

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

1  
2 ANSE, INC. d/b/a/ NEVADA STATE  
3 PLASTERING

4 Petitioner,

5 vs.

6 JUDGE ALLAN R. EARL, EIGHTH  
7 JUDICIAL DISTRICT COURT OF CLARK  
8 COUNTY, NEVADA

9 Respondent,

10 GLENN HAYWARD; FRED W.  
11 SCHAEFER; DONALD T. BARSKY;  
12 SHELDON FACTOR; JOHN P. FRIAR;  
13 NORMAN YORK; BERNARD  
14 BRONSTEIN; D.J. ADDONIZIO, et al.

15 Real Parties In Interest.

) CASE NO.: 51049

) District Court Case No.: A470159

) Department: XIX

) [Currently being heard in Dept. XXII]

) **PROPOSED JOINDER TO ANSE D/B/A  
NEVADA STATE PLASTERING'S  
PETITION FOR WRIT OF  
MANDAMUS AND AUGMENTATION  
OF RECORD**

16 **PROPOSED JOINDER TO PETITION FOR WRIT OF MANDAMUS**  
17 **AND AUGMENTATION OF RECORD**

18 ROBERT C. CARLSON, ESQ.  
19 Nevada Bar No. 8015

20 MEGAN K. DORSEY, ESQ.  
21 Nevada Bar No. 6959

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23 & HALUCK, LLP  
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27 Attorneys for Defendant

28 DEL WEBB COMMUNITIES, INC., an  
Arizona Corporation; DEL E. WEBB  
DEVELOPMENT CO., L.P., A Delaware  
Limited Partnership, DW HOMEBUILDING  
CO., an Arizona Corporation; DEL WEBB  
CORPORATION, a Delaware Corporation;  
PULTE HOME CORPORATION, a Michigan  
Corporation; PULTE HOMES, INC., a  
Michigan Corporation

THE HONORABLE ALLAN R. EARL  
DEPARTMENT XIX  
EIGHTH JUDICIAL DISTRICT COURT OF  
CLARK COUNTY, NEVADA  
Complex Litigation Center  
333 South Sixth Street  
Las Vegas, NV 89101  
(702) 671-4450  
Respondent

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1                   **PROPOSED JOINDER TO PETITION FOR WRIT OF MANDAMUS**  
2                   **AND AUGMENTATION OF RECORD**

3                   **COMES NOW**, Defendant DEL WEBB COMMUNITIES, INC., an Arizona  
4 Corporation; DEL E. WEBB DEVELOPMENT CO., L.P., A Delaware Limited Partnership,  
5 DW HOMEBUILDING CO., an Arizona Corporation; DEL WEBB CORPORATION, a  
6 Delaware Corporation; PULTE HOME CORPORATION, a Michigan Corporation; PULTE  
7 HOMES, INC., a Michigan Corporation [hereinafter collectively referred to as, "Del Webb"],  
8 by and through Robert C. Carlson, Esq. and Megan K. Dorsey, Esq. their attorneys, and hereby  
9 submits this PROPOSED JOINDER TO WRIT OF MANDAMUS AND AUGMENTATION  
10 OF RECORD.

11                   Through this Joinder Del Webb adopts the arguments and recitation of authority filed in  
12 support of Petitioner ANSE d/b/a NEVADA STATE PLASTERING'S [hereinafter referred to  
13 as "ANSE"] Writ of Mandamus. Del Webb seeks the same relief through this Joinder, which  
14 was requested within Petitioner ANSE'S Writ of Mandamus. Del Webb, in joinder, also  
15 supplements the arguments and recitation of authority filed in support of ANSE's Petition and  
16 respectfully requests to augment the record with additional documentation.

17                   Del Webb joined in the underlying Motion for Partial Summary Judgment at issue filed  
18 by ANSE on November 15, 2007 and heard on December 17, 2007 by Respondent Court. (*See*,  
19 Del Webb's Joinder to ANSE, Inc. d/b/a Nevada State Plastering's Motion for Partial Summary  
20 Judgment Regarding Chapter 40 Application, attached to proposed supplement as Exhibit "1").  
21 Del Webb also filed their own Motion for Partial Summary Judgment regarding the affect of  
22 this Court's decision in *Westpark Owners' Ass'n v. Dist. Ct.*, 123 Nev. Adv. Op. No. 37 (2007)  
23 on the present case on December 3, 2007. (*See*, Del Webb's Motion for Partial Summary  
24 Judgment Regarding Chapter 40 Application, attached to proposed supplement as Exhibit "2").  
25 This Motion was fully briefed and argued. (*See*, Plaintiffs' Opposition to Defendant Del  
26 Webb's Motion for Partial Summary Judgment Regarding Chapter 40 Application; Request for  
27 the Court to take Judicial Notice; Declaration of L.G. Strickland, in Support Thereof, attached  
28 to proposed supplement as Exhibit "3"; Del Webb's Reply in Support of its Motion for Partial

1 Summary Judgment, attached to proposed supplement as Exhibit "4"; Transcript of January 8,  
2 2008, attached to proposed supplement as Exhibit "5"; and Order on Del Webb's Motion,  
3 attached to proposed supplement as Exhibit "6").

4 Del Webb respectfully requests the right to join in the Petition for Writ of Mandamus  
5 and further requests the right to present oral argument at the time of hearing in support of said  
6 Writ.

7 DATED this 21<sup>st</sup> day of March, 2008.

8 KOELLER, NEBEKER, CARLSON  
& HALUCK, LLP

9 By:   
10

11 ROBERT C. CARLSON, ESQ.

12 Nevada Bar No. 8015

13 MEGAN K. DORSEY, ESQ.

14 Nevada Bar No. 6959

15 300 South Fourth Street, Suite 500

16 Las Vegas, NV 89101

17 Attorneys for Defendant

18 DEL WEBB COMMUNITIES, INC., an Arizona

19 Corporation; DEL E. WEBB DEVELOPMENT

20 CO., L.P., A Delaware Limited Partnership, DW

21 HOMEBUILDING CO., an Arizona Corporation;

22 DEL WEBB CORPORATION, a Delaware

23 Corporation; PULTE HOME CORPORATION, a

24 Michigan Corporation; PULTE HOMES, INC., a

25 Michigan Corporation

26 **SUPPLEMENT OF MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. STATEMENT OF THE CASE AND AUGMENTATION OF THE**  
28 **RECORD**

29 The underlying action involves alleged construction defects in over one thousand single  
30 and multi-family homes in the Sun City Summerlin community located in Las Vegas, Nevada.

1 The Sun City Summerlin project was developed by Del Webb between the years 1988 and  
2 2000. On July 3, 2003, Plaintiffs filed a Complaint against Del Webb alleging various  
3 construction defects within the single-family homes at Sun City Summerlin. The Complaint  
4 sought class action status of the entire Sun City Summerlin Community consisting of 7,778  
5 homes. After briefing and evidentiary hearings, the trial Court denied class action status based  
6 in part upon the *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837 (2005) decision. (See,  
7 Court's Order on Motion for Class Certification, attached to proposed supplement as Exhibit  
8 "7").

9 Del Webb filed a Third-Party Complaint on January 26, 2005 and a subsequent  
10 Amendment thereto on February 14, 2005, in which it specifically named, among other  
11 subcontractors who had performed work at the project and whose scope of work was implicated  
12 by Plaintiff's Complaint, Petitioner, ANSE. Third-Party Defendant ANSE filed its Answer to  
13 the First-Amended Third-Party Complaint on March 29, 2005.

14 The operative Complaint in this case is Plaintiffs' Sixth Amended Complaint. After  
15 class certification was not granted, Plaintiffs were allowed -- over Del Webb's objection -- to  
16 join individual homeowners. Del Webb objected to the joinders in early 2006 and thereafter as  
17 these newly named Plaintiffs had not satisfied the pre-litigation process of N.R.S. 40.600 *et*  
18 *seq.*, as then enacted which included the right to repair. (See, Del Webb's Opposition to  
19 Plaintiffs' Motion for Leave to File a Fourth Amended Complaint and Amend Case Caption,  
20 attached to proposed supplement as Exhibit "8"). There are currently a total of one thousand  
21 two hundred ninety-five (1,295) homes currently at issue in this litigation. Of the 1,295 homes  
22 at issue in this litigation, seven hundred twenty nine (729) of those have been resold to  
23 subsequent purchasers since their original purchase from Del Webb. These 729 properties are  
24 not "new" as defined in *Westpark and Pankopf v. Peterson*, 124 Nev. Adv. Op. No. 4, 175 P.3d  
25 910 (2008) and should not be allowed to recover for construction defects under N.R.S. 40.600 *et*  
26 *seq.*

27 Petitioner and Third-Party Defendant, ANSE, filed their Motion for Partial Summary  
28 Judgment Regarding application of N.R.S. 40.600 *et seq.* in the District Court on November 15,

1 2007. On November 27, 2007, Del Webb joined in the underlying Motion (*See*, Joinder,  
2 attached to proposed supplement as Exhibit "1"), and filed its own Motion for Partial Summary  
3 Judgment regarding application of N.R.S. 40.600 *et seq.* on December 3, 2007. (*See*, Del  
4 Webb's Motion for Partial Summary Judgment Regarding Chapter 40 Application, attached  
5 hereto as Exhibit "2"). Del Webb and Petitioner ANSE asserted within their respective Motions  
6 that the benefits afforded homeowners pursuant to N.R.S. 40.600 *et seq.* do not apply to the 729  
7 homes that have been sold to subsequent purchasers, as those homes no longer qualify as "new  
8 residences" under this Honorable Court's rulings in *Westpark Owners' Ass'n v. Dist. Ct.*, 123  
9 Nev. Adv. Op. No. 37 (2007). (*See*, Del Webb's Motion for Partial Summary Judgment  
10 Regarding Chapter 40 Application, at 4:16-22, attached hereto as Exhibit "2"). It is to be noted  
11 that Del Webb was not seeking complete dismissal of the claims regarding these 729 homes, but  
12 merely asserted that the specific rights and special remedies afforded under N.R.S. 40.600 *et*  
13 *seq.* are not available to the subsequent purchasers of these homes under the *Westpark* decision.  
14 *Id* at 6:11-17.

15 Plaintiffs filed an Opposition to Del Webb's Motion for Partial Summary Judgment with  
16 the District Court on December 20, 2008. (*See*, Plaintiffs' Opposition to Defendant Del Webb's  
17 Motion for Partial Summary Judgment Regarding Chapter 40 Application; Request for the  
18 Court to take Judicial Notice; Declaration of L.G. Strickland, in Support Thereof, attached to  
19 proposed supplement as Exhibit "3"). Del Webb subsequently filed a Reply brief on January 3,  
20 2008. (*See*, Del Webb's Reply in Support of its Motion for Partial summary Judgment, attached  
21 to proposed supplement as Exhibit "4").

22 On December 17, 2007, the District Court held a hearing on Petitioner ANSE's Motion  
23 before the Honorable Allan R. Earl. At that hearing, the District Court misapprehended the  
24 requested relief. The District Court expressed its concern that an application of *Westpark* to the  
25 facts of the instant case would result in a finding that subsequent purchasers have absolutely no  
26 rights whatsoever against a homebuilder.

27 After full briefing, on January 8, 2008, Del Webb's Motion for Partial Summary  
28 Judgment was heard by the District Court. (*See*, Transcript of January 8, 2008, attached to

1 proposed supplement as Exhibit "5"). The relief requested was that the subsequent purchasers  
2 still would have rights against a homebuilder, but those rights would not include the special  
3 rights and specific remedies of N.R.S. 40.600 *et seq.* (i.e. attorneys fees, costs and interest).  
4 The District Court in Judge Allan Earl again denied the rationale and reasoning of *Westpark* and  
5 denied the motion.

6 Despite the fact that neither Del Webb nor Petitioner ANSE were asserting that a  
7 subsequent purchaser was completely stripped of their ability to sue a homebuilder after  
8 *Westpark*, and went out of their way to recognize that subsequent purchasers still had claims  
9 under the common law against a homebuilder<sup>1</sup>, the District Court denied the Motion, denied Del  
10 Webb's and Petitioner's request for a stay, and refused to apply the courts decision in *Westpark*  
11 to this case.

12 After the District Court's rulings at the December 17, 2007 and January 8, 2009  
13 hearings, Orders concerning those rulings was issued by the District Court on January 9, 2008.  
14 (See, District Court's Orders dated January 9, 2008, attached to proposed supplement as Exhibit  
15 "6"). It is these Orders -- which Petitioner ANSE's Writ of Mandamus, and Del Webb, through  
16 this Joinder and Supplemental Points and Authorities -- requests this Honorable Court to  
17 review.

## 18 ARGUMENT

### 19 **II. BY AN ABUSE OF DISCRETION IN REFUSING TO APPLY** 20 ***WESTPARK* THE DISTRICT COURT PROVIDES PLAINTIFF** 21 **HOMEOWNERS STATUTORY BENEFITS TO WHICH THEY** 22 **ARE NOT ENTITLED.**

#### 23 **A. The Homes of 729 Joinder Plaintiffs Are Not "New** 24 **Residences" Under the *Westpark* Decision and the Court's** 25 **Recent Decision in *Pankopf v. Peterson*.**

26 The benefits afforded homeowners pursuant to N.R.S. 40.600 *et seq.* only apply to  
27 defects in the construction of a "new residence" or for defects in the "alteration of or addition to  
28

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<sup>1</sup> (See, Transcript of December 17, 2007 hearing, at 10:1-7; 13:1-3, attached to proposed supplement as Exhibit "11").

1 an existing residence.” See, N.R.S. 40.615. The homes of 729 of the Joinder Plaintiffs  
2 currently involved in this case are not “new residence[s]” as this Court interpreted that phrase in  
3 *Westpark*. Real Parties in Interest and Respondent Court have attempted to affix a limitation on  
4 this Court’s interpretation of that phrase that does not logically follow from this Court’s  
5 reasoning or subsequent opinions. *Westpark* is not limited solely to its facts; i.e. condominium  
6 conversions. *Westpark* specifically applies to the subsequent purchasers of any type of dwelling.

7 This interpretation was recently illuminated in *Pankopf v. Peterson*, 124 Nev. Adv. Op.  
8 No. 4, 175 P.3d 910 (2008). It is of note that the *Pankopf* opinion was released on February 7,  
9 2008, which was after Respondent Court rendered its decision on Del Webb and ANSE’s  
10 Motions. This Court’s opinion in *Pankopf* supports Del Webb and ANSE’s interpretation of  
11 *Westpark*’s “new residence” within their Motions for Partial Summary Judgment and is contrary  
12 to Respondent Court’s ruling.

13 In *Pankopf*, this Court addressed the meaning of the phrase “new residence” as  
14 interpreted by the *Westpark* decision. The *Pankopf* decision provides,

15 We recently addressed the meaning of the term “new residence” as defined by  
16 NRS Chapter 40 in *Westpark Owners’ Ass’n v. District Court*. Specifically, we  
17 held that “a residence is ‘new’ when it is a product of original construction that  
18 has been unoccupied as a dwelling from the completion of its construction until  
19 the point of sale.”

20 See, *id.* at 913. The import of the Court’s discussion of *Westpark* in *Pankopf* is certain. N.R.S.  
21 40.600 *et seq.* is specifically limited to claims brought by original purchasers of a home. The  
22 *Pankopf* Court went on to state,

23 [t]he parties also dispute whether the subsections of NRS 40.615 apply here.  
24 However, because the residence in this case (*Pankopf*) does not constitute a ‘new  
25 residence,’ neither the portion of NRS 40.615, which defines a construction defect  
26 as a ‘defect . . . of a new residence,’ nor its subsections, apply to the instant  
27 controversy.”

28 See, *id.*, at fn. 15.

In *Pankopf*, property owners brought an action against a residential home designer for “. . .  
alleged mistakes in his plans drawn to construct a personal residence.” See, *id.*, at 911. The  
property owner’s Complaint against the designer alleged causes of action sounding in Breach of

1 an Oral Contract; Negligence and Incompetence; and Professional Negligence. In turn, the  
2 designer filed a Motion to Dismiss pursuant to NRCP 12(b)(5) arguing that the property owners  
3 failed to comply with the pre-litigation requirements of N.R.S. 40.600 *et seq.* *See, id.*

4 The facts of *Pankopf* are important, because that case did not concern a condominium  
5 conversion as was the factual backdrop of *Westpark*. Respondent Court provided in its ruling  
6 on Del Webb's Motion for Partial Summary Judgment,

7 I believe that the *Westpark* case is good law but is limited to similar facts and  
8 circumstances that deal with conversions of apartments to condominiums or  
9 condominiums that were literally used as apartments before they were put up for  
sale to the general public.

10 (*See*, Transcript of January 8, 2008, at 33:2 – 33:8, attached to proposed supplement as Exhibit  
11 “5”). This Court did not mention or even allude to any issues concerning apartments or  
12 condominium conversions within their analysis of whether the property at issue was a “new  
13 residence” under N.R.S. 40.600 *et seq.* in *Pankopf*. The property was simply analyzed under  
14 the *Westpark* standard, “a residence is ‘new’ when it is a product of original construction that  
15 has been unoccupied as a dwelling from the completion of its construction until the point of  
16 sale.”

17 *Pankopf* confirms Del Webb and ANSE's position regarding the applicability of  
18 *Westpark* to the current case and solidifies the fact that the 729 subsequent purchasers cannot be  
19 afforded the rights and benefits of N.R.S. 40.600 *et seq.* (i.e. attorney fees, costs and interest)

20 **B. Respondent Court Abused Its Discretion in Denying Del Webb  
21 and ANSE's Motions for Partial Summary Judgment Even  
Without the Aid of the *Pankopf* Decision.**

22 As stated above, the *Pankopf* opinion was issued on February 7, 2008 after Respondent  
23 Court's decision on Del Webb [January 8, 2008] and ANSE's [December 17, 2007] Motions for  
24 Partial Summary Judgment. Nonetheless -- even without the further guidance provided by  
25 *Pankopf* -- Respondent Court abused its discretion when deciding the Motions at issue under  
26 *Westpark*. An En Banc panel of this Court issued the *Westpark* decision. Nowhere within that  
27  
28

1 decision is there any language limiting the “new residence” analysis under N.R.S. 40.600 *et seq.*  
2 to condominium conversions.

3 Prior to this Court’s decision in *Westpark*, District Courts in Nevada were charged with  
4 the task of interpreting the exact meaning of the phrase, “new residence.” As this Court  
5 acknowledged in *Westpark*, the Nevada Legislature had provided no guidance in defining the  
6 meaning of “new residence” stating, “when the legislature has addressed a matter with  
7 ‘imperfect clarity,’ it becomes the responsibility of this Court to discern the law.” *See, id.*, at  
8 427.

9 After determining that the phrase “new residence” was ambiguous and “subject to more  
10 than one reasonable interpretation,” this Court gave definition to that phrase stating, “in light of  
11 the spirit and the policy of NRS Chapter 40, we conclude that a residence is ‘new’ when it is a  
12 product of original construction that has been unoccupied as a dwelling from the completion of  
13 its construction until the point of sale.” *Id* at 428-9.

14 This Court’s interpretation of the NRS Chapter 40 statutory scheme in *Westpark*  
15 provides the District Courts with a two-prong analysis in determining if the benefits of N.R.S.  
16 40.600 *et seq.* are applicable to a given circumstance. As stated by this Court, “for NRS  
17 Chapter 40 remedies to apply, affected dwellings must be ‘residences’ under NRS 40.630 and  
18 be either ‘new’ or include newly completed improvements under NRS 40.615.” *See, id.*, at 424.

19 In the instant matter, the units at issue here are “residences” for N.R.S. 40.600 *et seq.*  
20 purposes. In addition, the fact that these homes have been or were occupied for several years  
21 prior to their subsequent resale(s) after the initial purchase from Del Webb, as new, precludes  
22 them from being considered “new residences” under *Westpark*. As an example, the home  
23 located at 2700 Showcase Drive was originally purchased from Del Webb on August 10, 1990.  
24 It was held by this original homeowner until April 16, 1998, when it was then resold to the  
25 current owner, a period of nearly eight years. Clearly, under *Westpark*, this home cannot be  
26  
27  
28

1 considered a "new residence" as that term is defined in that case. It is an eighteen-year-old  
2 home that is currently owned by a subsequent purchaser.<sup>2</sup>

3 The residence located at 8708 Shorecliff Dr. is another example of the type of concerns  
4 raised by this Court in *Westpark*. This residence was originally purchased from Del Webb as  
5 new on May 31, 1990. Since that time it has subsequently been resold on four occasions, with  
6 the most recent one occurring on or about August 17, 2005 [which is during the current  
7 lawsuit]. This home is not a "new residence," as defined by *Westpark*. The Clark County  
8 Assessor's individual pages on each of the 729 homeowners' residences at issue confirm this  
9 fact as to each residence. All were submitted in support of the underlying Motions.

10 If the District Court's Orders denying Del Webb and ANSE's Motions for Partial  
11 Summary Judgment are permitted to stand, the spirit and the policy of N.R.S. 40.600 *et seq.* will  
12 be damaged. The clear analysis and holdings within this Court's *Westpark* [and *Pankopf*]  
13 decisions will be abrogated by allowing Plaintiff homeowners, as subsequent purchasers, to reap  
14 the benefits of a statutory scheme, that was not intended to be available to them. These  
15 Plaintiffs, despite arguments to the contrary, are not without a remedy, as they may be able to  
16 bring a timely suit against a developer under common law causes of action. They are simply  
17 foreclosed from obtaining statutory benefits that were meant for a different class of ownership.  
18 Moreover, permitting these homeowners to assert the protections and benefits of N.R.S. 40.600  
19 *et seq.* would yield the absurd results that so concerned this Court in *Westpark*.

### 20 III. CONCLUSION

21 While both *Westpark* and now *Pankopf* have presented the opportunity to expand the  
22 reach and applicability of N.R.S. 40.600 *et seq.*, this Court has not done so. Respondent  
23 Court's interpretation of Nevada law in its ruling and Order on Del Webb and ANSE's Motions,  
24 is contrary to this Court's decisions in those two cases. The *Pankopf* case has solidified the fact  
25 that the *Westpark* analysis is not limited to solely factual scenarios concerning condominium  
26 conversions and applies to the current context.

27

28 <sup>2</sup> Issues as to the definition of "willful misconduct" and its impact on the statute of limitation and statute of repose

1 For the foregoing reasons – and those contained within ANSE’s Petition for Writ of  
2 Mandamus – Del Webb respectfully requests that the extraordinary relief requested by granted.

3 DATED this 21<sup>st</sup> day of March, 2008.

4 Respectfully submitted,

5 KOELLER, NEBEKER, CARLSON  
6 & HALUCK, LLP

7 By:   
8 ROBERT C. CARLSON, ESQ.

9 Nevada Bar No. 8015  
10 MEGAN K. DORSEY, ESQ.  
11 Nevada Bar No. 6959  
12 300 South Fourth Street, Suite 500  
13 Las Vegas, NV 89101

14 Attorneys for Defendant  
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20 Corporation; PULTE HOME CORPORATION, a  
21 Michigan Corporation; PULTE HOMES, INC., a  
22 Michigan Corporation

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28 are pending and not part of this Petition.

**AFFIDAVIT OF MEGAN K. DORSEY, ESQ.**

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STATE OF NEVADA        )  
                                  ) ss:  
COUNTY OF CLARK        )

I, MEGAN K. DORSEY, ESQ., being first duly sworn on oath, deposes and states under penalty of perjury that the following assertions are true and correct of my own personal knowledge:

1. I am an attorney duly licensed to practice law in the State of Nevada and am a partner of the law firm KOELLER, NEBEKER, CARLSON & HALUCK, LLP, attorneys for DEL WEBB COMMUNITIES, INC., an Arizona Corporation; DEL E. WEBB DEVELOPMENT CO., L.P., A Delaware Limited Partnership, DW HOMEBUILDING CO., an Arizona Corporation; DEL WEBB CORPORATION, a Delaware Corporation; PULTE HOME CORPORATION, a Michigan Corporation; PULTE HOMES, INC., a Michigan Corporation [hereinafter referred to collectively as "Del Webb"]. This Affidavit is submitted in support of the PROPOSED JOINDER TO ANSE D/B/A NEVADA STATE PLASTERING'S PETITION FOR WRIT OF MANDAMUS AND AUGMENTATION OF THE RECORD.

2. I have discussed this PROPOSED JOINDER TO ANSE D/B/A NEVADA STATE PLASTERING'S PETITION FOR WRIT OF MANDAMUS AND AUGMENTATION OF THE RECORD with our clients and have obtained authorization to file the same.

3. ANSE's Petition for Writ of Mandamus and this Proposed Joinder are being pursued because the Eighth Judicial District Court of Clark County, Nevada denied Motions for Partial Summary Judgment in contravention of this Court's decision in *Westpark Owners' Ass'n v. Dist. Ct.*, 123 Nev. Adv. Op. No. 37 (2007).

4. A true and correct copy of Del Webb's Joinder to ANSE, Inc. d/b/a Nevada State Plastering's Motion for Partial Summary Judgment Regarding Chapter 40 Application is attached to this proposed supplement as Exhibit "1".

5. A true and correct copy of Del Webb's Motion for Partial Summary Judgment Regarding Chapter 40 Application is attached to this proposed supplement as Exhibit "2".

1 6. A true and correct copy of Plaintiffs' Opposition to Defendant Del Webb's  
2 Motion for Partial Summary Judgment Regarding Chapter 40 Application; Request for the  
3 Court to take Judicial Notice; Declaration of L.G. Strickland, in Support Thereof is attached to  
4 this proposed supplement as Exhibit "3".

5 7. A true and correct copy of Del Webb's Reply in Support of its Motion for Partial  
6 Summary Judgment is attached to this proposed supplement as Exhibit "4".

7 8. A true and correct copy of the Transcript of the January 8, 2008 hearing is  
8 attached to this proposed supplement as Exhibit "5".

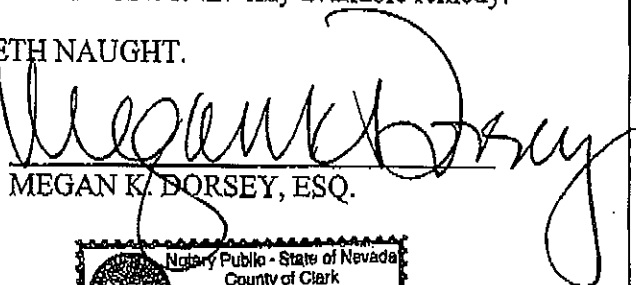
9 9. A true and correct copy of the Order on Del Webb's Motion for Partial Summary  
10 Judgment is attached to this proposed supplement as Exhibit "6".

11 10. A true and correct copy of the Court's Order on Motion for Class Certification is  
12 attached to this proposed supplement as Exhibit "7".

13 11. A true and correct copy of Del Webb's Opposition to Plaintiffs' Motion for  
14 Leave to File a Fourth Amended Complaint and Amend Case Caption is attached to this  
15 proposed supplement as Exhibit "8".

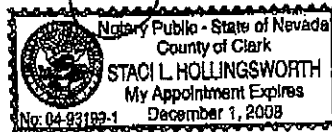
16 12. The Petitioners and Del Webb have no plain, speedy, or adequate remedy in the  
17 ordinary course of the law. As such, a Writ of Mandamus is the only available remedy.

18 FURTHER YOUR AFFIANT SAYETH NAUGHT.

19   
20 MEGAN K. DORSEY, ESQ.

21 SUBSCRIBED and SWORN to before  
22 me this 21<sup>st</sup> day of March, 2008.

23   
24 NOTARY PUBLIC



25  
26  
27  
28