.

Sea Opera is being built by one of Is-

rael's leading construction firms, Danyn Cebus, a member of the Africa Israel group of companies and one of the largest private business groups in the country.

The self-contained development, expected to be one of the most prestigious in Israel, features a striking architectural design and state-of-the-art technology. The IT infrastructure will ensure that the estate's many overseas residents can communicate with people abroad.

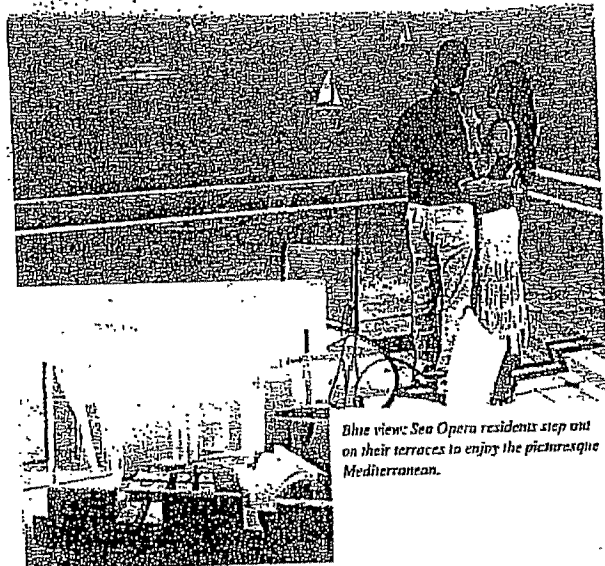
The exterior design of the Sea Opera towers provides the estate with an ultra-modern appearance. The singular design of the roof — a fan-like metallic structure — blends with the solid tower and its granite facade.

Industry pundits
already have designated
Sea Opera as one of
the top five beachfront
locales in Israel.

The approach to the towers is enhanced by a pleasant promenade that features impeccably maintained gardens. Guests enter a spacious lobby with marble floors and walls with silent

elevators. One of the elevators will be designated for Shabbat and Jewish holidays.

Apartment interiors will be designed to residents' specifications when possible. Modern kitchens and bathrooms have double-glazed windows, as does the entire apartment, to keep out the glare and heat of the sun. Each apartment has a terrace with a view of the sea.



Blue view: Sea Opera residents step out on their terraces to enjoy the picturesque Mediterranean.

The Sea Opera residence will be administered by a specially appointed maintenance and management company. The company will administer to all public areas, and maintain 24-hour surveillance and concierge services, as well as tend the gardens, swimming pool, gym and spa.

Already renowned in many Jewish communities around the world, the Sea Opera estate is selling briskly.

Most of the residents are citizens of the United States, the United Kingdom, South Africa and France. Most are professionals — lawyers, doctors, CPAs, industrialists and high-tech executives.

Living in the Sea Opera Tower Estate means waking to the sound of the waves; sitting on the terrace in the evening to feel

the sea breeze on your skin; taking a morning swim in the pool or the sea; or jogging on the Netanya esplanade just opposite your doorstep.

Industry pundits already have designated Sea Opera as one of the top five beachfront locales in Israel.

Currently available are three-bedroom apartments (with two bathrooms) with a balcony; four-bedroom apartments featuring a family room (with 3.5 bathrooms), plus two balconies; and large panoramic penthouses with various options. ■

For information, go to <http://sea.opera.co.il>; e-mail info@sea.opera.co.il; or call U.S. sales rep. Yair Tavshian at (646) 321-6179.

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Looking Good In Jerusalem

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SPECIAL TO THE JEWISH WEEK

unique project is offering buyers in Jerusalem perhaps one of the last unobstructed views of the Temple Mount, Old City and the Judean Desert at affordable prices.

Nof Zion was unveiled to the real estate market last year to overwhelming response from throughout the world, including the United States. Construction has begun in earnest.

New neighborhoods like Nof Zion haven't been built in Jerusalem for some time. The self-contained private neighborhood of nearly 400 apartments is being built on 115 dunams of private land.

This uniquely designed project will blend into the natural terraces of the Jerusalem Promenade slope, providing residents with a private terrace overlooking the Old City. The developer, the Dugal Investment Co., has paid great attention to detail.

Nof Zion is showcasing various types of apartments, some of which feature private gardens and penthouses. Aside from the spectacular views of Jerusalem, Nof Zion will include a commercial center, kindergartens, educational institutions, synagogues and a health club, and will be conveniently integrated into Jerusalem's new public transportation system. Major public and government institutions are also slated to be built nearby.

Sales of Nof Zion's luxurious apartments are being handled exclusively in Israel by Anglo-Saxon Jerusalem, U.S. sales are being conducted by the company's American representative, Gita Galbut, call (305) 761-8744. You can also visit the project's Web site at www.nofzion.co.il.

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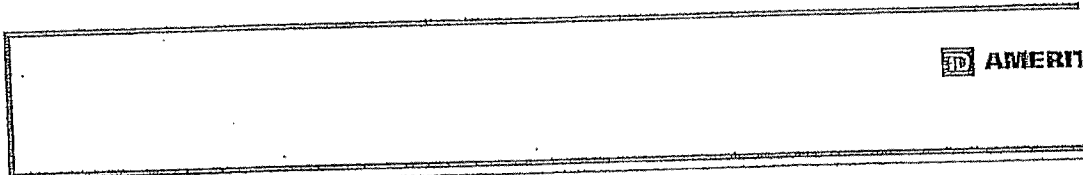
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Trump Tower planned for Tel Aviv skyline

Sun Jun 25, 2006 9:57am ET

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[\[-\] Text \[+\]](#)

JERUSALEM, June 25 (Reuters) - Real estate tycoon Donald Trump said on Sunday he will build a "Trump Tower" in Tel Aviv, his first investment in Israel in what would be the largest building in the country.

Trump, along with U.S.-based Crescent Heights Investments, will build the 70-storey tower of luxury apartments on the site of the current headquarters of food company Strauss-Elite (ELIT.TA: Quote, Profile, Research), across from the Diamond Exchange, at a cost of about \$300 million, they said in a statement.

"We are developing a signature landmark property so impressive that it will set a new standard for luxury condominium living in Israel," Trump said.

"I am confident that Israel's future can only go one direction and that is up," he said, adding he had been negotiating to buy the site for a year.

"Trump Tower Israel will redefine the city's spectacular skyline and bring the level of sophistication and design that Israel deserves."

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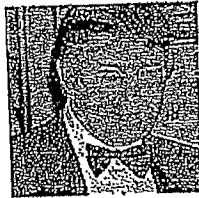
Print

Real Estate

Trump Tower in Ramat Gan

Donald Trump set to invest USD 300 million in building of tallest luxury apartment tower in Israel
Ido Efrati

Donald Trump and the American Crescent Heights development Company have purchased land on the corner of Artozorov and Jabotinsky streets in Ramat Gan, better known as Elite Junction.



Donald Trump Photo:
AP

[click here to enlarge text](#)

A USD 300 million, 70-story luxury apartment building is set to be built on the site, marking Trump's first investment in Israel.

The new tower is set to be the tallest building in the country, with 73,000 square meters (785,765 square foot) and an average price of USD 1 million for each apartment.

The site was purchased from the Strauss-Elite group for USD 44 million, and the group is expected to show an increase of NIS 120 million (about USD 27 million) in capital gains.

The site's 15 dunams (3.7 acres) include the historic Bauhaus-style Elite building destined for preservation.

Miami-based Crescent Heights Development Company, owned by Sonny Khan, is the third largest development company in the United States, building thousands of residential units each year. The company is known for building luxury apartment and office buildings in the US. Each tower includes gyms, a pool, and spa centers. Crescent Heights is represented in Israel by Tito N.S Architects, Ltd. which also serves as the projects planners.

Trump said during the unveiling of the project that the group is developing a unique and very impressive real-estate project, one that will become a 'landmark for future luxury apartment buildings in Israel.' The business mogul also said the he is 'certain Israel is on the right track.' Trump disclosed that he negotiated the deal for over a year prior to the signing.

Crescent Heights' spokesman Brian Duchman said that Israel is ready to construct a high-end residential building which includes all the amenities and attention to detail that "only the Trump name can represent."

[Back](#)

 MSNBC.com

The Donald to build 'Trump Tower' in Tel Aviv

His first Israeli investment will be largest building in country
Reuters

Updated: 2:50 p.m. ET June 25, 2006

JERUSALEM, - Real estate tycoon Donald Trump said on Sunday he will build a \$300 million "Trump Tower" in Tel Aviv, his first investment in Israel in what would be the largest building in the country.

Trump, along with U.S.-based Crescent Heights Investments, will build the 70-story tower of luxury apartments after paying \$44 million to buy the current complex that houses the headquarters of food company Strauss-Elite, across from the Diamond Exchange, they said.

"We are developing a signature landmark property so impressive that it will set a new standard for luxury condominium living in Israel," Trump said.

"I am confident that Israel's future can only go one direction and that is up," he said, adding he had been negotiating to buy the site for a year.

"Trump Tower Israel will redefine the city's spectacular skyline and bring the level of sophistication and design that Israel deserves."

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Volca!

SHAKERS

**Trump purchases site
for tower in Israel**

JERUSALEM: Donald Trump said Sunday that he had completed buying property in Ramat Gan, Israel, and planned to build a 70-story luxury-housing tower that would become the tallest building in Israel.

The \$300 million project will be the billionaire developer's first development in Israel, Trump said. The structure is planned in partnership with Crescent Heights Investments, which is based in the United States. The tower is planned on the site of the old Elite chocolate factory, adjacent to the Israel Diamond Exchange.

"I am confident that Israel's future can only go one direction, and that is up," Trump said, adding that he had negotiated for the site for more than a year. "We are developing a signature landmark property so impressive that it will set a new standard for luxury condominium living in Israel."



James Fraser/Bloomberg
Donald Trump

Rising demand and a lack of supply have resulted in increasing real estate prices in Israel, HSBC Holdings said in a recent report. The upper end of the market and properties in the sought-after central portion of the country, in cities like Ramat Gan, are the main beneficiaries of this trend, according to the report.

Strauss-Elite, the food maker, agreed in March to sell the site to the American developer for \$44 million.

— Alisa Odenheimer

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or World Logistics.

Israel Connections

Home > Israel Connections > Ynetnews.com: Trump Tower in Ramat Gan



Trump Tower in Ramat Gan

By Ido Efrati

This story is reprinted with permission from Ynetnews.com.
June 25, 2006

Donald Trump and the American Crescent Heights development Company have purchased land on the corner of Arlozorov and Jabotinsky streets in Ramat Gan, better known as Elite junction.



A \$300 million, 70-story luxury apartment building is set to be built on the site, marking Trump's first investment in Israel.

The new tower is set to be the tallest building in the country, with 785,765 square feet and an average price of \$1 million for each apartment.

The site was purchased from the Strauss-Elite group for \$44 million, and the group is expected to show an increase of about \$27 million in capital gains.

The site's 3.7 acres include the historic Bauhaus-style Elite building destined for preservation.

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Crescent Heights' spokesman Brian Duchman said that Israel is ready to construct a high-end residential building which includes all the amenities and attention to detail that "only the Trump name can represent."

Trump Goes Luxe in Israel

Posted Jan 26th 2006 8:03AM by Deidre Woolhard
Filed under: Estates

Donald Trump has announced his first foray into build in Israel. He will be spending \$300 million to create a 70-story luxury apartment tower in Ramat Gan in the Tel Aviv district. The new Trump Tower will be the tallest building in the country and it is expected that the apartments will sell for around \$1 million each. According to the article on Ynetnews, it took Trump a year to negotiate the deal but Trump is bullish on the future of luxury buildings in the region.



SHAKERS

Trump purchases site for tower in Israel

JERUSALEM: Donald Trump said Sunday that he had completed buying property in Ramat Gan, Israel, and planned to build a 70-story luxury-housing tower that would become the tallest building in Israel.

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Strauss-Elite, the food maker, agreed in March to sell the site to the American developer for \$44 million. — Alisa Odenheimer

Engelhard CEO quits in wake of takeover

NEW YORK: The chief executive of Engelhard, Barry Perry, quit shortly after shareholders agreed to a \$5 billion hostile takeover of the U.S. chemical company by BASF of Germany.

Perry resigned early this month, Maureen Pankert, spokeswoman for BASF, which is based in Ludwigshafen, Germany, said Friday. Pankert declined to comment further. Perry, whose initial opposition to BASF led to a higher takeover price, had led Engelhard, which is based in Iselin, New Jersey, since 2001.

BASF offered \$37 a share for Engelhard, the inventor of the catalytic converter, in early January to tap growing demand for pollution-control devices. Perry argued that the bid was too low because Engelhard's profit would grow 16 percent annually on average

through 2010 because of demand for catalysts and materials that reduce emissions from diesel engines.

Engelhard's directors, after months of resistance, endorsed a sweetened bid of \$39 a share last month. On June 6, BASF said that 89 percent of investors had agreed to the takeover. The acquisition is the largest ever for BASF, the world's largest chemical maker by sales.

BASF Corp., a North American affiliate, appointed Wayne Smith on Friday as executive vice president in charge of a newly formed catalysts division, which includes most of Engelhard's businesses.

Smith was the group vice president of the BASF intermediate-chemicals business in North America. — Jack Kaskey



Donald Trump

Investigation may block sale

JERUSALEM: York Capital Management, a hedge fund in New York, is unlikely to buy Psagot Ofek Investment House from Bank Leumi Le-Israel if Psagot's top executives are barred from running the company, the bank said Sunday.

York is holding talks with Israel's Securities Authority, which has said it may not give York a license if the two managers remain employed at Psagot, Leumi said in a statement. The chief executive, Gabriella Ravid, and her deputy, Danny Zilbiger, are being investigated on unspecified securities violations, Leumi said.

"The buyer has said that if this situation remains unchanged, it no longer sees itself obligated to complete the deal," Leumi said. "However, it is making every effort to solve this problem and has asked the bank to aid it."

Since she became CEO in 2003, Ravid has helped turn Psagot into the biggest mutual fund manager in Israel, with about 19.2 billion shekels, or \$4.3 billion, under management in 58 funds. Meitav Investments & Securities, a fund manager that tracks the industry, estimates that Psagot held 15.9 percent of the market in May.

York regards the Securities Authority's conditions as "unreasonable," Leumi said in the statement. A spokeswoman for York said the company would not comment on the report.

Israeli banks have been selling their mutual and provident fund management business to comply with a law approved last July forcing them out of the business to increase competition in the capital markets.

Shares of Leumi fell 46 shekels to 15.98 shekels Sunday in Tel Aviv.

— David Rosenberg

ONLINE EDITION
JERUSALEM POST

Trump upbeat on Israel's economy

Sharon Wrobel, THE JERUSALEM POST

Dec. 10, 2006

US real estate tycoon Donald Trump, who plans to erect the tallest building in Israel in Ramat Gan, has praised the country's strong economic potential.

"Israel is one of my favorite places in the world, it is a great country," the billionaire said in a videophone interview at Saturday night's opening session of the annual Globes Israel Business Conference in Tel Aviv. "I am a good businessman and I have tremendous confidence in the strength and potential of the Israeli economy, although I know the country has had to go through a lot in recent months."

Trump has teamed up with Crescent Heights Investments to replace the historic Elite candy factory in Ramat Gan with the 70-story luxury Trump Plaza Tower.

• 'Israel could be one of the world's most prosperous economies'

Trump is also planning to erect a luxury hotel bearing his name on a seaside cliff in Netanya.

"In real estate, everything is a matter of timing," said Donald Trump Jr., the Trump organization's vice president, who also took part in the videophone interview together with his sister Ivanka. "Binyamin Netanyahu's reforms and economic policies set a precedent for the economy, which gave the real estate market a big boost."

Ivanka Trump, vice president of the Trump organization, said the Trumps saw great potential in the Israeli real estate market. "We think Israel is a good investment. We see a lot of potential in the real estate market and are planning to increase our investments here," she said.

Ivanka Trump and Trump Jr. said they would be coming to Israel in about two months to see their projects. "I will be coming to Israel shortly afterward. I love Israel and I will be coming to Israel a lot," said Donald Trump.



This article can also be read at <http://www.jpost.com/servlet/Satellite?cid=1164881857587&pagename=JPost%2FJPArticle%2FShowFull>

[[Back to the Article](#)]



that monitors the activities of the property branch of the Development Authority offices of a Housing Company (Amidar). I am the owner and manager of a real estate appraisal office that provides services to public and private entities, as well as to the courts of law. I undertake evacuation appraisals for the Tel Aviv branch of the Israel Lands Authority. I was appointed as an expert appraiser on behalf of courts of law, determining appraisals involving compensations and Betterment Taxes. I also provide appraisal services to commercial banks. I am fully familiar with the facts stated herein.

2. I recently conducted an examination of the zoning and permit data related to the "Elite Site" in Ramat Gan, Israel. The "Elite Site" consists of several plots, the main plot being Plot No. 10 that consists of four parcels of land located in Ramat Gan, Israel: Parcel 233 of block 6128, having a registered area of 547 square meters, parcel 476 of block 6128, having a registered area of 2,047 square meters, parcel 468 of block 6128, having a registered area of 9,249 square meters, and parcel 47 of block 6128, having a registered area 2,961 square meters (the "Elite Site").

3. My examination was based on data and information provided by the Information Department of Ramat Gan Municipality, the Municipality's website, the Planning Branch of the Planning and Construction District Committee of the Central District, and upon a review of the construction files in the Permit Department of the Ramat Gan Municipality.

4. The Elite Site is governed by Town Plan No. RG/1257. This Plan was published for granting of validity on August 31, 2005 in Official Gazette 5432. The area of the Plan is 19,188 square meters and includes directions for the unification and redistribution, and allots new plots for, building open public areas and roads within its area (17 plots). Plot No. 10 is

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marked as a special area plot on which a 60-storey tower of mixed uses (offices, commercial, residential, or hotel) can be built, above 5 underground parking levels, on Jabotinsky Street.

5. Under Local Town Plan No. RG/1257, Plot No. 10, was approved to permit construction of 47,438 square meters as principal areas, and 50,300 square meters as service areas. The principal areas were approved to contain up to 700 square meters of commercial (i.e., stores, restaurants, banks and commercial uses) space for the façade facing Jabotinsky Street, with no less than 9,488 square meters of residential or hotel space. Of the 47,438 square meters of approved principal areas, up to 50% thereof, or 23,719 square meters were allowed to be constructed as residential space. The number of residential units was not permitted to exceed 296, and each apartment was required to have a minimum principal area of 80 square meters.

6. Under Section 31 of Town Plan No. RG/1257, the Plan terminated if construction (i.e., demolition of all structures marked for demolition and obtaining of building permits) did not commence within three (3) years of the granting of validity to the Plan, i.e., August 30, 2008. If construction did not commence by August 30, 2008, then, the building rights provided under Town Plan No. RG/1257 would be revoked and the entitlements would revert to those specified under the previous valid Town Plan (No. RG/11/1001).

7. In sum, under Town Plan No. RG/1257, which was in effect from August 31, 2005 and during the period in which, as I was informed, Crescent Heights Diamond LLC acquired and later re-sold the Elite Site, the Elite Site was approved for the construction (on Plot 10) of a 60-storey mixed use building (offices and residential), containing commercial space in the façade facing Jabotinsky Street, five levels of subterranean parking and additional stories of mixed use space, a maximum 50% of which (23,719 square meters) was permitted to be

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Committee reflect that at a meeting dated July 22, 2007, Crescent Heights proposed yet another plan, denominated Plan No. RG/1257B. The sole purpose of Plan No. RG/1257B was to extend the three (3) year life of the previous approved plan, Plan No. RG/1257, then set to expire on August 30, 2008, to six (6) years, so that it would expire if construction were not commenced by August 30, 2011 (instead of August 30, 2008). The Local Committee decided to recommend to the District Committee to deposit Plan No. RG/1257B and to extend the period of Plan No. RG/1257 to six (6) years as stated above.

11. The aforesaid minutes of July 22, 2007 in which Plan RG/1257/B was discussed, state that "the Plan (presumably MK (local) 1257/A) is in the stage of hearings at the District Committee which delay its approval and the commencement of actual building." However, I found no indication in any of the relevant records, that Crescent Heights Diamond LLC's proposed Plan No. MK (local) /1257A was actually received by the District Committee. In a visit I conducted to the District Committee on July 3, 2008, I was told that Plan No. MK (local)/1257A was never officially received by the District Committee.

12. The Israeli Real Estate Registry records reveal that Crescent Heights was registered as owner of the following parcels in the Elite Site – parcels No. 47, 233, 476, 468 of block 6128 – on April 29, 2007, and that on December 2, 2007, a Cautionary Note under Section 126 of the Israeli Land Law (1969), was recorded with respect to the aforesaid parcels in favor of Azorim Construction (1965) Ltd. ("Azorim"). In general, a Cautionary Note under Section 126 of the Israeli Land Law (1969) provides for the registration of a note in the event that a land rights' owner undertakes to enter into a transaction with respect to his land rights or to avoid from entering into such transaction.

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13. According to the Building Permit No. 2008257 dated June 11, 2008, issued in the name of Azorim Construction (1965) Ltd., which I located in the Building File, Azorim is constructing a 57 storey mixed use tower.

14. Based on the foregoing, it can be concluded that Crescent Heights Diamond LLC discontinued to promote its plan for a 75 storey building (containing 75% residential units), denominated as Plan No. MK (local) /1257A; sometime after January 7, 2007. It is also evident that Crescent Heights applied for the extension of the original plan, in effect when Crescent Heights Diamond LLC acquired the Elite Site, namely Plan No. RG/1257, allowing a 60 storey mixed use building containing 50% residential space and 50% commercial space.


Dated: August 20, 2008

Tel Aviv, Israel

NAVA SIRKIS

I, David Sirota, Adv. and Notary, hereby certify that Sirkis Nava has identified herself before me with an ID num. 051024479, and that following my warning to her of the legal consequences of an untruthful declaration, she affirmed the truthfulness of her declaration before me.

Name: David Sirota

Signature: _____


דוד סירוטה, עו"ד ונוטריון
מספר רשיון 7391

דוד סירוטה, משרד עורכי דין ומטריין
DAVID SIROTA, LAW OFFICE & NOTARY

בית פלטינס (קומה 9) רחוב הארבעה 21, תל-אביב 64739
טל. רב קווי 03-6236120 פקס 03-6236122

DAVID SIROTA, ADV & NOTARY
GILI SIROTA-BENTAL, ADV
ODELIA ASSULIN - DEGANI, ADV

דוד סירוטה, ע"ד ומטריין
גילי סירוטה - בנטל, ע"ד
אודליה אסולין - דגני, ע"ד

Form No 380

Authentication of Signature

I, David Sirota, Adv.& Notary from 21, Ha-Arbaa St. Tel-Aviv, Israel, hereby certify that on August 20, 2008, there appeared before me at my office, Sirkis Nava, I.D. 051024479, and signed on her own free will, the attached affidavit.

In witness whereof, I hereby authenticate the signature of Sirkis Nava, by my own signature and seal today, August 20, 2008.

Fees paid: 500 NIS including VAT.




Signature





Bernie Diamond

From: Bruce Menin [bmenin@crescentheights.com]

Sent: Wednesday, August 15, 2007 11:05 PM

To: Ivanka Trump

Cc: Donald Trump Jr.

Hi there,

I forgot to mention today that Mayor Bloomberg is coming to our home in the Hamptons on Saturday night the 25th of August for a World Trade Center Memorial Foundation event we are hosting. Ivanka, I know you mentioned you are out sometimes and if you would like to come, please do, without any obligation to give of course. It's from 5 to 7. If by chance Don or Eric are out please stop by too if you like.

I don't have Eric's email so please forward if you think he might have an interest.

Good seeing you all and I'm glad we cleared the air in person. We will, as always, keep you advised of new deals that come up that might be of interest as we always have you guys in our thoughts in terms of promoting the brand.

Best,

Bruce

Bruce A. Menin
Managing Principal
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bmenin@crescentheights.com

www.crescentheights.com



Bernie Diamond

From: Bruce Menin [bmenin@crescentheights.com]

Sent: Thursday, November 29, 2007 12:06 PM

To: Donald Trump Jr.; Ivanka Trump

Hi Don and Ivanka,

As you may know, we have essentially completed the sales office (last stages) for Trump Israel. However, while this has been happening, we have been approached by different entities to sell the property as we discussed when we met with your Dad. While the Israeli residential market is strong, we cannot get the 100% residential zoning as you know. So we remain open to selling if approached.

We are currently negotiating a few offers and if we sign we will let you know. And even if we do, we have no idea whether the buyer can and will close, and so we will not stop our continuing efforts on the sales office in case they don't. As we mentioned when we met, if we do sell, although we have no obligation to do so, we are willing to sit down and figure out a payment to the Trump Organization and a transfer of the license to our other property in Tel Aviv, of course subject to your approving it. Anyway, we didn't want you to hear anything from the grapevine as rumors are circulating.

I realize it's the holiday's -- I will be in Miami next week for Art Basel, but we could meet to discuss any other time at your convenience if you and your Dad so desire.

Thanks and regards!

Best,

Bruce

Bruce A. Menin
Principal
CRESCENT HEIGHTS OF AMERICA

Phone (212) 742-2126

(631) 537-4690

Fax (212) 742-2248

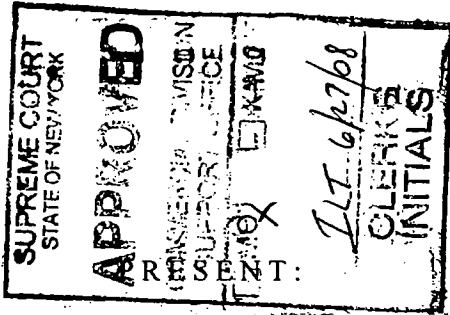
(631) 537-4691

bmenin@crescentheights.com

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4/25/2008





At IAS Part ⁵⁷ of the Supreme Court, of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York, New York on the 30th day of June, 2008. ✓

Hon. ~~Richard Cahn~~ *Charles E. Ramos*
Justice.

-----X
TRUMP MARKS LLC,

Plaintiff,

-against-

CRESCENT HEIGHTS DIAMOND, LLC, SONNY KAHN, an individual, RUSSELL W. GALBUT, an individual, BRUCE A. MENIN, an individual, each said individual being a member of Crescent Heights Diamond, LLC, and THOSE UNKNOWN INDIVIDUALS AND/OR UNKNOWN ENTITIES CONSTITUTING THE REMAINING MEMBERS OF CRESCENT HEIGHTS DIAMOND, LLC,

Defendants.
-----X

015134

Index No.: 08/601372

(Cahn, J.)

ORDER TO SHOW CAUSE

MOTION SEQUENCE #001

Upon the annexed affirmation of urgency of Y. David Scharf, dated June 27,

2008, the affidavit of Shlomo Dachoh, sworn to on June 20, 2008, the exhibits annexed thereto, ✓

the supporting memorandum of law, all the prior pleadings, papers and proceedings heretofore

had herein and the separately filed but accompanying Order to Show Cause filed by co-defendant

Crescent Heights Diamond, LLC and sufficient cause having been shown;

15 MOTIONS	45.00
TOTAL	45.00
CHECK	45.00

COURT CLERK	DATE	TIME	TERM
-0649 3000	08 JUN 27	2:06 PM	60-1

LET, Plaintiff Trump Marks LLC show cause before this Court, at the Supreme

Court of the State of New York, County of New York, located at 60 Centre Street, New York,

New York, on the 15th day of July, 2008, at 2:00 ~~pm~~ ^{am} /p.m., or as soon thereafter as ✓

counsel may be heard, why an Order should not be made and entered herein as follows:

- (1) pursuant to CPLR 3211(a)(1) and (7) dismissing the Complaint dated May 5, 2008 with prejudice, as against defendants Sonny Kahn, Russell Galbut and Bruce A. Menin; and
- (2) for such other and further relief as this Court deems just and proper.

ORDERED THAT SUFFICIENT REASON APPEARING THEREFOR, let

JSC service of a copy of this Order to Show Cause and the papers upon which it is based on Stephen B. Meister, Esq., Meister Seelig & Fein, LLP, attorneys for the Plaintiff, at 2 Grand Central Tower, 140 east 45th Street, 19th Floor, New York, NY 10017, by overnight mail or by hand, so as to be received by the 2nd day of July, 2008, be deemed good and sufficient service thereof; and it is further

JSC **ORDERED** that Plaintiff's opposition to Individual Defendant's motion, if any, shall be delivered by overnight mail or by hand to Individual Defendant's counsel so as to be received by the 1st day of July, 2008; ~~and further~~

~~**ORDERED**, that reply papers be served upon Plaintiff's counsel by overnight mail or by hand so as to be received by the ___th day of _____, 2008.~~

ENTER

JSC

**ORAL ARGUMENT
DIRECTED**

J.S.C.

Certification of Compliance with Rule 130.1
of the Uniform Rules of Court:

MORRISON COHEN LLP

By: 

Y. David Scharf
909 Third Avenue
New York, New York 10022
(212) 735-8600

*Attorneys for Defendants Sonny Kahn,
Russell W. Galbut and Bruce A. Menin*

AFFIRMATION of Urgency

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
TRUMP MARKS LLC,

Plaintiff,

-against-

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each
said individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN
INDIVIDUALS AND/OR UNKNOWN ENTITIES
CONSTITUTING THE REMAINING MEMBERS
OF CRESCENT HEIGHTS DIAMOND, LLC,

Defendants.

Index No.: 08/601372

(Cahn, J.)

**AFFIRMATION OF
URGENCY**

-----X
Y. DAVID SCHARF, an attorney duly admitted to practice before the Courts of
the State of New York, affirms the following to be true under penalties of perjury:

1. I am an attorney and a member of Morrison Cohen LLP, attorneys for
Defendants Sonny Kahn, Russell W. Galbut and Bruce A. Menin (collectively "Individual
Defendants").

2. I respectfully submit this affirmation in support of the Individual
Defendants' order to show cause seeking an order: (i) pursuant to CPLR 3211(a)(1) and (7),
dismissing with prejudice the Complaint dated May 5, 2008, as against Sonny Kahn, Russell
Galbut and Bruce A. Menin; and (ii) for such other and further relief as this Court deems just and
proper.

3. In accordance with Judge Cahn's standing directive, we are making this
motion by order to show cause. We respectfully request expedited treatment of this motion to

dismiss. The Complaint as against the Individual Defendants is patently frivolous and is designed merely to be harassing and vexatious by seeking to impute "personal liability" to a contract dispute between two limited liability companies.

✓
4. No prior application has been made for the relief sought herein.

WHEREFORE, on behalf of the Individual Defendants, I respectfully request that this Court issue and order: (i) pursuant to CPLR 3211(a)(1) and (7) dismissing with prejudice the Complaint filed in this action, as against Sonny Kahn, Russell Galbut and Bruce A. Menin; and (ii) for such other and further relief as this Court deems just and proper.

Dated: June 27, 2008
New York, New York


Y. DAVID SCHARF

AFFIDAVIT OF
Shlomo Dacksh

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
TRUMP MARKS LLC,

Plaintiff,

-against-

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each
said individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN
INDIVIDUALS AND/OR UNKNOWN ENTITIES
CONSTITUTING THE REMAINING MEMBERS
OF CRESCENT HEIGHTS DIAMOND, LLC,

Defendants.
-----X

Index No.: 08/601372

**AFFIDAVIT OF
SHLOMO DACHOH
IN SUPPORT OF
DEFENDANTS KAHN,
GALBUT AND MENIN'S
MOTION TO DISMISS
THE COMPLAINT**

STATE OF FLORIDA)
) ss:
COUNTY OF MIAMI-DADE)

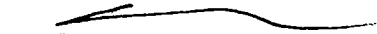
Shlomo Dachoh, being duly sworn, deposes and says:

1. I am the Secretary of Crescent Heights Diamond Holdings, LLC ("CH Holdings"), a Delaware limited liability company. I submit this affidavit in support of Defendants Sonny Kahn, Russell Galbut and Bruce A. Menin's motion, pursuant to CPLR § 3211(a)(1), (7) and (8), to dismiss the Complaint. As Secretary of CH Holdings, I have personal knowledge of all the facts set forth herein.

2. Attached hereto as "Exhibit A" is a true and correct copy of the Complaint (without Exhibit B to the Complaint, which for ease of reference has been attached hereto as "Exhibit B").

3. Attached hereto as "Exhibit B" is a true and correct copy of the license agreement, entered into by Plaintiff Trump Marks LLC and Defendant Crescent Heights Diamond LLC ("Crescent"), dated May 23, 2006, including an Amendment effective as of the same date ("License Agreement"). The parties to the License Agreement were Plaintiff and Crescent. CH Holdings signed as managing member of Crescent. (Ex. B p. 20). Defendants Sonny Kahn, Russell Galbut and Bruce A. Menin did not sign the License Agreement. (Id.)

4. Attached hereto as "Exhibit C" is a true and correct copy of the Amended and Restated Limited Liability Company Agreement of Crescent Heights Diamond LLC (the "Crescent LLC Agreement"). As set forth in the Crescent LLC Agreement, CH Holding is the sole member and manager of Crescent. (Ex. C. ¶ 5). CH Holdings' sole member and manager is CH International Holdings, LLC. Defendants Sonny Kahn, Russell Galbut and Bruce A. Menin are not -- nor have they ever been -- members of Crescent, and thus they have never received distributions from Crescent. (Ex. C. ¶ 12).


Shlomo Dachoh

Sworn to before me this
20th day of June, 2008


Notary Public

NOTARY PUBLIC-STATE OF FLORIDA
Chantal DeVos
Commission #DD776441
Expires: APR. 07, 2012
BONDED THRU ATLANTIC BONDING CO., INC.

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
TRUMP MARKS LLC,

Plaintiff,

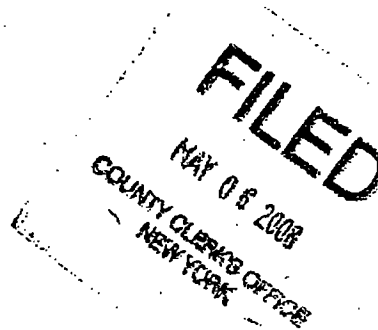
Index No. 08601372

-against-

VERIFIED COMPLAINT

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each said
individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN INDIVIDUALS
AND/OR UNKNOWN ENTITIES CONSTITUTING THE
REMAINING MEMBERS OF CRESCENT HEIGHTS
DIAMOND, LLC,

Defendants.
-----X



Plaintiff, Trump Marks LLC ("Trump Marks" or "Plaintiff"), by its attorneys, Meister
Seelig & Fein LLP, as and for its verified complaint (the "Complaint") against defendants
Crescent Heights Diamond, LLC ("Crescent"), Sonny Kahn ("Kahn"), Russell W. Galbut
("Galbut"), Bruce A. Menin ("Menin," and, together with Kahn and Galbut, collectively, the
"Named Members"), and Those Unknown Individuals and/or Entities Constituting the remaining
members of Crescent Heights Diamond, LLC (collectively the "Unknown Members"), alleges as
follows:

THE PARTIES

1. Plaintiff Trump Marks LLC is a Delaware Limited Liability Company with
its principal place of business at Trump Tower, 725 Fifth Avenue, New York, New York 10022.

2. Plaintiff, controls and is in the business of licensing, certain United States Trademarks (collectively, the "Trump Trademarks") covering real estate and related services and other rights, in the name, trademark, service mark, designation, and identification "TRUMP."

3. The Trump Trademarks were registered and are owned by Donald J. Trump, a world-renowned and preeminent builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields.

4. Defendant Crescent is a Delaware Limited Liability Company with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137.

5. Defendant Crescent, along with its affiliate, Crescent Heights of America, LLC, are engaged in the business of, among other things, building and developing first class residential condominium properties throughout the world.

6. Defendant Sonny Kahn is an individual having an address at 5940 North Bay Road, Miami Beach, Florida.

7. Defendant Kahn, on information and belief, is now a member of the defendant Crescent and was a member of Crescent in January 2008.

8. Defendant Russell W. Galbut is an individual having an address at 5225 Collins Avenue PH-8, Miami Beach, Florida.

9. Defendant Galbut, on information and belief, is now a member of defendant Crescent and was a member of Crescent in January 2008.

10. Defendant Bruce A. Menin is an individual having an address at 71 Townline Road, Wainscott, New York.

11. Defendant Menin, on information and belief, is now a member of defendant Crescent and was a member of Crescent on January 2008.

12. The Unknown Members, designated as such pursuant to CPLR Section 1024, are those remaining individuals and/or entities, beyond the Named Members, who now own a membership interest in defendant Crescent and owned such membership interest in January 2008.

JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in this court pursuant to Section 17(a) of the agreement giving rise to this action (described in paragraph 14 below). Under Section 17(a) of said agreement, the parties specifically agreed and consented to any suit, action or proceeding arising out of or in connection with a dispute under said agreement being brought exclusively in a Federal Court or New York State Court located in the State of New York, New York County, and irrevocably waived any objection to venue in any such court, and any claim that any such action brought in any such court has been brought in an inconvenient forum.

BACKGROUND

14. On or about May 23, 2006, Plaintiff and defendant Crescent entered into a License Agreement (the "License Agreement") pursuant to which Plaintiff licensed to defendant Crescent the right to use the name "Trump Tower" together with an associated approved logo (collectively, the "Licensed Mark"), in connection with defendant Crescent's design, construction and marketing of condominium units in what was planned to be the tallest structure in Israel, a 70 story first class residential condominium property containing approximately 786,000 square feet, including residential and retail space (the "Tower Property"), which was to

be built by defendant Crescent on certain parcels of land then owned or to be acquired by defendant Crescent, located in Ramat Gan, Israel, to wit: Parcel 233 of block 6128, having a registered area of 547 square meters, parcel 476 of block 6128, having a registered area of 2,047 square meters, parcel 468 of block 6128, having a registered area of 9,249 square meters, and parcel 47 of block 6128, having a registered area 2,961 square meters (collectively, the "Land").

15. Effective May 23, 2006, Plaintiff and defendant Crescent entered into a First Amendment to License Agreement (the "First Amendment"), which, among other things, changed the Licensed Mark from "Trump Tower" to "Trump Plaza." A true and correct copy of the License Agreement and the First Amendment are collectively annexed hereto and made a part hereof as Exhibit A.

16. Pursuant to Section 5 of the License Agreement, and Exhibit A thereto, defendant Crescent was required to pay Plaintiff Royalties in connection with the sale of the condominium units at the Tower Property at a rate equal to 25% of the sale price per square foot for such condominium units in excess of \$550 (U.S.), net of any value added tax ("VAT"), including a non-refundable initial Royalty payment of \$1,000,000 (U.S.).

17. On or about April 30, 2007, defendant Crescent acquired title to all of the constituent parcels constituting the Land at a cost of approximately \$44 million (U.S.).

18. Plaintiff has complied with all of its obligations under the License Agreement.

19. Specifically, as required by the License Agreement, Plaintiff registered the Licensed Mark with the Israeli Trademarks Office in or about May, 2006.

20. Additionally, at the request of defendants, Plaintiff caused Donald J. Trump to promote, and integrally associate himself with, the Land and the Tower Property, through,

among other things, Mr. Trump acting as Keynote Speaker, via live satellite video feed, in the Israel Business Conference held on December 9-11, 2006, organized by Israel's leading business newspaper, Globes. Further, Mr. Trump's association with the Tower Property elicited substantial coverage from the press, and consequently promoted and enhanced the value of the Land.

21. In or about August 1, 2007, Plaintiff became aware that defendant Crescent was engaged in negotiations to sell the Land to a third party developer and thereby abandon and render impossible the performance of its obligations under the License Agreement, including but not limited to Crescent's obligation under Section 3(a) of the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property.

22. By letter dated August 2, 2007 (copy attached as Exhibit B hereto), Plaintiff warned defendant Crescent that a sale of the Land to a third party would result in defendant Crescent defaulting on its obligations under the License Agreement, and would cause substantial damage to Plaintiff, by reason of the failure of Plaintiffs to receive substantial Royalties, defendant Crescent's unjust enrichment and the severe reputational damage Plaintiff's brand would suffer from Donald J. Trump's abrupt and forced dissociation from the Tower Property project.

23. Defendant Crescent nevertheless went forward with and consummated the sale of the Land to a third party, Azorim Investment, Development and Construction Ltd. ("Azorim").

24. Upon information and belief, in or about January, 2008, defendant Crescent consummated the sale of the Land to Azorim for approximately \$80.2 Million (U.S.).



25. Defendant Crescent contends that the performance of its obligations under the License Agreement, including but not limited to its obligation under Section 3(a) thereof to design and build the Tower Property, was excused because, according to defendant Crescent, it was unable to procure the necessary approvals to permit the construction of the Tower Property, as a purely residential and retail property – as opposed to a mixed residential, retail and office (or other use) project – from the relevant Israeli authorities.

26. However, there is no provision in the License Agreement which states that the Tower Property, as ultimately approved and permitted by the relevant Israeli authorities, must not contain any office or other type of space (beyond residential or retail space).

27. Further, defendant Crescent knew, prior to entering into the License Agreement, that the zoning laws applicable to Land did not permit the Tower Property to be designed and approved as a purely residential and retail condominium tower as of right, without certain permits, approvals and/or variances being granted by the relevant Israeli authorities.

28. Notwithstanding defendant Crescent's advance knowledge that permits, approvals and/or variances were required to be procured from the relevant Israeli authorities in order for the Tower Property to be designed and constructed, defendant Crescent executed and delivered to Plaintiff the License Agreement, which contains, at Section 3(a) thereof, the unqualified obligation of defendant Crescent Heights to design and construct the Tower Property. There is no clause in the License Agreement which permits defendant Crescent to avoid its unconditional obligation under Section 3(a) of the License Agreement to design and build the Tower Project by selling the Land in the event the aforesaid permits, approvals and/or variances were not issued by the relevant Israeli authorities.

29. By executing and delivering the License Agreement as it was drafted, the parties evidenced their mutual agreement to allocate the risk of failing to procure the needed permits, approval and/or variances to and upon defendant Crescent.

30. At no time did Defendants consult with Plaintiff as to their alleged difficulties in obtaining approvals and entitlements for a purely residential and retail project, or otherwise seek Plaintiff's view or assistance as to how best to proceed.

31. In any event, defendants contracted to sell the Land in December, 2007, having purchased the Land only eight (8) months previously, and therefore defendants did not make bona fide efforts to obtain the necessary permits, approvals and/or variances from the relevant Israeli authorities.

32. Defendants were required under the License Agreement to construct the Tower Project so long as it included residential and retail space, even if it included office or other type of space, and to pay Plaintiff the Royalties due on the sale of condominium units therein.

33. By selling the Land to a third party after being warned by Plaintiff that doing so would result in defendant Crescent's breach of the License Agreement, defendant Crescent did so at its peril, with full knowledge of and assuming the risk of the liabilities it would thereby incur to Plaintiff, for the damages Plaintiff would sustain from defendant Crescent's resultant breach of the License Agreement.

34. By reason of the foregoing, defendant Crescent has breached and defaulted upon its obligations under the License Agreement and is liable and accountable to Plaintiff in damages.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract against Defendant Crescent)

35. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

36. The License Agreement constitutes a valid and enforceable contract between Plaintiff and defendant Crescent.

37. Plaintiff has fully performed all of its obligations under the License Agreement.

38. Defendant Crescent has breached the License Agreement by failing to honor and perform its obligations and promises thereunder, including failing to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement.

39. As a consequence of defendant Crescent's breach of the License Agreement, Plaintiff has been damaged in an amount to be determined at trial, such amount being not less than \$45,000,000 (U.S.), plus interest and costs.

AS AND FOR A SECOND CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing against Defendant Crescent)

40. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

41. Pursuant to Section 17(a) of the License Agreement, the parties agreed that the License Agreement would be governed by the laws of the State of New York. Under applicable law, the License Agreement includes an implied covenant of good faith and fair dealing.

42. Defendant Crescent breached the implied covenant of good faith and fair dealing by selling the Land to a third party without having built the Tower Property, thereby frustrating

the purpose of the License Agreement and depriving Plaintiff of the benefit of its bargain, and reaping a windfall profit for itself in excess of \$36 Million (U.S.)

43. As a direct and proximate result of the foregoing breach of the implied covenant of good faith and fair dealing, Plaintiff has been harmed in an amount to be determined at trial, such amount being not less than \$45,000,000 (U.S.), plus interest and costs.

AS AND FOR A THIRD CAUSE OF ACTION
(Indemnification against Defendant Crescent)

44. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

45. Pursuant to Section 11 of the License Agreement, defendant Crescent expressly agreed to indemnify and hold harmless Plaintiff from and against any and all losses suffered by defendant Crescent arising out of a breach by defendant Crescent of any of its obligations, or a default by defendant Crescent under, the License Agreement.

46. By failing to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent has breached the express promises made by it and thereby defaulted under the License Agreement.

47. In consequence, defendant Crescent is liable to Plaintiff for the losses, including reasonable attorneys' fees and disbursements, sustained by Plaintiff in bringing this action, which seeks redress for defendant Crescent's breach of and default under the License Agreement.

AS AND FOR A FOURTH CAUSE OF ACTION
(Unjust Enrichment against all Defendants)

48. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

49. By virtue of defendant Crescent's receiving from Plaintiff the benefit of Donald J. Trump's world renowned reputation as the preeminent developer of luxury residential properties, and associated expertise, contacts, skills, knowledge and information, defendant Crescent, through Donald J. Trump's association with and promotion of the Land and Tower Project, has been substantially and unjustly enriched.

50. Specifically, by virtue of Donald J. Trump's association with and promotion of the Land and Tower Project, including the importance to the worldwide market of Mr. Trump's identifying the Tel Aviv/Ramat market in general, and the Land as a prime development site in said market, in particular, defendant Crescent was able to, and did in fact, sell the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), after having acquired the Land less than eight (8) months previously for only \$44 Million (U.S.), which resulted in a windfall profit to defendants of approximately \$36,000,000.

51. The real estate market in Ramat Gan, Israel did not appreciate materially during the brief period defendant Crescent owned the Land (April to December, 2007) and certainly did not appreciate during that period to such a degree that the market value of the Land (to which defendant Crescent added no value as no entitlements were received) increased from \$44 Million to \$80.2 Million in less than eight months (April to December, 2007).

52. Defendants contend that because the License Agreement does not require the payment of any Royalty or other consideration to Plaintiff upon a sale of Land and because

(defendants contend) the requisite approvals and permits for the construction of the Town Property could not be procured from the relevant Israeli authorities, the License Agreement has not been breached.

53. By reason of the foregoing, equity and good conscience require that defendants make restitution to Plaintiff in an amount equal to the value of the benefit defendants unjustly received.

54. By reason of the foregoing, defendants have been unjustly enriched by virtue of defendant Crescent's sale of the Land (which it had purchased in 2007 for approximately \$44 million) for approximately \$80.2 million in 2007 (with a closing in January, 2008). This sale resulted in a windfall profit to defendant Crescent of approximately \$36,000,000, which windfall profit, on information and belief was thereafter distributed to the Named Members and Unknown Members. Further, said windfall profit was realized by virtue of the world renowned reputation of Donald J. Trump as the preeminent developer of luxury residential properties, and the associated expertise, contacts, skills, knowledge and confidential information of Plaintiff.

55. Plaintiff is therefore entitled to judgment requiring defendants to make restitution to Plaintiff of the windfall profit realized by defendant Crescent upon the sale of the Land, and thereafter, on information and belief, distributed to the Named Members and Unknown Members, in an amount to be determined by the Court, such amount being approximately \$36,000,000 plus interest and costs.

AS AND FOR A FIFTH CAUSE OF ACTION
(Fraudulent Conveyance pursuant to New York
Debtor and Creditor Law §§ 273-275 against all Defendants)

56. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

57. On or about May 23, 2006, Plaintiff and defendant Crescent entered into the License Agreement.

58. In or about January, 2008, in breach of its obligations under the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent sold the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), realizing a windfall profit of approximately \$36 Million (U.S.).

59. Upon information and belief, shortly after receiving the \$80.2 Million (U.S.) of proceeds from the sale of the Land to Azorim, defendant Crescent, a limited liability company, distributed the net proceeds from such sale, including the windfall profits it received on such sale, to the Named Members and the Unknown Members (the "Fraudulent Conveyance").

60. At the time it distributed the net proceeds of the said sale to the Named Members and the Unknown Members, defendant Crescent knew of its liability to Plaintiff for defendant Crescent's breach of the License Agreement, which liability therefore constituted a debt of defendant Crescent antecedent to the aforesaid conveyance of the net proceeds of the sale by defendant Crescent to the Named Members and the Unknown Members.

61. Defendant Crescent received either no consideration or failed to receive fair consideration for the Fraudulent Conveyance to the Named Members and the Unknown Members.

62. The Fraudulent Conveyance was done to delay, hinder and avoid creditors of defendant Crescent.

63. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration and rendered defendant Crescent insolvent or was made at a time when defendant Crescent was insolvent, in violation of Section 273 of the New York Debtor and Creditor Law.

64. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration and left defendant Crescent with an unreasonably small amount of capital with which to operate, in violation of Section 274 of the New York Debtor and Creditor Law.

65. Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members was made without fair consideration at a time when defendant Crescent intended or believed that it would incur debts beyond its ability to pay them as they matured, in violation of Section 275 of the New York Debtor and Creditor Law.

66. By reason of the foregoing, Plaintiff demands that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received by defendant Crescent from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned by the Named Members and Unknown Members to defendant Crescent so

that it can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action.

AS AND FOR A SIXTH CAUSE OF ACTION
(Fraudulent Conveyance pursuant to New York
Debtor and Creditor Law § 276 against all Defendants)

67. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

68. Upon information and belief, the Fraudulent Conveyance was made by defendant Crescent with the actual intent to hinder, delay or defraud either present or future creditors of defendant Crescent, and did, in fact, hinder, delay and defraud Plaintiff.

69. By reason of the foregoing, Plaintiff demands that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received by defendant Crescent from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned by the Named Members and Unknown Members to defendant Crescent so that it can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action.

AS AND FOR A SEVENTH CAUSE OF ACTION
(Attorneys' Fees pursuant to New York
Debtor and Creditor Law § 276-a against all Defendants)

70. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

71. By reason of the foregoing, and pursuant to New York Debtor and Creditor Law Section 276-a, Plaintiff demands judgment against the Defendants for all of the costs and disbursements of this action, including its attorneys' fees herein.

3697-002 Doc# 11

AS AND FOR A EIGHTH CAUSE OF ACTION
**(Wrongful Distributions in Violation of Section 18-607 of the
Delaware Limited Liability Company Act (or Section 508 of the New York Limited
Liability Company Act) against all Defendants)**

72. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 34 hereof, inclusive, as if fully set forth herein.

73. Defendant Crescent is a limited liability company organized under the Delaware Limited Liability Company Act (the "Act").

74. On or about May 23, 2006, Plaintiff and defendant Crescent entered into the License Agreement.

75. In or about January, 2008, in breach of its obligations under the License Agreement to design and build the Tower Property and market for sale condominium units at the Tower Property and thereafter pay Plaintiff Royalties as specified in the License Agreement, defendant Crescent sold the Land to a third party, Azorim, for approximately \$80.2 Million (U.S.), realizing a windfall profit of approximately \$36 Million (U.S.).

76. Upon information and belief, shortly after receiving the \$80.2 Million of proceeds from the sale of the Land to Azorim, defendant Crescent, a Delaware limited liability company, distributed the net proceeds from such sale, including the windfall profits it received on such sale, to the Named Members and Unknown Members (the "Fraudulent Conveyance").

77. At the time it distributed the net proceeds of the said sale to the Named Members and Unknown Members, defendant Crescent and said distributees knew of defendant Crescent's liability to Plaintiff for defendant Crescent's breach of the License Agreement, which liability therefore constituted a debt of defendant Crescent antecedent to the aforesaid Fraudulent

Conveyance of the net proceeds of the sale by defendant Crescent to the Named Members and Unknown Members.

78. Defendant Crescent's distribution of the net proceeds of the sale of the Land to the Named Members and Unknown Members was a distribution made in violation of Section 18-607 (a) of the Act (or Section 508 of the New York Limited Liability Company Act, if the Court deems such act applicable), in that, at the time of the distribution, after giving effect to the distribution, all liabilities of defendant Crescent (other than certain liabilities to members and liabilities with respect to non-recourse debt), but including, in particular, its antecedent debt to Plaintiff for damages arising from its breach of the License Agreement, exceeded the fair value of the assets of defendant Crescent.

79. By reason of the terms of the License Agreement and Attorney Diamond's letter of August 2, 2007, among other things, the Named Members and the Unknown Members knew, at the time they received a distribution of the net proceeds of the sale from defendant Crescent, that said distribution violated Section 18-607(a) of the Act (or Section 508 of the New York Limited Liability Company Act, if the Court deems such act applicable), as aforesaid.

80. In consequence, the Named Members and the Unknown Members are liable to defendant Crescent to return the wrongful distributions they received from defendant Crescent of the net proceeds of the sale of the Land to Azorim, and Plaintiff is entitled to a judgment directing that said return be made, so that Plaintiff may have satisfaction of judgment for damages awarded to it in respect of defendant Crescent's breach of the License Agreement and unjust enrichment as alleged herein.

WHEREFORE, Plaintiff seeks judgment:

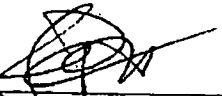
- (a) On the first cause of action for breach of contract as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$45,000,000, plus interest, costs and reasonable attorneys' fees;
- (b) On the second cause of action for breach of the implied covenant of good faith and fair dealing as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$45,000,000, plus interest, costs and reasonable attorneys' fees;
- (c) On the third cause of action for indemnification as against defendant Crescent, in an amount to be determined at trial, plus interest, costs and reasonable attorneys' fees;
- (d) On the fourth cause of action for unjust enrichment as against defendant Crescent, in an amount to be determined at trial, such sum being not less than \$36,000,000, plus interest, costs and reasonable attorneys' fees;
- (e) On the fifth cause of action for fraudulent conveyance as against all defendants pursuant to New York Debtor and Creditor Law Sections 273, 274 and 275, ordering that the conveyances by defendant Crescent to the Named Members and the Unknown Members of the net proceeds received from sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned to defendant Crescent by the Named Members and the Unknown Members, so that defendant Crescent can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action, plus interest, costs and reasonable attorneys' fees;
- (f) On the sixth cause of action for fraudulent conveyance as against all defendants pursuant to Debtor and Creditor Law, Section 276, ordering that the conveyances by defendant Crescent to the Named Members and Unknown Members of the net proceeds received from the sale of the Land to Azorim, be set aside as fraudulent, and that such amounts be returned to defendant Crescent by the Named Members and Unknown Members, so that defendant Crescent can pay Plaintiff any judgment obtained by Plaintiff against defendant Crescent in this action, plus interest, costs and reasonable attorneys' fees;
- (g) On the seventh cause of action for attorneys' fees pursuant to New York Debtor and Creditor Law Section 276-a as against all defendants, in an amount to be determined at trial, plus interest and costs; and

(h) On the eighth cause of action for wrongful distributions made in violation of Section 18-607 of the Delaware Limited Liability Company Act and/or Section 508 of the New York Limited Liability Company Act as against all defendants, ordering the Named Members and the Unknown Members to return to defendant Crescent the distributions the former received from the latter in respect of the net proceeds of the sale of the Land, so that Plaintiff may have satisfaction of the judgment awarded to Plaintiff on the first, second, third and fourth causes of action herein.

(i) All such other and further relief as this Court deems just and equitable.

Dated: New York, New York
May 5, 2008

MEISTER SEELIG & FEIN LLP

By: 
Stephen B. Meister, Esq.

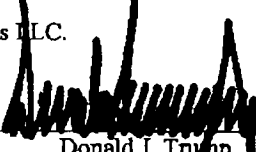
2 Grand Central Tower
140 East 45th Street, 19th Floor
New York, New York 10017
(212) 655-3500
Attorneys for Plaintiff

VERIFICATION


STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Donald J. Trump, being duly sworn, deposes and says as follows:

I am a member of Plaintiff Trump Marks LLC. I have read the within Verified Complaint, and the same is true to my knowledge, except as to those matters alleged upon information and belief, and as to those, I believe them to be true. The source of my belief is my personal knowledge of the matters set forth therein, my review of relevant documents and the books and records of Trump Marks LLC.



Donald J. Trump

Sworn to before me this
day of May, 2008


BERNARD R. DIAMOND
Notary Public, State of New York
No. 02DM987017
Qualified in Westchester County
Commission Expires Sept 30, 2008



Exhibit B

Trump Marks LLC

c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022

Bernard R. Diamond
Executive Vice President
& General Counsel
Direct dial (212) 715-7288
Direct fax (212) 317-0037
bdiamond@trumpcorp.com

Via Certified Mail, RRR, Facsimile
and Federal Express

August 2, 2007

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, FL 33137
Attention: Sharon Christenbury, Esq.
Fax: 305-573-2315

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60603
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

Re: License Agreement ("License Agreement") dated May 23, 2006 between Trump Marks LLC, as Licensor and Crescent Heights Diamond, LLC, as Licensee

Dear Ms. Christenbury:

Reference is made to the License Agreement.

The capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the License Agreement.

As I am sure you are well aware, since the inception of the License Agreement, the well-publicized association of the "Trump" name with the anticipated "Tower Property" (as defined in the License Agreement) has generated intense interest among potential purchasers, investors, lenders and the general public, which, in turn, has led to a dramatic appreciation in the value of the Land.

It has come to the Licensor's attention that the Licensee has either sold the Land or is entertaining competing offers for the sale of the Land. By its actions the Licensee obviously seeks to profit handsomely from the association of the "Trump" name with the Land. Notably, in several recent conversations between senior representatives of the Licensee and the Licensor, the Licensee failed to disclose to the Licensor its aforesaid actions.



Sharon Christenbury
August 2, 2007
Page 2

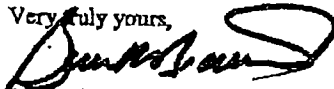
I remind you that among the numerous obligations of the Licensee under the License Agreement (and the inducement for the Licensor to execute and deliver the License Agreement to the Licensee) is the Licensee's covenant and agreement, among others, "...to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property" under the Trump brand.

Please be advised that any sale or other disposition of the Land by the Licensee, without the consent of the Licensor, will thwart the intent and purpose of the License Agreement to the Licensor's financial detriment, denying the Licensor the right to receive many millions of dollars in "Royalties", in violation of the License Agreement.

Any effort by the Licensee to assign the License Agreement to a purchaser of the Land, without the Licensor's consent, will constitute a separate material default by the Licensee under the License Agreement. In addition, the disassociation of the Trump name from the Tower Property as a result of any such unapproved sale, after the public acclaim that has resulted by reason of such association, will substantially damage the Trump name and reputation on a world-wide basis, for which the Licensor will hold the Licensee fully responsible.

I trust you will be guided accordingly.

Very truly yours,



Bernard R. Diamond

BRD: mgs

cc: Donald J. Trump
Donald J. Trump, Jr.
Ivanka Trump
Eric Trump
Jay Goldberg, Esq. - *not sent.*

EXHIBIT B

LEAD001d Amended Airy License Rev 5-19-06 V2L.DOC

LICENSE AGREEMENT

BETWEEN

TRUMP MARKS LLC

LICENSOR,

AND

CRESCENT HEIGHTS DIAMOND, LLC

LICENSEE

Dated: New York, N.Y.
May 23, 2006

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Exhibits

- A Royalties
- B Power of Attorney
- C Restricted Area

LICENSE AGREEMENT

THIS AGREEMENT ("Agreement") is made as of the ^{23rd} day of May, 2006, between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor"), with a principal place of business at 725 Fifth Avenue, New York, New York 10022, and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company, ("Licensee"), with a principal place of business at 2930 Biscayne Boulevard, Miami, Florida 33137. The Licensor and Licensee may hereinafter sometimes be referred to as the "Parties" and individually as a "Party".

RECITALS

WHEREAS, Donald J. Trump, a world-renowned builder and developer of luxury residential real estate, among other things, who enjoys the highest reputation in these fields, is the owner of certain United States Trademarks covering certain real estate services as well as certain other rights in the name, trademark, service mark, designation, and identification "TRUMP;" and

WHEREAS, pursuant to a certain License and Quality Control Agreement dated as of May 25, 2005, between Trump Marks LP, as licensor and Licensor as licensee, Licensor controls the licensing of the aforesaid Trump trademarks; has the exclusive right to grant the license to Licensee provided herein; and is the proper party to enter into this Agreement; and

WHEREAS, Licensee intends to (i) develop a building (the "Building") on certain land (the "Land") owned or to be acquired by Licensee, in Ramat Gan, Israel, which Land is legally described as: Parcel 233 of block 6128, having a registered area of 547 meters; parcel 476 of block 6128, having a registered area of 2047 meters; parcel 468 of block 6128, having a registered area of 9249 meters; parcel 47 of block 6128, having a registered area of 2961 meters; and all that is built on and attached to the said four parcels (the Land, together with the Building to be erected thereon, collectively the "Tower Property"), which, on completion of construction will include a first-class, luxury residential condominium component, which may include storage spaces (the "Storage Spaces") and garage spaces (the "Garage Spaces") (collectively, the "Residential Component") and, a retail component, which may include one or more restaurant units and one or more retail components of the type commonly located in similar projects, (collectively, the "Retail Component"); (ii) design, develop, construct and operate the Tower Property or portions thereof in the form of condominium ownership; and (iii) market, sell and/or lease the units forming part of the Residential Component and the Retail Component (individually, a "Unit" and collectively, the "Units") to be contained in the Building. All of the foregoing activities recited on subdivisions (i) through (iii) above, inclusive, to be performed in accordance with the "Trump Standard" (as herein defined) so as to maximize the value of the Tower Property for the benefit of Licensee and Licensor; and

WHEREAS, Licensee desires to use the name "Trump Tower"; which, together with any "Approved Logo" (as herein defined) is referred to herein as the "New Trump Mark"; and

WHEREAS, Licensor is willing to grant to Licensee the right to use the New Trump Mark in accordance with and subject to the terms, covenants and provisions of this Agreement.

NOW, THEREFORE, for One (\$1.00) Dollar and other good and valuable consideration, receipt of which is hereby acknowledged, Licensor and Licensee do hereby agree as follows:

1. License; Registration; Licensor Restriction

(a) Promptly after the date hereof, Licensor shall submit the New Trump Mark for registration (the "Registration") with The Israeli Trademarks Office (the "TTO"). Licensee acknowledges and agrees that Licensor shall not be liable or responsible to Licensee for any delay in or limitation imposed upon the New Trump Mark during the Registration process or any refusal by the TTO to register the New Trump Mark, and all of Licensee's obligations hereunder regarding the use of the New Trump Mark, including but not limited to Licensee's payment obligations hereunder shall remain in effect whether or not Registration of the New Trump Mark shall occur. Licensor shall have the right to register this Agreement with the appropriate Israeli authorities.

(b) Licensor hereby grants to Licensee, during the "Term" (as herein defined), a nonexclusive (subject to Section 1(g)), nonassignable (except as provided in Section 12(b) and (c) hereof), nontransferable right, without the right to grant sublicenses, to use the New Trump Mark alone or as part of the Approved Logo(s) solely for the purpose of identifying the Tower Property at its above-mentioned location, subject to all the terms, covenants and provisions of this Agreement. Licensee shall be required to, and hereby agrees to, use the New Trump Mark as the sole identification of the Building during the Term. Licensee shall also have the right to use the New Trump Mark in signage, print medium, television, radio, internet (the "Internet"), and other forms of promotional and publicity materials and facilities, solely with respect to the promotion of the Building, subject to all the terms, covenants and provisions of this Agreement. In connection with Licensee's exercise of the foregoing marketing rights, Licensor reserves the right to prohibit the making of representations on behalf of Licensor or Donald J. Trump, or the use of material which, in the judgment of Licensor, do not accurately reflect facts about Licensor and/or Donald J. Trump.

(c) Licensor hereby grants to Licensee, during the Term, the right to permit Residential Component Unit owners and lessees, and Retail Component Unit owners and lessees (collectively, "Occupants") to use the New Trump Mark solely for the purpose of identifying in advertising and promotion of their Residential and Retail Component Units in connection with offers to sell or lease such Units, and as the address of such Occupants at the Building. However, such right shall not permit the Occupants to use the New Trump Mark as part of the name or identification of such Occupants. Trade names such as "Trump Tower Restaurant" or "The Restaurant at Trump Tower" are not permitted or authorized hereunder. Licensee agrees that the foregoing rights and restrictions governing Licensee's and such Occupants' use of the New Trump Mark, including but not limited to its obligation to comply with the Trump Standard, and Licensor's access to the Building as provided in Paragraph 3(d) hereof, shall be set forth in:

(i) each contract of sale or lease, pursuant to which an Occupant shall acquire or lease a Unit from Licensor; and

(ii) each succeeding contract of sale, lease, or sublease pursuant to which an Occupant shall sell or otherwise transfer or lease its Unit or assign its lease or sublease its Unit; and

(iii) the bylaws of the Building (Takanon Habait Hameshutaf) (the "Bylaws") which shall be registered by Licensee with the Tel Aviv, Israel Land Registry, together with the registration of each purchasing Occupant's ownership of its Unit.

Each such contract of sale, lease, assignment, sublease and the Bylaws, and an English translation of each, shall be subject to the approval of Licensor. Licensee agrees to cooperate fully with, and furnish assistance to Licensor in any action by Licensor required to ensure that any use of the New Trump Mark by the Occupants complies with the terms and conditions of this Agreement.

(d) In connection with its identification and promotion of the Building, Licensee may propose to use certain composite trademark(s) and/or logos in association with and/or incorporating the New Trump Mark, including, but not limited to, a logo that substantially consists of distinctive design elements of the Building, (collectively, the "Proposed Logo" or "Proposed Logos"). Prior to any adoption and/or use of any Proposed Logo, Licensee shall submit a graphical representation of such Proposed Logo to Licensor precisely in the manner which Licensee intends such Proposed Logo to appear in commercial use. Following Licensee's submission of such Proposed Logo to Licensor, Licensor shall review such Proposed Logo within fifteen (15) days of receipt thereof, and if such Proposed Logo meets with Licensor's preliminary approval, Licensor shall commission its Israel trademark counsel to conduct a full trademark search and make an assessment as to the likely registrability and/or availability of such Proposed Logo for use. Licensee shall bear the costs incurred in the trademark clearance assessment of each Proposed Logo. Upon obtaining the assessment of counsel regarding clearance of any Proposed Logo, Licensor shall, in its reasonable discretion, within fifteen (15) days of receipt of counsel's said assessment, determine whether to approve such Proposed Logo. Licensor shall promptly notify Licensee in writing whether or not it is permitted to adopt and/or use any given Proposed Logo. Licensee may submit multiple alternative Proposed Logos at the same time, which shall proceed concurrently through the approval process, subject to the provisions of this Agreement. Licensee shall not adopt and/or use any Proposed Logo unless and until it obtains Licensor's approval, in writing, in the manner set forth in this subparagraph 1(d).

(e) If the Licensor approves any Proposed Logo, such Proposed Logo shall then be referred to as an "Approved Logo." At such time that the Licensor approves any Proposed Logo, in writing, Licensee acknowledges and agrees that Licensor shall own all right, title and interest in and to any and all Approved Logos and that Licensee's sole rights with respect thereto shall be to use such Approved Logos subject to, and in accordance with, the terms, covenants and provisions of this Agreement. If and when any Proposed Logo is approved in writing by Licensor in accordance with the terms of this Agreement, such Approved Logo will be considered as of the date of such approval as a New Trump Mark and will be subject to the terms and conditions of this Agreement. On termination of this Agreement, Licensor shall

assign to Licensee (in a form reasonably acceptable to Licensee) all of Licensor's right, title and interest in and to the Approved Logos adopted and used by Licensee, if any, but only that portion of such Approved Logos (the "Design Logos") that do not contain any element of the name "Trump" or can be readily separated and clearly distinguished from the name "Trump."

(f) Licensor shall file trademark applications for the New Trump Mark (other than Approved Logos), at Licensor's expense, in English and Hebrew, and each Approved Logo, at Licensee's expense, including the expense of any renewals of any such Registration, with the ITO in Classes 36 and 37. Applications for Approved Logos, if approved by the ITO, will be deemed a part of the New Trump Mark.

(g) Provided that Licensee is not in default of this Agreement after any applicable notice and cure period provided herein, and this Agreement is in full force and effect, then:

A. until the first to occur of (i) the date that is forty-two (42) months from execution of this Agreement; and (ii) the date upon which at least ninety (90%) percent of the Units available for sale to the public are subject to binding contracts of sale, Licensor will not license the name "Trump" for a residential condominium building, with or without storage spaces, garage spaces and retail areas, within the area of Tel Aviv, Israel shown cross-hatched on Exhibit C annexed hereto and made a part hereof. (the "Restricted Area"); and

B. until the date that is twelve (12) months from the date hereof, Licensor will not license the name "Trump" for a "Condominium Hotel" (as herein defined).

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" name, other than the New Trump Mark, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that term is customarily used, or for any other use not expressly prohibited herein, anywhere in Tel Aviv or elsewhere in Israel.

D. For the purposes of this Paragraph 1(g) "Condominium Hotel" shall mean apartment hotels and/or suite hotels and/or apartment buildings (which may be residential condominium buildings) (x) in which the owners have the right to include their apartments or units in a rental program for predominantly transient occupancy, whether short-term, medium-term or long-term, with a majority of the apartments or units of the building anticipated, but not required, to participate in the rental program on a predominantly short-term transient occupancy basis; (y) which provide to such apartment or unit owners services customarily provided by a hotel, such as a registration desk, cleaning services and the like; and (z) which are professionally managed by an affiliate of Licensor or by a third-party manager.

(h) Licensor shall cause Donald J. Trump to make one (1) trip to the Tower Project (the "Trump Appearance"), at Licensee's expense for first class air transportation and first class accommodations and food, for no more than one (1) day of six (6) working hours, for

the promotion of the Tower Project to the public. The Trump Appearance shall occur on a date reasonably acceptable to the Parties, but consistent with Donald J. Trump's professional schedule.

(j) Any Internet website addresses obtained and utilized by Licensee with respect to the promotion of the Tower Property shall be subject to the approval of Licensor in writing, which approval shall not be unreasonably withheld or delayed; and if so approved, shall be issued exclusively in the name of Donald J. Trump, as the owner thereof.

2. Exclusions to License; Use of License

(a) Licensee recognizes and agrees that no rights, other than as expressly provided herein, to use the New Trump Mark are granted hereunder, whether as to activities, products, services, or otherwise. Solely for promotional purposes, Licensee may produce, sell or give away promotional items, décor elements, souvenir products, (e.g. pens, bathroom towels, tumblers and monogrammed clothing) and any items customarily sold in a spa (including but not limited to cosmetics, robes, slippers, and t-shirts, respectively), which bear the New Trump Mark, have been reasonably approved by Licensor as to design, development, marketing and sales, and conform to the Trump Standard. The following merchandising items shall be royalty-free during the term of this Agreement: (i) promotional give-aways, and (ii) any items purchased from Licensor or its designee. As for other merchandising items, including those sold in a sundries store or gift shop or a spa or other portions of the Tower Property, Licensee will pay or will cause any tenant, licensee or other operator thereof to pay, to Licensor royalties in respect of such sales in an amount equal to fifteen percent (15%) of all net sales after deduction of only Israeli Value Added Tax and returns (the "Sales Royalties"). Sales Royalties will be paid to Licensor quarter-annually within thirty (30) days of the close of each quarter. Payment of the Sales Royalties shall be accompanied by Licensee's statement certified by the Chief Financial Officer of Licensee as true and complete (the "Statement") in such detail as Licensor shall reasonably require, with respect to the Sales Royalties provided in such Statement. Licensee shall not have the right to use the New Trump Mark in connection with individual facilities within the Tower Property, or with any products or services sold or offered for sale in the Tower Property or elsewhere, except as provided herein, or if and as may subsequently be agreed to in writing by Licensor in Licensor's sole and absolute discretion.

(b) Licensee also recognizes and agrees that it has no other rights to the use of the name "Trump" other than in respect to the licensed New Trump Mark, and recognizes Licensor's sole and exclusive ownership of all proprietary rights in the name "Trump" and in the New Trump Mark. Licensee will not register nor attempt to register the New Trump Mark or "Trump" or any derivations or phonetic equivalents thereof, as a name, mark or otherwise. Licensee agrees neither to assert any claim to any goodwill, reputation, or ownership of the name "Trump" or in the New Trump Mark nor to contest the validity or ownership of the New Trump Mark. Licensee agrees that it will not do, or permit any act or thing to be done, in derogation of any of the rights of Licensor in connection with Licensee's use of the New Trump Mark either during the term of this Agreement or thereafter and that Licensee will not use the New Trump Mark except as licensed hereunder. Licensee further acknowledges and agrees that any goodwill associated with the use of the New Trump Mark shall inure directly and exclusively to Licensor.

(c) All uses of the New Trump Mark by Licensee shall faithfully reproduce the design and appearance of the New Trump Mark.

(d) At the request of Licensor, Licensee shall include the trademark designation legally required or useful for enforcement (e.g. "TM", "SM" or ®, as applicable) in connection with Licensee's use of the New Trump Mark.

(e) Except as specifically authorized under this Agreement, Licensee shall not use the New Trump Mark in whole or in part on or in connection with any other business and shall not permit or authorize any other person or entity to use the New Trump Marks in any manner.

(f) Licensor shall have the right to review and approve in writing, all promotional materials or any other materials (with an English translation) using the New Trump Mark prior to Licensee's use of such materials. Licensor shall within Licensor's reasonable discretion, review and approve such materials within ten (10) business days of its receipt of such materials; provide however, if Licensor shall fail to approve or shall reject any such submission within such ten (10) business day period and after three (3) days following an additional written notice to Licensor, sent upon the expiration of such ten (10) business day period, such submissions shall be deemed approved by Licensor. Notwithstanding the foregoing, in no event shall Licensee issue a press release concerning Licensor (or Donald J. Trump) without Licensor's prior written approval.

(g) Licensee agrees to ensure that, in such cases as Licensor may require, use or display of the New Trump Marks are in the manner sufficient to indicate that the New Trump Marks are owned by Licensor and are being used under license.

3. Trump Standard; Trump Standard Default; Power of Attorney. As a material inducement for the grant of the license provided herein, Licensee covenants and agrees with Licensor:

(a) to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property, in each case, with the level of quality and luxury associated with the premier, first class mixed-use residential condominium building known as the Akirov Building in Tel Aviv, Israel (the "Signature Property"); and

(b) at all times, to maintain, and ensure by the provisions of the Bylaws, and by each contract for the sale of a Unit and each lease and sublease of a Unit, that Licensee and each Occupant (hereinafter singularly, a "License Beneficiary," and collectively, "License Beneficiaries") maintain standards, with respect to the Tower Property, and the Residential and Retail Components thereof, as the case may be, that are at least equal to those standards of design, development, construction, marketing, sale, equipping, operation, repair and maintenance followed by the Signature Property (for the purposes of this Agreement, such standards as the date hereof, are collectively called the "Trump Standard").

(c) Using its commercially reasonable judgment, Licensor shall be the sole judge of whether a License Beneficiary is maintaining the Trump Standard, and if Licensor, in its

commercially reasonable judgment, determines that the Trump Standard is not being maintained or that a License Beneficiary has breached any other provision of this Agreement relating to the Trump Standard, (collectively, a "Trump Standard Default") Licensor may notify, as applicable, the License Beneficiary thereof in writing (the "Trump Standard Default Notice") and if the License Beneficiary shall fail to fully correct to Licensor's satisfaction any condition or cure any Trump Standard Default identified in the Trump Standard Default Notice, within thirty (30) days of the receipt of such Trump Standard Default Notice, Licensor may immediately terminate this Agreement and all rights licensed hereunder by notifying the License Beneficiary in writing of such termination; provided however, that so long as the Trump Standard Default cannot be cured solely by the payment of money and the License Beneficiary shall have commenced the curing of such Trump Standard Default within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, the License Beneficiary shall have such reasonable additional period of time as shall be reasonably necessary to cure such Trump Standard Default, but in no event more than the shorter of (i) one hundred twenty (120) days, or (ii) the number of days of "Unavoidable Delay" (as herein defined) that the License Beneficiary shall contemporaneously document in writing to Licensor.

(d) Licensor or its representatives shall at all times have access to, and the right to inspect, the Tower Property, interior and exterior (but excluding the interior of non-Licensee or its designees' privately owned units, unless authorized by such unit owners), and the procedures utilized by the License Beneficiaries, in the operation and maintenance of the Residential Component and Retail Component during normal business hours, on not less than twenty-four (24) hours notice, but without unreasonably interfering with the operation of the Tower Property, to confirm License Beneficiaries' compliance with the provisions of this Agreement.

(e) (i) Concurrently with the execution of this Agreement, Licensee shall execute and deliver to Licensor a Power of Attorney (the "Power") in the form and on the terms annexed hereto as Exhibit B and made a part hereof, in form sufficient for registration with the appropriate Israel governmental authority, pursuant to which Licensee irrevocably designates Licensor or its attorneys, as attorney-in-fact for Licensee, to execute and deliver on behalf of Licensee, any such documents as shall be required to cause the registration of this Agreement, as provided in Paragraph 1(a) hereof, to be cancelled in the event that this Agreement expires or is terminated for any reason and Licensee shall fail to commence an action (the "Action") to enjoin or contest the cancellation of the registration of this Agreement within thirty (30) days of such termination. In the event Licensee shall commence an Action, then Licensor may cause the registration of this Agreement to be cancelled upon the conclusion of such litigation.

(ii) Subject to the provisions of Subsection (i) above, Licensor agrees to register Licensee as an "authorized person" in accordance with Section 50 and 51 of the Israel Trademark Ordinance.

4. Delivery of Plans and Specifications to Licensor

(a) Licensee shall deliver to Licensor the following preliminary plans and specifications, information and other Trump Standard related items ("Preliminary Plans") for

the Building, for the Licensor's written approval and determination that they comply with the Trump Standards:

- (i) The engineering and design of the Building and all service systems of the Building;
- (ii) The exterior design of the Building, including, but not limited to the facade, signage, landscaping, access methods, and illumination;
- (iii) The interior signage, unit layouts and room counts;
- (iv) All furniture, fixtures, equipment, and appliances;
- (v) The sales and marketing plan for the Tower Property including sales office location and layout, sales staff training and sales collateral materials;
- (vi) The identity of the contractors proposed by Licensee for the construction of the Tower Property; provided, however, Licensor shall be deemed to approve any contractor that is acceptable to Licensee's institutional construction lender for the Building; and
- (vii) The manager(s) of the Tower Property; provided, however, Licensor shall be deemed to approve any manager that is acceptable to Licensee's institutional construction lender for the Building.

Within twenty (20) business days of receipt of the Preliminary Plans, Licensor will either approve the same or send a "Deficiency Notice" (as herein defined) to Licensee, whereupon Licensee shall prepare and deliver to Licensor revised Preliminary Plans ("Revised Preliminary Plans") which satisfy the Deficiency Notice. In the event Licensor does not deliver to Licensee an approval or issue a Deficiency Notice within twenty (20) business days of receipt of any Revised Preliminary Plans, Licensor shall be deemed to have approved the Revised Preliminary Plans.

(b) Prior to the commencement of the demolition of existing improvements or construction of the Tower Property, Licensee shall submit its final plans and specifications therefor (the "Final Plans and Specifications") including each of the items delineated in Subsection 4(a) (i) - (vii) hereof, to Licensor, to the extent not previously approved by Licensor in writing. Following Licensee's submission of such Final Plans and Specifications, Licensor shall review such Final Plans and Specifications within fifteen (15) business days of receipt thereof. Within fifteen (15) business days after review of the Final Plans and Specifications, Licensor shall deliver a report to Licensee, which either (1) approves, in writing, Licensee's Final Plans and Specifications or (b) identifies in detail and with particularity each portion of the Final Plans and Specifications that does not comply with the Trump Standard (the "Deficiency Notice") and specifies what changes need to be made to the Final Plans and Specifications before Licensor shall approve the Final Plans and Specifications; Licensee shall thereafter

diligently attempt to cure such deficiencies, and upon completion, shall re-submit the revised Final Plans and Specifications to Licensor. Upon obtaining the revised Final Plans and Specifications, Licensor shall review the same, and within ten (10) business days after receipt thereof, shall either: (x) approve the revised Final Plans and Specifications or (y) issue another Deficiency Notice. If the Parties reach an impasse such that the Revised Preliminary Plans or the Final Plans are not approved by Licensor after Licensor issues three (3) or more Deficiency Notices (with respect to each of the Revised Preliminary Plans and the Final Plans and Specifications), Licensor and Licensee shall each have the right to terminate this Agreement. Licensor agrees to work reasonably with Licensee to correct any deficiencies provided in a Deficiency Notice. Licensor and Licensee may exercise such right of termination by delivering written notice to the other (the "Termination Notice") within, but not later than, fifteen (15) business days after the third Deficiency Notice, whereupon this Agreement shall automatically terminate and be of no further force and effect. Notwithstanding the foregoing, Licensor shall be entitled to retain any portion of the Royalty paid to Licensor prior to the date of the termination of this Agreement. Once approved, Licensee shall construct or cause construction of the Tower Property in accordance with the Final Plans and Specifications, approved by Licensor, which shall adhere to and comply with the Trump Standard.

5. Royalty

(a) Licensee shall pay to Licensor for the rights granted to Licensee hereunder, the "Royalty" (as herein defined) set forth on Exhibit "A" annexed hereto and made a part hereof.

(b) In the event Licensee shall be required to withhold any taxes or other mandatory payments imposed by the State of Israel ("Licensor Local Tax Obligation"), and provided that at the time of the withholding there is a double taxation treaty in force between the State of Israel and the United States enabling the Licensor to obtain a credit in the United States with respect to such withholdings, Licensee shall pay such Licensor Local Tax Obligation on Licensor's behalf and furnish to Licensor the receipt, remittance voucher or other original evidence of such payment of any Licensor Local Tax Obligation so paid so that Licensor can apply for a corresponding tax credit in the United States. Licensee shall fully cooperate with Licensor and provide such information and records as Licensor may reasonably require in connection with any application to the tax authorities of Israel and/or the United States, including but not limited to, the obtaining of a credit for any Licensor's Local Tax Obligation paid in the State of Israel which Royalties and other payments are being made by Licensee to Licensor hereunder.

6. Term. The term of this Agreement (the "Term") shall commence on the date hereof and shall end on the first to occur of: (i) the expiration or earlier termination of this Agreement, as provided herein or (ii) the day upon which the Tower Property shall no longer be known by the New Trump Mark, and Licensor and Licensee have not agreed in writing or are not in substantive discussions for the use of a Trump Name as the name of the Tower Project.

7. Non-Trump Standard Default: Licensor's Default

(a) In addition to the provisions of Paragraph 3 hereof, Licensee shall be considered in default and Licensor may terminate this Agreement if Licensee shall default in (i) the payment of a sum of money and such default shall not be cured within a period of ten (10) days after written notice of such default is given by Licensor to Licensee, or (ii) except as otherwise provided in Section 3(c) hereof as they are related to a Trump Standard Default, the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensor to Licensee; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensee shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensee shall have such additional time as shall be reasonably necessary to cure such default, not to exceed sixty (60) days. During any such default by Licensee, any sum of money due hereunder shall accrue interest at the highest rate permitted by applicable law.

(b) Licensor shall be considered in default and Licensee may terminate this Agreement if Licensor shall default in the performance of any material obligation hereunder and such default shall not be cured within a period of thirty (30) days after written notice of such default is given by Licensee to Licensor; provided, however, that so long as the default cannot be cured solely by the payment of a sum of money and Licensor shall have commenced the curing of such default promptly and in any event within such thirty (30) day period and shall diligently prosecute the curing thereof to completion, Licensor shall have such additional time as shall be reasonably necessary to cure such default, not exceeding sixty (60) days.

8. Licensor's Termination. In addition to any other right or remedy of Licensor hereunder, Licensor shall have the absolute right to terminate this Agreement and the rights licensed hereunder, upon ten (10) days prior written notice of such termination to Licensee, if:

- (a) Licensee files a petition in bankruptcy or is adjudged bankrupt; or
- (b) a petition in bankruptcy is filed against Licensee and not discharged within sixty (60) days; or
- (c) Licensee becomes insolvent, or makes an assignment for the benefit of its creditors or any arrangement pursuant to any bankruptcy or like law; or
- (d) a receiver is appointed for Licensee or its business; or
- (e) a substantial portion of the Building is damaged or destroyed by fire or other casualty and the Building is not rebuilt in a diligent and expeditious manner and in compliance with the Trump Standard; or
- (f) the Tower Property or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Tower Property cannot be operated in a manner consistent with the Trump Standard; or

(g) Sonny Kahn, Russell W. Galbut and Bruce A. Menin (singularly, a "Principal" and collectively the "Principals") and any successor to any Principal approved by Licensor or permitted pursuant to Paragraph 12(c) hereof, cease collectively to own a majority of the direct or indirect interests in Licensee and to control the day to day activities of Licensee.

(h) The construction of the Building fails to commence within twenty-four (24) months from the date of this Agreement, unless such delay shall result from any strikes, lockouts or labor disputes, inability to obtain labor (but excluding all delays resulting from delays in obtaining permits for foreign workers that exist for more than ninety (90) days in the aggregate) or materials or reasonable substitutes thereof, acts of God, governmental restrictions, regulations or controls, terrorist, enemy or hostile government action, civil commotion, war, riot or insurrection, fire or other casualty or other events similar to the foregoing beyond the reasonable control of Licensee (collectively, "Unavoidable Delays") in which event such twenty-four (24) month period shall be deemed extended one (1) day for each day of Unavoidable Delay which is contemporaneously documented in writing to Licensor; or

(i) A Tofes 4 (Form 4) has not been issued for the Building within forty (40) months from the commencement of construction, except as a result of Unavoidable Delays, in which event, such thirty-six (36) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor; or

(j) Closings have not occurred or binding contracts with appropriate deposits have not been accepted by Licensee for at least seventy (70%) percent of the Units within forty (40) months from the date of commencement of construction, except as a result of Unavoidable Delays, in which event, such forty (40) month period shall be deemed extended one (1) day for each day of Unavoidable Delay, which is contemporaneously documented in writing to Licensor.

(k) Licensee shall notify Licensor in writing of each Unavoidable Delay provided in subparagraphs (h) through (j) inclusive, above and the reasonably anticipated duration of the same, promptly after the occurrence of the same, otherwise such Unavoidable Delay shall be deemed waived.

(l) Notwithstanding the termination of this Agreement pursuant to any of its terms, Licensor shall be entitled to receive, and Licensee shall pay to Licensor all Royalties that have accrued to Licensor prior to the date of termination. Royalties due to Licensor pursuant to this Section 8 (l) shall be paid to Licensor on the delivery of possession of a Unit, and such obligations shall survive such termination. A Licensee Fee shall accrue to Licensor on date that a contract of sale or a lease of a Unit is entered into.

9. **Licensee's Termination.** Notwithstanding anything to the contrary herein, including but not limited to the provisions of Paragraph 7(b) hereof, Licensee shall have the right to terminate this Agreement upon ten (10) days prior written notice of such termination to Licensor if

(a) the Building or any part thereof is taken in condemnation or eminent domain proceedings and the remaining portions of the Building and land upon which it is located cannot be operated in a manner consistent with the Trump Standard; or

(b) prior to the sale of at least seventy (70%) percent of the Units in the Tower Property that are offered for sale to the public, Donald J. Trump (i) dies; (ii) becomes permanently incapacitated or otherwise ceases permanently to render services to Licensor; (iii) is no longer a principal of Licensor; (iv) is convicted of a felony; (v) files a petition in bankruptcy or is adjudged bankrupt; (vi) a petition in bankruptcy is filed against Donald J. Trump and not discharged within sixty (60) days; or (vii) becomes insolvent, or makes an assignment for the benefit of his creditors or any arrangement pursuant to any bankruptcy or like law.

(c) The termination of this Agreement pursuant to this Paragraph 9 shall not impair Licensor's right to receive the Royalty in respect of units for which purchase contracts and leases shall be entered into prior to the date of termination.

10. Discontinuation of Use of Marks. Upon the expiration or termination of this Agreement for any reason, Licensee will immediately undertake its best efforts to discontinue any and all uses of the Trump Marks, by itself and by any Occupant, and make and shall cause each Occupant to make, no further use of the same whatsoever. If Licensee or any Occupant fails to so discontinue all such use within ninety (90) days, Licensor shall be entitled to immediate injunctive relief in addition to damages and all other applicable remedies.

11. Licensee Indemnification. Licensee hereby agrees to indemnify, defend, and hold free and harmless Licensor, its members, shareholders, employees, representatives, directors, officers, and Donald J. Trump and its and his successors and assigns (collectively, "Licensor Indemnified Parties") from and against any and all causes of action (including, but not limited to, product liability actions, tort actions and actions of any Occupants) and reasonable out-of-pocket expenses, including, but not limited to, interest, penalties, attorney and third party fees, and all reasonable amounts paid in the investigation, defense, and/or settlement of any claims, suits, proceedings, judgments, losses, damages, costs, liabilities and the like, (collectively "Claims and Expenses") which may be suffered, incurred or paid by any Licensor Indemnified Party, arising in whole or in part, directly or indirectly, out of (i) Licensee's or its agents, servants, employees or contractors acts or omissions in breach or default of this Agreement or (ii) the design, construction, operation, maintenance or repair of the Tower Property; or (iii) any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, arising from any use of the Approved Logos or (iv) Licensee's or its agents, servants, employees or contractors failure to comply with any laws. The foregoing indemnification shall not apply to any Claims and Expenses resulting from the negligence or willful acts of any Licensor Indemnified Party.

12. Assignment

(a) Licensor may assign this Agreement without the prior consent of Licensee to Donald J. Trump or an entity controlled by Donald J. Trump, or any heir, successor or legal representative of Licensor or Donald J. Trump; provided the assignee assumes the terms and conditions of this Agreement and owns or controls the New Trump Mark. This Agreement and Licensee's use of the New Trump Mark hereunder shall inure solely to the benefit of Licensor and to any and all heirs, successors or assignees of Licensor who owns or controls the New Trump Marks.

(b) Licensee may assign this Agreement as collateral to an institutional construction lender (the "Lender") without the written consent of Licensor, provided that (i) the form and content of such assignment shall be reasonably acceptable to Licensor; and upon an event of default by Licensee under any such institutional construction loan the Lender shall, within thirty (30) days of the date upon which it legally obtains possession of the Tower Property, assume the obligations of Licensee hereunder. Until such time as the Lender shall assume the obligations of Licensee hereunder, it shall have no right or interest in or to the New Trump Mark.

(c) The Principals may by will or intestacy transfer their direct or indirect interests in Licensee to each other or to the spouses or children of the Principals, which transferees shall be bound by the terms and provisions of this Agreement.

13. Infringement; Licensor Indemnification

(a) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based solely on the use of the New Trump Mark (exclusive, however, of any Approved Design Logos) for which Registration has issued by the ITO pursuant to the terms of this Agreement, is instituted against Licensee, Licensor hereby agrees, subject to the other provisions of Section 1(a) and this Section 13(a), to indemnify, defend, and hold free and harmless Licensee, its employees, representatives, directors, officers, successors and permitted assigns from and against any and all such causes of action and reasonable out-of-pocket expenses, including, without limitation, interest, penalties, attorney and third party fees which may be suffered, incurred or paid by Licensee in connection therewith. Licensee agrees to cooperate with Licensor in the defense of such action and to take no actions of any kind regarding such claim without the express prior written consent of Licensor, such consent not to be unreasonably withheld or delayed. Licensor shall have the sole and absolute right to settle any such action and to negotiate and determine the settlement terms. Licensee shall take all steps reasonably recommended to mitigate its damages incurred, including the removal of any New Trump Mark from the Tower Property and discontinuance of any use of the New Trump Mark, if required by Licensor. The remedy provided in this paragraph shall be the sole and entire remedy of Licensee. However, Licensor shall not be responsible for any special, consequential or exemplary damages or projected lost sales or profit of Licensee or other costs, losses or expenditures of Licensee. Licensee shall promptly notify Licensor of any marks used by third parties that may be confusingly similar or otherwise damaging to the New Trump Mark, but shall take no other action of any kind with respect thereto, except by express prior written authorization of Licensor.

(b) If during the term of this Agreement any trademark infringement action, proceeding or claim, or threat of such action, proceeding or claim, based on use of the New Trump Mark (exclusive of any Approved Design Logos) is instituted against Licensor, Licensor shall have, at Licensor's option, the right to: (i) defend itself against any such action, proceeding or claim; or (ii) enter into any settlement of any such action, proceeding or claim in its sole discretion.

14. Representations and Warranties; Covenants

(a) Licensor represents and warrants to Licensee that:

(i) Licensor has the power and authority and all necessary licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensor of the Agreement does not and will not conflict with, or result in any breach or contravention of any contractual obligation to which Licensor is a party or any order, injunction, writ or decree of any governmental authority to which Licensor or its property is subject or violate any requirement of law.

(iii) Licensor has not granted to any third party any rights inconsistent with the license rights granted to Licensee hereunder.

(iv) This Agreement constitutes a legal, valid and binding obligation of Licensor, enforceable against Licensor in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(v) Licensor shall use its commercially reasonable efforts to protect and maintain in full force and effect, at its expense, (x) the New Trump Mark (exclusive of Approved Logos) in Israel, to the extent Registration has been issued by the ITO; and (y) in the United States, with respect to any registrations with the U.S. Patent and Trademark Office of the same trademark as the New Trump Mark (other than Approved Logos);

(vi) The New Trump Mark is free and clear of any and all liens and other encumbrances and will not be pledged or granted as a security interest during the term of this Agreement unless such pledge or security interest is subject to this Agreement.

(b) Licensee represents and warrants to Licensor that:

(i) Licensee is a duly organized, validly existing and in good standing under the laws of the State of Delaware. Licensee has the power and authority and all licenses, authorizations, consents and approvals to perform its obligations under this Agreement.

(ii) The execution, delivery and performance by Licensee of this Agreement has been duly authorized by all necessary corporate action, and does not and will not contravene the terms of Licensee's charter documents, conflict with, or result in any breach or contravention of, any contractual obligation to which Licensee is a party or any order, injunction, writ or decree of any governmental authority to which Licensee or its property is subject or violate any requirement of law.

(iii) This Agreement constitutes legal, valid and binding obligations of Licensee, enforceable against Licensee in accordance with their respective terms, except as

enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

(c) Licensee covenants with, warrants and represents to Licensor as follows

(i) Licensee is not now, nor shall it be at any time during the Term, an individual, corporation, partnership, joint venture, trust, trustee, limited liability company, unincorporated organization, real estate investment trust or any other form of entity (collectively, a "Person,") with whom a United States citizen or entity organized under the laws of the United States or its territories or entity having its principal place of business within the United States or any of its territories (collectively, a "U.S. Person"), is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the Office of Foreign Assets Control, Department of the Treasury ("OFAC") (including those executive orders and lists published by OFAC with respect to Persons that have been designated by executive order or by the sanction regulations of OFAC as Persons with whom U.S. Persons may not transact business or must limit their interactions to types approved by OFAC or otherwise. Neither Licensee nor any Person who owns an interest in Licensee is now nor shall be at any time during the Term a Person with whom a U.S. Person, including a "financial institution" as defined in 31 U.S.C. 5312 (a) (z) as periodically amended, is prohibited from transacting business of the type contemplated by this Agreement, whether such prohibition arises under United States law, regulation, executive orders and lists published by the OFAC or otherwise.

(ii) Licensee has taken, and shall continue to take during the Term, such measures as are required by applicable law to assure that the funds paid to Licensor hereunder, are derived: (i) from transactions that do not violate United States law nor, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction in which they originated; and (ii) from permissible sources under United States law and to the extent such funds originate outside the United States, under the laws of the jurisdiction in which they originated. Licensee is, and during the Term will be, in compliance with any and all applicable provisions of the USA PATRIOT Act of 2001, Pub. L. No. 107-56, the Bank Secrecy Act of 1970, as amended, 31 U.S.C. Section 5311 et. seq., the Trading with the Enemy Act, 50 U.S.C. App. Section 1 et. seq., the International Emergency Economic Powers Act, 50 U.S.C. Section 1701 et. seq., and the sanction regulations promulgated pursuant thereto by the OFAC, as well as laws relating to prevention and detection of money laundering in 18 U.S.C. Sanctions 1956 and 1957.

15. Insurance. All insurance coverage shall be subject to Licensor's review and reasonable approval and shall include the following:

(a) Prior to Commencing Construction:

(i) Licensee's Contractors shall provide evidence of a Contractors All-Risk Policy providing Builders' Risk Coverage on a Completed Value Form and Third Party Liability with limits of \$100,000,000.

(ii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(iii) Licensee shall cause the Architect and Engineers to obtain and maintain Architect's and Engineer's Professional Liability Insurance during the period commencing on the date of the Architect's Agreement and expiring no earlier than twenty-four (24) months after the substantial completion of the Building. Such insurance shall be in an amount equal to at least \$5,000,000 per claim.

(b) Post Construction of the Building:

(i) Special Perils Insurance: Licensee shall maintain property insurance against all risks of loss to the Property customarily covered by so-called "All Risk" or "Special Perils Form" policies which shall include the following perils: building collapse, fire, flood, hurricane, lightning, malicious mischief, subsidence, terrorism, vandalism, loss of rents, water damage, windstorm, additional expense of demolition and increased costs of construction, including, without limitation, increased costs that arise from any changes in laws or other legal requirements with respect to such on restoration in a minimum amount of \$10,000,000; at least one hundred (100%) percent of the replacement cost value of the Improvements; and all tenant improvements and betterments that any lease requires.

(ii) Liability Insurance: Licensee shall maintain the following insurance for personal injury, bodily injury, death, accident and property damage (collectively, the "Liability Insurance"): (i) public liability insurance, including commercial general liability insurance; (ii) owned (if any), hired, and non-owned automobile liability insurance; and (iii) umbrella liability insurance. Liability Insurance shall provide coverage of at least \$50,000,000 per occurrence and \$50,000,000 in the annual aggregate, per location. If any Liability Insurance also covers other location(s) with a shared aggregate limit, then the minimum Liability Insurance shall be increased to \$50,000,000. Liability Insurance shall include coverage for liability arising from premises and operations, elevators, escalators, independent contractors, contractual liability (including, without limitation, any liability assumed under any leases), and products and completed operations. All Liability Insurance shall name the Indemnified Parties as "Additional Insureds".

(iii) Evidence of Workers' Compensation/Employers Liability shall be provided where applicable.

(c) Evidence, acceptable to Licensor, of the existence of all such insurance shall be given to Licensor at least every six (6) months during the Term hereof.

16. Notices. Any notice, election, request or demand which by any provision of this Agreement is required or permitted to be given or served hereunder shall be in writing and shall be given or served by (i) hand delivery against receipt; or (ii) by any nationally recognized overnight courier service providing evidence of the date of delivery; or (iii) by certified mail

return receipt requested, postage prepaid; or (iv) by facsimile transmission, provided it is also concurrently sent by mail as provided in (iii) above, in each case addressed to:

(a) Licensee:

Crescent Heights Diamond, LLC
2930 Biscayne Boulevard
Miami, Florida 33137
Attn: Sharon Christenbury, Esq.
Fax: 305-573-2315

with a copy to:

Holland & Knight LLP
131 South Dearborn
Chicago, IL 60663
Attention: Grant McCorkhill, Esq.
Fax: (312) 578-6666

(b) Licensor:

Trump Marks LLC
c/o The Trump Organization
725 Fifth Avenue
New York, New York 10022
Attention: Donald J. Trump
President
Fax: (212) 755-3230

With a copy to:

The Trump Organization LLC
725 Fifth Avenue
New York, New York 10022
Attention: Bernard R. Diamond
Executive Vice President and General Counsel
Fax: (212) 317-0037

or to such other address or addresses, or such other persons, as a party shall from time to time designate by notice given and delivered as aforesaid. Any notice shall be deemed to have been rendered or given: (w) on the date hand delivered (or when delivery is refused), unless such hand delivery was not on a Business Day (as herein defined) or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (x) on the date delivered by a courier service (or when delivery is refused), unless such delivery was not on a Business Day or was after 5:30 p.m. on a Business Day, in which event delivery shall be deemed to have been rendered on the next Business Day; (y) three (3)



Business Days from the date deposited in the mail, if mailed as aforesaid; and (z) the date sent by facsimile transmission, provided a copy is concurrently sent in the manner provided in subsection (ii) above. For the purposes of this Paragraph 16, a "Business Day" shall mean a day on which business is transacted by the Bank of Israel.

17. Miscellaneous

(a) This Agreement shall be governed, both as to interpretation and enforcement, by the laws of the State of New York and, as necessary, in the courts in that State, without regard to any principles of conflicts of law. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall be brought in the federal court or state court located in the County of New York in the State of New York, and each of the parties hereby consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court of that any such suit, action or proceeding brought in any such court has been brought in an inconvenient form. Process in any such suit, action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. The parties acknowledge that the courts of the State of New York are a convenient forum for a resolution of any disputes hereunder. Notwithstanding the foregoing, but in addition to the rights provided above, Licensor shall have the right, in its sole discretion, to apply for injunctive relief against Licensee in the courts of Israel and the courts of Israel shall have jurisdiction with respect thereto.

(b) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

(c) If any provision hereof, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remaining provision herein, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

(d) This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and may not be amended except by an instrument in writing signed by a Licensor and Licensee. Failure of a party hereto to complain of any act, omission, course of action, or continued acts or omissions, no matter how long such may continue, shall not be deemed a waiver by said party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waiving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or a consent to any subsequent breach of this Agreement.

(e) Licensor and Licensee covenant and agree that, without the written consent of the other Party, unless, as specifically provided herein, as may be required by law, or in an action or proceeding to enforce this Agreement, they will not, under any circumstances,

disclose or permit to be disclosed the existence of this Agreement or any of its contents to any persons or entities for any purpose whatsoever, other than solely to their respective shareholders, directors, members, officers and other employees, attorneys, accountants, banks, lenders, (collectively, "Affiliated Parties"), in each such case, on a "need to know basis." All Affiliated Parties shall be deemed bound by the provisions of this Paragraph 17(e). In connection with any such permitted disclosure to any Affiliated Parties, Licensor and Licensee, as applicable, shall be liable to the other Party for the acts or omissions of their Affiliated Parties that are in violation of this Paragraph 17(e).

(f) Notwithstanding anything to the contrary contained herein, including but not limited to the provisions of Paragraph 3 hereof, Licensor shall not be responsible for and shall have no liability to Licensee or to any third parties for, any design, construction, repair, or operation, means, methods, techniques, sequences and procedures, or for security or safety precautions and programs, employed by or on behalf of Licensee with respect to the design, construction, repair, or operation of the Tower Property. It is further understood and agreed by Licensee that Licensor is not an architect, engineer, contractor, or other professional licensed by any state, city or municipal authority or any department or agency of any of the foregoing, and Licensor shall provide no services to Licensee in such capacity and shall have no liability to Licensee or to any third party as such. Any reviews, recommendations, approvals, and advice to be furnished by Licensor under this Agreement shall not be deemed to be warranties or guarantees or constitute the performance of professional services as aforesaid.

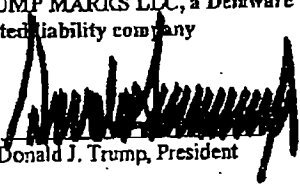
(g) The Recitals set forth above are incorporated herein as if set forth in full.

[Signatures follow on the next page.]

IN WITNESS WHEREOF, the parties have executed this Agreement which shall be effective as of the date first set forth above.

LICENSOR:

TRUMP MARKS LLC, a Delaware
limited liability company

By: 
Donald J. Trump, President

LICENSEE:

CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company

By: Crescent Heights Diamond Holdings, LLC,
a Delaware limited liability company
Its managing Member



Name: Sharon Christenbury
Title: Vice President

EXHIBIT A

ROYALTIES

1. In consideration for Licensor's execution and delivery of this Agreement and the rights granted to Licensee hereunder, Licensee shall pay to Licensor amounts (singularly, the "Royalty" and collectively, the "Royalties") equal to the sum of:
 - (a) \$1,000,000.00 (U.S.), (the "Initial Payment") which shall be non-refundable and paid to Licensor on the date that Licensee shall be issued the initial construction permit for the commencement of construction of the Building, other than permits for demolition required under a pre-development loan, if any.
 - (b) An amount (the "Residential Incentive") equal to twenty-five (25%) percent of the amount by which the average of the U.S. dollar aggregate sales prices, including upgrading, for all units in the Residential Component that are offered for sale to the public (which shall not be less than ninety-five (95%) percent of all units in the Residential Component) equals or exceeds \$550.00 (U.S.) per "Residential Square Foot" (as herein defined), net of any applicable value added tax ("VAT") that is added to the purchase price; and
 - (c) An amount (the "Non-Residential Incentive") equal to ten (10%) percent of the sales price, net of any VAT, for each Storage Space, Garage Space and unit of the Retail Component (collectively, "Non-Residential Portions"); and
 - (d) An amount (the "Rental Incentive") equal to ten (10%) percent of the gross rental payments received by Licensee for residential units in the Residential Component or retail units (or portions thereof) in the Retail Component or for Storage Space or Garage Space, in each case less only any common area costs, including common utilities, taxes and operating expenses and other similar items that are passed through to the tenants, without premium or override added by Licensee.
 - (e) For the purposes of this Exhibit A, "Residential Square Foot" shall mean the area within each unit that is capable of being air-conditioned. In the event the Parties shall be required to utilize square meters as opposed to Residential Square Feet, as the appropriate measurement for purposes of this Exhibit A, then the Parties agree that each square meter shall equal 10.70391 square feet.
2.
 - (a) The Residential Incentive shall be computed and paid to Licensor (the "Interim Residential Payment"), less the amount of the Initial Payment, on the date upon which possession of eighty-five (85%) percent of the Residential Component Units that are offered for sale to the public have been delivered to the purchasers.

Upon the delivery of possession of the last of the Residential Component Units that are offered for sale to the public, Licensor and Licensee shall recompute the amount of the Residential Incentive for all Residential Component Units (the "Final Residential Computation"). If the Final Residential Computation is greater than the sum of all Interim Residential Payments, the positive difference shall be paid by Licensee to Licensor within ten (10) days of such computation. If the Final Residential Computation is less than the sum of the Interim Residential Payments, the difference shall be paid by Licensor to Licensee within ten (10) days following such computation.

- (b) The Non-Residential Incentive shall be paid to Licensor within five (5) days of Licensee's receipt of payment from the applicable purchasers.
 - (c) The Rental Incentive shall be paid to Licensor quarter annually in arrears with respect to each lease in effect during such quarter-annual period.
3. Licensor or its authorized representatives will have the right to inspect, copy and audit at reasonable times (but not more than twice during any calendar year), and upon reasonable advance notice to Licensee, both during and after the Term, such original books, records, purchase contracts, leases and other documents that serve as the basis for the determination of the Sales Royalties and the Royalties. Licensor agrees that the information contained in Licensee's books and records will be subject to the confidentiality provisions of paragraph 17(e) hereof. Any inspection or audit will be paid for by Licensor. However, in the event that any inspection or audit shows that Licensee has under-reported the Sales Royalties or the Royalties by two (2%) percent or more for any given period, then Licensee shall pay to Licensor within fifteen (15) days after receipt of the audit report, the deficiency in the Sales Royalties or Royalties as the case may be, together with interest thereon at the rate of nine (9%) percent per annum from the original due date to the date of payment; the actual cost of such inspection or audit and other reasonable costs incurred by Licensor. Within ten (10) days following the expiration of each month of the Term Licensee shall provide to Licensor, in form and content approved by Licensor, a report as to all residential and retail sales and leasing, including parking and storage, that occurred in the immediately preceding month.
4. In the event that any agreement for the sale or lease of any part of the Tower Property is set forth in New Israel Shekels, then for the purposes of calculating the Sales Royalties or the Royalties, the sales price (inclusive of all upgrades) and all rents shall be calculated according to the "representative rate" of the U.S. dollar, published by the Bank of Israel, as of the date of the execution of the sales or lease agreement.
5. All definitions used in this Agreement, to which this Exhibit "A" is an exhibit, shall be deemed incorporated herein.

EXHIBIT B

POWER OF ATTORNEY

(follows this cover page)

IRREVOCABLE POWER OF ATTORNEY

We, the undersigned, CRESCENT HEIGHTS DIAMOND, LLC of 25 Broad Street, New York, New York 10004, do hereby appoint Advocates Isaac Molhe and/or Orrin Persky and/or David N. Shimron and/or Jakob Melcer and/or Michal Arlosoroff and/or Dov Abramowitz and/or Shai Ganor and/or Michael Rabello and/or Michal Shur-Ofry and/or Jonathan Friedland and/or Tal Ranel-Cohen and/or Shlomit Agmon and/or Gil Ephrat and/or Raanan Persky and/or Orna Gabay and/or Orit Malka and/or Yitzhak Goldstein and/or Rachel Shay and/or Judy Amidor and/or Eyal Zalikhia and/or Aharon Ilouz and/or Roman Kogan and/or Inbal David, of Technology Park, Manahat, Jerusalem, Israel, jointly and severally (hereinafter: "Our Attorneys") to act jointly or severally as our true and lawful attorney or attorneys in fact and at law to act in our name and place and to do all that is necessary to CANCEL ANY REGISTRATION OF A TRADEMARK LICENSE(S), WHICH MAY BE REGISTERED WITH THE ISRAELI TRADEMARK REGISTRAR, REFERRING TO TRADEMARK(S)/TRADEMARK APPLICATION(S) IN THE NAME OF DONALD J. TRUMP AND/OR TRUMP MARKS LLC., IN WHICH OUR NAME SHALL APPEAR AS LICENSEE ("hereafter: Cancellation of Trademark License Registration")

Without derogating from the generality of the above, Our Attorneys shall be entitled to do the following for the above purpose:

1. To appear on our behalf and in our stead before any person, authority, institution, or office whether governmental, municipal, public or private—including, but not limited to, the Israeli Trademark Registrar.
2. To sign, execute, deliver, and acknowledge on our behalf and stead all requests, declarations, applications, forms, notices and other documents which shall be required for the purpose of Cancellation of Trademark License Registration.
3. To pay, on our behalf and stead and at our expense, all payments of any kind whatsoever for the purpose of Cancellation of Trademark License Registration.
4. This Power of Attorney shall be interpreted in the broadest manner so that our Attorney shall be able to, on our behalf and stead, execute any action that we ourselves and/or a person/persons acting on our behalf are legally entitled to do for the purpose of Cancellation of Trademark License Registration.
5. Any act executed and/or caused to be carried out by Our Attorney(s), on our behalf, in respect to this Power of Attorney, shall obligate us and our legal successors.
6. Since third party rights are dependent on this Power of Attorney, it shall be irrevocable, and we shall not be able to cancel it or change it. Furthermore, this Power of Attorney shall remain valid even if we become bankrupt, or enter into liquidation and/or any similar

proceedings, and shall bind our liquidators, trustees, receivers, and any other legal successors in title.

IN WITNESS WHEREOF, we have signed our name to this Power of Attorney specifically designated for the aforementioned purposes on this _____ day of May 2006.

CRESCENT HEIGHTS DIAMOND, LLC

By its authorized signatory:

Name:

Title:

Certification of Attorney:

I, the undersigned _____, of _____ as legal counsel to _____, hereby certify that the above are authorized signatories on behalf of _____ and that the signatures hereinabove duly bind _____.

Signature: _____

Name: _____, Esq.

Date: _____

SIGNATURES TO BE ENDED BY THE END OF THE LINE AND AUTHENTICATED BY A POSTAL OFFICE



EXHIBIT C

THE RESTRICTED AREA

(follows this cover page)

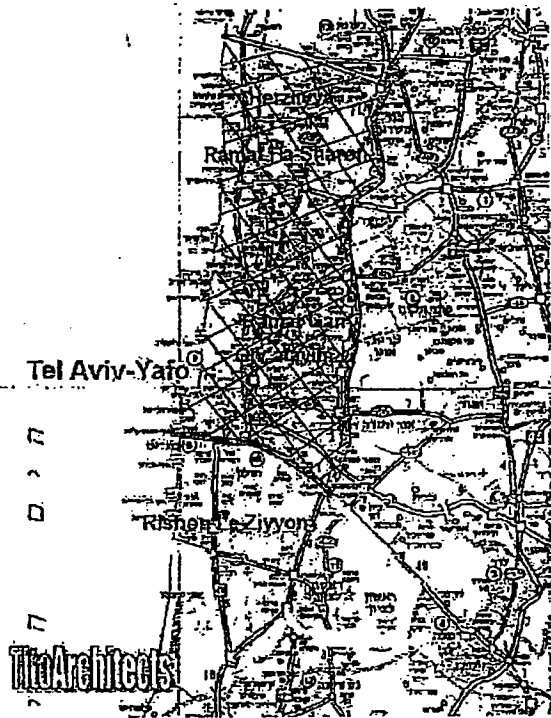


EXHIBIT C
THE RESTRICTED AREA
(The Restricted Area is cross hatched)



FIRST AMENDMENT TO LICENSE AGREEMENT

This FIRST AMENDMENT TO LICENSE AGREEMENT ("Amendment") is made and entered into effective as of the 23rd day of May, 2006 by and between TRUMP MARKS LLC, a Delaware limited liability company ("Licensor") and CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company ("Licensee").

RECITALS:

- A. Licensor and Licensee entered into that certain License Agreement dated as of May 23, 2006 (the "Agreement").
- B. Pursuant to the terms and conditions of the Agreement, Licensor licensed to Licensee the right to use the trademark "Trump Tower" as the New Trump Mark for use in association with the Tower Property in Ramat Gan, Israel, pursuant to the terms and conditions of the Agreement.
- C. At Licensee's request, Licensor has applied for the registration of the trademark "Trump Plaza" with The Israeli Trademark Office in classes 36 and 37.
- D. Licensor and Licensee have agreed to amend the Agreement to provide that the New Trump Mark shall be "Trump Plaza", with the contingent right, as herein provided, for Licensee to use the trademark "Trump Tower" as the New Trump Mark if Licensee is prevented or prohibited from using the trademark "Trump Plaza" as the New Trump Mark.
- E. Defined terms not otherwise defined herein shall have the meaning set forth in the Agreement.

NOW THEREFORE, for and in consideration of \$1.00 and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Licensor and Licensee agree to amend the Agreement as follows:

1. Paragraph 4 of the Recitals to the Agreement is amended and restated as follows:

WHEREAS, Licensee desires to use the name "Trump Plaza" or in the alternative, "Trump Tower", if the use of "Trump Plaza" is prohibited as the result of a Supervening Event (as provided in and subject to Section 1(j) below); which together with any "Approved Logo" (as hereinafter defined) is referred to herein as the "New Trump Mark"; and

2. Paragraph 1 of the Agreement is amended to incorporate new Paragraphs 1(i), (k), (l) and (m) as follows:

(j) During the Term of this Agreement, the New Trump Mark shall be the trademark "Trump Plaza", together with any "Approved Logo", until such time as

(x) Licensee is prohibited from lawfully using the trademark "Trump Plaza" for any reason (including but not limited to, as the result of the enforcement of rights by a third party, the decision of a court, tribunal, or dispute resolution body of competent jurisdiction or other occurrence which prevents Licensee from using "Trump Plaza"), or (y) Licensee, based on the advice of counsel, reasonably believes the continued use of the "Trump Plaza" trademark could expose Licensee or Licensor to potential liability to a third party (collectively a "Supervening Event"). Upon the occurrence of a Supervening Event, Licensee shall have the right to notify Licensor in writing (a "Supervening Notice") of: (i) such Supervening Event, with reasonable documentation explaining the cause thereof, and (ii) that Licensee has elected to use the trademark "Trump Tower" as the New Trump Mark under this Agreement in lieu of "Trump Plaza," subject, however, to the provisions of Paragraph (k) below. Upon delivery of the Supervening Notice to Licensor, all references to the New Trump Mark in this Agreement shall be deemed to mean the "Trump Tower" trademark together with any "Approved Logo"; Licensee shall then have the immediate right to use the "Trump Tower" trademark in lieu of the "Trump Plaza" trademark; and Licensee shall phase out usage of the trademark "Trump Plaza" within a reasonable period of time, not exceeding ninety (90) days. If Licensee elects to use the "Trump Tower" trademark as described above, Licensee shall pay all costs and expenses associated with changing the name of the Tower Property from "Trump Plaza" to "Trump Tower", including signage, advertising, marketing, stationery etc.

(k) Notwithstanding anything to the contrary contained in this Agreement, in the event Licensee shall substitute "Trump Tower" for "Trump Plaza" as the New Trump Mark pursuant to the provisions of Section 1(j) above, and Licensee shall then be compelled to cease use of "Trump Tower" as the New Trump Mark as the result of a Supervening Event, Licensee shall have the right to elect to return to the use of "Trump Plaza" as the New Trump Mark in accordance with the terms of Section 1(j) above. If Licensee elects to return to use of "Trump Plaza" as described in the preceding sentence, Licensor shall have no liability to Licensee under this Agreement if Licensor's trademark rights to "Trump Plaza" are adversely affected ("Adverse Impact") solely as a result of Licensee ceasing use of "Trump Plaza" as the New Trump Mark during the period of time when Licensee had elected to use "Trump Tower" as the New Trump Mark. However, if an Adverse Impact on Licensor's trademark rights in the "Trump Plaza" trademark is caused by any act or omission of Licensor in violation of this Agreement (including but not limited to a failure to maintain the "Trump Plaza" trademark), the limitations on Licensor's liability as provided in the preceding sentence shall not apply and all applicable terms and conditions of this Agreement shall apply.

(l) Notwithstanding anything to the contrary contained herein, if, after expiration of the time period provided for in Section 1(g)A above, Licensor shall have the opportunity to use or license "Trump Plaza" or "Trump Tower" in the Restricted Area, Licensor shall notify Licensee in writing of such potential use ("Licensor Use Notice"). Licensee shall have thirty (30) days after receipt of the

Licensor Use Notice ("Election Period") to elect in writing whether "Trump Plaza" or "Trump Tower" shall be the New Trump Mark ("Licensee Election Notice"). From the date of the Licensee Election Notice, the New Trump Mark shall be the mark elected by Licensee in the Licensee Election Notice which shall be irrevocable, and Licensor, its affiliates and Donald J. Trump shall then have the right to use, for any purposes not prohibited herein, whichever of "Trump Plaza" or "Trump Tower" is not identified in the Licensee Election Notice. If Licensee shall fail to deliver the Licensee Election Notice prior to expiration of the Election Period, Licensee shall be deemed to have elected to use the New Trump Mark in use by Licensee on the date of the Licensor Use Notice.

(m) If at any time Licensee shall be prohibited from using both "Trump Plaza" and "Trump Tower" as the New Trump Mark as the result of a Supervening Event, Licensee shall have the right to use another "Trump" name trademark ("Replacement Mark"). The Replacement Mark shall be mutually agreed upon, using good faith, by both Licensor and Licensee, which agreement shall not be unreasonably withheld by either party. The determination of the Replacement Mark shall follow the applicable procedures of Paragraph 1(d) hereof. The Replacement Mark shall be agreed upon as promptly as practicable after Licensee is prohibited from using both "Trump Plaza" and "Trump Tower" as the New Trump Mark. Any such Replacement Mark shall be registered, maintained and used in accordance with the terms and conditions of this Agreement and any such Replacement Mark shall then be deemed the "New Trump Mark" as used herein. If Licensee elects to use the Replacement Mark as described above, Licensee shall pay all costs and expenses associated with the trademark assessment, application for trademark registration of, and changing the name of the Tower Property to, the Replacement Mark, including signage, advertising, marketing, stationery etc.

3. Paragraph 1(g) C of the Agreement is amended and restated as follows:

C. Nothing contained in this Agreement shall prohibit or restrict Licensor or Donald J. Trump or any affiliate of either, from licensing the "Trump" and/or "Trump International Hotel and Tower" names, whether alone or in combination with other words, for the development, construction, operation and/or management of one or more hotels, as that term is customarily used, or any Condominium Hotel, or for any other use not expressly prohibited herein, anywhere in the State of Israel, including the Restricted Area. For the sake of clarity, it shall not be a violation by Licensor of any provision of this Agreement, if at the time the New Trump Mark shall be "Trump Tower" Licensor shall use or license others to use the name "Trump International Hotel and Tower" anywhere in the State of Israel, including the Restricted Area, for a hotel or Condominium Hotel.

4. Miscellaneous.

(a) Ratification. Except as herein specifically modified and amended by this Amendment, all of the terms, covenants and conditions of the Agreement are hereby ratified and confirmed and shall remain in full force and effect.

(b) Agreement. Except insofar as reference to the contrary is made in any such instrument, all references to the "Agreement" in any future correspondence or notice between the parties shall be deemed to refer to the Agreement as modified by this Amendment.

(c) Binding Effect. Each person executing this Amendment personally represents and warrants to the other parties hereto that he/she is legally authorized to execute this Amendment as the binding obligation of such person.

(d) Counterpart Signatures. This Amendment may be executed in multiple counterparts, each of which shall constitute an original but when taken together shall constitute one and the same instrument.

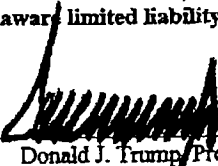
(e) Recitals Incorporated. The Recitals to this Amendment set forth above are incorporated herein as if set forth in full.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have respectively executed this Amendment as of the day and year first above written.

LICENSOR:

TRUMP MARKS LLC,
a Delaware limited liability company

By: 
Donald J. Trump, President

LICENSEE:

CRESCENT HEIGHTS DIAMOND, LLC,
a Delaware limited liability company

By: Crescent Heights Diamond Holdings, LLC
a Delaware limited liability company,
its managing Member

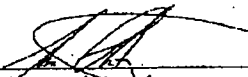
By: 
Name: Sharon Christenbury
Title: Vice President

EXHIBIT C

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
CRESCENT HEIGHTS DIAMOND, LLC**

This Amended and Restated Limited Liability Company Agreement (the "**Agreement**"), for CRESCENT HEIGHTS DIAMOND, LLC, a Delaware limited liability company (the "**Company**"), is made and entered into to be effective December 31, 2006. Reference is made to that certain limited liability company agreement for the Company, which was made and entered into effective as of February 22, 2006, by the Company and the sole initial member (hereinafter, the "**Member**"), which agreement (the "**Initial Operating Agreement**") is attached hereto as Exhibit I.

Recitals

WHEREAS, the Initial Operating Agreement permits and sets forth the terms pursuant to which the Member may amend and restate said agreement;

WHEREAS, the Member, in its best business judgment and in the best interests of the Company, deems it appropriate and desirable to amend the Initial Operating Agreement in accordance with its terms and with the Delaware Limited Liability Company Act (the "**Act**"), as amended from time to time (Title 6, Del. Code §§18-101 et seq.); and

WHEREAS, the Member agrees and wishes to adopt and approve this Agreement as the amended and restated limited liability company agreement for the Company;

NOW, THEREFORE, the Member hereby agrees as follows:

1. **Formation; Amendment and Restatement.** Pursuant to the Act, the Member formed a Delaware limited liability company under the laws of the State of Delaware by filing the Certificate with the Delaware Secretary of State, a copy of which is attached to the Initial Operating Agreement as Schedule B thereto, and entering into the Initial Operating Agreement. The rights and liabilities of the Member shall hereinafter be determined pursuant to the Act and this Agreement. To the extent that the rights or obligations of any Member are different by reason of any provision of the Initial Operating Agreement or this Agreement than they would be in the absence of such provision, this Agreement shall, to the maximum extent permitted by the Act, control. Furthermore, notwithstanding anything contained herein to the contrary, if any provision or term hereof conflicts with any term or provision of the Initial Operating Agreement, the terms and provisions of this Agreement shall prevail.

2. **Purpose.** The object and purpose of the Company is to engage in any lawful act or activity for which a limited liability company may be organized under the Act and

in any and all activities necessary, convenient, desirable or incidental thereto. Notwithstanding the foregoing, the Company shall not engage in any business other than the following:

(a) acquire, own, develop, operate, manage, mortgage, lease and dispose of the Property (defined in Section 3 hereof); and

(b) do all things necessary, suitable, desirable or proper for the accomplishment of or in furtherance of, any of the purposes set forth herein and to do every other act or acts incidental to, or arising from, or connected with any of such purposes.

3. **Property:** For purposes of this Agreement, the "Property" means that certain real property located at Arlosoroff & Jabotinsky Streets, Ramat-Gan, Israel, commonly known as "the Elite site", together with any improvements thereon, and more completely described in Schedule A attached hereto and incorporated by reference herein.

4. **Principal Office.** The principal office of the Company shall be located at c/o Crescent Heights, 2930 Biscayne Boulevard, Miami, FL 33137. At any time, the Manager (as defined below) may designate another principal office of the Company or may relocate the principal office of the Company.

5. **Member.** The name, percentage interest in the Company and the business, residence or mailing address of the Member are as follows:

<u>Name</u>	<u>Percentage Interest</u>	<u>Address</u>
Crescent Heights Diamond Holdings, LLC	100%	c/o Crescent Heights 2930 Biscayne Boulevard Miami, FL 33137

6. **Powers.** The manager of the Company shall be the manager or managers set forth on Schedule B hereto (the "Manager"), and need not be a Member. The Manager shall manage the business and affairs of the Company. The Manager shall have the power and authority to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers and authorities, statutory or otherwise, possessed by managers of limited liability companies under the laws of the State of Delaware, including without limitation, the Act. The Manager may be removed at any time, with or without cause, by the written consent of the sole Member. The Manager may be removed at any time, with or without cause, as determined in the sole discretion of the Member. The Manager shall perform his duties as a Manager in good faith, in a manner the Manager reasonably believes to be in the best interest of the Company, and with such care as an ordinarily prudent person in a like position would use under similar circumstances. In connection with the foregoing, the Manager is hereby authorized and empowered to act through officers, employees and other persons designated by the Manager in carrying out any and all of its powers and authorities that the Manager possesses under this Agreement to any officers, employees and any other person

designated by the Manager. The Manager may designate an authorized person, within the meaning of the Act, to execute, deliver and file the Certificate of Formation of the Company (and any amendments and/or restatements thereof) and any other certificates (and any amendments and /or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

7. **Term.** The term of the Company commenced on February 22, 2006, the date on which the Certificate of Formation of the Company was filed in accordance with the Act, and shall continue until the earlier of (a) December 31, 2036, or (b) the dissolution of the Company in accordance with Section 10 hereof.

8. **Limited Liability.** Except as otherwise provided by the Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and neither any Member nor any officer, member, employee, representative or agent (including, without limitation, a person having more than one such capacity) shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of acting in such capacity.

9. **Dissolution.** The Company shall dissolve, and its affairs shall be wound up, upon the first to occur of the following: (a) the written consent of the sole Member, (b) the dissolution or bankruptcy of the sole Member or the occurrence or any other event which terminates the continued membership of any Member in the Company, unless the Company is continued pursuant to the Act, or (c) the entry of a decree of judicial dissolution under Section 18-802 of the Act. In the event of dissolution, the Company shall conduct only such activities as are necessary to wind up its affairs.

10. **Capital Contributions.** The Member is deemed admitted as a Member of the Company upon its execution and delivery of this Agreement. The initial contribution of the Member is One Hundred Dollars (\$100.00). The total capital of the Member in the Company from time to time shall be referred to as such Member's "Capital."

11. **Additional Contributions.** The Member is not required to make any additional capital contributions to the Company, but additional contributions may be made in the Member's sole discretion.

12. **Allocation of Profits and Losses.** The Company's profits and losses shall be allocated solely to the Member. The Company shall be a "disregarded entity" for federal, state and local income tax purposes.

13. **Distributions.** Distributions shall be made to the Member at the times and in the amounts determined by the Manager. Such distributions shall be allocated solely to the Member.

14. **Books and Records.**

(a) At all times during the continuance of the Company, the Manager shall keep or cause to be kept full and true books of account, in which shall be entered fully and accurately each transaction of the Company. The Company shall keep its books and records on the same method of accounting employed for tax purposes.

(b) The Company shall continuously maintain at its principal place of business set forth in Section 4:

(i) a current list of the full name and last known business or residence address of the Member together with the contribution and the share in profits and losses of the Member;

(ii) a copy of the Certificate of Formation of the Company and all certificates of amendments thereto, together with executed copies of any powers of attorney pursuant to which any such certificate has been executed;

(iii) copies of the Company's Federal, state and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

(iv) copies of this Agreement and all amendments hereto;

(v) the Company's books and records for at least the current, and past three (3) fiscal years; and

(vi) such additional books and records as are necessary for the operation of the Company.

(c) Any records maintained by the Company in the regular course of its business may be kept on, or be in the form of, punch cards, magnetic tape, photographs, micrographics, or any other information storage device, provided, that the records so kept can be converted into clearly legible written form within a reasonable period of time.

(d) The Member has the right upon reasonable request:

(i) to inspect and copy during normal business hours, at such Member's expense, any of the Company's records required to be kept by the Company; and

(ii) to obtain, at such Member's expense, a copy of the Company's Federal, state and local income tax or information returns for each year.

(e) The Company shall send to the Member, within ninety (90) days after the end of each taxable year, such information as is necessary for such Member to complete Federal, state and local income tax or information returns.

(f) No value shall be placed for any purpose upon the Company's name or the right to its use or upon the goodwill of the Company or its business. Upon termination or dissolution of the Company, neither the Company's name, nor the right to its use, nor the goodwill of the Company, shall be considered as an asset of the Company.

15. **Exculpation and Indemnification.** Neither the Manager nor the Member nor any of their respective partners, affiliates, members, shareholders, consultants, representatives, employees, agents (including, without limitation, any agent acting as an attorney-in-fact), officers or directors, nor any of their respective affiliates, partners, members, shareholders, officers, representatives, directors, consultants, employees or agents (including, without limitation, any agent acting as an attorney-in-fact) (each an "Indemnified Party") shall be liable to the Company or any other person or entity for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Party in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Party by this Agreement, by any other agreement entered into between the Indemnified Party and the Company, or otherwise, except that an Indemnified Party shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Party's gross negligence or willful misconduct. To the full extent permitted by applicable law, an indemnified Party shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Indemnified Party by reason of any act or omission performed or omitted by such Indemnified Party in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of the authority conferred on such Indemnified Party by this Agreement, by any other agreement entered into between the Indemnified Party and the Company, or otherwise, except that no Indemnified Party shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Party by reason of such Indemnified Party's gross negligence or willful misconduct; provided, however, that any indemnity under this Section 14 shall be provided out of and only to the extent of the Company's assets. and the Member shall not have any personal liability on account thereof.

16. **Assignments.** The Member may assign, in whole or in part, its limited liability company interest as determined in its sole discretion.

17. **Fiscal Year.** The fiscal year of the Company for financial statement and federal income tax purposes shall, except as otherwise required in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), end on December 31 of each year.

18. **Company Tax Returns.** The Manager shall cause to be prepared and timely filed all tax returns required to be filed for the Company. The Manager may, in its sole discretion, make or refrain from making any Federal, state or local income or other tax elections for the Company that it deems necessary or advisable.

19. **No Management Powers of the Member.** Except as expressly set forth herein, only the Manager shall participate in the management of the Company business and have the power to bind the Company or to act on behalf of the Company in any manner whatsoever.

20. Single Purpose Entity; Certain Restricted Actions.

(a) *Limitations on Acts of the Company.* During any period when a lender so requires, the Company shall:

- (i) not engage in any business unrelated to the Property;
- (ii) not have any assets other than those related to the Property, or any indebtedness, liabilities or indemnification obligations other than these related to the Property;
- (iii) maintain books, records, accounts, financial statements, stationery, invoices and checks and other entity documents separate and apart from those of any other Person ("Person" means any individual, general partnership, limited partnership, limited liability company, limited liability partnership, corporation, trust, estate, real estate investment trust, association, or other entity.)
- (iv) maintain its books, records, resolutions and agreements as official records;
- (v) hold itself out as being a Person separate and apart from each other Person;
- (vi) conduct its business in its own name and exercise reasonable efforts to correct any misunderstanding actually known to it regarding its separate identity;
- (vii) not commingle its funds or assets with those of any other Person and hold its assets in its own name;
- (viii) maintain an arm's-length relationship with its affiliates and not enter into a transaction with any of its affiliates other than on an arm's-length basis in the ordinary course of its business;
- (ix) not guaranty or otherwise oblige itself with respect to the debts of any other Person or hold out its credit as being available to satisfy the obligations of any other Person, except as otherwise permitted by any applicable loan documents;
- (x) not pledge its assets for the benefit of any other Person or make any loans or advances to any other Person;
- (xi) except as otherwise permitted by any applicable loan documents, not acquire the obligations or securities of its members;
- (xii) maintain adequate capital in light of its contemplated business purposes;

24. **Entire Agreement; Amendments.** This Agreement constitutes the entire agreement of the Company and the Member with respect to the subject matter hereof and may be amended and supplemented only in a written instrument signed by each such parties and any additional party to an amendment, as the case may be and as necessary.

25. **Admission of Additional Members.** One (1) or more additional members of the Company may be admitted to the Company with the prior written consent of the sole Member.

26. **Governing Law.** This Agreement shall be governed by, and construed under, the laws of the State of Delaware, without reference to the rule and principles governing conflicts of laws.

27. **Counterparts.** This Agreement may be executed through the use of separate signature pages or in any number of counterparts, and each such signature page or counterpart shall, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby,
has duly executed this Agreement as of December 31, 2006.

MEMBER

Crescent Heights Diamond Holdings, LLC



Name: Sharon Christenbury
Title: Vice President

EXHIBIT I

INITIAL OPERATING AGREEMENT

SCHEDULE A
THE PROPERTY

SCHEDULE B
THE MANAGER

Crescent Heights Diamond Holdings, LLC

Index No. 601372/08
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

TRUMP MARKS LLC,

Plaintiff,

-against-

CRESCENT HEIGHTS DIAMOND, LLC, ET AL.,

Defendant.

ORDER TO SHOW CAUSE WITH AFFIRMATION OF
URGENCY

ATTORNEYS FOR DEFENDANTS

MorrisonCohen^{LLP}

909 Third Avenue, New York, NY 10022-4731 •
p:212.735.8600 • f:212.735.8708

DUPLICATE COPY

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X

TRUMP MARKS LLC,

Plaintiff,

-against-

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each
said individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN
INDIVIDUALS AND/OR UNKNOWN ENTITIES
CONSTITUTING THE REMAINING MEMBERS
OF CRESCENT HEIGHTS DIAMOND, LLC,

Defendants.

-----X

Index No.: 08/601372
(Cahn, J.)

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS SONNY KAHN, RUSSELL W. GALBUT AND
BRUCE A. MENIN'S MOTION TO DISMISS THE COMPLAINT**

MORRISON COHEN LLP
Y. David Scharf
Mary E. Flynn
Latisha Thompson
909 Third Avenue
New York, New York 10022
(212) 735-8600

*Counsel for Defendants Sonny Kahn,
Russell W. Galbut and Bruce A. Menin*

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Defendants Sonny Kahn, Russell Galbut and Bruce A. Menin (the "Individual Defendants") respectfully submit this memorandum of law in support of their motion, pursuant to CPLR §§ 3211(a)(1) and (7), to dismiss the Complaint.

PRELIMINARY STATEMENT

To avoid unnecessary duplication, the Individual Defendants adopt and supplement the Preliminary Statement submitted on behalf of Co-Defendant Crescent Heights Diamond, LLC ("Crescent") as follows:

Apparently in an attempt to add "leverage" to this lawsuit, Trump has also sued the Individual Defendants, whom Trump alleges -- on "information and belief" -- were "members" of Crescent when the Land was sold and received distributions of the sale proceeds. (Compl. ¶¶ 7, 9, 11, 54 at Ex. A to Dachoh Aff.).¹

However, as demonstrated in Crescent's Amended and Restated Liability Company Agreement (the "Crescent Agreement") Trump sued the wrong parties: the Individual Defendants are not, and never were, members of Crescent, and they did not receive any distribution of the sales proceeds. (Dachoh Aff. ¶ 4; Crescent Agr. ¶ 5 at Ex. C to Dachoh Aff.).² For this reason, Trump's claims against the Individual Defendants (for unjust enrichment, fraudulent conveyance and wrongful distribution to an LLC member) must be dismissed: the

¹ For ease of reference, the Complaint (without the License Agreement attached) is attached as Exhibit A to the Affidavit of Shlomo Dachoh sworn to on June 20, 2008 (the "Dachoh Aff."). For purposes of this motion only, factual allegations in the Complaint are accepted as true. The License Agreement (including its amendment) is attached as Exhibit B to the Dachoh Aff.

² Attached as Exhibit C to the Dachoh Aff. is a true copy of the Crescent Agreement.

Individual Defendants by definition were not unjustly enriched and cannot be required to return a conveyance or distribution they did not receive.

Because the Individual Defendants have submitted documentary evidence proving that they are not members of Crescent and hence did not receive any sales proceeds, this Court should dismiss the claims against them now under CPLR § 3211(a)(1), before discovery commences and the Individual Defendants are forced to endure the time and expense of litigation.

Leaving the documentary evidence aside, Trump's claims against the Individual Defendants are defective on their face and must be dismissed under CPLR § 3211(a)(7) for the following additional reasons:

- Plaintiff's unjust enrichment claim is barred because there is a written agreement -- the License Agreement between Trump and Crescent -- governing the subject matter of Plaintiff's claims.
- Plaintiff's fraudulent conveyance claims should be dismissed because: (1) Crescent's sale of the Land did not constitute a breach of the Licensing Agreement; (2) Plaintiff failed to plead fraud with particularity; and (3) Plaintiff failed to allege actual facts showing that any of the required elements of a fraudulent conveyance claim exist.
- Plaintiff's claim for wrongful distributions must be dismissed because Plaintiff failed to allege that: (1) Crescent's liabilities exceed the fair value of Crescent's assets; or (2) the alleged distributions to the Individual Defendants did not constitute "reasonable compensation for present or past services."

STATEMENT OF FACTS

**Trump And Crescent Entered Into
A License Agreement Granting
Certain Trademark Rights To
Crescent In Tel Aviv**

The Individual Defendants adopt and supplement the Statement of Facts submitted on behalf of Crescent as follows:

Defendant Crescent is a Delaware limited liability company. (Dachoh Aff., Ex. C). As made plain in Crescent's Amended and Restated Liability Company Agreement, the Individual Defendants are not members of Crescent. The sole member and manager of Crescent is Crescent Heights Diamond Holdings, LLC ("CH Holdings"), a Delaware limited liability company. (See Crescent Agr. ¶ 5 at Ex. C to Dachoh Aff.). Crescent is in the business of developing residential real estate. (Compl. ¶ 5 at Ex. A to Dachoh Aff.).

Plaintiff Trump is a Delaware limited liability company, which controls and is in the business of licensing certain United States trademarks associated with Donald Trump in the residential real estate market. (Compl. ¶ 2 at Ex. A to Dachoh Aff.).

The signatories to the License Agreement were Plaintiff and Crescent. CH Holding signed as managing member of Crescent. (License Agr. p. 20 at Ex. B to Dachoh Aff.). The Individual Defendants are not signatories to the License Agreement.

**The Individual Defendants Are
Neither Parties To The License
Agreement, Nor Members of
Crescent**

The Individual Defendants are not parties to the License Agreement. (License Agr. p. 1 at Ex. B to Dachoh Aff.). The Individual Defendants are not -- nor have they ever been

-- members of Crescent or CH Holdings. (Dachoh Aff., ¶ 4; Crescent Agr. ¶ 12 at Ex. C to Dachoh Aff.).

**Unable To Construct The Building,
Crescent Sold Its Land To A
Third Party**

Defendant Crescent advised Plaintiff that it was denied the necessary approvals to permit the construction of the Tower Property as described in the License Agreement. (Compl. ¶ 25 at Ex. A to Dachoh Aff.). In or about January, 2008, with no construction permits having been issued and the land still undeveloped, Crescent sold the Land to an unrelated third party, Azorim Investment, Development and Construction Ltd. ("Azorim"). (Compl. ¶ 4 at Ex. A to Dachoh Aff.). Crescent did not assign, nor is it alleged that Crescent assigned, the License Agreement to Azorim.

On August 2, 2007, Plaintiff, by its counsel, Bernard Diamond, sent a letter to Crescent addressed to Sharon Christenbury (the "August 2 Letter") purporting to object to the pending sale of the Land. (Compl. ¶ 22 at Ex. A to Dachoh Aff.; Compl. Ex. B at Ex. A to Dachoh Aff.). Specifically, Mr. Diamond stated that Plaintiff believed its consent was required for Crescent to sell the Land or to assign the License Agreement. (Compl. Ex. B at Ex. A to Dachoh Aff.). The August 2 Letter stated that any sale of the Land would "thwart" the purpose of the License Agreement and would deny the Licensor "the right to receive many millions of dollars in Royalties in violation of the License Agreement." Mr. Diamond's letter provided no further quantification of any purported damages. (*Id.*). The only alleged default under the License Agreement mentioned by Mr. Diamond was any effort to assign the License Agreement

to a purchaser of the land. None of the Individual Defendants were copied on the August 2 Letter.

**With No Interest In The Land And No
Infringement On Its Trademark,
Plaintiff Sues The Individual
Defendants For Unearned Royalties
And For Crescent's Sale Proceeds**

In the Complaint, Plaintiff now contends that Crescent breached the License Agreement by selling the Land, and seeks damages for lost royalties in the amount of \$45 million. Plaintiff also contends in the Complaint that it is entitled to \$36 million, representing the alleged profit to Crescent on its sale of the Land.

On May 5, 2008, Plaintiff commenced this action (a) against Crescent for breach of contract (the first cause of action), breach of the implied good faith covenant (the second cause of action) and indemnification (the third cause of action) and (b) against Crescent and the Individual Defendants for unjust enrichment, fraudulent conveyance and claims arising for wrongful distribution under the New York and Delaware limited liability acts. The fourth, fifth, sixth, seventh and eighth causes of action in the Complaint are alleged against the Individual Defendants.

ARGUMENT

I.

THE UNJUST ENRICHMENT CLAIM AGAINST THE INDIVIDUAL DEFENDANTS MUST BE DISMISSED

Plaintiff's unjust enrichment claim against the Individual Defendants must be dismissed for two reasons. First, the claim is barred because there is an express written contract governing the claim's subject matter -- *i.e.*, the Licensing Agreement between Trump and Crescent. Second, the documentary evidence demonstrates that the Individual Defendants are not and never were members of Crescent and thus never received any portion of the proceeds of the sale of the Land.

A. The License Agreement Bars Plaintiff's Unjust Enrichment Claim

Under New York law, the existence of the License Agreement between Plaintiff and Crescent bars Plaintiff's second cause of action for unjust enrichment against Crescent. *See Wilhelmina Artist Mgmt., LLC v. Knowles*, No. 601151/03, 2005 WL 1617178, at *10 (Sup. Ct. N.Y. Co. June 6, 2005) (Cahn, J.) (where "there is a valid contract governing the subject matter of the parties' dispute, recovery in quasi contract, for unjust enrichment, for events arising out of that same subject matter is precluded"). Plaintiff's unjust enrichment claim against the Individual Defendants fails for the same reason. The rule that the existence of a valid and enforceable written contract governing a particular subject matter precludes recovery in quasi contract for events arising out of the same subject matter applies with equal force to non-signatories to the agreement. *Vitale v. Steinberg*, 307 A.D.2d 107, 111, 764 N.Y.S.2d 236, 239 (1st Dep't 2003) ("the existence of the . . . agreement, an express contract governing the subject

matter of plaintiff's claims, also bars the unjust enrichment cause of action as against the individual defendants, notwithstanding the fact that they [are] not signatories to that agreement"); see Bellino Schwartz Padob Adver. v Solaris Mktg. Group, 222 A.D.2d 313, 635 N.Y.S.2d 587, 588 (1st Dep't 1995) (holding that "existence of an express contract between [defendant] and plaintiff governing the subject matter of plaintiff's claim . . . bar[red] any quasi contractual claim against [a second] defendant as a third-party nonsignatory to a valid and enforceable contract"); Danica Plumbing & Heating LLC v. AMOCO Constr. Corp., 18 Misc. 3d 1137A, 2008 N.Y. Misc. LEXIS 628, at *12 (Sup. Ct. Kings Co. 2008) ("This prohibition against quasi-contractual claims where a written contract exists applies not only to the parties that are in privity of contract, but also to noncontracting parties as well"). Hence, the arguments asserted by Crescent in support of its Motion to Dismiss the Second Cause of Action are hereby adopted by the Individual Defendants and incorporated by reference. This well-settled principle of law mandates dismissal of the Plaintiff's unjust enrichment claim.

B. Because The Individual Defendants Were Not Members of Crescent And Therefore Did Not Receive The Proceeds Of The Sale, They Cannot Be Held Liable For Unjust Enrichment

Plaintiff alleges "on information and belief" that Crescent's profit from the sale of the Land was "distributed to the Named Members", which Plaintiff alleges include the Individual Defendants. (Compl. ¶ 54 at Ex. A to Dachoh Aff.). Plaintiff's unsupported "belief" is contradicted, however, by documentary evidence in the form of Crescent's Amended and Restated Limited Liability Company Agreement, which proves that the sole member of Crescent

is CH Holding (Dachoh Aff. ¶ 4; Crescent Agr. ¶ 5 at Ex. C to Dachoh Aff.). The Individual Defendants are not and never were members of Crescent and did not receive any portion of the proceeds from Crescent's sale of the Land.³ (Dachoh Aff. ¶ 4; Crescent Agr. ¶ 12 at Ex. C to Dachoh Aff.). Hence, even if there were a cognizable claim against Crescent and its members for unjust enrichment, and there is not, there can be no such claim against the Individual Defendants.

C. The Individual Defendants Cannot Be Held Liable For Crescent's Alleged Unjust Enrichment

To the extent Plaintiff seeks to hold the Individual Defendants liable for Crescent's alleged unjust enrichment, Plaintiff's claim must be dismissed as well (even if, contrary to fact, the Individual Defendants were members of Crescent).

1. Plaintiff Has Not Pled Allegations Sufficient To Pierce Crescent's Corporate Veil

Under Delaware law, which is applicable here,⁴ a limited liability company such as Crescent is a "separate legal entity" distinct from the members who own an interest in the limited liability company. 6 Del. C. § 18-201(b) (2008). Courts will not easily disregard the corporate form to hold individuals liable for corporate acts. See Wellman v. Dow Chem. Co., No. 05-280-SLR, 2007 U.S. Dist. LEXIS 19527, at *5 (D. Del. Mar. 20, 2007) (holding that piercing the corporate veil is an "extraordinary remedy" and will not be granted where plaintiff fails to allege facts in support of such remedy); Wallace v. Wood, 752 A.2d 1175, 1180 (Del. Ch.

³ It is noteworthy that Plaintiff, in its zeal to file suit against the Individual Defendants personally, chose not to list CH Holding as a named Defendant even though it identified itself as Managing Member of Crescent in the License Agreement.

1999) (“[O]fficers of a corporation are not liable on corporate contracts as long as they do not purport to bind themselves individually.”).

To pierce the corporate veil under Delaware law, a plaintiff must make a showing that “[the two entities] operated as a single economic entity such that it would be inequitable for this Court to uphold a legal distinction between them.” Harper v. Delaware Valley Broadcasters, Inc., 743 F. Supp. 1076, 1085 (D. Del. 1990). In determining whether the parent and subsidiary (or owner) operated as a single economic entity, Delaware courts consider such factors as whether the “corporation was adequately capitalized for the corporate undertaking; whether the corporation was solvent; whether dividends were paid, corporate records kept, officers and directors functioned properly, and other corporate formalities were observed; whether the dominant shareholder siphoned corporate funds; and whether, in general, the corporation simply functioned as a facade for the dominant shareholder.” Id. Plaintiff has alleged no facts that would suggest that the Individual Defendants and Crescent “operated as a single entity.”

⁴ The law of the state of incorporation determines whether a court can disregard the corporate form under which an entity operates. Fletcher v. Atex, Inc., 68 F.3d 1451, 1456 (2d Cir. 1995). Delaware law thus applies to the analysis of the sufficiency of the corporate form of this Delaware limited liability company. Even if New York law applies, however, the result is the same. The Complaint fails to allege facts sufficient to pierce Crescent’s corporate veil. To pierce the corporate veil under New York law, a plaintiff must show that: (i) the parent exercised complete dominion over the subsidiary with respect to the transaction attacked; and (ii) such domination was used to commit a fraud or wrong against the plaintiff which resulted in plaintiff’s injury. Morris v. State Dep’t of Taxation & Fin., 82 N.Y.2d 135, 141, 603 N.Y.S.2d 807 (1993); Fisher v. Zaks, 48 A.D.3d 251, 251, 852 N.Y.S.2d 69, 69 (1st Dep’t 2008) (holding that the corporate veil could not be pierced where plaintiff failed to prove that defendant exercised complete domination over the company, and such domination caused plaintiff’s injury); Chestnut Hill Partners, LLC v. Van Raalte, 45 A.D.3d 434, 435, 847 N.Y.S.2d 18, 19 (1st Dep’t 2007) (“The decision to dismiss the complaint as against the individual defendants . . . was appropriate since plaintiff failed to allege facts implying individual abuse of the privilege of doing business in the corporate form”). The Complaint fails to allege any of these factual predicates for a “piercing” claim under either Delaware or New York law.

Plaintiff makes no allegations that corporate formalities were not observed or that the Individual Defendants used Crescent as a “mere facade” for the Individual Defendants. Having failed to allege facts in support of piercing the corporate veil, Plaintiff’s claims against the Individual Defendants simply cannot stand. Wellman, 2007 U.S. Dist. LEXIS 19527.

2. **The Claim Is Barred Under Delaware Code § 18-303**

Plaintiff’s claim for unjust enrichment against the Individual Defendants are also barred by Section 18-303(a) of the Delaware Limited Liability Company Act which provides that “no member or manager of a limited liability company shall be obligated personally for any such debt, obligation or liability of the limited liability company solely by reason of being a member or acting as a manager of the limited liability company.” 6 Del. C. § 18-303 (a) (2008).

Section 18-303(a) clearly applies here. It is well-settled that the law of the state in which an entity is formed controls with respect to matters relating to the internal affairs of such entity. Venturetek, L.P. v. Rand Publ’g Co., Inc., 39 A.D.3d 317, 833 N.Y.S.2d 93 (1st Dep’t 2007), appeal denied, 10 N.Y.3d 703, 854 N.Y.S.2d 104 (2008). “Issues involving the rights and liabilities of a corporation . . . are determined by the local law of the state” Restatement (Second) of Conflict of Laws § 302 (1971). This “internal affairs doctrine” is a principle according to which only one state’s laws regulate the internal affairs of a corporation, including relationships among or between the corporation and its officers, directors and shareholders. Otherwise, the corporation could be faced with conflicting demands. In re BP p.l.c. Derivative Litig., 507 F. Supp. 2d 302 (S.D.N.Y. 2007); Seybold v. Groenink, No. 06 Civ. 772, 2007 U.S. Dist. LEXIS 16994 (S.D.N.Y. March 12, 2007); see also Facchina v. Malley, No. 783-N, 2006 Del. Ch. LEXIS 142, at *12-13 (Del. Ch. Aug. 1, 2006) (“Delaware law, however, governs the

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internal affairs of a Delaware limited liability company, regardless of its place of operations”). The internal affairs doctrine mandates the application of Delaware law to determine the personal liability of the members of this Delaware limited liability company. The License Agreement’s choice of law provision providing for the application of New York law to the transaction between Plaintiff and Crescent does not contravene this doctrine. The License Agreement binds only its parties, not the internal affairs of a foreign business entity. Moreover, the Individual Defendants are not parties to the License Agreement, and as such, they are not bound by the choice of law provision contained therein. Williams v. Deutsche Bank Secs., Inc., No. 04 Civ. 7588, 2005 U.S. Dist. LEXIS 12121 at *15-16 (S.D.N.Y. June 13, 2005) (“Choice of law provisions do not apply to disputes between entities who were not parties to the contract.”).

II.

PLAINTIFF’S FRAUDULENT CONVEYANCE CLAIMS (THE FIFTH, SIXTH AND SEVENTH CAUSES OF ACTION) AGAINST THE INDIVIDUAL DEFENDANTS MUST BE DISMISSED

Plaintiff’s fifth cause of action is for an alleged fraudulent conveyance pursuant to New York Debtor & Creditor Law Sections 273, 274 and 275. These are commonly referred to as the “constructive fraud” sections of the fraudulent conveyance law. Plaintiff’s sixth cause of action is for an alleged fraudulent conveyance pursuant to New York Debtor & Creditor Law Section 276, the fraudulent conveyance law’s “actual fraud” section. Plaintiff’s seventh cause of action is for attorney’s fees based on actual fraud pursuant to Section 276-a of the New York

Debtor & Creditor Law.⁵ Each of these claims must be dismissed against the Individual Defendants for four reasons: (1) Plaintiff is not a creditor of Crescent, because Crescent did not breach the License Agreement by selling its Land; (2) even if Crescent breached the contract, Plaintiff's damages are too speculative to form the basis for a fraudulent conveyance claim; (3) in any event, because the sale proceeds were not conveyed to the Individual Defendants, they are not proper parties to fraudulent conveyance claims; and (4) Plaintiff has failed to allege adequately the elements of a fraudulent conveyance claim.

1. Plaintiff Is Not A Creditor Of Crescent Because Crescent Did Not Breach The License Agreement By Selling The Land

To assert a fraudulent conveyance claim, Plaintiff must be a creditor of the transferor. N.Y. Debt. & Cred. Law §§ 273-276 (2008); Lippe v. Bairnco Corp., 225 B.R. 846, 857 (S.D.N.Y. 1998). Here, as demonstrated in the Crescent Memorandum (which is incorporated herein), Crescent did not breach the Licensing Agreement by selling the Land, and therefore cannot establish itself as a creditor of Crescent. For this reason, each of Plaintiff's fraudulent conveyance claims fails. See Salovaara v. Eckert, 6 Misc. 3d 1005A, 800 N.Y.S.2d 356 (Sup. Ct. N.Y. Co. 2005) (in an action for breach of contract and fraudulent conveyance, among others, the court determined that it would "first examine the breach of contract claims"

⁵ This claim is only available if the Court finds "actual intent" to defraud, *i.e.*, that Section 276 has been violated. See Farm Stores, Inc. v. School Feeding Corp., 102 A.D.2d 249, 477 N.Y.S.2d 374 (2d Dep't 1984), *aff'd*, 64 N.Y.2d 1065, 489 N.Y.S.2d 877 (1985) ("The trial court was also correct in holding that Farm Stores' attorney was not entitled to fees under Section 276-a of the New York Debtor & Creditor Law in view of the absence of satisfactory proof of actual intent to defraud creditors. The attorney's fees provision of Section 276-a is inapplicable where the subject conveyance is invalid under the constructive fraud provisions of the New York Debtor & Creditor Law as opposed to the actual fraud provisions thereof") (internal citations omitted).

because “if the contract actions . . . should fail, then plaintiff would not be a creditor of [defendant company], with rights under the Debtor Creditor Law to support” the fraudulent conveyance causes of action).

2. Plaintiff’s Damages Are Too Speculative To Form The Basis For A Fraudulent Conveyance Claim

Plaintiff’s contention that it is entitled to compensation in some undetermined amount for Crescent’s sale of the Land is entirely too speculative to constitute “probable liability on an existing debt” sufficient to sustain a fraudulent conveyance claim under Section 273.⁶ See Shelly v. Doe, 249 A.D.2d 756, 671 N.Y.S.2d 803 (3d Dep’t 1998) (holding that a defendant’s probable liability too speculative to constitute an existing debt when at the time of the challenged conveyance it was unknown the amount of the liability, notwithstanding that the event giving rise to the liability preceded the transfer). No liability will be sufficient to be considered probable and calculable for purposes of alleging insolvency under Section 273 unless “some evidence [is] proffered as to the probability, at the time of the challenged conveyance, that a

⁶ Plaintiff’s Section 274 claim is also insufficiently pled. See R. C. Williams & Co. v. Euhler, 222 A.D. 561, 227 N.Y.S. 40 (1st Dep’t 1928) (“The pleader should at least have alleged that the judgment debtor retained, at the time of the conveyance, an unreasonably small capital with which to meet his transaction with the plaintiff.”) (emphasis added). Here, Plaintiff makes no allegations concerning Crescent’s post conveyance business, much less whether Crescent maintained sufficient capital. Plaintiff does not even attempt to allege that at the time of the conveyance or anytime thereafter Plaintiff and Crescent engaged in any business or transaction whatsoever.

contingent liability will be imposed and, if so, in what amount.” Staten Island Sav. Bank v. Reddington, 260 A.D.2d 365, 366, 687 N.Y.S.2d 707, 709 (2d Dep’t 1999).⁷

3. **No Conveyance -- Fraudulent or Otherwise --
Was Made To The Individual Defendants**

The Individual Defendants have submitted documentary evidence demonstrating that they never were members of Crescent and therefore never received any portion of any proceeds from Crescent’s sale of the Land. Because the Individual Defendants were not members of Crescent and were neither the transferees nor transferors of the alleged improper distribution, they cannot be liable for such alleged fraudulent conveyance.

Even more fundamentally, Plaintiff fails to allege any facts in support of its allegation “made upon information and belief” that the net proceeds of the sale of the Land were distributed to anyone, let alone to the Individual Defendants. The Complaint fails to allege what “information” resulted in Plaintiff’s “belief” that such distributions were made. The Complaint fails to allege the amount of any such distributions, when such distributions took place and to whom any such distributions were made. Plaintiff rests its entire Complaint against the Individual Defendants on this baseless. However, such bare assumptions, simply are insufficient to withstand a motion to dismiss.

⁷ Here, while Plaintiff asserts that the Individual Defendant’s potential liability for breach of contract arose prior to the alleged fraudulent conveyance, it has not even attempted to assert that at the time of the conveyance, the probability of liability or the amount of any liability was known. While Plaintiff alleges that by letter dated August 2, 2007, it put Defendants on notice of its breach of contract claims, what the letter actually shows is that Plaintiff had not yet quantified the claims. (See Compl. Ex. B at Ex. A to Dachoh Aff.). In fact, in the August 2, 2007 letter, Plaintiff makes no monetary demand at all beyond a cursory statement that Crescent’s sale of the land will “deny the Licensor the right to receive many millions of dollars in ‘Royalties’.” (Id.)

It is axiomatic that a claim for fraudulent conveyance does not create a right of action against a non-party to the challenged transfer. Federal Deposit Ins. Corp. v. Porco, 75 N.Y.2d 840, 842, 552 N.Y.S.2d 910, 911 (1990) (holding that the New York fraudulent conveyance statutes do not “explicitly or implicitly, create a creditor’s remedy for money damages against parties who, like defendants here, were neither transferees of the assets nor beneficiaries of the conveyance”). “The creditor’s remedy . . . is limited to reaching the property which would have been available to satisfy the judgment had there been no conveyance; and requiring that it be restored to the debtor’s possession.” Geren v. Quantum Chem. Corp., 832 F. Supp. 728, 736 (S.D.N.Y. 1993); see also Hassett v. Goetzmann, 10 F. Supp. 2d 181, 191-92 (N.D.N.Y. 1998). The Individual Defendants thus are not proper parties from whom to seek the property believed to have been wrongfully conveyed. For these reasons alone, the Plaintiff’s house of cards constructed to convert this contract claim into a fraud claim collapses. The fifth, sixth and seventh claims must be dismissed without leave to replead.

4. Plaintiff Has Failed To Allege Adequately The Elements Of A Fraudulent Conveyance Claim

In addition to failing to allege a sustainable breach of contract claim and/or a single fact to support that any distribution (proper or improper) was made to anyone by Crescent, the Complaint also fails to allege any facts even suggesting that the required elements of a fraudulent conveyance claim exist. As set forth in the chart below, the Complaint merely parrots the language of the New York Debtor and Creditor Law in conclusory allegations:

<u>Language of the Statute</u>	<u>Language of the Complaint</u>
<p>“Every conveyance made and every obligation incurred <u>by a person who is or will be thereby rendered insolvent</u> is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without fair consideration.” (N.Y. Debt. & Cred. Law § 273; emphasis added).</p>	<p>“Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members <u>was made without fair consideration and rendered defendant Crescent insolvent or was made at a time when defendant Crescent was insolvent</u>, in violation of Section 273 of the New York Debtor and Creditor Law.” (Comp. ¶ 63 at Ex. A to Dachoh Aff.; emphasis added).</p>
<p>“Every conveyance <u>made without fair consideration</u> when the person making it is engaged or is about to engage in a business or transaction for which the property remaining in his hand after the conveyance is an <u>unreasonably small capital</u> is fraudulent as to creditors . . .” (N.Y. Debt. & Cred. Law § 274; emphasis added).</p>	<p>“Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members <u>was made without consideration and left defendant Crescent with an unreasonably small amount of capital</u> with which to operate, in violation of Section 274 of the New York Debtor and Creditor Law.” (Comp. ¶ 64 at Ex. A to Dachoh Aff.; emphasis added).</p>
<p>“Every conveyance made and every obligation incurred <u>without fair consideration when the person making the conveyance or entering into the obligation intends or believes that he will incur debts beyond his ability to pay as they mature</u>, is fraudulent as to both present and future creditors.” (N.Y. Debt. & Cred. Law § 275; emphasis added).</p>	<p>“Upon information and belief, the Fraudulent Conveyance by defendant Crescent to the Named Members and Unknown Members <u>was made without fair consideration at a time when defendant Crescent intended or believed that it would incur debts beyond its ability to pay them as they matured</u>, in violation of Section 275 of the New York Debtor and Creditor Law.” (Comp. ¶ 65 at Ex. A to Dachoh Aff.; emphasis added).</p>
<p>“Every conveyance made and every obligation incurred with <u>actual intent, as distinguished from intent presumed in law, to hinder, delay, or defraud</u> either present or future creditors is fraudulent . . .” (N.Y. Debt. & Cred. Law § 276; emphasis added).</p>	<p>“Upon information and belief, the Fraudulent Conveyance was <u>made by defendant Crescent with the actual intent to hinder, delay or defraud</u> either present or future creditors of defendant Crescent, and did, in fact, hinder, delay and defraud Plaintiff.” (Comp. ¶ 68 at Ex. A to Dachoh Aff.; emphasis added).</p>

These legal conclusions are, as a matter of law, insufficient to support Plaintiff's fifth, sixth and seventh causes of action.

The law is clear that "[a]lthough on a motion addressed to the sufficiency of a complaint pursuant to CPLR 3211 (a)(7), the facts pleaded are presumed to be true and accorded every favorable inference . . . allegations consisting of bare legal conclusions, as well as factual claims either inherently incredible or contradicted by documentary evidence, are not entitled to such consideration." Quatrochi v. Citibank, N. A., 210 A.D.2d 53, 53, 618 N.Y.S.2d 820, 820 (1st Dep't 1994); Mark Hampton, Inc. v. Bergreen, 173 A.D.2d 220, 220, 570 N.Y.S.2d 799, 799 (1st Dep't 1991) (same). The Supreme Court has held that courts are "not bound to accept as true a legal conclusion couched as a factual allegation." Papasan v. Allain, 478 U.S. 265, 286, 106 S. Ct. 2932, 2944 (1986) (disregarding petitioners' allegation that they were denied a minimally adequate education because "no actual facts" were alleged in support of the assertion). As the Supreme Court clarified in Twombly, "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Bell Atl. Corp. v. Twombly, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929, 940 (2007).

Here, there are no facts alleged to support Plaintiff's conclusory statements that the alleged distribution of sale proceeds:

- were made without fair consideration,
- rendered Crescent insolvent,
- left Crescent with unreasonably small capital to engage in business with Plaintiff,

- were made by Crescent with an intent or belief that Crescent would thereafter be unable to pay its debts, and
- were made with the actual intent to defraud.

“A formulaic recitation of the elements of a cause of action” was insufficient in Twombly, and it is insufficient here as well. The fifth, sixth and seventh causes of action must therefore be dismissed.

III.

PLAINTIFF’S SIXTH AND SEVENTH CAUSES OF ACTION MUST ALSO FAIL FOR FAILURE TO PLEAD ACTUAL FRAUD WITH PARTICULARITY

Plaintiff’s claims against the Individual Defendants for fraudulent conveyance with actual intent to defraud pursuant to Section 276 and 276-a also fail for the additional reason that Plaintiff has failed to plead fraud with the requisite level of particularity. See In re Sharp Int’l Corp. 403 F.3d 43, 56-57 (2d Cir. 2005) (“As ‘actual intent to hinder, delay or defraud’ constitutes fraud . . . it must be pled with specificity.”); Southern Indus., Inc. v. Jeremias, 66 A.D.2d 178, 181, 411 N.Y.S.2d 945, 948 (2d Dep’t 1978) (noting that actual intent to hinder, delay or defraud “consists of deception intentionally practiced to frustrate the legal rights of another,” and citing the example of a debtor transferring his property to another while retaining the use thereof so as to continue in business free from the claims of creditors). Normal incidents of corporate activity are insufficient. See In re Crazy Eddie Sec. Litig., 802 F. Supp. 804, 816 (E.D.N.Y. 1992). Here, Plaintiff has offered no support for its bare and conclusory allegation on information and belief that improper distributions were made at all, and if so were made with the

“intent to defraud.” As such, Plaintiff’s sixth and seventh causes of action must fail for this reason, as well.

IV.

**PLAINTIFF’S EIGHTH CAUSE OF ACTION FOR
WRONGFUL DISTRIBUTIONS IN VIOLATION OF
SECTION 18-607 OF THE DELAWARE LIMITED LIABILITY
COMPANY ACT OR SECTION 508 OF THE NEW YORK
LIMITED LIABILITY COMPANY ACT FAILS**

Plaintiff alleges in its Eighth Cause of Action, that, upon information and belief, “shortly after receiving the . . . proceeds from the sale of the Land . . . defendant Crescent, a Delaware limited liability company, distributed the net proceeds from such sale . . . to the Named Members and the Unknown Members”. (Compl. ¶ 76 at Ex. A to Dachoh Aff.). Plaintiff further alleges that at the time of such alleged distribution, “defendant Crescent and said distributees knew of defendant Crescent’s liability to Plaintiff” (*Id.* at ¶ 77), and that such distribution was in violation of either Section 18-607(a) of the Delaware Limited Liability Company Act or Section 508 of the New York Limited Liability Company Act, if the Court deems the latter applicable. (*Id.* at ¶ 79).

Section 18-607(a) provides, in its entirety:

§ 18-607. Limitations on distribution

(a) A limited liability company shall not make a distribution to a member to the extent that at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their limited liability company interests and liabilities for which the recourse of creditors is limited to specified property of the limited

liability company, exceed the fair value of the assets of the limited liability company, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of that property exceeds that liability. For purposes of this subsection (a), the term "distribution" shall not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business pursuant to a bona fide retirement plan or other benefits program.

6 Del. C. § 18-607 (2008).⁸ Sections 18-607(b) and 508(b) provide that a member who knew at the time of the distribution that the distribution was made in violation of subsection (a) is liable to the limited liability company for its return but will not be liable if, at the time of such distribution, such member did not know it was made in violation of subsection (a). 6 Del. C. § 18-607 (2008); N.Y. LLC § 508(b) (2008).

It is axiomatic that liability under Section 18-607(a) (or Section 508 of the New York Limited Liability Company Act) attaches only if the limited liability company in question makes a distribution to its member in violation of this section. This claim fails against the Individual Defendants because the Individual Defendants are not members of Crescent.

⁸ New York Limited Liability Company Act § 508 similarly provides:

(a) A limited liability company shall not make a distribution to a member to the extent that, at the time of the distribution, after giving effect to the distribution, all liabilities of the limited liability company, other than liabilities to members on account of their membership interests and liabilities for which recourse of creditors is limited to specified property of the limited liability company, exceed the fair market value of the assets of the limited liability company, except that the fair market value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited liability company only to the extent that the fair value of such property exceeds such liability.

This is not the only pleading defect in the Eighth Cause of Action. This claim fails to allege that: (1) Crescent's liabilities exceed the fair value of Crescent's assets; or (2) the alleged distributions to the individual defendants did not constitute "reasonable compensation for present or past services." 6 Del. C. § 18-607(a) (2008); see also N.Y. LLC § 508(b) (2008). Nor does Plaintiff allege why the Individual Defendants should be charged with knowledge that the alleged distribution by Crescent to its members was wrongful. The only notice alleged in the Complaint is the August 2, 2007 letter from Plaintiff's Bernard R. Diamond which, from its face, was neither sent to, nor copied to, any of the Individual Defendants. (See Comp. Ex. B at Ex. A to Dachoh Aff.).

While this claim would fail for all of these evident pleading deficiencies, that the Individual Defendants are not and have never been members of Crescent warrants dismissal of this claim without leave to replead.

CONCLUSION

For all of the foregoing reasons, the Individual Defendants respectfully request that the Court enter an order dismissing the Complaint against them, and providing such other and further relief as this Court deems just and proper.

Dated: New York, New York
June 27, 2008

MORRISON COHEN LLP

By: _____

Y. David Scharf

Mary E. Flynn

Latisha Thompson

909 Third Avenue

New York, New York 10022

(212) 735-8600

*Attorneys for Defendants Sonny Kahn,
Russell W. Galbut and Bruce A. Menin*



SUPREME COURT
STATE OF NEW YORK

APPROVED

COMMERCIAL DJ
SUPPORT OF

MOT

LLT 6/27/08

CLERK
INITIAL

At IAS Part 49 of the Supreme Court, of the State of New York, held in and for the County of New York, at the Courthouse, 60 Centre Street, New York, New York on the 30th day of June, 2008.

PRESENT:

Hon. *Charles E. Ramos*
~~Richard Cahn~~

Justice.

015133

-----X
TRUMP MARKS LLC,

Plaintiff,

Index No.: 08/601372

-against-

(Cahn, J.)

CRESCENT HEIGHTS DIAMOND, LLC, SONNY KAHN, an individual, RUSSELL W. GALBUT, an individual, BRUCE A. MENIN, an individual, each said individual being a member of Crescent Heights Diamond, LLC, and THOSE UNKNOWN INDIVIDUALS AND/OR UNKNOWN ENTITIES CONSTITUTING THE REMAINING MEMBERS OF CRESCENT HEIGHTS DIAMOND, LLC,

Defendants.

ORDER TO SHOW CAUSE

MOTION SEQUENCE #002

VAL 3

INDEX NUMBER 601372	YEAR 2008	
15 MOTIONS		45.00
TOTAL		45.00
CHECK		45.00

Upon the annexed affirmation of urgency of Richard D. Emery, dated June 27,

CONS CASHIER DATE TIME TERM
-0650 3000 08 JUN 27 2:05 PM 60-1

2008, and the supporting memorandum of law, all the prior pleadings, papers and proceedings heretofore had herein and the separately filed but accompanying Order to Show Cause filed by co-defendants Sonny Kahn, Russell Galbut and Bruce A. Menin and sufficient cause having been shown;

LET, Plaintiff Trump Marks LLC show cause before this Court, at the Supreme Court of the State of New York, County of New York, located at 60 Centre Street, New York, New York, on the 15th day of July, 2008, at 2:00 ~~pm~~ /p.m., or as soon thereafter as counsel may be heard, why an Order should not be made and entered herein as follows:

- (1) pursuant to CPLR 3211(a)(1) and (7) dismissing the Complaint dated May 5, 2008 with prejudice, as against defendant Crescent Heights Diamond, LLC; and
- (2) for such other and further relief as this Court deems just and proper.

ORDERED THAT SUFFICIENT REASON APPEARING THEREFOR, let service of a copy of this Order to Show Cause and the papers upon which it is based on Stephen

91 | B. Meister, Esq., Meister Seelig & Fein, LLP, attorneys for the Plaintiff, at 2 Grand Central
JSC | Tower, 140 east 45th Street, 19th Floor, New York, NY 10017, by overnight mail or by hand, so
as to be received by the ^{not} ~~6~~ ^{July} ~~th~~ day of ~~June~~, 2008, be deemed good and sufficient service thereof; ✓
and it is further

P | ORDERED that Plaintiff's opposition to Defendant Crescent Heights Diamond,
JSC | LLC's motion, if any, shall be delivered by overnight mail or by hand to counsel for Defendant
Crescent Heights Diamond, LLC so as to be received by the 11 th day of July, 2008; and further ✓

~~ORDERED that reply papers be served upon Plaintiff's counsel by overnight
mail or by hand so as to be received by the 11 th day of July, 2008.~~ ✓

ENTER

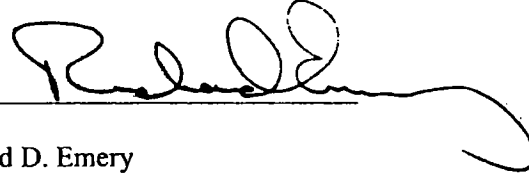
J.S.C.

ORAL ARGUMENT
DIRECTED

J.S.C.

Certification of Compliance with Rule 130.1
of the Uniform Rules of Court:

EMERY CELLI BRINCKERHOFF
& ABADY LLP

By: 

Richard D. Emery
Andrew G. Celli, Jr.
Ilann M. Maazel
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New York, N.Y. 10019
(212) 763-5000

*Attorneys for Defendant Crescent Heights
Diamond, LLC*

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
TRUMP MARKS LLC,

Plaintiff,

-against-

CRESCENT HEIGHTS DIAMOND, LLC, SONNY
KAHN, an individual, RUSSELL W. GALBUT, an
individual, BRUCE A. MENIN, an individual, each
said individual being a member of Crescent Heights
Diamond, LLC, and THOSE UNKNOWN
INDIVIDUALS AND/OR UNKNOWN ENTITIES
CONSTITUTING THE REMAINING MEMBERS
OF CRESCENT HEIGHTS DIAMOND, LLC,

Defendants.
-----X

Index No.: 08/601372

(Cahn, J.)

**AFFIRMATION OF
URGENCY**

RICHARD D. EMERY, an attorney duly admitted to practice before the Courts of
the State of New York, affirms the following to be true under penalties of perjury:

1. I am an attorney and a member of Emery Celli Brinckerhoff & Abady
LLP, attorneys for Defendant Crescent Heights Diamond, LLC.

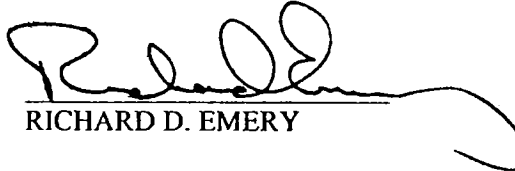
2. I respectfully submit this affirmation in support of Defendant Crescent
Heights Diamond, LLC's order to show cause seeking an order: (i) pursuant to CPLR 3211(a)(1)
and (7), dismissing with prejudice the Complaint dated May 5, 2008, as against Crescent Heights
Diamond, LLC; and (ii) for such other and further relief as this Court deems just and proper.

3. In accordance with Judge Cahn's standing directive, we are making this
motion by order to show cause. We respectfully request expedited treatment of this motion to
dismiss. The Complaint is patently frivolous and vexatious and should be disposed of on an
expedited basis to allow Crescent Heights Diamond, LLC proper access to its assets.

4. No prior application has been made for the relief sought herein.

WHEREFORE, on behalf of the Defendant Crescent Heights Diamond, LLC, I respectfully request that this Court issue and order: (i) pursuant to CPLR 3211(a)(1) and (7) dismissing with prejudice the Complaint filed in this action, as against Defendant Crescent Heights Diamond, LLC; and (ii) for such other and further relief as this Court deems just and proper.

Dated: June 27, 2008
New York, New York


RICHARD D. EMERY



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
:
TRUMP MARKS LLC, :
:
Plaintiff, :
:
-against- :
:
CRESCENT HEIGHTS DIAMOND, LLC, SONNY :
KAHN, an individual, RUSSELL W. GALBUT, an :
individual, BRUCE A. MENIN, an individual, each :
said individual being a member of Crescent Heights :
Diamond, LLC, and THOSE UNKNOWN :
INDIVIDUALS AND/OR UNKNOWN ENTITIES :
CONSTITUTING THE REMAINING MEMBERS :
OF CRESCENT HEIGHTS DIAMOND, LLC, :
Defendants. :
:
-----X

Index No.: 08/601372
(Cahn, J.)

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT CRESCENT HEIGHTS DIAMOND, LLC'S
MOTION TO DISMISS THE COMPLAINT**

Richard D. Emery
Andrew G. Celli, Jr.
Ilann M. Maazel
Debra Greenberger
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Defendant Crescent Heights Diamond, LLC (“Crescent”) respectfully submits this memorandum of law in support of its motion to dismiss all of the claims of the Verified Complaint (the “Complaint”) of Trump Marks LLC against Crescent, pursuant to CPLR 3211(a)(7), for failure to state a cause of action, and CPLR 3211(a)(1), based upon documentary evidence (the License Agreement or “Agreement”).

PRELIMINARY STATEMENT

Donald Trump, by his own description, is a sophisticated “world-renowned builder and developer of luxury residential real estate.” Agmt., 1st Whereas Cl. He is a best-selling author, holding forth on the “art” of negotiating real estate deals. And he runs his own real estate university. Yet, having failed to negotiate a real estate licensing agreement to his liking in this case, his company comes to this Court and asks it to rewrite the Agreement.

But the Agreement is clear, conforming to the obvious intent of the parties. And both parties complied with it. It spells out concisely what Trump is, and is not, entitled to.

This deal was simple. Crescent licensed the “Trump Tower” name for a residential condominium building that did not yet exist but which Crescent intended to build if, among other things, it could acquire the land, receive the appropriate zoning variances from the Israeli authorities, and if the parties could agree on design specifications. If Crescent did build, Trump was to get a one-time fee when construction began. And then royalties, and only royalties, were to be paid when and if apartments were actually sold or rented. Crescent’s obligations were to design and operate the building according to standards fixed by Trump. Trump did not want his name on any building that did not meet his standards.

Trump, nonetheless, asserts that the license for his brand obligated Crescent to build and pay him royalties. But the License Agreement itself spells out that if Crescent did not build

within two years, for any reason within Crescent's control, Trump's remedy was termination. In other words, the Agreement specifically contemplates the possibility that the building would not be built, and provides, as any real estate deal should, for a remedy in that circumstance — termination. Similarly, the Agreement recognizes the necessity to ultimately agree on plans and specifications before the building could be constructed and provides that if the parties reach an impasse in determining those specifications, either party may terminate.

Neither of these sophisticated parties contemplated any remedies other than termination; the sole exception was Trump's right to damages for use of the marks after termination of the deal. Trump did not protect himself in any way (other than the right to terminate) from the possibility that the building would not be built and the property sold at a profit. Despite the fact that Trump now claims Crescent owes him a substantial amount of money, he never bargained for the right to participate in any Crescent profits which flowed from a sale required when rezoning was not possible.

Trump was nothing more than a licensor, not a partner in the transaction. Trump never invested a dime towards the purchase of the land. Trump never invested a dime in construction. All Trump did, according to the Complaint, is appear on a single, live-video feed with the Israel Business Conference. Nevertheless, Trump now seeks \$45 million+ in damages. This contract precludes any damage claim because Trump failed to negotiate for it.

Trump's remaining claims are no more than legal window dressing. The "good faith" and unjust enrichment claims improperly seek to rewrite the Agreement. This Court has repeatedly rejected such duplicative claims in similar cases. *See infra* at 19-20, 23-34. The "indemnification" claim is a reach, premised upon the failed breach claim, and limited by its terms to claims which Trump is defending, not pursuing. Trump's claims against the individual defendants, as well as its

claims for fraudulent conveyance and wrongful distribution (which were asserted against Crescent and the individual defendants) will be addressed by counsel for the individual defendants but, likewise, have no merit.

It is plain what happened here. Crescent sold land it bought at a profit, and Trump cannot abide losing out on a profit, whether or not he is entitled to it. Trump apparently wishes now that he had bargained for a contract clause to share in proceeds of an investment he did not pay for. But there is no such clause; there is no breach; and, without a breach, there is no case. The parties negotiated the very remedy they received. The motion to dismiss should be granted.

STATEMENT OF FACTS

For purposes of this motion to dismiss, defendant accepts the allegations in the Complaint as true. Defendant refers to the Complaint, and the License Agreement attached to the Complaint, in this brief.¹

On May 23, 2006, Donald Trump, a sophisticated “world-renowned builder and developer of luxury residential real estate,” through his company Trump Marks LLC (“Trump”), entered into a License Agreement with Crescent. Agmt., 1st Whereas Cl. Trump drafted this Agreement, the purpose of which was to license the Trump name for a possible building, the “Tower Property,” to be built on several parcels of land in Israel. Compl. ¶ 14. The Agreement defined the “Tower Property” as the “Building” which would “include a first class, luxury residential condominium component . . . and one or more retail components” (there was no mention of office space), together with four parcels of “Land” on which that Building would be constructed. Agmt., 3rd Whereas Cl. As alleged in the Complaint, at the time of the Agreement, Crescent did not have title to

¹ “A copy of any writing which is attached to a pleading is a part thereof for all purposes.” N.Y.C.P.L.R. § 3014 (McKinney 2007).

all the parcels of land. Compl. ¶ 17. Furthermore, as the Complaint alleges, the Tower Property could not be constructed as a residential and retail development without obtaining variances. Compl. ¶ 27. The idea for the possible building was grand and unprecedented: no less than the “tallest structure in Israel,” with 786,000 square feet of space. *Id.* ¶ 14. At the time of the Agreement, there was no building, and there were no units in a building. There was no agreement on plans and specifications for the building. Agmt. § 4. There was only an idea, and a piece of land to be acquired. Agmt. *passim*; Compl. ¶ 17.

The structure of the Agreement is straightforward. Trump would license his name if the land were acquired, the parties agreed on plans and specifications, construction permits were issued and the building were built to the Trump Standard. In return, Trump would receive various royalties. Agmt. §§ 1 (granting of license), § 3 (Trump Standard), § 5 (royalties). But if construction of the building did not begin within twenty-four months, Trump could terminate the Agreement and revoke the license. *Id.* § 8(h). To the extent construction did not occur due to events “beyond the reasonable control” of Crescent, the twenty-four month period would not run. *Id.* If however, construction did not occur for reasons *within* Crescent’s control, *e.g.*, because Crescent decides not to construct the building, then Trump’s sole remedy would be to terminate the Agreement and revoke the license after twenty-four months. *Id.*

The Agreement contemplates a number of other scenarios under which Trump could terminate the Agreement and revoke the license. Section 3 of the Agreement requires any design, construction, and building to meet the “Trump Standard.” *Id.* § 3. If Crescent failed at any time to meet the Trump Standard, Trump could terminate and revoke the license. *Id.* § 3(c). Section 4 reiterates the extent to which Trump wanted to ensure that appropriate standards were met for any building with the Trump name. That section lays out a detailed protocol for Trump’s review of the

“Final Plans and Specifications” and Crescent’s rights to redraft those plans based on Trump’s concerns. *Id.* § 4(b). It expressly contemplates that the Tower Property may not be built and, in fact, that in the event a disagreement over the plans reached an impasse, there was a reciprocal right to terminate the Agreement. *Id.* And if the Agreement is terminated as a result of an impasse, Trump retains royalties paid to date, if any. *Id.*

Furthermore, the Agreement expressly contemplated that the Tower Property, even if built, might not always be known by the Trump name, e.g., if the Tower Property were sold. The License Agreement provided that it would end on the earlier of “(i) the expiration or earlier termination of this Agreement, as provided herein or (ii) *the day upon which the Tower Property shall no longer be known by the New Trump Mark ...*” *Id.* § 6 (emphasis added).

If Crescent did build a building and sell units in the building, Trump would be entitled to receive certain royalties. *Id.* § 8(l). Exhibit A to the Agreement (entitled “Royalties”) provides that Trump would receive \$1 million if and when a construction permit were issued. Trump would receive additional royalties if and when any units in the future building were sold, provided they sold for more than a minimum price per square foot. Notably, the Agreement specified that the initial payment was not triggered by a permit to demolish the existing building at the site, nor was it triggered by a pre-development loan. *Id.* Ex. A. Trump would receive his initial payment only when and if the project received a “green light” construction permit for construction of the entire Tower Project.

Although the Agreement could have provided for an initial, non-refundable payment to Trump upon signing, it did not do so. *Agmt. passim.* The Agreement also does not include any form of penalty or liquidated damages if the building is not built. *Agmt. passim.* Rather, Section 8(h) provides that if no construction begins within a twenty-four month period, Trump may terminate the Agreement and revoke the license. Finally, the Agreement also does not include any clause which

would provide Trump a percentage of any profit if the land were resold.

This was a “nonexclusive” licensing agreement which placed minimal limitations on Trump’s ability to continue to exploit its mark worldwide. Agmt. §§ 1(b), (g). The limited exceptions to the nonexclusivity provision were that Trump could not license its name (1) in a specified area of Tel Aviv for up to 3 ½ years (unless the Agreement were terminated earlier, as described above) or (2) for a “Condominium Hotel” for a 12 month period. *Id.* § 1(g).

As alleged in the Complaint, Crescent did not construct a building on the Land, the variances were not granted, no permit to construct the Tower Property was issued, and the project did not therefore proceed to the “Final Plans and Specifications” stage. Crescent sold its Land to a third-party. Compl. ¶ 23. The Complaint does not allege that Trump had at any time invested any money to purchase the land; Trump did not. The Complaint does not allege that Trump had at any time invested any money to construct a building on the land; Trump did not. Trump’s only effort, according to the Complaint, was Donald Trump’s participation (presumably from Palm Beach, Florida) on a video feed with the Israel Business Conference. *Id.* ¶ 20. This participation did not even meet Trump’s contractual obligation to have Donald Trump personally appear in Israel to promote the building. Agmt. § 1(h).

Nevertheless, after Crescent sold the property, Trump brought this lawsuit, seeking over \$45 million in damages.

ARGUMENT

On a motion to dismiss pursuant to CPLR 3211(a)(7), “the court must grant the motion if plaintiff has failed to state a cause of action.” *Monaco v. Saint Mary’s Hosp. of Troy Inc.*, 585 N.Y.S.2d 589, 590 (3d Dept. 1992). “A motion pursuant to CPLR § 3211(a)(1) will be granted if the movant presents documentary evidence that definitively dispose[s] of the claim.” *Martian*

Entertainment, LLC v. Harris, No. 600384/06, 2006 WL 2167178, at *4 (N.Y.Sup. July 5, 2006)
(Cahn, J.).

I. THE BREACH OF CONTRACT CLAIM SHOULD BE DISMISSED

Plaintiff's breach of contract claim fails for three independent reasons: (1) As is plain from the four corners of the Agreement, failure to build is not a breach of the Agreement; (2) Even if failure to build were a breach, Plaintiff was limited to the remedy set forth in the Agreement: termination of the license and payment of any royalties earned as of the date of termination; and (3) Under the "new business" rule, Plaintiff has failed as a matter of law to plead damages, an essential element of its contract claim.

A. Crescent Did Not Breach

In interpreting a contract, the Court must first look to its four corners. *R/S Assocs. v. New York Job Dev. Auth.*, 98 N.Y.2d 29, 32-33 (2002) (affirming dismissal of contract claim and holding that "[u]nless the court finds ambiguity, the rules governing the interpretation of ambiguous contracts do not come into play"). Where a contract is clear on its face, it should be enforced according to its terms, particularly when it is drafted by "sophisticated and counseled business persons." *Reiss v. Fin. Performance Corp.*, 97 N.Y.2d 195, 198 (2001); *see also Cornhusker Farms, Inc. v. Hunts Point Coop. Mkt., Inc.*, 769 N.Y.S.2d 228, 231 (1st Dep't 2003) ("If these commercially sophisticated and counseled parties had intended to [include a subject as] part of their agreement, they could easily have accomplished that purpose by drafting the contractual writings so that one or more of them expressly incorporated the [subject] by reference.").

This is a very simple Agreement: if Crescent builds, Trump attaches the Trump name to the building and receives royalties. But nothing in the Agreement requires Crescent to build.

The best Trump can do in the Complaint is point to Section 3(a) of the Agreement:

“Trump Standard.” The Trump Standard section provides, in relevant part:

Trump Standard; Trump Standard Default; Power of Attorney.

As a material inducement for the grant of the license provided herein, Licensee covenants and agrees with Licensor:

(a) to design, develop, construct, market, sell, equip, operate, repair and maintain the Tower Property, in each case, with the level of quality and luxury associated with the premier, first class mixed use residential condominium building known as the Akirov Building in Tel Aviv, Israel (the “Signature Property”); and

(b) at all times, to maintain ... that Licensee and each Occupant ... maintain standards, with respect to the Tower Property, and the Residential and Retail Components thereof, as the case may be, that are at least equal to those standards of design, development, construction, marketing, sale, equipping, operation, repair and maintenance followed by the Signature Property (for the purposes of this Agreement, such standards as [of] the date hereof, are collectively called the “Trump Standard”).

(Id. § 3(a), (b)).

The purpose of the “Trump Standard” section is straightforward: to ensure that, *if* the building were built, it is built to the “Trump Standard.” It is not a covenant to build *per se*; rather, it is to ensure that the Trump name would only be placed on a building that met the “Trump Standard.”

This is plain for a number of reasons. First, the context of Section 3 makes plain the purpose of Section 3(a). *Kass v. Kass*, 91 N.Y.2d 554, 566 (1998) (“Particular words should be considered, not as if isolated from the context, but in the light of the obligation as a whole and the intention of the parties as manifested thereby.” (internal quotation marks omitted)). Every single sentence in Section 3, including Section 3(a), is about quality control. Section 3(a) ensures that any property bearing the Trump name maintain a certain “level of quality and luxury” (*i.e.*, the “level of quality and luxury” enjoyed in the Akirov Building). Section 3(b) provides that any unit sold contain bylaws that “maintain standards” equal to the standard in the Akirov Building, defined as the “Trump Standard.” Section 3(c) provides that Trump is the “sole judge” of whether Crescent “is maintaining

the Trump Standard”; if Crescent fails, Trump may withdraw the license to the Trump name. Section 3(d) gives Trump the right to inspect any property built, to ensure that the Trump Standard is met. And Section 3(e) gives Trump the power to withdraw registration of the Agreement with the Israeli government in case the Trump standard is not met.

Section 3 is *not* a promise to build. Had the parties intended to create a promise to build, they would have written a section titled: “Promise to Build,” or “Obligation to Build,” or “Covenant to Build,” instead of “Trump Standard.” Trump would have required Crescent to build the property and imposed penalties if Crescent did not build the property. Experienced real estate contract drafters know how to spell out an enforceable covenant to build.² But that is not Section 3. Section 3 does no less, and no more, than what its title reflects: it ensures that, if built, the building would meet the “Trump Standard.”

Section 4 makes the point even more clear: It provides that Trump must approve Crescent’s plans for the Building to ensure that every component — from the signage, to the furniture, to the building manager — meets Trump’s standards. Agmt. § 4(a). And if Trump informs Crescent that Crescent’s design plans are not up to the Trump Standard, either party “may exercise [a] right of termination.” *Id.* § 4(b). This remedy, immediately following the “Trump Standard” section, is fundamentally inconsistent with an absolute obligation by Crescent to build.

The Agreement’s third Whereas clause also makes this plain. It states that Crescent “intends” to develop a building, not that it “will” develop a building, “shall” develop a building, or “covenants” or “promises” to build a building. “Intent” to build a building captures exactly the reality

² The computer header on the Agreement states “L:/BRD/Tel Aviv License reRev 5-29-06 v 20.doc,” which indicates that the Agreement is from BRD’s computer, namely Bernard R. Diamond, Trump’s in-house attorney. Agmt. *passim*; Compl. Ex. B (Aug. 2, 2007 letter from Diamond). It is well-settled, that, to the extent there “is ambiguity in the terms of a contract prepared by one of the parties, it is consistent with both reason and justice that any fair doubt as to the meaning of its own words should be resolved against such party.” *Rentways, Inc. v. O’Neill Milk & Cream Co.*, 308 N.Y. 342, 348 (1955) (internal quotation marks omitted).

of a plan to build in a foreign land with all the exigencies of a large-scale real estate project and is a far cry from a contractual covenant to build a building. There were numerous contingencies that had to be satisfied before the Tower Property could be constructed to the Trump Standard, as stated in the Complaint and the Agreement:

- Crescent needed to acquire the land on which the building was to be built. Agmt., 3rd Whereas Cl.; Compl. ¶ 14.
- Israeli authorities needed to provide a zoning variance if the property were to be built without office space. Compl. ¶ 26.
- Both parties needed to agree on plans and specifications to ensure that the Tower Property met the Trump Standard. Agmt., § 4(b). If the parties reach an impasse on those plans, the agreement provides that either party “shall each have the right to terminate this Agreement.” *Id.*
- Crescent needed a demolition permit under a pre-development loan and, later, an initial construction permit. Agmt., Ex. A.

The parties recognized these contingencies and provided that Trump would earn a royalty only when the hypothetical project approached fruition, namely, when the Israeli authorities would issue a construction permit. Agmt., Ex. A. Hence, the contingent nature of the deal warranted the use of the phrase “intends to build” in the third recital.

If there were any doubt about what Section 3 means (and there should be no doubt), Section 8(h) resolves it. Section 8 expressly contemplates that no building might ever be built, and describes what happens if Crescent does not begin construction within twenty-four months: Trump can terminate the license. Agmt. § 8(h). There are exceptions. If terrorism, or war, or an Act of God, or another event “beyond the reasonable control” of Crescent causes a period of delay, then that period does not count towards the twenty-four months. Those delays are defined as “Unavoidable Delays.” *Id.* But if Crescent fails to begin construction within twenty-four months for any reason *within* its reasonable control—*i.e.*, for any delays that *are* avoidable, Trump can simply terminate the Agreement and revoke the license. If Crescent decides (for whatever reason) not to build, that

decision is within its “reasonable control,” the twenty-four months run, and Trump can terminate the license. *Id.* This is its one and only remedy. And certainly Crescent relied on this explicit clause during the formation of the contract when, as the Agreement states, Crescent had not yet acquired the land and no one could be sure that this ambitious project would ever succeed. Agmt., 3rd Whereas Cl.; Compl. ¶ 14.

Nowhere does Section 8 suggest that a failure to build is a breach. Nowhere does any other section in the Agreement suggest that a failure to build is a breach. To the contrary, the parties expressly contemplated this possibility, and simply provided that if the building were not built, Trump could terminate the license. No harm, no foul.

The Complaint also alleges that Crescent did not acquire title to all the parcels of land until *after* the May 23, 2006 Agreement was signed. Compl. ¶ 14, 17. Trump cannot seriously contend that the Agreement imposes an obligation to build on land that Crescent *did not own when it signed the Agreement*. Crescent could not (and did not promise to) build the Tower Property on land it did not own. It promised only that, if a building were built, it would meet the “Trump Standard.” Agmt. § 3.

In *Long Island Rail Road Co. v. Northville Industries Corp.*, the New York Court of Appeals considered and rejected the argument that a license agreement — there, for an oil pipeline — obligated the defendant to construct the pipeline. 41 N.Y.2d 455 (1977). The agreement “did not obligate Northville to construct and operate a pipeline along the railroad’s right of way. The agreement was purely and simply a *license arrangement*.” *Id.* at 461 (emphasis added). That is this Agreement: a license arrangement. To construe the Agreement otherwise “would be contrary to the obvious intention of the parties as expressed therein.” *Id.* at 461-62. Experienced real estate contract drafters know how to spell out an enforceable covenant to build; here, they spelled out only a license

arrangement.

The Agreement could not be more plain: there is no obligation to build, and if Crescent fails to build, Trump can terminate the license. The Complaint alleges that Crescent did not build. By the plain terms of the Agreement, that was not a breach.

B. Even if Crescent Did Breach, Plaintiff's Only Remedy is Termination of the Contract

Assume, *arguendo*, that failure to build is a "breach." The Complaint still fails to state a claim, because Trump's *only* remedy is termination of the Agreement.

The sole and exclusive remedy that the Agreement provides for failure to build within twenty-four months is "the absolute right to terminate this Agreement and the rights licensed hereunder" and "any other right or remedy of [Trump] hereunder." Agmt. § 8. Trump has terminated the Agreement, and Crescent does not oppose Trump's termination.

The only remaining remedy is "any other right or remedy of [Trump] hereunder." *Id.* "Hereunder" is the key defining and *limiting* word. What are the remedies set forth "hereunder" in the Agreement?³ Section 8(l) provides that "Licensor shall be entitled to receive, and Licensee shall pay to Licensor all Royalties that have accrued to Licensor prior to the date of termination. Royalties due to Licensor pursuant to this Section 8(l) shall be paid to Licensor on the delivery of possession of a Unit. . . . A Licensee [*sic*] Fee shall accrue to Licensor on date that a contract of sale or a lease of a Unit is entered into."

Because (as alleged in the Complaint) Crescent never built any building, it never sold any unit, never entered into a contract of sale or a lease of any unit, and never delivered possession of

³ Trump's only other remedy provision under the Agreement is in Section 10, which applies only where, after "expiration or termination" of the Agreement, Crescent fails to "discontinue any and all uses of the Trump Marks." In such case, Trump can seek injunctive relief "in addition to damages and all other applicable remedies." Although this provision is irrelevant here, it again demonstrates that the parties knew how to define remedies, and provide for damage remedies, when they wanted to.

any unit in the (non-existent) building. This provision is therefore inapplicable. Its presence, however, demonstrates the clear limitation on Trump's available remedies.

Exhibit A to the Agreement, "Royalties," underlines the point. It provides that Trump is to be paid \$1 million on the date Crescent receives an "initial construction permit." Agmt. Ex. A. But as alleged in the Complaint, Crescent never received a construction permit (nor did it receive demolition permits). This \$1 million payment is not triggered even by "permits for demolition required under a pre-development loan." *Id.* § 1(a). Therefore the \$1 million royalty does not apply. The Royalty Exhibit also provides for various royalties upon the sale of units, but again, no units were even built, much less sold. Once again, the bargained-for remedies are specific, and in this case, inapplicable.

Nowhere does the Agreement even hint at a damages remedy if a building is not constructed or the land sold. To the contrary, the Agreement expressly provides for a specific, limited remedy in that situation: termination of the Agreement, revocation of the license.

Trump is limited to the defined remedies in the Agreement. *See W.W.W. Assocs., Inc. v. Giancontieri*, 77 N.Y.2d 157, 159 (1990) (dismissing complaint and holding that where contract language has "unambiguous reciprocal cancellation provision," plaintiff's complaint fails where it seeks alternate damages in the way of specific performance). Those remedies are (1) termination, and (2) if applicable, royalties. Royalties are inapplicable and termination has already occurred.

The Agreement not only limited Trump's remedy to termination, but limited Crescent to termination as well. Section 9 provides that if, at any time before "70% of the Units of the Tower Property" are sold, Donald Trump dies, is incapacitated, is convicted of a felony, files for bankruptcy, or "is no longer a principal of Licensor [Trump]," (among other possibilities) Crescent's remedy is simple and limited: Crescent "shall have the right to terminate this Agreement." Agmt. § 9. Thus, if

the building were built and Crescent Heights invested significant resources marketing the Trump name, if the Trump name became worthless or tainted overnight, Crescent could not seek damages. Even if Donald Trump decided to sell his interest as a principal in Trump Marks, Crescent could not seek damages. Its only remedy—like Trump’s only remedy in this lawsuit—would be termination.

New York law is well-established: the parties are limited to remedies set forth in their agreement. In *Long Island Rail Road Co.*, for example, the Court of Appeals held that the railroad plaintiff “may not recover damages based on estimates of the compensation to which it would have been entitled had [defendant] exercised its privilege to operate a pipeline.” 41 N.Y.2d at 462. Instead, the Court limited plaintiff’s remedies to those expressly set forth in the agreement. *Id.*

The Court of Appeals decision in *Kenford Co. v. County of Erie*, 73 N.Y.2d 312 (1989) (“*Kenford II*”) is also particularly instructive. There, a real estate developer donated land to the County to develop a sports stadium, and purchased land near the proposed stadium. The County (unlike here) specifically agreed to commence construction of the stadium within 12 months, and to provide the developer a 40-year lease to operate the facility. When the County later terminated the contract, the developer sued, *inter alia*, for the lost appreciation of the land it owned adjacent to the proposed stadium. But the Court of Appeals dismissed the developer’s claim.

The Court held that “damages must have been brought within the contemplation of the parties as the probable result of a breach at the time of or prior to contracting.” *Id.* at 319 (collecting cases). The Court must determine “what liability the defendant fairly may be supposed to have assumed consciously, or to have warranted the plaintiff reasonably to suppose that it assumed, when the contract was made.” *Id.* In *Kenford II*, it was undisputed “that at the time the contract was executed, all parties thereto harbored an expectation and anticipation that the proposed domed stadium facility would bring about an economic boom in the County and would result in increased land values

and increased property taxes.” *Id.* Nevertheless, the Court held: “We cannot conclude . . . that this hope or expectation of increased property values and taxes necessarily or logically leads to the conclusion that the parties contemplated that the County would assume liability for Kenford’s loss of anticipated appreciation in the value of its peripheral lands if the stadium were not built.” *Id.* at 319-20. “Indeed, the provisions in the contract providing remedy for a default do not suggest or provide for such a heavy responsibility on the part of the County. In the absence of any provision for such an eventuality, *the commonsense rule to apply is to consider what the parties would have concluded had they considered the subject.*” *Id.* at 320 (emphasis in original). The Court concluded that nothing in the contract “contemplated that the County was undertaking a contractual responsibility for the lack of appreciation in the value of Kenford’s peripheral lands in the event the stadium was not built.” *Id.*

This case is considerably more straightforward, because, as reflected in the Agreement, the parties *did* “consider the subject.” Section 8(h) expressly provides that, if construction does not commence within twenty-four months, Trump can terminate the Agreement and revoke the license. Certainly nothing in the Agreement obliged Crescent to pay Trump for the appreciation of Crescent’s land if Crescent chose to sell the land instead of building a property. Agmt., § 8(h) These sophisticated parties *could* have bargained for such a clause; they didn’t. Nor did the Agreement oblige Crescent, if it did *not* build a building, to pay Trump for whatever profits it might have earned had Crescent acquired all the land, built a building, and sold units to third-parties. Again, these sophisticated parties could have bargained for a lost-profits or liquidated damages clause; they didn’t. What the Agreement *does* contemplate, however, is that if no building were constructed, Trump can terminate the Agreement and revoke the license. Nothing more.

As the Court of Appeals noted in *Kenford II*, “the constant refrain which flows throughout the legion of breach of contract cases dating back to the leading case of *Hadley v*

Baxendale . . . provides that damages which may be recovered by a party for breach of contract are restricted to those damages which were reasonably foreseen or contemplated by the parties during their negotiations or at the time the contract was executed. The evident purpose of this well-accepted principle of contract law is to limit the liability for unassumed risks of one entering into a contract and, thus, diminish the risk of business enterprise.” *Id.* at 321. Even if “Kenford obviously anticipated and expected that it would reap financial benefits from an anticipated dramatic increase in the value of its peripheral lands upon the completion of the proposed domed stadium facility,” that expectation did not “translate into cognizable breach of contract damages since there is no indication whatsoever that the County reasonably contemplated . . . that it was to assume liability for Kenford’s unfulfilled land appreciation expectations in the event that the stadium was not built.” *Id.* at 322.

Kenford II is directly on point: Even if Trump anticipated that it would receive various profits if Crescent managed to acquire title to land it did not fully own, secure permits, build a building, and sell units in that building, there is “no indication whatsoever that [Crescent] reasonably contemplated that it was to assume liability . . . in the event that the [building] was not built.” To the contrary, as the Agreement demonstrates, the parties contemplated that, if no building were built, Trump could back out, and terminate the license, which it has.

The Agreement is plain on its face. The breach of contract claim should be dismissed.

C. Plaintiff Cannot Prove Damages Under the “New Business” Rule

Even if Crescent breached (it did not), and even if Trump were not limited to the remedies set forth in the Agreement (it is so limited), Trump has failed to adequately plead damages under the new business rule. Because damages are an essential element of a contract claim, Trump’s contract claim again fails. *Alpha Auto Brokers, Ltd. v. Cont’l Ins. Co.*, 728 N.Y.S.2d 769, 770 (2d Dep’t 2001) (“In order to recover damages for breach of contract, the plaintiffs were required to prove

damages resulting from that breach, and their failure to do so was fatal to that cause of action”); *Reade v. Sullivan*, 18 N.Y.S.2d 841, 841-42 (1st Dep’t 1940) (dismissing complaint as “insufficient for failure properly to allege damage”).

Damages “must be capable of proof with reasonable certainty,” and “not be merely speculative, possible or imaginary.” *Kenford Co., Inc. v. Erie County*, 67 N.Y.2d 257, 261 (1986) (“*Kenford I*”). Where a new business is “seeking to recover for loss of future profits, a stricter standard is imposed for the obvious reason that there does not exist a reasonable basis of experience upon which to estimate lost profits with the requisite degree of reasonable certainty.” *Id.* Though *Kenford I* was a post-trial appeal, its rule has been repeatedly applied to dismiss complaints. See *Calip Dairies, Inc. v. Penn Station News Corp.*, 695 N.Y.S.2d 70, 71 (1st Dep’t 1999) (affirming dismissal of claim for lost profits “because the profits alleged to have been lost could not be determined with a reasonable degree of certainty, the parties’ agreement having been in effect for only one year”); *Robin Bay Assocs., LLC v. Merrill Lynch & Co.*, 07 Civ. 376, 2008 WL 2275902, at *8 (S.D.N.Y. June 3, 2008) (dismissing claim for loss of future profits where defendant allegedly failed to raise funds for construction of St. Croix resort, because the relevant industry is “still in its infancy and cannot provide a record of performance sufficient to project future profits”; “there is simply no basis for the court to determine lost profits at this point [motion to dismiss] or any other stage of the litigation because such a calculation would require a high degree of speculation”); *Nineteen New York Properties Ltd. P’ship v. 535 5th Operating Inc.*, 621 N.Y.S.2d 42, 43 (1st Dep’t 1995) (dismissing claim for lost profits because “Corn Club’s business was a start-up venture; the lost profits were too speculative”); see also *Awards.com, LLC v. Kinko’s, Inc.*, 834 N.Y.S.2d 147, 152-53 (1st Dep’t 2007) (holding that it “would be highly speculative and unreasonable to infer an intent to assume the risk of lost profits in what was to be a start-up venture”).

All of these decisions are rooted in the rationale of *Kenford I*, which found that though the experts' "massive" "quantity of proof" calculating damages "unquestionably, represents business and industry's most advanced and sophisticated method for predicting the probable results of contemplated projects" (in fact, the court said, it was "difficult to conclude what additional relevant proof could have been submitted"), "[n]evertheless [this] proof is insufficient to meet the required standard." *Kenford I*, 67 N.Y.2d at 261-62.

Under the new business rule, Trump's alleged damages (in addition to being precluded under the Agreement itself) are plainly too speculative to survive a motion to dismiss:

- As alleged in the Complaint, at the time of the Agreement, Crescent did not yet even own all the land on which any building was to be built. Compl. ¶ 17.
- Nowhere does the Complaint allege that even a single person had promised to buy or lease a condominium in the hypothetical, future building.
- Trump was only entitled to recover royalties on the sale of units to the extent the sales prices exceeded \$550 (U.S.) per "Residential Square Foot." Agmt. Ex. A.
- No building like it existed in the entire State of Israel. It was to be the "tallest structure in Israel, a 70 story first class residential condominium property containing approximately 786,000 square feet, including residential and retail space." Compl. ¶ 14. Thus, there was no track record of sales.

This was, to put it mildly, a new business. At the time of the Agreement, no one could even have known what type of development Crescent would get approval to build, much less that Crescent would sell "x" units to "y" purchasers in the future building. Trump has suffered no damages as a matter of law. The breach of contract claim should be dismissed.

II. THE GOOD FAITH AND FAIR DEALING CLAIM SHOULD BE DISMISSED

The good faith and fair dealing claim — a frequent refuge of a plaintiff with a weak breach of contract claim — is also barred as a matter of law. “[I]n appropriate circumstances an obligation of good faith and fair dealing on the part of a party to a contract may be implied and, if implied will be enforced.” *Murphy v. Am. Home Prods. Corp.*, 58 N.Y.2d 293, 304 (1983). However, the implied obligation is merely “in aid and furtherance of other terms of the agreement of the parties”; “[n]o obligation can be implied . . . which would be inconsistent with other terms of the contractual relationship.” *Id.* “[A] cause of action for breach of the implied duty of good faith and fair dealing” therefore “cannot be maintained” where the alleged breach is “intrinsically tied to the damages allegedly resulting from a breach of the contract.” *The Hawthorne Group, LLC v. RRE Ventures*, 776 N.Y.S.2d 273, 276 (1st Dep’t 2004) (internal citation omitted) (emphasis added).

Here, Trump’s “allegations of breach of the duty of good faith and fair dealing . . . presuppose that [Crescent] breached the express terms of the contract.” *Geler v. National Westminster Bank USA*, 770 F.Supp. 210, 215 (S.D.N.Y. 1991). “As a result, the . . . complaint could not, on any facts, entitle [Trump] to any relief to which [it] would not be entitled” under its breach of contract claim. *Id.*

As this Court held in *JRK Franklin, LLC v. 164 East 87th Street LLC*, “a party who asserts the existence of an implied-in-fact covenant bears a heavy burden, for it is not the function of the courts to remake the contract agreed to by the parties, but rather to enforce it as it exists.” No. 604313/05, 2006 WL 3361554, at *7 (N.Y.Sup. Oct. 3, 2006) (Cahn, J.) (internal citation omitted). Plaintiff must prove that a particular contract provision “impose[s] upon [defendant] a[] duty to affirmatively act, or refrain from acting,”—not merely that it would have been better or more sensible to include such a covenant, but rather that the particular unexpressed promise sought to be enforced is in fact implicit in the agreement viewed as a whole,” and that such obligation is not “inconsistent with

other terms of the contractual relationship.” *Id.* That Trump cannot do. As this Court held in *Horowitz v. New York*, the good faith claim should be dismissed because it is simply “redundant of the breach of contract claim.” No. 100382/03, 2003 WL 22287468, at *4, 5 (N.Y.Sup. Oct. 2, 2003) (Cahn, J.).

The parties expressly contemplated that a building might not be built. That is the premise of Section 8(h). If Crescent fails to begin construction within twenty-four months for any reason within its reasonable control, Trump can terminate. *Id.* It is hardly “bad faith” not to build when the Agreement expressly acknowledges that a building may not be built, for reasons either within, or beyond, Crescent’s control.

Having failed to identify an actionable breach, Trump cannot rewrite the Agreement through the back door of a good faith claim. *See supra.* These were highly sophisticated parties. They understood how to create an obligation to build, how to define breach, and which remedies to impose in case of breach. Had these parties desired to ensure that a building would be built or that Trump be compensated regardless of whether a building were built, they would have done so. Trump could have been paid “x million” dollars upon signing. Trump could have been paid liquidated damages if no building were built.

But the Agreement did no such thing. Indeed, such clauses make no sense in a *license* agreement. This was simply an agreement to license Trump’s name *if* the building were built. The building was not built, the license was not used. There is no bad faith claim here.

Nor does the line of cases that imply good faith to use reasonable efforts to exploit an exclusive license apply here. These cases—outside the real estate context—begin with *Wood v. Lucy, Lady Duff-Gordon*, 222 N.Y. 88, 91-92 (1917), which held that there is an implied “promise to use reasonable efforts” to exploit a licensing agreement, where (1) there was “exclusive privilege,” and

the licensor had “no right . . . to place her own indorsements or market her own designs except through the agency of the [licensee]”; (2) the licensor’s “sole compensation for the grant of an exclusive agency is to be [a portion] of all the profits resulting from the [licensee’s] efforts” and “[u]nless [licensor] gave his efforts, [licensee would] never get anything” and (3) such an implied promise was “the intent[] of the parties.” 222 N.Y. at 91-92. These cases do not control here, for a number of reasons. First, and most importantly, there can be no duty to exploit before the object of the agreement is created; in other words, once the building was constructed pursuant to the Trump Standard, Crescent Heights may have a duty to exploit the license, but certainly not at this early stage. *See Pharm. Horizons, Inc. v. Sterling Drug, Inc.*, 512 N.Y.S.2d 30, 31 (1st Dep’t 1987) (distinguishing *Wood v. Lady Duff-Gordon* as it “however, dealt with an endorsement of clothing, as opposed to the instant case which involved a non-existent type of product requiring research. The cases are not comparable, and *Wood* is therefore inapposite” and affirming dismissal of claim because “[i]n the absence of a triable issue of fact as to whether [defendant] created the product, and inasmuch as a product was never marketed, [defendant’s] obligation to pay royalties never ripened. Furthermore, because no royalties accrued, [defendant] maintained the right of termination.”). Second, and relatedly, the Licensing Agreement indicates that the parties intended that the duty to exploit would be triggered by the construction of the building. The initial payment would only be made once the construction permit was issued. Indeed, given the multiple contingencies in a real estate transaction, as laid out in the Complaint and the Agreement (*see supra* at 10, including acquiring the land, securing zoning variances, agreeing on plans and specifications, and securing construction permits), any other obligation would be foolhardy. Third, this was not an agreement where Trump’s “sole compensation” would be based on Crescent Heights’ efforts; the Agreement provided for an initial payment of \$1 million once the construction permit was issued. Finally, Trump retained considerable

liberty to use his mark worldwide; this was, by its terms, a “nonexclusive contract.” Agmt. § 1(b).

While there were some limitations on the nonexclusivity of the marks, *id.* § 1(g), these were minimal, and in no way placed Trump in the vulnerable position of the licensor in *Lady Duff-Gordon*.

The good faith and fair dealing claim must be dismissed.

III. THE “INDEMNIFICATION” CLAIM SHOULD BE DISMISSED

Plaintiff’s indemnification claim is perhaps its most bizarre. Section 11 of the Agreement provides:

Licensee hereby agrees to indemnify, defend, and hold free and harmless Licensor . . . from and against any and all causes of action (including, but not limited to, product liability actions, tort actions and actions of any Occupants) and reasonable out-of-pocket expenses, including, but not limited to, interest, penalties, attorney and third party fees and all reasonable amounts paid in the investigation, defense, and/or settlement of any claims, suits, proceedings, judgments, losses, damages, costs, liabilities and the like . . . which may be suffered, incurred or paid by [Licensor], arising in whole or in part, directly or indirectly, out of (i) Licensee’s or its agents, servants, employees or contractors acts or omissions in breach or default of this Agreement...

The claim fails for two independent reasons:

A. No Breach, No Indemnification

Additionally, there can be no indemnification unless there is a “breach or default” of the Agreement. As set forth *supra*, here there was no breach or default under the plain terms of the Agreement. The indemnification “claim” is thus no more than an attempt to piggyback upon another, failed claim. Because the breach claim fails, the indemnification “claim” also fails.

B. Indemnification Plainly Applies Only to Third-Party Suits Against Trump

First, the indemnification clause was plainly meant only to apply when *third parties* sued Trump as a result of malfeasance by Crescent. Instead, Trump now claims it is entitled to attorneys’ fees if it prevails in a lawsuit against Crescent arising out of Crescent’s breach. But had these parties desired a fee-shifting provision as between them, they would have written one into the

Agreement: *i.e.*, “In the event of litigation relating to this Agreement, the prevailing party shall be entitled to its reasonable attorneys’ fees and costs.” Or they could have written a one-way fee-shifting provision: “In the event Trump prevails in a litigation against Crescent for breach of the Agreement, Trump shall be entitled to its reasonable attorneys’ fees and costs.” The parties, however, did not write a fee-shifting provision into the Agreement.

In *Hooper Assocs., Ltd. v. AGS Computers, Inc.*, 74 N.Y.2d 487, 492-93 (1989), the New York Court of Appeals expressly rejected an indemnification claim for fees brought by the plaintiff in a breach of contract action. The Court first noted that indemnification provisions must be “strictly construed to avoid reading into it a duty which the parties did not intend to be assumed,” because an indemnification for litigation fees is “contrary to the well-understood rule that parties are responsible for their own attorney’s fees.” *Id.* at 491-92. To make use of an indemnification clause in such circumstances, a plaintiff must demonstrate that the indemnification provision was “unmistakably clear” that it covered indemnification in breach of contract actions, rather than indemnification relating to third-party claims. *Id.* at 492. In *Hooper*, the indemnification clause required defendant to indemnify plaintiff for “fees arising out of (i) [a]ny breach by AGS of any express or implied warranty hereunder and any express representation or provision hereof; [or] (ii) [t]he performance of any service to be performed hereunder. . . .” *Id.* at 490 n.1 (emphasis omitted). In considering whether this provision was “unmistakably clear,” the Court did *not* ask whether any of this language—for example indemnification for “performance of any service to be performed hereunder”—*could* apply to a breach of contract action. Instead, it asked whether any term is “exclusively or unequivocally referable to claims between the parties themselves or support[s] an inference that defendant promised to indemnify plaintiff for counsel fees in an action on the contract,” a significantly higher standard. *Id.* at 492.

Here, as in *Hooper*, the subjects of the indemnification clause are all “susceptible to third-party claims,” *id.*, and there is no indication whatsoever that the indemnification provision covers fees for contract claims by the Plaintiff.

Trump’s argument is all the more absurd in light of the obligation to “defend” Trump in Section 11. The presence of the word “defend” itself indicates that the clause is intended to apply where Trump is a defendant, not a plaintiff. And if Trump were correct that Crescent had the obligation both to “indemnify” and to pay the attorneys’ fees of Trump in an action against Crescent, then Section 11 would *also* require Crescent to “defend” Trump in an action against Crescent. How can Crescent “defend” Trump in an action against Crescent? Is Crescent obligated to hire lawyers to sue itself? As the *Hooper* court held, the “assumption of the defense has no logical application to a suit between the parties.” 74 N.Y.2d at 492-93.

Had a third-party sued Trump as a result of alleged malfeasance by Crescent, then the indemnification clause would be relevant. The claim here is a non-starter.

IV. THE UNJUST ENRICHMENT CLAIM SHOULD BE DISMISSED

The unjust enrichment claim is also no more than breach of contract revisited. And it is well-settled that, where there is a contract that governs the relationship at issue between parties, there can be no unjust enrichment claim.

This Court has repeatedly held, and it is a matter of black letter law, that where “there is a valid contract governing the subject matter of the parties’ dispute, recovery in quasi contract, for unjust enrichment, for events arising out of that same subject matter is precluded.” *Wilhelmina Artist Mgmt., LLC v. Knowles*, No. 601151/03, 2005 WL 1617178, at *10 (N.Y.Sup. June 6, 2005) (Cahn, J.); *Franco v. Guardian Life Ins. Co. of America*, No. 604302/2001, 2003 WL 230700, at *3 (N.Y.Sup. Jan. 22, 2003) (Cahn, J.) (dismissing unjust enrichment claim because the “parties’ rights

and liabilities are governed by the terms of an express contract”); *Horowitz v. New York Blood Ctr., Inc.*, No. 100382/03, 2003 WL 22287468, at *4 (N.Y.Sup. Oct. 2, 2003) (Cahn, J.) (same).

Here, there can be no dispute that there is a valid contract governing the subject matter of the dispute — the Tower Property, which, as defined in the Agreement, included both the land and the building to be constructed on the land. Agmt., 3rd Whereas Cl. If a building were not built, an eventuality that the Agreement specifically contemplates, then it is inevitable that the land would be resold. Since Trump did not bargain for any participation in the possible profits from a future sale of the land, there can be no claim for unjust enrichment. *See supra*.

Furthermore, and as an alternate ground to dismiss the unjust enrichment claim, “there can be no unjust enrichment claim where defendant had the right to act as it did pursuant to a contract between the parties.” *Horowitz*, 2003 WL 22287468, at *4. Here, as set forth in Section 8(h) of the Agreement, Crescent had the right not to construct a building, and if it did not construct a building, Trump had a right to terminate the Agreement and revoke the license.

The unjust enrichment claim should be dismissed.

V. THE FRAUDULENT CONVEYANCE AND WRONGFUL DISTRIBUTION CLAIMS SHOULD BE DISMISSED

Claims five through eight are asserted against the corporate defendant, Crescent, as well as the individual defendants. These claims fail because there is no underlying breach of contract, *see supra*. Crescent adopts all of the arguments as to claims five through eight asserted by counsel for the individual defendants in their brief, which is hereby incorporated by reference.

CONCLUSION

For all of the foregoing reasons, all of the claims in the Complaint against Crescent Heights Diamond LLC should be dismissed in their entirety.

Dated: June 27, 2008
New York, New York

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
TRUMP MARKS LLC, :
 :
 Plaintiff, :
 :
 -against- :
 :
 CRESCENT HEIGHTS DIAMOND, LLC, SONNY :
 KAHN, an individual, RUSSELL W. GALBUT, an :
 Individual, BRUCE A. MENIN, an individual, each :
 said individual being a member of Crescent Heights :
 Diamond, LLC, and THOSE UNKNOWN :
 INDIVIDUALS AND/OR UNKNOWN ENTITIES :
 CONSTITUTING THE REMAINING MEMBERS :
 OF CRESCENT HEIGHTS DIAMOND, LLC, :
 :
 Defendants. :
-----X

Index No. 601372/08
(Cahn, J.)

**AMENDED
NOTICE OF
CROSS-MOTION**

PLEASE TAKE NOTICE, that upon the attached affidavit of Nava Sirkis, sworn to on August 20, 2008, the accompanying affirmation of Stephen B. Meister, Esq., dated August 22, 2008, and the exhibits thereto, the accompanying Memorandum of Law, and all prior pleadings and proceedings heretofore had herein, plaintiffs Trump Marks LLC ("Plaintiff") will cross-move in the Supreme Court of the State of New York, County of New York, Part 49, Room 232, at the Courthouse located at 60 Centre Street, New York, New York, on September 25, 2008, at 9:30 a.m., or as soon thereafter as counsel can be heard, for an order (1) pursuant to CPLR 1024, granting Plaintiff permission to amend the complaint to add Crescent Heights Diamond Holdings, LLC and CH International Holdings, LLC as defendants in this action, and (2) awarding Plaintiff such other and further relief as the Court deems just and proper, including but

not limited to, awarding Plaintiff its costs and disbursements (including attorneys' fees) incurred in this action.

Dated: New York, New York
August 26, 2008

MEISTER SEELIG & FEIN LLP



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