

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

2
3 TOWER HOMES, LLC, a Nevada
4 limited liability company;

5 Plaintiff,

6 vs.

7
8 WILLIAM H. HEATON, individually;
9 NITZ, WALTON & HEATON, LTD.,
10 a domestic professional corporation;
11 and DOES I through X, inclusive,

12 Defendants.
13

CASE NO.: 65755

Electronically Filed
Feb 05 2015 10:41 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

14 **APPELLANT TOWER HOMES, LLC'S APPENDIX**

15 **VOLUME 1**

16
17 Appellant, Tower Homes, LLC, by and through its attorneys of record, PRINCE |
18 KEATING, hereby concurrently files this Appendix in supplement to its Opening Brief.
19 This Appendix contains true and accurate portions of the district court record and other
20 sources that are essential to understand the matters set forth in the aforementioned
21 Petition.
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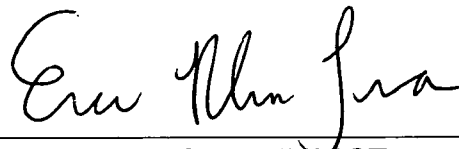
CHRONOLOGICAL APPENDIX OF DOCUMENTS

DOCUMENT	DATE	PAGE
Complaint	06/12/2012	Vol. 1 AA1-10
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	07/19/2012	Vol. 1 AA11-173 Vol. 2 AA174-196
Plaintiff Tower Homes, LLC's Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	09/04/2012	Vol. 2 AA197-379 Vol. 3 AA380-424
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Reply to Opposition to Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	09/19/2012	Vol. 4 AA425-465
Order Regarding Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	11/01/2012	Vol. 4 AA466-468
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Renewed Motion to Dismiss	07/26/2013	Vol. 4 AA469-600
Plaintiff Tower Homes, LLC's Opposition to Defendants' Renewed Motion to Dismiss	08/16/2013	Vol. 5 AA601-704
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Reply to Plaintiff's Opposition to Renewed Motion to Dismiss	08/20/2013	Vol. 5 AA705-713
Order Denying Defendants' Renewed Motion to Dismiss	09/04/2013	Vol. 5 AA714-715
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Motion for Summary Judgment	02/18/2014	Vol. 5 AA716-846
Plaintiff Tower Homes, LLC's Opposition to Defendants' Motion for Summary Judgment	03/07/2014	Vol. 6 AA847-868
Defendants William Heaton and the law firm of Nitz, Walton & Heaton, Ltd.'s Reply to Plaintiff's Opposition to Motion for Summary Judgment	03/14/2014	Vol. 6 AA869-891

1	Defendants William Heaton and the law	03/21/2014	Vol. 6 AA892-899
2	firm of Nitz, Walton & Heaton, Ltd.'s		
3	Supplemental Exhibit in Support of Motion		
4	for Summary Judgment		
5	Discovery Commissioner's Reports and	03/19/2014	Vol. 6 AA900-906
6	Recommendations on Plaintiff's Motion to		
7	Compel		
8	Minute Order Granting Defendants William	03/25/2014	Vol. 6 AA907-908
9	Heaton and the law firm of Nitz, Walton &		
10	Heaton, Ltd.'s Motion for Summary		
11	Judgment		
12	Order Granting Defendants' Motion for	05/15/2014	Vol. 6AA909-915
13	Summary Judgment		
14	Notice of Entry of Order	05/15/2014	Vol. 6 AA916-924
15	Notice of Appeal	05/28/2014	Vol. 6 AA925-926
16	Transcript of Proceedings on Defendants	12/02/2014	Vol. 6 AA927-948
17	William Heaton and the law firm of Nitz,		
18	Walton & Heaton, Ltd.'s Motion for		
19	Summary Judgment heard on March 21,		
20	2014		

DATED this 4th February, 2015.

PRINCE | KEATING



DENNIS M. PRINCE

Nevada Bar No. 5092

ERIC N. TRAN

Nevada Bar No. 11876

9130 West Russell Road, Suite 200

Las Vegas, Nevada 89148

Attorneys for Appellant

Tower Homes, LLC

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

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4 limited liability company;

CASE NO.: 65755

5 Plaintiff,

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10 a domestic professional corporation;
11 and DOES I through X, inclusive,

12 Defendants.
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14 **APPELLANT TOWER HOMES, LLC'S APPENDIX**

15 **VOLUME 1 (PART 1) OF 4**

16
17 Appellant, Tower Homes, LLC, by and through its attorneys of record, PRINCE |
18 KEATING, hereby concurrently files this Appendix I in supplement to its Opening Brief.

19 This Appendix contains true and accurate portions of the district court record and
20 other sources that are essential to understand the matters set forth in the
21 aforementioned Petition.
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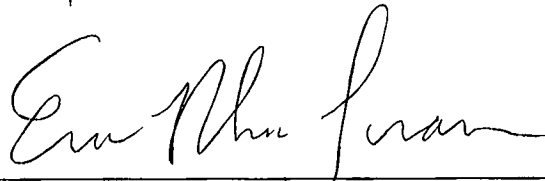
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Plaintiff Tower Homes, LLC's Opposition to Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment	09/04/2012	Vol. 1 AA197-424

DATED this 4th February, 2015.

PRINCE | KEATING



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Las Vegas, Nevada 89148

Attorneys for Appellant

Tower Homes, LLC

CIVIL COVER SHEET

A - 1 2 - 6 6 3 3 4 1 - C

Clark County, Nevada

Case No. _____

XXVII

(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone): Tower Homes, LLC

Defendant(s) (name/address/phone): William H. Heaton,
individually; Nitz, Walton & Heaton, LTD.

Attorney (name/address/phone):

Dennis M. Prince, 3230 S. Buffalo Drive, Suite 108,
Las Vegas, Nevada 89117 (702) 228-6800

Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)☐ **Arbitration Requested****Civil Cases**

Real Property	Torts	
<input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Title to Property <input type="checkbox"/> Foreclosure <input type="checkbox"/> Liens <input type="checkbox"/> Quiet Title <input type="checkbox"/> Specific Performance <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property <input type="checkbox"/> Partition <input type="checkbox"/> Planning/Zoning	<input type="checkbox"/> Negligence <input type="checkbox"/> Negligence – Auto <input type="checkbox"/> Negligence – Medical/Dental <input type="checkbox"/> Negligence – Premises Liability (Slip/Fall) <input checked="" type="checkbox"/> Negligence – Other	<input type="checkbox"/> Product Liability <input type="checkbox"/> Product Liability/Motor Vehicle <input type="checkbox"/> Other Torts/Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Torts/Defamation (Libel/Slander) <input type="checkbox"/> Interfere with Contract Rights <input type="checkbox"/> Employment Torts (Wrongful termination) <input type="checkbox"/> Other Torts <input type="checkbox"/> Anti-trust <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Insurance <input type="checkbox"/> Legal Tort <input type="checkbox"/> Unfair Competition
Probate	Other Civil Filing Types	
<input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside Estates <input type="checkbox"/> Trust/Conservatorships <input type="checkbox"/> Individual Trustee <input type="checkbox"/> Corporate Trustee <input type="checkbox"/> Other Probate	<input type="checkbox"/> Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> General <input type="checkbox"/> Breach of Contract <input type="checkbox"/> Building & Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Other Contracts/Acct/Judgment <input type="checkbox"/> Collection of Actions <input type="checkbox"/> Employment Contract <input type="checkbox"/> Guarantee <input type="checkbox"/> Sale Contract <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Civil Petition for Judicial Review <input type="checkbox"/> Other Administrative Law <input type="checkbox"/> Department of Motor Vehicles <input type="checkbox"/> Worker's Compensation Appeal	<input type="checkbox"/> Appeal from Lower Court (also check applicable civil case box) <input type="checkbox"/> Transfer from Justice Court <input type="checkbox"/> Justice Court Civil Appeal <input type="checkbox"/> Civil Writ <input type="checkbox"/> Other Special Proceeding <input type="checkbox"/> Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Conversion of Property <input type="checkbox"/> Damage to Property <input type="checkbox"/> Employment Security <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Foreign Judgment – Civil <input type="checkbox"/> Other Personal Property <input type="checkbox"/> Recovery of Property <input type="checkbox"/> Stockholder Suit <input type="checkbox"/> Other Civil Matters

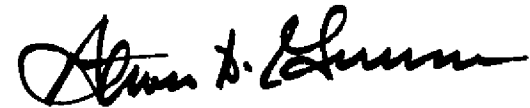
III. Business Court Requested (Please check applicable category; for Clark or Washoe Counties only.)

- | | | |
|---|--|---|
| <input type="checkbox"/> NRS Chapters 78-88 | <input type="checkbox"/> Investments (NRS 104 Art. 8) | <input type="checkbox"/> Enhanced Case Mgmt/Business |
| <input type="checkbox"/> Commodities (NRS 90) | <input type="checkbox"/> Deceptive Trade Practices (NRS 598) | <input type="checkbox"/> Other Business Court Matters |
| <input type="checkbox"/> Securities (NRS 90) | <input type="checkbox"/> Trademarks (NRS 600A) | |

06/12/12

Date

Signature of initiating party or representative



CLERK OF THE COURT

COMP

DENNIS M. PRINCE

Nevada Bar No. 5092

PRINCE & KEATING

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Suite 108

Las Vegas, Nevada 89117

Telephone: (702) 228-6800

Facsimile: (702) 228-0443

E-Mail: DPrince@PrinceKeating.com

Attorney for Plaintiffs

Tower Homes, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

TOWER HOMES, LLC, a Nevada limited liability
company;

Plaintiff,

vs.

WILLIAM H. HEATON, individually;
NITZ, WALTON & HEATON, LTD., a domestic
professional corporation; and DOES I through X,
inclusive,

Defendants.

CASE NO.: A - 1 2 - 6 6 3 3 4 1 - C
DEPT. NO.: X X V I I

COMPLAINT

Tower Homes, LLC, a Nevada limited liability company, pursuant to Bankruptcy Court Order dated June 3, 2010, Case No. BK-07-13208, for its Complaint against the Defendants states, asserts and alleges as follows:

1. Tower Homes, LLC (hereinafter "Tower") is and was at all times relevant to these proceedings a Nevada limited liability company.

2. Upon information and belief William H. Heaton (hereinafter "Heaton") is and was

1
2 at all times relevant to the proceedings, a resident of the state of Nevada. Additionally, Heaton is
3 and was at all times relevant to these proceedings a licensed attorney in the state of Nevada
4 practicing law in Clark County, Nevada.

5 3. Upon and information and belief, Nitz, Walton & Heaton, Ltd. (hereinafter
6 "NWH") is and was a Nevada professional corporation. NWH is a law firm located at 601 South
7 Tenth Street, Suite 201, Las Vegas, Nevada 89101. At all times relevant to these proceedings,
8 Heaton was an employee, agent, officer, shareholder or other authorized representative of NWH.
9

10 4. The true names and capacities of Defendants named herein as DOES I through X,
11 whether individual, corporate, associate, or otherwise, are presently unknown to the Plaintiff,
12 who, therefore, sues said defendants by such fictitious names. The Plaintiff is informed and
13 believes and, therefore, alleges that each of the Defendants so designated herein is responsible in
14 some manner for the events and occurrences referred to herein alleged, and the Plaintiff will
15 request leave of the Court to amend this Complaint to insert the true names and capacities of
16 DOES I through X, when the same have been ascertained and to join such Defendants in this
17 action.
18

19 5. Rodney C. Yanke (hereinafter "Yanke") is a longtime client of Heaton and NWH.
20 Upon information and belief, Yanke is a licensed contractor in the state of Nevada. In addition,
21 Yanke began investing and developing real property in and around Clark County, Nevada.
22

23 6. On or about April 3, 2004, NWH caused or assisted in the formation of Tower at
24 the request of Yanke. At that time, Yanke informed Heaton and NWH of his intent to construct a
25 residential common interest ownership project known as Spanish View Towers Project
26 (hereinafter the "Project").
27

28 7. Yanke was the managing member of Tower. Yanke, in his capacity as the

1
2 manager of Tower, informed Heaton and NWH that the Project was to consist of three 18 story
3 condominium towers combining for a total of 405 units located generally at the southwest corner
4 of Interstate 215 and south Buffalo Drive in Las Vegas, Nevada.

5 8. NWH and Heaton knew or should have known that the Project was a common
6 interest community governed by the requirements of Chapter 116 of the Nevada Revised Statutes.
7

8 9. In addition to other legal services, Yanke, as the manager of Tower, requested that
9 Heaton and NWH draft purchase contracts for the individual units. Prior to and during the initial
10 phases of construction, Tower marketed the individual units for sale to members of the public.
11 Heaton and NWH were obligated to properly advise Tower of all applicable legal requirements
12 concerning the sale of the individual units, including the applicability of Chapter 116 of the
13 Nevada Revised Statutes. Heaton and NWH knew or reasonably should have known that the
14 purchase contracts they drafted would be utilized by Tower for the sale of the individual units.
15 Heaton and NWH also knew that each pre-construction purchaser would be required to put up a
16 substantial earnest money deposit toward the purchase price of the individual unit.
17

18 10. Heaton and NWH knew that Tower had a legal obligation to each individual
19 purchaser to properly safeguard the earnest money deposits from mismanagement, theft or
20 unlawful use as required by Chapter 116 of the Nevada Revised Statutes.
21

22 11. Heaton and NWH knew or should have known about the strict requirements of
23 Chapter 116 of the Nevada Revised Statutes relating to the usage of the earnest money deposits by
24 Tower. Heaton and NWH should have advised Tower pursuant to NRS 116.411 that the earnest
25 money deposits were required to be held by a third party and could only be released for very
26 limited purposes as allowed by the statute.
27

28 12. Heaton and NWH had a duty and obligation to advise Tower of the requirements

1
2 of NRS 116.411 and draft the contracts in strict accordance with the statute. Instead of properly
3 advising Tower of the legal requirements of NRS 116.411 and drafting the purchase contracts in
4 strict accordance therewith, Heaton and NWH drafted the purchase contracts in specific
5 contravention of the strict requirements of NRS 116.411 which is designed for the protection of
6 purchasers of common interest units such as the Project.
7

8 13. Based on the manner in which Heaton and NWH drafted the contracts, Tower was
9 in violation of NRS 116.411. Moreover, by reason of the failure to properly advise Tower and
10 draft contracts in strict accordance with NRS 116.411, Heaton and NWH created the risk that the
11 earnest money deposits would be used for unlawful purposes to the detriment of Tower.
12

13 14. Heaton and NWH knew that Yanke and/or others at Tower were using the deposit
14 for unlawful purposes and in contravention of Nevada law.

15 15. On or about May 23, 2007, certain Tower Purchasers filed a Complaint in the
16 Eighth Judicial District Court, Case No. A541668, against, among others, Tower and Yanke
17 seeking the return of their earnest money deposits. On or about October 23, 2007, the Tower
18 Purchasers filed a First Amended Complaint against Tower, Yanke and others seeking return of
19 the earnest money deposits. On or about March 31, 2009, Tower Purchasers filed a Second
20 Amended Complaint against Tower, Yank and others seeking return of their earnest money
21 deposits. The allegations contained in the Complaint, First Amended Complaint and Second
22 Amended Complaint in Case No. A541668 are incorporated herein by reference as though fully
23 set forth herein.
24

25 16. On May 31, 2007, Tower filed a Petition in the United States Bankruptcy Court in
26 the District of Nevada pursuant to Chapter 11 of the United States Bankruptcy Code. Among
27 Towers' creditors were the individual Tower Purchasers. The Tower Purchasers collectively filed
28

1
2 Proofs of Claims totaling \$3,560,000.00. There was no timely objection to the amount of the
3 Tower Purchasers Proofs of Claims. William A. Leonard, Jr. is the post-confirmation Chapter 11
4 Trustee of the Tower bankruptcy estate.

5 17. During the bankruptcy proceeding, the Trustee, the law firm Marquis Aurbach
6 Coffing as well as the Tower Purchasers entered into a stipulation to release and assign certain
7 claims of the debtor and allow Marquis Aurbach Coffing as counsel for the Tower Purchasers to
8 pursue claims on behalf of the debtor. Pursuant to the stipulation of the parties which was entered
9 as an Order on June 3, 2010, Marquis Aurbach Coffing and the Trustee signed and agreed to
10 allow Marquis Aurbach Coffing as counsel for the Tower Purchasers to pursue any and all claims
11 on behalf of the debtor against any individual or entity who may have any liability, owed any to
12 the debtor or others for the loss of the earnest money deposits provided by the purchasers of the
13 units at Spanish View and the Project.
14

15
16 18. The trial in Case No. A541668 was scheduled to commence on May 9, 2011. In
17 advance of the trial, a settlement agreement was reached between the Tower Purchasers and
18 Yanke, individually.

19
20 19. On or about May 2, 2011, a Stipulation to Entry of Order Granting Judgment
21 Against Yanke and dismissing claims against Yanke was entered in Case No. A541668.

22 FIRST CAUSE OF ACTION

23 20. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
24 through 19 of this Complaint and incorporates them by reference.

25 21. Heaton and NWH provided legal representation to Tower concerning the Spanish
26 View Project, including providing legal advice and drafting the purchase contracts.
27

28 22. Heaton and NWH breached their duty of care by failing to perform as a reasonable

1
2 attorney and law firm would relating to its representation of Tower.

3 23. As a result of the failure to perform and provide advice as a reasonable attorney
4 and law firm would under the same or similar circumstances, Heaton and NWH breached their
5 duty of care owed to Tower.

6 24. As a direct and proximate result of Defendants' breach of duty and care to Tower,
7
8 Tower has been damaged in an amount in excess of \$10,000.00.

9 25. As a direct and proximate result of Heaton and NWH's actions and/or omissions,
10 Tower has been required to retain the services of an attorney to prosecute this action, and is,
11 therefore, entitled to reasonable attorney's fees and costs incurred herein.

12 SECOND CAUSE OF ACTION

13 (Breach of Fiduciary Duty)

14
15 26. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
16 through 25 of this Complaint and incorporates them by reference.

17 27. A fiduciary duty existed between Tower and Heaton/NWH as their client.

18 28. By virtue of the breach of this fiduciary duty, Heaton and NWH were under a duty
19 and obligation to act for the specific benefit of Tower and its legal obligations concerning the sale
20 of the individual units.
21

22 29. Heaton and NWH had a duty to act with the utmost good faith trust and candor
23 toward Tower.

24 30. Heaton and NWH breached their fiduciary duty owed to Tower.

25 31. As a result of Heaton and NWH's breach of fiduciary duty, Tower has been
26 damaged in an amount in excess of \$10,000.00.
27
28

1
2 32. As a direct and proximate result of Heaton and NWH's actions and/or omissions,
3 Tower has been required to retain the services of an attorney to prosecute this action, and is,
4 therefore, entitled to reasonable attorney's fees and costs incurred herein.

5 WHEREFORE, Plaintiff pray for a judgment against Defendants as follows:

- 6
7 1. General and special damages in an amount in excess of \$10,000.00;
8 2. Costs of suit incurred including reasonable attorney's fees; and
9 3. For such other relief as the Court deems just and proper.

10 DATED this 11 day of June, 2012.

11 **PRINCE & KEATING**

12
13 
14 DENNIS M. PRINCE
15 Nevada Bar No. 5092
16 3230 South Buffalo Drive
17 Suite 108
18 Las Vegas, Nevada 89117
19 Attorney for Plaintiff
20 *Tower Homes, LLC*

1
2 **IAFD**
3 DENNIS M. PRINCE
4 Nevada Bar No. 5092
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9 Telephone: (702) 228-6800
10 Facsimile: (702) 228-0443
11 E-Mail: *DPrince@PrinceKeating.com*
12 Attorney for Plaintiffs
13 *Tower Homes, LLC*

10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

13 TOWER HOMES, LLC, a Nevada limited liability)
14 company;)
15)
16 Plaintiff,)
17)
18 vs.)
19)
20 WILLIAM H. HEATON, individually;)
21 NITZ, WALTON & HEATON, LTD., a domestic)
22 professional corporation; and DOES I through X,)
23 inclusive,)
24)
25 Defendants.)
26)
27)
28)

CASE NO.:
DEPT. NO.:

22 **INITIAL APPEARANCE FEE DISLCOSURE**

23 Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for
24 parties appearing in the above entitled action as indicated below:

25 TOWER HOMES, LLC \$270.00

26 ...

27 ...

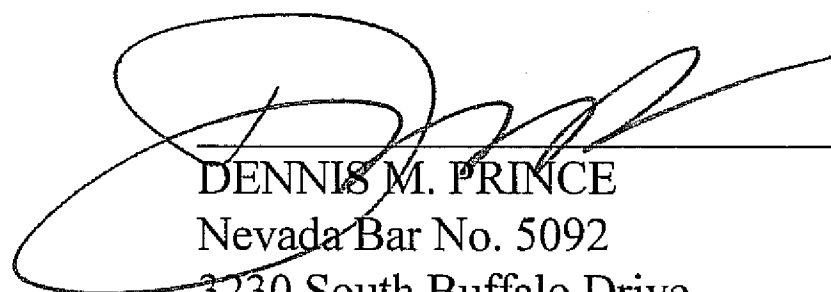
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TOTAL REMITTED:

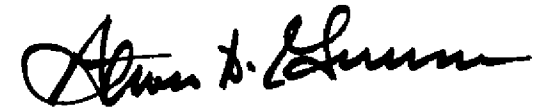
\$270.00

DATED this 14 day of June, 2012.

PRINCE & KEATING



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Las Vegas, Nevada 89117
Attorney for Plaintiff
Tower Homes, LLC



CLERK OF THE COURT

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6 Fax: 702.893.3789
Attorneys for Defendants
7 *William H. Heaton and Nitz, Walton & Heaton,*
Ltd.

8
9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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17 X, inclusive,

18 Defendants.
19

Case No.: A-12-663341-C
Dept. No.: 27

**MOTION TO DISMISS, OR,
ALTERNATIVELY, MOTION FOR
SUMMARY JUDGMENT**

20
21 Defendants William H. Heaton and Nitz, Walton & Heaton, Ltd., by and through their
22 attorneys of record, Lewis Brisbois Bisgaard & Smith, LLP, hereby move to dismiss Plaintiff's
23 Complaint pursuant to N.R.C.P. 12(b)(5) (failure to state a claim upon which relief can be granted)
24 and N.R.C.P. 17 (lack of legal capacity to sue). Alternatively, if and to the extent the Court
25 considers the extrinsic evidence submitted with this motion, Defendants move for summary
26 judgment pursuant to N.R.C.P. 56.

27 ///

28 ///

1 This motion is based on the following memorandum of points and authorities, all pleadings
2 and records in this matter and any further argument and/or evidence that may be presented at the
3 hearing of this motion.

4 DATED this 19th day of July, 2012

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6
7 By /s/ Jeffrey D. Olster
8 V. Andrew Cass
9 Nevada Bar No. 005246
10 Jeffrey D. Olster
11 Nevada Bar No. 008864
12 6385 S. Rainbow Boulevard, Suite 600
13 Las Vegas, Nevada 89118
14 Attorneys for Defendants
15 *William H. Heaton and Nitz, Walton & Heaton,*
16 *Ltd.*

17 **NOTICE OF MOTION**

18 PLEASE TAKE NOTICE that the undersigned will bring this motion to dismiss on for
19 hearing in Department 27 of this Court on the 23 day of August, 2012 at
20 10:00 am, or as soon thereafter as counsel may be heard.

21 DATED this 19th day of July, 2012

22 LEWIS BRISBOIS BISGAARD & SMITH LLP

23 By /s/ Jeffrey D. Olster
24 V. Andrew Cass
25 Nevada Bar No. 005246
26 Jeffrey D. Olster
27 Nevada Bar No. 008864
28 6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Attorneys for Defendants
William H. Heaton and Nitz, Walton & Heaton,
Ltd.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This case arises out of a situation that has become all too familiar to the state and federal
4 courts in southern Nevada – a failed high-rise condominium development. Plaintiff Tower
5 Homes, LLC (hereafter “Tower”) sought to develop such a project back in 2004, and sought the
6 assistance of defendant Nitz, Walton & Heaton, Ltd. (“NWH”) in connection with the project.
7 One of NWH’s roles was to prepare the purchase contracts for the condominium units in
8 compliance with Nevada law. NWH did so in accordance with Nevada law and the applicable
9 standard of care.

10 When the development went south, largely due to a lack of funding, Tower and its sole
11 owner and principal, Rodney Yanke (“Yanke”), were sued by purchasers who had paid earnest
12 money deposits for units that were never built. In this underlying litigation, *Tower and Yanke*
13 *were accused of, among other things, wrongfully misappropriating the purchaser’s deposits – in*
14 *direct contravention to the advice provided by NWH.* Immediately after the underlying lawsuit
15 was commenced, Tower was forced into Chapter 11 bankruptcy proceedings by several of the
16 contractors who had worked on the project.

17 During the bankruptcy proceedings, the bankruptcy trustee and/or bankruptcy estate, in
18 accordance with federal law, expressly retained all claims or causes of action. Subsequent to the
19 plan confirmation, the bankruptcy trustee assigned, or “released,” all claims regarding the
20 misappropriated purchaser deposits *directly and exclusively* to the condominium purchasers.
21 Contrary to this undisputable procedural history, Tower now inexplicably purports to bring the
22 instant action in its own name. As such, Tower lacks the authority and legal capacity to bring this
23 action.

24 Furthermore, even if Tower did hypothetically have the capacity to maintain this action in
25 its own right, it is brought well beyond two years after Tower discovered the material facts which
26 constitute the cause of action, and more than four years after Tower sustained damages by virtue
27 of the filing of the purchasers’ underlying lawsuit. Accordingly, this legal malpractice action is
28 barred by the statute of limitations established by NRS 11.207 as a matter of law.

1 **II. BACKGROUND**

2 This action arises out of an alleged attorney-client relationship between NWH and Tower.
3 (Complaint ¶¶ 5-7.) In particular, NWH represented Tower with respect to a residential common
4 interest ownership development known as Spanish View Towers (hereafter the “Project”).
5 (Complaint ¶ 6.) As part of this representation, NWH prepared the purchase contracts for the
6 individual condominium units. (Complaint ¶ 9.)

7 The crux of the substantive dispute is whether the purchase contracts complied with
8 applicable Nevada law (NRS Chapter 116). Tower contends that NWH “should have advised
9 Tower pursuant to NRS 116.411 that the earnest money deposits were required to be held by a
10 third party and could only be released for very limited purposes as allowed by the statute,” and
11 that the purchase contracts did not comply with NRS 116.411. (Complaint ¶¶ 11-12.) NWH
12 maintains that it did so advise Tower (and Yanke) regarding NRS 116.411, that the purchase
13 contracts complied with NRS 116.411 and that it did not breach any duty or standard of care.
14 *Stated simply, the deposited funds were misappropriated, against NWH’s advice, the terms of the*
15 *Purchase Contract and without NWH’s knowledge.*

16 **A. The Underlying Lawsuit**

17 Due to financing and market issues, the Project was not successful, and construction was
18 never completed. On May 23, 2007, some of the individuals who had agreed to purchase units in
19 the Project (hereafter the “Tower Homes Purchasers”), and who had paid earnest money deposits,
20 filed a complaint in Clark County District Court (*Gaynor, et al. v. Tower Homes, LLC, et al.*, Case
21 No. A541668, hereafter the “Underlying Lawsuit”) against Tower, Yanke and others seeking the
22 return of their earnest money deposits. (Complaint ¶ 15.)

23 In this May 23, 2007 complaint in the Underlying Lawsuit (hereafter the “Underlying
24 Complaint”),¹ the Tower Homes Purchasers alleged, among other things, that:

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27 ¹ Despite referencing the Underlying Complaint, Tower does not attach the document to its instant
28 Complaint. A copy is therefore attached as **Exhibit A** for this Court’s convenience and reference.

- 1 • *Tower* breached the terms of the purchase contracts (Ex. A, Underlying
- 2 Complaint ¶¶ 32-39);
- 3 • *Tower* failed and/or refused to return their deposit monies (Ex. A,
- 4 Underlying Complaint ¶ 37);
- 5 • *Tower* breached the implied covenant of good faith and fair dealing (Ex. A,
- 6 Underlying Complaint ¶¶ 40-44);
- 7 • *Tower* accepted and retained benefits (i.e., the purchasers' deposits) "under
- 8 circumstances where it would be unjust and inequitable for them to retain
- 9 the benefits") (Ex. A, Underlying Complaint ¶ 54);
- 10 • *Yanke* was using the purchasers' deposits for improper purposes (Ex. A,
- 11 Underlying Complaint ¶¶ 79-93); and
- 12 • *Tower (and Yanke)* had "misappropriated, unlawfully exercised domain
- 13 over, and converted for their use and benefit the [Tower Homes
- 14 Purchasers'] purchase money to the detriment of the [Tower Homes
- 15 Purchasers]." (Ex. A, Underlying Complaint ¶ 95 [emphasis added].)

16 Tower notably omits mentioning these allegations in its instant Complaint, which, if proven to be
17 true, would show that the Tower Homes Purchasers filed the Underlying Lawsuit because Tower
18 and Yanke misappropriated the funds – not because of any act or omission by NWH.

19 The Tower Homes Purchasers eventually reached a settlement with Yanke on or about
20 May 2, 2011. (Complaint ¶ 18.) Due to the bankruptcy proceedings (detailed below), Tower did
21 not participate in the Underlying Lawsuit, but the Tower Homes Purchasers' claims against Tower
22 were pursued and adjudicated as the Class 13 Claims in the December 8, 2008 "Order Approving
23 Disclosure Statement and Confirming Plan of Reorganization" (hereafter the "Plan Confirmation
24 Order") in the bankruptcy proceedings. (This Plan Confirmation Order is attached as **Exhibit B.**)

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1 **B. The Bankruptcy Proceedings**

2 One week after the Underlying Lawsuit was filed, on May 31, 2007, Chapter 11
3 bankruptcy proceedings were initiated against Tower. (Complaint ¶ 16.)²

4 On or about December 8, 2008, Tower’s bankruptcy trustee filed and confirmed the plan of
5 reorganization pursuant to United States bankruptcy laws. Notably, in a section of the plan
6 entitled “Litigation,” the plan provides, in relevant part, that:

7 *[T]he Trustee and the Estate shall retain all claims or Causes of*
8 *Action* that they have or hold against any party . . . whether arising
9 pre- or post-petition, subject to applicable state law statutes of
10 limitation and related decisional law, whether sounding in tort,
11 contract or other theory or doctrine of law or equity. Confirmation
12 of the Plan effects no settlement, compromise, waiver or release of
13 any Cause of Action unless the Plan or Confirmation Order
14 specifically and unambiguously so provide. The nondisclosure or
15 nondiscussion of any particular Cause of Action is not and shall not
16 be construed as a settlement, compromise, waiver or release of such
17 Cause of Action. Upon the Effective Date, *the Trustee* will be
18 designated as representative of the Estate under section 1123(b)(3)
19 of the Bankruptcy code and *shall, except as otherwise provided*
20 *herein, have the right to assert any or all of the above Causes of*
21 *Action post-confirmation in accordance with applicable law.*

22 (See Ex. B at 48:18 – 49:1 [emphasis added].)

23 Subsequent to the plan confirmation, notwithstanding his exclusive right to control all of
24 Tower’s potential causes of action, the bankruptcy trustee, in a June 3, 2010 “Order Granting
25

26 ² The allegation in the Complaint that “Tower filed a Petition in the United States Bankruptcy Court”
27 (Complaint ¶ 16) is technically not true. The bankruptcy proceedings were actually initiated on an
28 involuntary basis by several of Tower’s creditors.

1 Motion to Approve Stipulation to Release Claims and Allow Marquis & Aurbach, as Counsel for
2 the Tower Homes Purchasers, to Pursue Claims on Behalf of Debtor” (hereafter the “Marquis
3 Aurbach Order”) agreed to relinquish certain alleged causes of action to certain enumerated parties
4 against certain enumerated individuals or entities:

5 The Trustee hereby stipulates and agrees *to release to the Tower*
6 *Homes Purchasers* any and all claims on behalf of [Tower] against
7 Rodney C. Yanke, Americana LLC dba Americana Group, Mark L.
8 Stark, Jeannine Cutter, David Berg, Equity Title of Nevada, LLC *or*
9 *any other individual or entity later identified through discovery*
10 which has or may have any liability or owed any duty to [Tower] or
11 others for the loss of the Tower Homes Purchasers earnest money
12 deposits and all claims to any and all earnest money deposits
13 provided by purchasers for units in the Spanish View Tower Homes
14 condominium project.

15 (See Marquis Aurbach Order, attached as **Exhibit C**, at Page 5 of 6, lines 13-19 [emphasis
16 added].)³ In other words, notwithstanding his express retention of all causes of action belonging
17 to Tower, the bankruptcy trustee agreed to release *to the Tower Homes Purchasers* the right to
18 pursue claims relating to the earnest money deposits *through its attorneys, Marquis & Aurbach*
19 (now Marquis Aurbach Coffing).

20 **III. ARGUMENT**

21 In the instant action, Tower maintains two causes of action against Mr. Heaton and NWH:
22 (1) legal malpractice (this “First Cause of Action” is not labeled in the Complaint, but can be fairly
23 read as attempting to plead a legal malpractice cause of action); and (2) breach of fiduciary duty.
24 Both causes of action are subject to dismissal on at least two grounds. First, Tower lacks the
25 capacity to bring this action based on federal bankruptcy law and the Plan Confirmation Order

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27 ³ As with the Underlying Complaint, Tower does not attach the Marquis Aurbach Order, despite
28 its reference to and reliance on the order as its alleged authorization for this action.

1 (Ex. B). The Marquis Aurbach Order, upon which Tower relies as its exclusive authorization for
2 this action (Ex. C) does not, by its terms, authorize Tower to bring this action. Second, even if
3 Tower was hypothetically authorized by federal law, the Plan Confirmation Order or the Marquis
4 Aurbach Order to bring this action, it is nevertheless barred by the applicable statute of limitations
5 (NRS 11.207) as a matter of law.

6 A. **Tower lacks the capacity to bring this action based on both federal law and the**
7 **orders entered in the bankruptcy proceedings.**

8 When a bankruptcy is filed, a bankruptcy estate is created pursuant to 11 U.S.C. § 541(a)
9 consisting of **all legal and equitable interests of the debtor, including all claims and causes of**
10 **action that belong to the debtor.** *See, e.g., Sierra Switchboard v. Westinghouse*, 789 F.2d 705,
11 707 (9th Cir. 1986); *Weitzel v. The Mirage*, 2009 U.S. Dist. Lexis 34621 at *7 (D. Nev. 2009);
12 *Suter v. Goedert*, 396 B.R. 535, 540-42 (D. Nev. 2008). “Thereafter, the property of the estate is
13 distinct from the property of the debtor.” *Suter, supra*, 396 B.R. at 541.

14 The trustee (or debtor in possession, which is not applicable here) is the representative of
15 the estate with the authority to sue on behalf of the estate pursuant to 11 U.S.C. §§ 323, 363 and
16 1107. *See Suter, supra*, 396 B.R. at 546 (“Because the legal malpractice action is property of the
17 estate, the trustee had the authority to sell, settle, or compromise non-exempt assets of the estate.”)
18 In Tower’s Chapter 11 bankruptcy, a trustee was appointed on January 18, 2008, and the trustee
19 was the only person with the right to pursue claims on behalf of the debtor. *See* 11 U.S.C. §
20 1141(b) (“Except as otherwise provided in the plan or the order confirming the plan, the
21 confirmation of a plan vests all of the property of the estate in the debtor.”)

22 1. **The Plan Confirmation Order does not authorize Tower to bring this**
23 **action.**

24 In Tower’s case, the Plan Confirmation Order did “otherwise provide” within the meaning
25 of 11 U.S.C. § 1141(b), and, pursuant to this order, it is *the trustee*, and not the debtor, that was
26 authorized, post-confirmation, to pursue or dispose of claims. In this regard, Article X(C) of the
27 Plan Confirmation Order provides that “...from and after the Confirmation Date, *the Trustee and*
28 *the Estate shall retain all claims or Causes of Action* that they may have or hold against any

1 party . . . whether arising pre- or post-petition, subject to applicable state law statutes of limitation
2 and related decisional law, whether sounding in tort, contract or other theory or doctrine of law or
3 equity.” (See Ex. B at 48:17-22 [emphasis added].) Thus, title to the claims which are the subject
4 of this action never vested in the debtor (Tower) pursuant to 11 U.S.C. § 1141. Accordingly,
5 Tower simply has no authority to sue and is without legal capacity to maintain this action.

6 **2. The Marquis Aurbach Order does not authorize Tower to bring this**
7 **action.**

8 Presumably in an attempt to avoid the foregoing well-established law and the Plan
9 Confirmation Order, Tower alleges that the instant action is brought “pursuant to Bankruptcy
10 Court Order dated June 3, 2010, Case No. BK-07-13208.” (Complaint at 1:22-23.) In other
11 words, Tower maintains that its authority to bring this action is the Marquis Aurbach Order (Ex.
12 C), which provides, in salient part, that:

- 13 • “The [Tower Bankruptcy] Trustee has determined that he does not intend
14 and, in any event, does not have sufficient funds in the Estate to pursue
15 claims on behalf of [Tower] against Rodney C. Yanke, Americana LLC dba
16 Americana Group, Mark L. Stark, Jeannine Cutter, David Berg, Equity Title
17 of Nevada, LLC or any other individual or entity later identified through
18 discovery which has or may have liability to [Tower] or others for the loss
19 of the earnest money deposits provided by purchasers for units in the
20 Spanish View Tower Homes condominium project.” (Ex. C, Marquis
21 Aurbach Order at Page 4 of 6 [designated at top of page], line 26 to Page 5
22 of 6, line 5 [emphasis added].)
- 23 • “The Trustee hereby stipulates and agrees *to release to the Tower Homes*
24 *Purchasers any and all claims on behalf of [Tower]* against Rodney C.
25 Yanke, Americana LLC dba Americana Group, Mark L. Stark, Jeannine
26 Cutter, David Berg, Equity Title of Nevada, LLC *or any other individual or*
27 *entity later identified through discovery* which has or may have any
28 liability or owed any duty to [Tower] or others for the loss of the Tower

Homes Purchasers earnest money deposits and all claims to any and all earnest money deposits provided by purchasers for units in the Spanish View Tower Homes condominium project.” (Ex. C, Marquis Aurbach at Page 5 of 6, lines 13-19 [emphasis added].)

- “The Trustee hereby stipulates and agrees *to allow Marquis & Aurbach*, as counsel for the Tower Homes Purchasers, to pursue any and all claims on behalf of [Tower] against Rodney C. Yanke, Americana LLC dba Americana Group, Mark L. Stark, Jeannine Cutter, David Berg, Equity Title of Nevada, LLC *or any other individual or entity later identified through discovery* which has or may have any liability or owed any duty to [Tower] or others for the loss of earnest money deposits and all claims to any and all earnest money deposits provided by purchasers for units in the Spanish View Tower Homes condominium project.” (Ex. C, Marquis Aurbach Order at Page 5 of 6, lines 20-26 [emphasis added].)

In other words, the Marquis Aurbach Order makes clear that Tower’s bankruptcy trustee determined that he did not intend to pursue any of Tower’s potential claims based on the loss of the earnest money deposits. These claims were all therefore “released” *to the Tower Homes Purchasers*. The Tower Homes Purchasers were then authorized, *through their counsel, Marquis & Aurbach*, to pursue Tower’s potential claims based on the loss of the earnest money deposits.

Accordingly, for several reasons, the Marquis Aurbach Order simply does not authorize the instant action. First, contrary to the Marquis Aurbach Order’s unambiguous authorization, Tower is the plaintiff, not the Tower Homes Purchasers. As noted above, the Marquis Aurbach Order expressly “released” the alleged claims *to the Tower Homes Purchasers*, not to Tower. The Marquis Aurbach Order simply does not authorize Tower to file this action. Second, the law firm of Marquis Aurbach Coffing is not counsel in this action. In other words, the plain language of the Marquis Aurbach Order simply does not authorize this action as a matter of law.

Third, even if the Marquis Aurbach Order did somehow authorize Tower to now pursue the instant action in its own right, through non-authorized counsel, the Marquis Aurbach Order

1 still only authorizes actions *against the expressly enumerated individuals and entities*, as well as
2 “any other individual or entity *later identified through discovery* which has or may have any
3 liability or owed any duty to [Tower] or others for the loss of the Tower Homes Purchasers earnest
4 money deposits.” (See Ex. C, Marquis Aurbach Order at Page 5 of 6, lines 13-19 [emphasis
5 added].) At the time of the Marquis Aurbach Order on June 3, 2010, *both the Tower Homes*
6 *Purchasers and the Marquis Aurbach law firm undisputedly knew that NWH represented*
7 *Tower in connection with the preparation of the contracts for the Project.* In other words, NWH
8 cannot be an entity “later identified through discovery” under the Marquis Aurbach Order.

9 For example, nearly four years *prior to* the entry of the Marquis Aurbach Order, in a letter
10 to Mr. Heaton and NWH dated August 11, 2006, counsel for two of the Tower Homes Purchasers
11 stated: “I understand from speaking with you that you or your firm, in fact, represents Tower
12 Homes and is familiar with the [Purchase] Contract, having assisted in its preparation.” (See letter
13 from Paul Connaghan to Tower [c/o William Heaton of NWH], dated August 11, 2006, attached
14 as **Exhibit D.**)

15 Additionally, during his Rule 2004 examination on October 3, 2007 in connection with the
16 bankruptcy proceedings (i.e., over two years prior to the entry of the Marquis Aurbach Order),
17 which was attended by Terry Coffing and Brian Hardy of the Marquis Aurbach firm, Yanke
18 testified that Jim Walton of NWH prepared the purchase contract for Tower. (See excerpts of
19 deposition of Yanke on October 3, 2007, attached as **Exhibit E**, at 7:17-22.) Yanke also testified
20 as to the details of the subject bank accounts that held the deposited funds, as well as his
21 knowledge of the applicable Nevada law. (Ex. E at 10-12, 24.) Specifically, when asked about
22 how many laws he had to comply with in order to sell condominium units, Yanke replied: “All
23 paperwork was done by Nitz, Walton & Heaton and Lionel Sawyer. So, you know, do I know
24 those laws? I instruct them to put together a contract that would pass the state. They put together
25 a contract that would pass the state and we got a real estate exemption.” (Ex. E at 24:8-14.)

26 In other words, neither Mr. Heaton, Mr. Walton nor NWH (nor any other attorney at
27 NWH) were individuals or entities “later identified through discovery” within the scope and
28 authorization of the Marquis Aurbach Order.

1
2 Accordingly, based on the foregoing undisputed facts and circumstances, Tower simply
3 lacks the legal capacity to bring and maintain this action as a matter of law.

4 **B. This action is barred by the statute of limitations.**

5 Even if Tower, hypothetically, had the capacity and bankruptcy trustee authorization to
6 bring this action, the action is still subject to dismissal as a matter of law because it is barred by
7 the statute of limitations.

8 NRS 11.207 establishes the statute of limitations for legal malpractice claims as follows:

- 9 1. An action against an attorney or veterinarian to recover
10 damages for malpractice, whether based on a breach of duty
11 or contract, must be commenced within 4 years after the
12 plaintiff sustains damage or within 2 years after the plaintiff
13 discovers or through the use of reasonable diligence should
14 have discovered the material facts which constitute the cause
15 of action, *whichever occurs earlier*.
16 2. This time limitation is tolled for any period during which the
17 attorney or veterinarian conceals any act, error or omission
18 upon which the action is founded and which is known or
19 through the use of reasonable diligence should have been
20 known to the attorney or veterinarian.

21 NRS 11.207 (Emphasis added). This action is barred by both the two-year and four-year measures
22 of time provided by the statute.

23 With respect to the two-year measure, the statute of limitations runs “2 years after the
24 plaintiff discovers or through the use of reasonable diligence should have discovered the material
25 facts which constitute the cause of action.” NRS 11.207(1). In this case, drafts of the subject
26 Purchase Contract containing the provision which is now alleged to be deficient were sent to
27 Tower in November 2004. (See attached **Exhibit F**, which is a draft Purchase Contract which was
28 delivered to Tower back on November 16, 2004.) Thus, Tower was apprised of the questioned

1 provisions of the Purchase Contract as early as November 2004. Tower also received a copy of
2 the August 11, 2006 demand letter from Paul Connaghan (Exhibit D), and an additional August
3 23, 2006 demand letter from Mr. Connaghan (attached as **Exhibit G**), in which Mr. Connaghan
4 explained in detail the reasons why he felt that the Purchase Contract did not comply with the
5 Nevada statute, including his allegation that the Purchase Contract violated NRS 116.411. Mr.
6 Heaton caused copies of both of these letters to be promptly delivered to Tower. (See attached
7 Declaration of William H. Heaton ¶¶ 6, 9.)

8 Additionally, Tower's principal, Yanke, was questioned repeatedly concerning the
9 Purchase Contract by attorneys for the Tower Home Purchasers during his Rule 2004 examination
10 on October 3, 2007 (See Ex. E). Accordingly, there can be no reasonable dispute that Tower knew
11 of the material facts constituting its alleged cause of action against NWH much longer than two
12 years before this action was filed.

13 With respect to the four-year measure provided by NRS 11.207, absent some type of
14 cognizable tolling, *four years from the date on which a plaintiff "sustains damage" is the*
15 *outside limit for when a legal malpractice claim can be initiated.* The Nevada Supreme Court
16 has clarified that a plaintiff/client who has retained an attorney for transactional legal work
17 "sustains damage" when a lawsuit caused by the allegedly negligent transactional work is filed.
18 *See Gonzales v. Stewart Title*, 111 Nev. 1350, 905 P.2d 176 (1995) (granting attorney's motion to
19 dismiss based on statute of limitations pursuant to NRS 11.207(1)); *see also Kopicko v. Young*,
20 114 Nev. 1333, 1337 n. 3, 971 P.2d 789, 791 (1998) (reaffirming distinction between transactional
21 and litigation malpractice for determining commencement of running of statute of limitations).⁴

22 In *Gonzales*, the plaintiff clients retained defendant attorney to prepare documents,
23 including a promissory note, for the sale of the clients' property. Because the promissory note
24 was defective, the clients got sued. The Nevada Supreme Court held that the *filing* of this
25

26 ⁴ The federal court sitting in Nevada, less than four months ago, again reaffirmed the viability of the
27 distinction between transaction-based and litigation-based causes of action for legal malpractice for
28 purposes of analyzing the statute of limitations. *See New Albertson's, Inc. v. Brady, Vorwerck, Ryder &*
Caspino, 2012 U.S. Dist. Lexis 42369 at *14-*15 (D. Nev. March 28, 2012).

1 underlying lawsuit against the clients, and not the final resolution of that proceeding, commenced
2 the running of the statute of limitations:

3 The rule set forth herein is in accordance with reason and the
4 relevant statute, NRS 11.207(1). A plaintiff necessarily ‘discovers
5 the material facts which constitute the cause of action’ for attorney
6 malpractice when he files or defends a lawsuit occasioned by that
7 malpractice, and he ‘sustains damage’ by assuming the expense,
8 inconvenience and risk of having to maintain such litigation, even if
9 he wins it. Other statutory limitations are not tolled to wait for
10 damages to accrue in an amount certain. The limitation period for
11 medical malpractice is not tolled to await all the bills for remedial
12 treatment, which could include a lifetime of special care. *See* NRS
13 41A.097. A homeowner who knows of a construction defect would
14 be ill advised to wait until the house falls down to sue the builder.
15 *See Tahoe Village Homeowners v. Douglas Co.*, 106 Nev. 660, 799
16 P.2d 556 (1990). We see no reason to impose a special rule for
17 attorney malpractice. Further, the rule set forth herein should not
18 deter clients from allowing their attorney to ‘cure’ an error. It
19 merely means that the client must observe the limitation period in
20 doing so.

21 *Gonzales, supra*, 111 Nev. at 1354. Accordingly, because the plaintiffs in *Gonzales* did not file
22 their lawsuit within four years of the date on which the lawsuit occasioned by the alleged
23 malpractice was filed against them, their legal malpractice lawsuit was time-barred as a matter of
24 law. *Id.* at 1355.⁵

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26 ⁵ The version of NRS 11.207 at issue in *Gonzalez* did not include the two-year measure that is now
27 contained in the current statute, which was enacted pursuant to 1997 amendments. *See New Albertson’s,*
28 *supra*, 2012 U.S. Dist. Lexis 42369 at *11. This distinction, however, makes no difference in this case.

1 Here, Tower concedes in its Complaint that the underlying lawsuit against Tower was filed
2 on May 23, 2007. (Complaint ¶ 15; Ex. A.) In the Underlying Complaint, the Tower Homes
3 Purchasers alleged that Tower, among other things, breached the terms of the purchase contracts
4 (Ex. A, Underlying Complaint ¶¶ 32-39), failed and/or refused to return their deposit monies (Ex.
5 A, Underlying Complaint ¶ 37), accepted and retained benefits (i.e., the purchasers' deposits)
6 "under circumstances where it would be unjust and inequitable for them to retain the benefits"
7 (Ex. A, Underlying Complaint ¶ 54), used the purchasers' deposits for improper purposes (Ex. A,
8 Underlying Complaint ¶¶ 79-93) and had "misappropriated, unlawfully exercised domain over,
9 and converted for [its] use and benefit the [Tower Homes Purchasers'] purchase money to the
10 detriment of the [Tower Homes Purchasers]." (Ex. A, Underlying Complaint ¶ 95 [emphasis
11 added].) In other words, in their Underlying Complaint, the Tower Homes Purchasers alleged
12 precisely same wrongs that Tower now alleges NWH should somehow have prevented.

13 Accordingly, by May 23, 2007, Tower "sustained damage" within the meaning of NRS
14 11.207. *See Gonzales, supra*, 111 Nev. at 1354-55. Under this outside four-year measure
15 provided by NRS 11.207(1), Tower had until May 23, 2011 to file a complaint against NWH.

16 Therefore, under either measure of permissible time, Tower's instant Complaint, filed on
17 June 12, 2012 -- over a year after the *longer* four-year statute ran, and at least several years after
18 the two-year statute ran -- was simply filed too late as a matter of law. Accordingly, even if
19 Tower somehow had the legal capacity to bring this action, it is still barred by the statute of
20 limitations as a matter of law, and therefore should be dismissed pursuant to N.R.C.P. 12(b)(5).

21 C. **Tower's breach of fiduciary duty cause of action is not only barred by the**
22 **statute of limitations, it does not exist as a matter of law.**

23 Tower's second cause of action for "breach of fiduciary duty" is also subject to dismissal
24 on statute of limitations grounds based on NRS 11.207, and is independently subject to dismissal
25 because the cause of action simply does not exist in this case. The Nevada Supreme Court has
26 clarified that a separate breach of fiduciary duty cause of action does not exist in the context of a
27 claim arising out of the attorney-client relationship: "A cause of action for legal malpractice
28 *encompasses breaches of contractual as well as fiduciary duties* because both 'concern the

1 representation of a client and involve the fundamental aspects of an attorney-client relationship.”
2 *Stalk v. Mushkin*, 125 Nev. Adv. Rep. 3, 199 P.3d 838, 843 (2009) (statute of limitations for
3 breach of fiduciary duty claim against attorney subject to and analyzed under NRS 11.207).

4 In other words, the *Stalk* case establishes that Tower’s breach of fiduciary duty cause of
5 action (1) is subject to NRS 11.207, and is therefore barred by the statute of limitations as
6 discussed in detail above; and (2) does not exist as an independent cause of action by a client
7 against its attorneys because it is entirely subsumed within the legal malpractice cause of action.
8 *See Stalk, supra*, 199 P.3d at 843.

9 **IV. CONCLUSION**

10 Based on the foregoing, defendants William H. Heaton and Nitz, Walton & Heaton, Ltd.
11 respectfully requests that the Complaint be dismissed in its entirety, with prejudice. Alternatively,
12 Defendants seek the entry of summary judgment. Tower lacks capacity to sue and, even if it had
13 the requisite capacity and authorization to sue, the causes of action asserted are barred by the
14 statute of limitations as a matter of law.

15 DATED this 19th day of July, 2012

16 LEWIS BRISBOIS BISGAARD & SMITH LLP

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By /s/ Jeffrey D. Olster
V. Andrew Cass
Nevada Bar No. 005246
Jeffrey D. Olster
Nevada Bar No. 008864
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
William H. Heaton and Nitz, Walton & Heaton,
Ltd.

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1. I am an attorney, duly licensed and authorized to practice law in the State of Nevada. I am a principal of the law firm of Nitz, Walton & Heaton, Ltd. (“NWH”).
2. I, along with my partner, James Walton, represented Tower Homes, LLC in connection with the Spanish View Towers project. I therefore have personal knowledge of NWH’s representation of Tower Homes, LLC in connection with this project, including the factual and procedural history of the proceedings relating to Tower Homes, LLC and the project.
3. Attached as **Exhibit A** is a true and correct copy of the Complaint from the Underlying Lawsuit (*Gaynor, et al. v. Tower Homes, LLC, et al.*, Case No. A541668).
4. Attached as **Exhibit B** is a true and correct copy of the Bankruptcy Court’s December 8, 2008 “Order Approving Disclosure Statement and Confirming Plan of Reorganization” from the Tower bankruptcy proceedings (United States Bankruptcy Court, District of Nevada, Case No. BK-07-13208-BAM).
5. Attached as **Exhibit C** is a true and correct copy of the “Order Granting Motion to Approve Stipulation to Release Claims and Allow Marquis & Aurbach, as Counsel for the Tower Homes Purchasers, to Pursue Claims on Behalf of the Debtor” from the Tower Homes, LLC bankruptcy proceedings.
6. Attached as **Exhibit D** is a true and correct copy of the August 11, 2006 letter from Paul Connaghan to Tower (c/o me), in which Mr. Connaghan confirmed his knowledge of NWH’s representation of Tower Homes, LLC, as well as my firm’s familiarity with the subject purchase contracts. I caused a copy of this letter to be promptly delivered to Tower.
7. Attached as **Exhibit E** are true and correct excerpts of the deposition of Rod Yanke taken on October 3, 2007.
8. Attached as **Exhibit F** is a true and correct copy of a draft of the Purchase Contract which was delivered to Tower by NWH on November 16, 2004.
9. Attached as **Exhibit G** is a true and correct copy of the August 23, 2006 letter from Paul Connaghan to Tower (c/o me), in which Mr. Connaghan explained in detail the reasons why

1 he felt that the Purchase Contract did not comply with the Nevada statute, including his allegation
2 that the Purchase Contract violated NRS 116.411. I caused a copy of this letter to be promptly
3 delivered to Tower.

4 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
5 correct and, if sworn as a witness, I would testify competently thereto.

6 DATED this 19th day of July, 2012.

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/s/
William H. Heaton

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of Lewis Brisbois Bisgaard & Smith LLP, and that on this 19th day of July, 2012, a true and correct copy of the foregoing **MOTION TO DISMISS, OR, ALTERNATIVELY, MOTION FOR SUMMARY JUDGMENT** was placed in an envelope, postage prepaid, addressed as stated below.

Dennis M. Prince
Prince & Keating
3230 South Buffalo Drive, Suite 108
Las Vegas, Nevada 89117
P: (702) 228-6800
F: (702) 228-0443
Attorneys for Plaintiff

By: /s/ Nicole Sallade .
An Employee of LEWIS BRISBOIS
BISGAARD & SMITH LLP

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DECLARATION OF WILLIAM H. HEATON

I, William H. Heaton, do hereby declare:

1. I am an attorney, duly licensed and authorized to practice law in the State of Nevada. I am a principal of the law firm of Nitz, Walton & Heaton, Ltd. ("NWH").

2. I, along with my partner, James Walton, represented Tower Homes, LLC in connection with the Spanish View Towers project. I therefore have personal knowledge of NWH's representation of Tower Homes, LLC in connection with this project, including the factual and procedural history of the proceedings relating to Tower Homes, LLC and the project.

3. Attached as **Exhibit A** is a true and correct copy of the Complaint from the Underlying Lawsuit (*Gaynor, et al. v. Tower Homes, LLC, et al.*, Case No. A541668).

4. Attached as **Exhibit B** is a true and correct copy of the Bankruptcy Court's December 8, 2008 "Order Approving Disclosure Statement and Confirming Plan of Reorganization" from the Tower bankruptcy proceedings (United States Bankruptcy Court, District of Nevada, Case No. BK-07-13208-BAM).

5. Attached as **Exhibit C** is a true and correct copy of the "Order Granting Motion to Approve Stipulation to Release Claims and Allow Marquis & Aurbach, as Counsel for the Tower Homes Purchasers, to Pursue Claims on Behalf of the Debtor" from the Tower Homes, LLC bankruptcy proceedings.

6. Attached as **Exhibit D** is a true and correct copy of the August 11, 2006 letter from Paul Connaghan to Tower (c/o me), in which Mr. Connaghan confirmed his knowledge of NWH's representation of Tower Homes, LLC, as well as my firm's familiarity with the subject purchase contracts. I caused a copy of this letter to be promptly delivered to Tower.

7. Attached as **Exhibit E** are true and correct excerpts of the deposition of Rod Yanke taken on October 3, 2007.

8. Attached as **Exhibit F** is a true and correct copy of a draft of the Purchase Contract which was delivered to Tower by NWH on November 16, 2004.

9. Attached as **Exhibit G** is a true and correct copy of the August 23, 2006 letter from Paul Connaghan to Tower (c/o me), in which Mr. Connaghan explained in detail the reasons why

1 he felt that the Purchase Contract did not comply with the Nevada statute, including his allegation
2 that the Purchase Contract violated NRS 116.411. I caused a copy of this letter to be promptly
3 delivered to Tower.

4 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
5 correct and, if sworn as a witness, I would testify competently thereto.

6 DATED this 19th day of July, 2012.

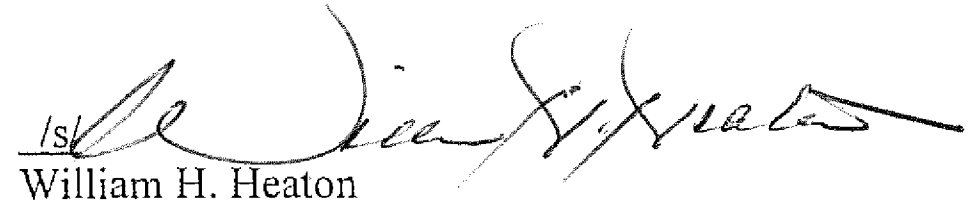
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8 
9 William H. Heaton

EXHIBIT A

EXHIBIT A

Original

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CLERK OF THE COURT

COMP

Marquis & Aurbach

TERRY A. COFFING, ESQ.

Nevada Bar No. 4949

BRIAN R. HARDY, ESQ.

Nevada Bar No. 10068

10001 Park Run Drive

Las Vegas, Nevada 89145

(702) 382-0711

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ALLISON GAYNOR, an individual; BARBARA
CHANDLER, individually and as TRUSTEE OF
THE SARALEE M. BOWERS TRUST, and on
behalf of others similarly situated,

Plaintiffs,

vs.

TOWER HOMES, LLC., a Nevada limited
liability company; RODNEY C. YANKE, an
individual; PRUDENTIAL REAL ESTATE
AFFILIATES, INC., a Delaware Corporation;
AMERICANA LLC dba AMERICANA
GROUP; Nevada limited liability company;
MARK L. STARK, an individual in his capacity
as a broker; JEANNINE CUTTER, an individual
in her capacity as an agent; DAVID BERG, an
individual in his capacity as an agent DOE
REAL ESTATE AGENTS I through X,
individually, DOE REAL ESTATE BROKERS I
through X, individually, ROE REAL ESTATE
CORPORATIONS I through X, inclusive,

Defendants

Case No:

Dept. No.:

(Business Court Requested)

COMPLAINT

Plaintiffs Allison Gaynor and Barbara Chandler, individually and on behalf of the Saralee
M. Bowers Trust (hereinafter collectively the "Plaintiffs"), by and through their attorney record,
the law firm of Marquis & Aurbach, hereby complain and allege, on behalf of themselves and
person similarly situated as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction in this suit because Plaintiffs seek damages in excess

Page 1 of 12

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CLERK OF THE COURT

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1 of the minimum jurisdictional requirements of this Court.

2 2. This Court has personal jurisdiction over the Defendants for the following
3 reasons:

- 4 a. Upon information and belief, the Defendants conduct business in Nevada,
5 were fiduciaries or recipients of funds held in Nevada, participated and/or
6 engaged in transactions which injured Nevadans, engaged in tortious
7 behavior in Nevada, caused injuries and damages to Nevadans, and/or they
8 are citizens or domiciliaries of this state. In addition, the claim stated in
9 this Complaint arises under Defendants' contacts with this state.
- 10 b. The Defendants have had such minimum contacts with the State of
11 Nevada that a Nevada court's exercise of personal jurisdiction over the,
12 would not offend traditional notions of fair play and substantial justice,
13 and the claims stated in this Complaint arise under those minimum
14 contacts.

15 3. Venue is proper in Clark County, Nevada for the following reasons:

- 16 a. Upon information and belief, Defendants are residents of Clark County,
17 Nevada, they transact business in Clark County, Nevada.
- 18 b. The issues and claims alleged in this Complaint revolve around property
19 located in Nevada.
- 20 c. Clark County, Nevada, is the county where all or substantially all of the
21 events giving rise to the Plaintiffs' claims occurred.

22 **II. PARTIES**

23 4. Allison Gaynor, is and was at all times relevant hereto, a party to an agreement to
24 purchase real property located in Clark County, State of Nevada.

25 5. Barbara Chandler, is and was at all times relevant hereto, a party to an agreement
26 to purchase real property located in Clark County, State of Nevada.

27 6. Saralee M. Bowers Trust, is and was at all times relevant hereto, a party to an
28 agreement to purchase real property located in Clark County, State of Nevada.

1 7. The class that Plaintiffs represent is comprised of all consumers, individuals or
2 otherwise, who entered into written Purchase Contracts with Defendant Tower Homes, LLC
3 ("Tower") and/or its agents, partners, successors or assigns, to purchase a common interest
4 ownership unit in the Spanish View Tower Homes Project ("Spanish View Project") to be
5 constructed by Defendants Tower and Rodney C. Yanke ("Yanke") (collectively hereinafter the
6 "Tower Defendants") on Assessors Parcel No. 176-04-601-019 in the County of Clark, State of
7 Nevada.

8 8. Tower is, and was at all times relevant hereto, a Nevada limited liability company,
9 doing business in Clark County, State of Nevada.

10 9. Yanke is, and was at all times relevant hereto, a resident of Clark County, State of
11 Nevada.

12 10. Prudential Real Estate Affiliates, Inc. ("Prudential") is, and was at all times
13 relevant hereto, a Delaware corporation, doing business in Clark County, State of Nevada.

14 11. AMERICANA LLC dba AMERICANA GROUP ("Americana") is, and was at all
15 times relevant hereto, a Nevada limited liability company, doing business in Clark County, State
16 of Nevada.

17 12. Mark L. Stark ("Stark") is, and was at all times relevant hereto, a resident of and
18 real estate broker in Clark County, State of Nevada.

19 13. Jeannine Cutter ("Cutter") is, and was at all times relevant hereto, a resident of
20 and real estate agent in Clark County, State of Nevada.

21 14. David Berg ("Berg") is, and was at all times relevant hereto, a resident of and real
22 estate agent in Clark County, State of Nevada.

23 15. Prudential, Americana, Stark, Cutter and Berg are hereinafter collectively referred
24 to as the Agent Defendants.

25 16. That the true names or capacities, whether individual, corporate, associate or
26 otherwise of the Defendants named herein as DOES 1 through X, inclusive, and ROE
27 CORPORATIONS I through X, inclusive, are unknown to Plaintiffs who, therefore, sue said
28 Defendants by such fictitious names. Plaintiffs allege that each Defendant designated herein as a

DOE or ROE CORPORATION is negligently, willfully, contractually, intentionally or otherwise legally responsible for the events and happenings herein referred to and proximately caused injury and damage thereby to the Plaintiffs as herein alleged. Plaintiffs shall ask leave of this Court to amend the Complaint to insert the true names and capacities of each Defendant named as DOES and/or ROE CORPORATIONS, when the same have been ascertained, and will further seek leave to join said Defendants in these proceedings.

III. GENERAL FACTUAL ALLEGATIONS

SPANISH VIEW PROJECT

17. Tower is a company set up by Yanke for the sole purpose of building the Spanish View Project.

18. The Spanish View Project is proposed to have three 18-story condominium towers, combining for 405 units, located at the southwest corner of Interstate-215 and S. Buffalo Road in Las Vegas, Nevada.

19. The Plaintiffs entered into written Purchase Contracts with the Tower Defendants which provided that their units located on or above the fifth floor of Tower A would be completed in or before July, 2007.

20. Moreover, according to oral promises made by the Tower Defendants and the Agent Defendants the first tower in the Spanish View Project was to be complete in June or July 2006.

21. To date, the first tower has not been completed nor is it near substantial completion. In fact, to date, Tower A does not even contain a ground level floor. Accordingly, it is impossible for the Tower Defendants to have a completed tower within the next forty-five (45) days.

22. Upon information and belief, construction on the Spanish View Project has ceased and there is presently no financing available for its completion.

23. Upon information and belief, there are approximately nine (9) lawsuits pending against the Tower Defendants and the Spanish View Project which effectively cloud title to the property.

1 24. Upon information and belief, there are over twenty-five million dollars in
2 mechanics liens which have been filed for work on the Spanish View project.

3 **INDUCEMENT INTO UNCONSCIONABLE AGREEMENT**

4 25. Plaintiffs meet with one or more of the Agent Defendants regarding the Spanish
5 View project. At the meeting with one or more of the Agent Defendants, it was represented to
6 the Plaintiffs that the first tower would be completed in June or July of 2006.

7 26. Based upon the assurances of the Agent Defendants, the Plaintiffs provided the
8 Tower Defendants with deposit monies in excess of \$10,000 to reserve a unit in the Spanish
9 View Project.

10 27. Based upon the assurances of the Agent Defendants, the Plaintiffs entered into a
11 Purchase Contract with the Tower Defendants to purchase a unit in the Spanish View Project.

12 28. The Purchase Contract provided that the Plaintiffs would place their purchase
13 monies into escrow account and that after five (5) days the escrow company would deposit the
14 purchase monies into Tower's company bank account.

15 29. The Purchase Contract provided a time is of the essence clause.

16 30. The Tower Defendants failed to meet their completion dates and will be unable to
17 meet any future contract dates.

18 31. Upon information and belief, the Spanish View Project presently has neither
19 financing available nor the resources necessary for its completion. Moreover, the first tower has
20 not been completed nor is it near substantial completion.

21 **FIRST CAUSE OF ACTION**
22 **(Breach of Contract – the Tower Defendants)**

23 32. The Plaintiffs repeat, re-allege and incorporate by reference each and every
24 allegation contained above, inclusive, as if fully set forth herein.

25 33. The Plaintiffs, each of them, entered into a into written Purchase Contracts with
26 the Tower Defendants and/or their agents, partners, successors or assigns, to purchase a common
27 interest ownership unit in the Spanish View Project

28 34. The Purchase Contract provided a time is of the essence clause.

1 35. The first tower in Spanish View was to be complete in June or July 2006.

2 36. To date, the first tower has not been completed nor is it near substantial
3 completion.

4 37. The Tower Defendants Plaintiffs have failed and/or refused to return Plaintiffs
5 deposit monies in excess of \$10,000.

6 38. As a direct and proximate result of the Tower Defendants' breach, the Plaintiffs
7 have been damaged an amount in excess of \$10,0000, plus interest thereon.

8 39. 35. As a direct and proximate result of the aforementioned acts, it has become
9 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
10 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

11 **SECOND CAUSE OF ACTION**

12 **(Breach of the Covenant of Good Faith and Fair Dealing – the Tower Defendants)**

13 40. The Plaintiffs repeat, re-allege and incorporate by reference each and every
14 allegation contained above, inclusive, as if fully set forth herein.

15 41. All contracts in Nevada contain an implied covenant of good faith and fair
16 dealing.

17 42. The Tower Defendants, breached the covenant of good faith and fair dealing by
18 refusing to honor their contractual obligations.

19 43. As a direct and proximate cause of the Tower Defendants' breach, the Plaintiffs
20 have been damaged in excess of \$10,000, plus interest thereon.

21 44. As a direct and proximate result of the aforementioned acts, it has become
22 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
23 recover fees and costs incurred herein pursuant to the terms Purchase Contract.

24 **THIRD CAUSE OF ACTION**

25 **(Declaratory Relief – the Tower Defendants)**

26 45. The Plaintiffs repeat, re-allege and incorporate by reference each and every
27 allegation contained above, inclusive, as if fully set forth herein.

28 46. A justiciable controversy exists between the Plaintiffs and the Defendants relative
to their legal rights and duties under the above-mentioned Purchase Contract.

1 47. The controversy between the Plaintiffs and Defendants is adverse.

2 48. Plaintiffs seek a declaration from this Court setting forth the particular rights and
3 obligations of each party with regard to Purchase Contract.

4 49. A judicial determination of the Plaintiffs rights under the above referenced
5 Purchase Contract is necessary and appropriate at this time in order to avoid additional and
6 unnecessary litigation.

7 50. As a direct and proximate result of the aforementioned acts, it has become
8 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
9 recover fees and costs incurred herein pursuant to the terms Purchase Contract.

10 **FOURTH CAUSE OF ACTION**
11 **(Unjust Enrichment – all Defendants)**

12 51. The Plaintiffs repeat, re-allege and incorporate by reference each and every
13 allegation contained above, inclusive, as if fully set forth herein.

14 52. The Plaintiffs conferred upon Defendants, each of them, certain monetary
15 benefits.

16 53. Defendants appreciated the benefits conferred upon them by the Plaintiffs.

17 54. Defendants accepted and retained the benefits under circumstances where it
18 would be unjust and inequitable for them to retain the benefits.

19 55. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have
20 been damaged in excess of \$10,000.00, plus interest thereon.

21 56. As a direct and proximate result of the aforementioned acts, it has become
22 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
23 recover fees and costs incurred herein pursuant to the terms of the Purchase Contract.

24 **FIFTH CAUSE OF ACTION**
25 **(Deceptive and Unfair Trade Practices in Violation of NRS 598 Et. Seq.)**
26 **(Agent Defendants)**

27 57. The Plaintiffs repeat, re-allege and incorporate by reference each and every
28 allegation contained above, inclusive, as if fully set forth herein.

58. Upon information and belief, in or around February 2005, Cutter was intimately

involved and living with Yanke, the owner of Tower and developer of the Spanish View Project.

59. Upon information and belief, in or around February 2005, Cutter had a financial interest in the Spanish View Project.

60. Cutter, as the onsite agent at the Spanish View Project, had contact with each and every one of the Plaintiffs.

61. Cutter failed to disclose to the Plaintiffs, each of them, material facts in connection with her solicitation to purchase an interest in land in the state of Nevada in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

62. Cutter's actions and conduct constitute a deceptive and unfair trade practice in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

63. Cutter works as a Sellers agent for sales in the Spanish View Project and does so as an agent of Stark who is the Sellers broker for all sales in the Spanish View Project.

64. Upon information and belief, Cutter and Stark are employed by Prudential and Americana.

65. Consequently, Prudential and Americana failed to disclose material facts in connection with a solicitation to purchase an interest in land in the state of Nevada in violation of NRS 598.0903 et. seq. and NRS 599A.010 et. seq.

66. NRS 598.0999(3) provides that a "person, firm, or any officer or managing agent of any corporation or association who knowingly and willfully engages in a deceptive trade practice" may be required to "pay to the aggrieved party damages on all profits derived from the knowing and willful engagement in a deceptive trade practice and treble damages on all damages suffered by reason of the deceptive trade practice."

67. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have been damaged in excess of \$10,000.00, plus interest thereon.

68. As a direct and proximate result of the aforementioned acts, it has become necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to recover fees and costs incurred herein as well as treble damages pursuant to NRS 598.0999(3).

SIXTH CAUSE OF ACTION
(Violation of NRS 645)
(Agent Defendants)

69. The Plaintiffs repeat, re-allege and incorporate by reference each and every allegation contained above, inclusive, as if fully set forth herein.

70. Pursuant to NRS 645.990(4) any officer or agent of a corporation, or member or agent of a limited-liability company, partnership or association, who personally participates in or is an accessory to any violation of NRS chapter 645 is subject to the penalties prescribed therein.

71. Pursuant to NRS 645.260, where any person, limited liability company, partnership, association or corporation, in consideration for (or expectation of) a commission, directly or indirectly engages in any single act defined under NRS 645.030, such as negotiating a sale or soliciting prospective buyers, that person or entity is acting within the capacity of a real estate broker or real estate salesman.

72. Pursuant to NRS 645.252(1), Defendants Cutter, Stark, Americana and/or Prudential were required to disclose: 1) any material and relevant facts, data or information which they knew, or should have known, relating to the property, 2) each source from which they would receive compensation as a result of the transaction, and 3) that they had an interest in a principal to the transaction.

73. Pursuant to NRS 645.320, a licensee is prohibited from dealing with any party to a real estate transaction in a manner which is deceitful, fraudulent, or dishonest.

74. Upon information and belief, in or around February 2005, Cutter was intimately involved and living with Yanke, the owner of Tower and developer of the Spanish View Project.

75. Upon information and belief, in or around February 2005, Cutter and Americana had a financial interest in the Spanish View Project.

76. Defendants Cutter, Stark, Americana and/or Prudential failed to disclose these material facts in connection with their solicitation to purchase an interest in land in the state of Nevada in violation of NRS 645 et. seq.

77. As a direct and proximate cause of the Defendants' actions, the Plaintiffs have been damaged in excess of \$10,000.00, plus interest thereon.

1 78. As a direct and proximate result of the aforementioned acts, it has become
2 necessary for the Plaintiffs to secure the services of an attorney, and the Plaintiffs are entitled to
3 recover all fees and costs incurred herein.

4 **SEVENTH CAUSE OF ACTION**
5 **(Civil RICO - Yanke)**

6 79. The Plaintiffs repeat, re-allege and incorporate by reference each and every
7 allegation contained above, inclusive, as if fully set forth herein.

8 80. Yanke engaged in racketeering activity as defined in NRS 207.390.

9 81. Upon information and belief, Yanke committed a predicate act when was
10 involved in a scheme in which he took buyers and lenders monies for completed houses without
11 the intent or ability to complete said houses in violation of NRS 207.360.

12 82. Upon information and belief, Yanke was sued as a result of his activities in Case
13 No.: 86-A-245508-C and Case No. 06-A-528584-C in the Eighth Judicial District Court in Clark
14 County, Nevada.

15 83. Upon information and belief, the aforementioned cases were initiated after July 1,
16 1983 and Yanke has continued engaging in related acts of racketeering which have the same or
17 similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise
18 interrelated by distinguishing characteristics.

19 84. Yanke's racketeering actions are not isolated incidents.

20 85. Yanke has utilized a Purchase Contract in relation to the Spanish View Project
21 which provides that potential purchasers must place their purchase monies into escrow account
22 which, after five (5) days, pursuant to Yankes instructions is deposited into Yanke's company
23 bank account.

24 86. Upon information and belief, Yanke is not utilizing said money to complete the
25 Spanish View Project.

26 87. Upon information and belief, Yanke committed a subsequent predicate act when
27 prior to Yanke accepting the Plaintiffs purchase monies he accepted purchase monies from other
28 purchasers under false pretenses.

1 88. The Plaintiffs entered into a Purchase Contract and provided Yanke with deposit
2 monies in excess of \$10,000.

3 89. The Plaintiffs deposit monies have been removed from the escrow account and
4 deposited in Yanke business account.

5 90. Upon information and belief, Yanke is continuing to take purchase monies from
6 other potential purchasers, knowing that the Spanish View Project cannot be completed or
7 receive financing.

8 91. As a direct and proximate result of Defendants' racketeering activities, the
9 Plaintiffs have been damaged in excess of \$10,000.

10 92. The Plaintiffs are entitled to treble damages.

11 93. The Plaintiffs have been forced to retain the services of an attorney to prosecute
12 this matter and are entitled recover reasonable costs and attorneys fees incurred herein as special
13 damages.

14 **EIGHTH CAUSE OF ACTION**
15 **(Conversion – the Tower Defendants)**

16 94. The Plaintiffs repeat, re-allege and incorporate by reference each and every
17 allegation contained above, inclusive, as if fully set forth herein.

18 95. The Tower Defendants have misappropriated, unlawfully exercised domain over,
19 and converted for their use and benefit the Plaintiffs purchase money to the detriment of the
20 Plaintiffs.

21 96. By keeping the above-referenced funds, the Tower Defendants' possession and
22 use of the funds demonstrates a claim of ownership which is inconsistent with the proper and
23 rightful ownership thereof.

24 97. The Plaintiffs have been forced to retain the services of an attorney to prosecute
25 this matter and are entitled recover reasonable costs and attorneys fees incurred herein as special
26 damages

27 WHEREFORE, Plaintiffs pray for a judgment against Defendants as follows:

28 1. For Breach of Contract damages in excess of \$10,000, plus interest thereon;

2. For general damages in excess of \$10,000.00, plus interest thereon;
3. For declaratory relief setting forth the particular rights and obligations of each party with regard to Purchase Contract.
4. For statutory treble damages;
5. For attorney's fees and costs incurred herein as damages pursuant NRS 598.0999(3);
6. For attorney's fees and costs incurred herein as damages pursuant Purchase Contract;
7. For punitive damages; and
8. For such other and further relief as the Court deems just and proper in its premises.

Dated this 22nd day of May, 2007.

MARQUIS & AURBACH

By: 

Terry A. Coffing, Esq.
Nevada Bar No. 4949
Brian R. Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for Plaintiffs

EXHIBIT B

EXHIBIT B



Entered on Docket
December 08, 2008

Bruce A. Markell

Hon. Bruce A. Markell
United States Bankruptcy Judge

SULLIVAN, HILL, LEWIN, REZ & ENGEL
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Attorneys for William A. Leonard, Jr.,
Chapter 11 Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re)	CASE NO. BK-S-07-13208-BAM
)	Chapter 11 (Involuntary)
TOWER HOMES, LLC, a Nevada limited)	
liability company, dba Spanish View Tower)	
Homes,)	Date: November 17, 2008
)	Time: 9:30 a.m.
Debtor.)	
)	Ctrm.: BAM - Courtroom 3
)	Foley Federal Building
)	300 Las Vegas Blvd. South
)	Las Vegas, NV 89101
)	Judge: Hon. Bruce A. Markell

ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING PLAN OF
REORGANIZATION

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1 The Motion to Confirm Plan of Reorganization ("Motion") filed by William A. Leonard, Jr.
2 ("Trustee"), the Chapter 11 trustee of the bankruptcy estate of Tower Homes, LLC ("Debtor"), came
3 on regularly for hearing on November 17, 2008, at 9:30 a.m. in Courtroom 3 of the above-entitled
4 Court, United States Bankruptcy Judge Bruce A. Markell presiding. The Trustee appeared in person
5 and by his counsel, James P. Hill of Sullivan, Hill, Lewin, Rez & Engel. All other appearances are
6 noted in the Court's record of the hearing.

7 The Court having considered the Motion, its supporting papers, the combined Disclosure
8 Statement and Plan of Reorganization, the opposition filed thereto, and the stipulation resolving the
9 opposition; the Court having previously entered an order conditionally approving the Trustee's
10 disclosure statement; the Court having entered findings of fact and conclusions of law concurrently
11 herewith; notice of the Motion appearing sufficient and proper; and good cause appearing therefor,

12 IT IS HEREBY ORDERED that:

13 1. The disclosure statement aspect of the plan is granted final approval as containing
14 "adequate information" within the meaning of section 1125 of the Bankruptcy Code (11 U.S.C. §§
15 101, et seq.).

16 2. The Plan, subject to the modifications announced in open court ("Plan"), is confirmed
17 and approved in its entirety. A copy of the Plan as amended is attached as Exhibit "A" hereto. To
18 the extent of any conflict between the Plan and this order ("Confirmation Order"), this Confirmation
19 Order shall control. The Trustee is authorized to take all steps and do all things necessary to
20 implement the Plan. All terms not defined herein shall have the meaning given them in the Plan, or
21 if not defined in the Plan, then in the Motion.

22 3. The failure to reference or discuss any particular provision of the Plan in this
23 Confirmation Order shall have no effect on the Court's approval and authorization of, or the validity,
24 binding effect, and enforceability of, such provision. Each provision of the Plan is authorized and
25 approved and shall have the same validity, binding effect, and enforceability as every other provision
26 of the Plan, whether or not mentioned in this Confirmation Order.

27 4. Pursuant to section 1141 of the Bankruptcy Code (11 U.S.C. § 101, et seq.), and
28 except as expressly provided in the Plan, related settlement agreements referred to in the Plan, or this

1 Confirmation Order, the provisions of the Plan (including the exhibits thereto, and all documents and
2 agreements executed pursuant to the Plan) and this Confirmation Order shall be binding on (i) the
3 Debtor, (ii) the Trustee, (iii) any person acquiring property under the Plan, and (iv) all holders of
4 Claims against and Interests in the Debtor or its bankruptcy estate, whether or not impaired under the
5 Plan and whether or not, if impaired, any such holder accepted the Plan.

6 5. On the Effective Date, except as provided in the Plan or related settlement agreements
7 referred to in the Plan; (A) Creditors of the Debtor whose Claims are dealt with by the Plan and this
8 Confirmation Order are restrained and enjoined from the commencement, taking, or continuance of
9 any action, or the employment of any process: (i) to collect such Claims or debts from the Trustee,
10 the Debtor or its bankruptcy estate, or from property of the Debtor or its bankruptcy estate; (ii)
11 which may directly or indirectly interfere with or impair the Trustee's administration of property of
12 the Debtor's bankruptcy estate; or (iii) to collect on a claim or alleged claim that is satisfied or
13 treated under the Plan; (B) this injunction shall be binding on all Creditors, parties in interest, and
14 other Persons, and their respective officers, agents, members, employees, successors, and assigns;
15 and (C) the assets and property of the Debtor and its bankruptcy estate shall be held by the Trustee to
16 be administered free and clear of each and every claim, lien, encumbrance, action, successor liability
17 proceeding, setoff, counterclaim, or claims for equitable relief of any type or nature, except as
18 expressly provided for by the Plan.

19 6. In the event that a Timely Refinancing is achieved in accordance with the terms of the
20 Plan, then (a) all executory Purchase Contracts shall be assumed pursuant to the provisions of
21 sections 365 and 1123 of the Bankruptcy Code, other than any executory Purchase Contract that is
22 the subject of a motion to reject filed prior to and pending on the Confirmation Date, which shall be
23 rejected according to the terms of such motion; and (b) all other executory contracts to which the
24 Debtor may be a party shall be rejected, other than any executory contract or unexpired lease that is
25 the subject of a motion to assume filed prior to and pending on the Confirmation Date, which shall
26 be assumed according to the terms of such motion. In the event that a Timely Refinancing is not
27 achieved, then (i) all executory contracts and unexpired leases to which the Debtor may be a party
28 shall be rejected, other than any executory contract or unexpired lease that is the subject of a motion

1 to assume filed prior to and pending on the Confirmation Date, which shall be assumed according to
2 the terms of such motion. Any assumption or rejection effected under this paragraph and not the
3 subject of a specific assumption or rejection order shall be deemed to have occurred on the date that
4 the Trustee files the notice described in Section V(B)(3)(i) of the Plan; provided, however, that in the
5 event of a dispute over whether a Timely Refinancing has been achieved, any assumption or
6 rejection effected under this paragraph shall be deemed to have occurred on the date that any Court
7 order resolving the dispute becomes final.

8 7. Pursuant to section 1142(b) of the Bankruptcy Code, the Trustee is authorized and
9 empowered to (a) execute and deliver any instrument, agreement or document required to effect a
10 transfer of property dealt with by the Plan; and (b) to perform any other act that is necessary,
11 desirable or required to consummate the Plan.

12 8. Pursuant to section 105 of the Bankruptcy Code, the Trustee is authorized and
13 empowered to take any and all actions reasonably necessary to implement the transactions
14 contemplated by the Plan and this Confirmation Order, all without further corporate action or action
15 of the managers or members of the Debtor, including, without limitation, matters under the Plan
16 involving the organizational structure of the Debtor or corporate action by the Debtor.

17 9. Pursuant to section 1146(a) of the Bankruptcy Code, the issuance, transfer, or
18 exchange of notes or equity securities under the Plan, the creation of any mortgage, deed of trust, or
19 other security interest, the making or assignment of any lease or sublease, or the making or delivery
20 of any deed or other instrument of transfer under, in furtherance of, or in connection with the Plan,
21 including, without limitation, any agreements of consolidation, deeds, bills of sale or assignments
22 executed in connection with any of the transactions contemplated under the Plan, shall not be subject
23 to any stamp tax, transfer tax, mortgage recording fee, or other similar tax.

24 10. All Professional Persons, or other Persons requesting compensation or reimbursement
25 of expenses pursuant to any of sections 327, 328, 330, 331, 503(b) and 1103 of the Bankruptcy Code
26 for services rendered on or before the Confirmation Date (including, inter alia, any compensation
27 requested by any Professional Person or any other Person for making a substantial contribution in
28 the Bankruptcy Cases) shall file with the Court and properly serve an application for final allowance

1 of compensation and reimbursement of expenses no later than (i) sixty (60) days after the
2 Confirmation Date, or (ii) such later date as this Court shall order upon application made prior to the
3 end of such 60-day period. The Trustee shall be paid in accordance with the terms of Section VIII(J)
4 of the Plan.

5 11. Compensation for services rendered and for reimbursement of expenses by the
6 Trustee or a Professional Person after the Confirmation Date need not be approved by the Court.
7 The Trustee or Professional Persons may invoice the estate directly, and shall provide a copy of such
8 invoice to the Office of the United States Trustee and any other party specifically requesting in
9 writing to the Trustee a copy of such post-confirmation invoices (not merely having requested notice
10 generally in the bankruptcy case). In the event that no objection is served on the Trustee and the
11 party requesting payment within 10 days of service of a given invoice, the Trustee may pay such
12 invoice without further order of the Court. In the event that an objection to a given invoice is served
13 on the Trustee and the party requesting payment within 10 days of service of a given invoice, the
14 party requesting payment may submit an application to the Court for review of the request for
15 compensation and reimbursement, and the Court retains jurisdiction to hear and approve such
16 application and compel payment thereon. Such post-Confirmation Date compensation for services
17 rendered and reimbursement of expenses shall be considered an ordinary expense of the Debtor's
18 bankruptcy estate.

19 12. All fees payable by the Trustee on behalf of the Debtor on or before the Effective
20 Date pursuant to section 1930 of Title 28 of the United States Code shall be paid by the Trustee on or
21 before the Effective Date.

22 13. Except as otherwise provided in the Plan and this Confirmation Order, notice of all
23 subsequent pleadings in these Chapter 11 cases shall be limited to counsel for the Debtor; the
24 Trustee; the United States Trustee; Yanke; Bank of George; OneCap; the Petitioning Creditors; the
25 Joining Creditors; as well as Donna Osborn, Esq.; any party directly affected by the relief requested
26 in a pleading; and any other party requesting such notice by a writing delivered to the undersigned
27 counsel after the Effective Date, unless otherwise specified in an order by this Court. The Trustee

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1 shall provide notice to all creditors and parties in interest of (i) such future limitation of notice, and
2 (ii) the opportunity to request in writing continued notice.

3 14. Pursuant to sections 1123(a) and 1142(a) of the Bankruptcy Code, the provisions of
4 this Confirmation Order, the Plan, or any amendments or modifications thereto shall apply and be
5 enforceable notwithstanding any otherwise applicable non-bankruptcy law.

6 15. The Trustee and the Debtor's bankruptcy estate shall retain all Claims or Causes of
7 Action that they have or hold against any party, including against "insiders" of the Debtor (as that
8 term is defined in Bankruptcy Code section 101(31)), whether arising pre- or post-petition, subject to
9 applicable state law statutes of limitation and related decisional law, whether sounding in tort,
10 contract or other theory or doctrine of law or equity. Confirmation of the Plan effects no settlement,
11 compromise, waiver or release of any Claim or Cause of Action unless the Plan, related settlement
12 agreements referred to in the Plan, or this Confirmation Order specifically and unambiguously so
13 provide. Upon the Effective Date, the Trustee will be designated as representative of the Estate
14 under section 1123(b)(3) of the Bankruptcy Code and shall, except as otherwise provided herein,
15 have the right to assert any or all of the above Causes of Action post-confirmation in accordance
16 with applicable law. Notwithstanding the foregoing, neither the Trustee, the Debtor, nor the Estate
17 have, or shall assert, any claims or Causes of Action against Bank of George, or with respect to the
18 SPF Financing.

19 16. When the Trustee has determined in his reasonable business judgment that the Plan
20 has been substantially consummated, he shall file an application for a final decree as required by
21 Federal Rule of Bankruptcy Procedure 3022. This application may be granted prior to full
22 consummation of the Plan. Notwithstanding the entry of such final decree and the closing of the
23 Chapter 11 case, the Court shall hear controversies arising thereafter that are within the scope of the
24 provisions of the Plan, of this Confirmation Order, or of other order of this Court regarding retained
25 jurisdiction over the case and the parties in interest thereto. In addition, any party in interest may
26 move to reopen the Chapter 11 case if necessary to obtain relief that otherwise could not be obtained
27 absent reopening of the case. Any request for such relief may be heard concurrently with a motion

28 ///

1 to reopen the case, and the same may be heard on an emergency basis if expedited relief is necessary
2 under the circumstances.

3 17. The Court reserves jurisdiction to the extent set forth in Section X(I) of the Plan and
4 as provided by law.

5 IT IS SO ORDERED.

6
7 Submitted by:

8 SULLIVAN, HILL, LEWIN, REZ & ENGEL
9 A Professional Law Corporation

10 By: /s/ James P. Hill
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12 ATTORNEYS FOR WILLIAM A.
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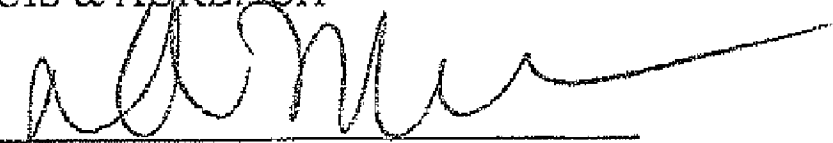
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CERTIFICATION - LOCAL RULE 9021

In accordance with Local Rule 9021, counsel submitting this document(s) certifies as follows (check one):

 The Court waived the requirements of L.R. 9021.

 No parties appeared or filed written objections, and there is no Trustee appointed in the case.

 X I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any Trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below (list each party and whether the party has approved, disapproved, or failed to respond to the document):

- William A. Leonard, Jr., is the appointed Trustee and the client of undersigned counsel.
- Donna Osborn, counsel for Ferguson Enterprises, Hughes Water & Sewer, Ltd., and numerous pre-purchasers, approved the order.
- Shlomo Sherman, counsel for Bank of George, failed to respond.
- James MacRobbie, counsel for OneCap Mortgage Co., failed to respond.
- William M. Noall, counsel for HB Parkco Construction, Inc.; Regional Steel Corporation; and Nevada Ready Mix Corporation, failed to respond.
- Jon T. Pearson, counsel for Atlas Mechanical, Inc.; Building Consensus, Inc.; Harry Ellis Devereaux; Helix Electric of Nevada; Ledcor Construction, Inc.; and WPH Architecture, Inc., failed to respond.
- William H. Heaton, counsel for Rodney Yanke, failed to respond.

By: /s/ Christine A. Roberts
Christine A. Roberts
228 South Fourth Street, First Floor
Las Vegas, NV 89101
Attorneys for William A. Leonard, Jr.

###

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6 Attorneys for William A. Leonard, Jr.,
7 Chapter 11 Trustee

8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10
11 In re) CASE NO. BK-S-07-13208-BAM
Chapter 11 (Involuntary)
12 TOWER HOMES, LLC, a Nevada limited)
liability company, dba Spanish View Tower)
13 Homes,) **Date: November 17, 2008**
Debtor.) **Time: 9:30 a.m.**
14)
15) Ctrm.: BAM - Courtroom 3
Foley Federal Building
16) 300 Las Vegas Blvd. South
Las Vegas, NV 89101
Judge: Hon. Bruce A. Markell

17
18
19 **TRUSTEE'S DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION**
(amended as approved at confirmation hearing)
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TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
A.	Overview	1
B.	The Plan Will Allow for Greater Recoveries by Creditors	1
C.	The Trustee Recommends that You Vote to Accept the Plan.....	2
II.	INTRODUCTION.....	3
III.	VOTING INSTRUCTION AND THE PLAN CONFIRMATION PROCESS	6
A.	Approval of the Disclosure Statement.....	6
B.	Holders of Claims Eligible to Vote For or Against the Plan	6
C.	Voting Instructions	7
D.	Acceptance of the Plan	7
1.	Acceptance By a Class of Claims	7
2.	Deemed Acceptance/Rejection	7
3.	Comparison to Chapter 7	8
4.	Confirmation Without Acceptance ("Cramdown")	8
5.	Confirmation Hearing	9
6.	Identity of Person to Contact For More Information Regarding the Plan	9
E.	The Trustee Recommends That You Vote to Accept the Plan.....	9
IV.	FACTUAL BACKGROUND	10
A.	The Debtor's Background and Pre-Bankruptcy Operating History	10
B.	Events Leading to the Debtor's Bankruptcy	11
C.	The Chapter 11 Case	11
V.	CRITICAL PLAN PROVISIONS.....	12
A.	Overview	12
B.	First Alternative - Refinancing.....	12
1.	Generally.....	12
2.	Determination of Amount Needed to Satisfy All Claims	13
3.	Effect of Timely Refinancing	14
4.	Control of Estate Funds/Satisfaction of Claims.....	14
C.	Second Alternative - Liquidation	15
1.	Generally.....	15
2.	Sale Procedure	15
3.	Sale Free and Clear/Credit Bids.....	17
4.	Operation of Bankruptcy Code Section 506(a).....	17
D.	Allowance and Satisfaction of Claims	17
E.	Timing of Distributions	18
VI.	DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS	18
A.	Administrative Expense Claims	18
B.	Priority Tax Claims	19

1	VII. DESIGNATION, CLASSIFICATION AND TREATMENT OF CLAIMS AND INTERESTS.....	19
2		
3	A. Class 1	20
4	B. Class 2	21
5	C. Class 3	21
6	D. Class 4	22
7	E. Class 5	23
8	F. Class 6	27
9	G. Class 7	28
10	H. Class 8	29
11	I. Class 9	29
12	J. Class 10	30
13	K. Class 11	30
14	L. Class 12	31
15	M. Class 13	31
16	N. Class 14	34
17	O. Class 15	34
18	P. Class 16	34
19	VIII. MEANS OF IMPLEMENTATION OF THE PLAN.....	35
20	A. Assets and Liabilities of the Estate.....	35
21	B. Source of Funds to Pay Claims	35
22	C. Continued Management of the Debtor	36
23	D. Further Development of Property/Additional Debt.....	36
24	E. Objections to Claims	37
25	1. Generally.....	37
26	2. Resolution of Disputes	37
27	3. Settlement	37
28	4. Allowed Amount.....	37
29	F. Assumption or Rejection of Unexpired Leases and Executory Contracts	38
30	1. Assumption or Rejection.....	38
31	2. Reservation of Rights.....	38
32	3. Proof of Claim for Rejection Damages.....	39
33	G. Retention of Liens	39
34	H. Deadline For Administrative Expense Claims	39
35	I. Post-Confirmation Compensation of Professional Persons.....	40
36	J. Compensation of the Trustee.....	40
37	K. Net Operating Reserve	41
38	L. Re-vesting of Assets in the Debtor.....	41
39	M. Cancellation of the Debtor's Stock	41
40	IX. LIQUIDATION ANALYSIS	42
41		
42	A. In General	42
43	B. The Plan Priorities Follow the Chapter 7 Priorities.....	42
44	C. Timing of Distributions	42
45	D. Amount of Distributions.....	43
46	E. The Trustee's Financial Projections	44
47	1. Overview.....	44
48	2. The Different Possible Outcomes	45
49	3. The Models Are Liquidation Analyses	45
50	4. Disclaimer	46

1	X.	MISCELLANEOUS PROVISIONS OF THE PLAN	46
2	A.	All section 1129(a)(4) Payments Subject to Bankruptcy Court Review	46
	B.	Default	46
3	1.	Events of Default	46
	2.	Consequences of Default	47
4	C.	Litigation	47
	D.	Modification/Amendment of Plan	48
5	1.	Amendments Prior to Confirmation	48
	2.	Amendments After Confirmation	48
6	3.	Effect on Claims	48
	E.	Reservation of Section 1129(b) Rights (Cramdown)	48
7	F.	Exemption from Transfer Taxes	49
	G.	Post-Confirmation Status Reports and Final Decree	49
8	H.	Post-Confirmation United States Trustee Fees	50
	I.	Post-Confirmation Jurisdiction	50
9	1.	Purposes	50
	2.	Abstention	52
10	J.	General Provisions	53
	1.	Unclaimed Funds	53
11	2.	Notice	53
	3.	Headings	54
12	4.	Severability	54
	5.	Governing Law	54
13	6.	Successors and Assigns	55
	7.	Plan Is Self Executing	55
14	XI.	EFFECT OF CONFIRMATION	55
15	A.	Binding Effect	55
16	B.	Possible Discharge of the Debtor	55
	C.	Post-Confirmation Conversion or Dismissal	56
17	D.	Tax Consequences	56
	E.	Exculpation	57
18	F.	Injunction/Further Actions	58
19	XII.	CONCLUSION AND RECOMMENDATION	59
20	XIII.	GLOSSARY OF DEFINED TERMS	59
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF AUTHORITIES

Statutes

Bankruptcy Code § 1129(a).....	6, 9, 49
Bankruptcy Code § 1129(a)(4)	46
Bankruptcy Code § 1129(a)(7)(A).....	8
Bankruptcy Code § 1129(a)(8)	9, 49
Bankruptcy Code § 1129(a)(9)	32
Bankruptcy Code § 1129(b).....	6, 8, 9, 48
Bankruptcy Code § 1129(b)(2)(A).....	13, 17, 35, 36, 64

William A. Leonard, Jr. (the "Trustee"), the Chapter 11 trustee of the bankruptcy estate of Tower Homes, LLC (the "Debtor"), hereby files his Disclosure Statement and Plan of Reorganization (the "Disclosure Statement," or the "Plan").¹

I.

EXECUTIVE SUMMARY

A. Overview

The Trustee's Plan is described in detail below. In summary, it offers two alternative solutions for satisfaction of Creditors' Claims. One alternative provides the Debtor and its principal, Rodney Yanke, a short period of time (in addition to that already enjoyed) to complete a refinancing of the Debtor's Spanish View Towers real estate project. The second alternative provides sale procedures for the certain sale of the Property within a definite time period should the Debtor and Yanke fail to consummate and close a refinancing of the Property in the time afforded them to do so. Payments on account of Creditors' Claims depend on which alternative is implemented. If the Debtor and Yanke achieve a refinancing, all Allowed Claims will be paid in full. If the Debtor and Yanke fail to achieve a timely refinancing, Creditors' Claims will be paid, if at all, depending on the ultimate sale price achieved for the Property, and upon each Creditor's relative priority in terms of allowed, perfected liens against the Property and in terms of the priority their Claims hold as established by this Plan and the Bankruptcy Code. The treatment set forth herein represents the results of arms length settlement negotiations between and among the Trustee, Yanke, OneCap (as holder of multiple classes and priorities of Claims), the Mechanics' Lien Claimants, and the Pre-Purchaser Claimants. Creditors and other parties in interest are urged to read this Plan carefully to more fully understand the treatment of Creditors' Claims, Equity Interests and the Debtor's assets.

B. The Plan Will Allow for Greater Recoveries by Creditors

The Trustee believes that the treatment of Creditors under this Plan will result in a greater recovery for Creditors than that which is likely to be achieved under liquidation in a case under

¹ A glossary of defined terms is provided at the end of this document, beginning at page 59 below.

1 Chapter 7 of the Bankruptcy Code. Absent confirmation of the Plan, the Trustee believes that
2 senior Secured Creditors would likely foreclose on the Property, and that a foreclosure sale
3 would not realize maximum value for the Property. The Plan avoids a hurried "fire sale" of the
4 Property, and instead provides for a fully-advertised sale of the Property over a reasonable time
5 period with the help of seasoned professionals -- all of which should help realize maximum value
6 for the Property. The Plan also provides for the possibility -- albeit remote -- of a Timely
7 Refinancing, under which all Allowed Claims will be satisfied in full -- a result not probable in a
8 liquidation under either Chapter 7 or the Plan. The Plan will also allow distributions to Creditors
9 to be made sooner than would be possible under Chapter 7. Earlier payment will likely mean
10 higher payment, because the more time passes, the more interest accrues on the senior Secured
11 Claims.

12 Attached as Exhibit "1" hereto are the Trustee's Financial Projections which show
13 various possible outcomes for Creditors in the Bankruptcy Case. The models make clear that in
14 order for Class 14 Unsecured Claims to receive any distribution, (i) Yanke must achieve a
15 Timely Refinancing (including the required negotiation of discounted Claim amounts), or (ii) the
16 Property must sell for \$90 million or more, and the Trustee must achieve success with Claim
17 objections.

18 The Trustee believes that the alternative to the Plan is liquidation through foreclosure by
19 the senior priority Secured Creditors and likely litigation among Classes of Secured Creditors
20 spanning many years and involving many tens of thousands of dollars of litigation expenses, and
21 offering no guaranteed returns.

22 **C. The Trustee Recommends that You Vote to Accept the Plan**

23 Based on the factors described above, the Trustee believes that confirmation of the Plan
24 is in the best interest of Creditors. The Trustee, in consultation with senior priority Creditors and
25 the Debtor, recommends that Creditors vote to accept the Plan.

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II.

INTRODUCTION

Chapter 11 of the Bankruptcy Code allows a debtor, a court-appointed trustee, creditors and other parties in interest to propose a plan of reorganization. A plan of reorganization provides the means for a debtor to reorganize its financial affairs and continue to operate, or to liquidate, or a combination of both. A disclosure statement describes the assumptions that underlie the Plan, how the Plan will be executed, and the treatment of creditors' and other parties' claims and interests. A disclosure statement must contain information of a kind and in sufficient detail to enable creditors and other parties who are affected by the Plan to vote intelligently for or against the Plan or to object to the Plan.

THE DOCUMENT YOU ARE READING IS A COMBINED DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION, AS THOSE TERMS ARE USED IN THE BANKRUPTCY CODE. The Trustee is the party proposing the Plan and sending you this combined Disclosure Statement and Plan of Reorganization. The Trustee, in consultation with the Debtor and the secured creditors holding the largest claims in this case, has proposed the Plan to provide the treatment for all claims against and equity interests in the Debtor. The Plan provides that the Debtor be afforded a brief opportunity (60 or 90 days) to attempt to refinance its real property. If the Debtor timely achieves such a refinancing, all allowed claims of creditors will be paid in full. If the Debtor does not timely achieve such a refinancing, then the Trustee will liquidate the Debtor's assets and use the liquidation proceeds to pay allowed claims of creditors in the priority set forth below, to the extent that such proceeds allow. The procedures for refinancing and sale are discussed in detail below.

The Bankruptcy Court has preliminarily approved the document you are reading as a Disclosure Statement containing adequate information in sufficient detail to enable parties affected by the Plan to make informed judgments about the Plan. The Bankruptcy Court will make a final determination respecting the adequacy of this Disclosure Statement at the Confirmation Hearing (defined below). The Bankruptcy Court has not yet confirmed the Plan, and therefore the Plan is not yet binding.

1 READ THIS DISCLOSURE STATEMENT CAREFULLY TO FIND OUT THE
2 FOLLOWING IMPORTANT INFORMATION:

- 3 1. HOW THE PLAN WILL AFFECT YOUR CLAIM;
4 2. WHAT RIGHTS YOU HAVE WITH RESPECT TO VOTING FOR OR
5 AGAINST THE PLAN;
6 3. WHAT RIGHTS YOU HAVE WITH RESPECT TO OBJECTING TO THE
7 PLAN; AND
8 4. HOW AND WHEN TO VOTE FOR OR AGAINST THE PLAN.

9 This Disclosure Statement cannot tell you everything about your rights. You should
10 consider consulting your own lawyer to obtain more specific advice on how the Plan will affect
11 you and what is the best course of action for you.

12 The information contained in this Disclosure Statement has been submitted by the
13 Trustee, unless expressly attributed to other sources. The Trustee has authorized no
14 representations concerning the Debtor or its financial affairs other than those representations set
15 forth in this Disclosure Statement.

16 Except as may be set forth in this Disclosure Statement, the Bankruptcy Court has not
17 approved any representations concerning the Debtor or the value of its assets. The Trustee has
18 not authorized any representations or inducement to secure acceptance or rejection of the Plan
19 other than as contained herein and approved by the Bankruptcy Court.

20 The statements contained in this Disclosure Statement are based upon information
21 obtained by the Trustee from the Debtor's books and records, as well as through formal and
22 informal discovery conducted by the Trustee with the Debtor's former officers, directors,
23 employees, attorneys and accountants, and with other parties in interest. Such statements are
24 made as of the date of this document, unless another date is specified. Neither delivery of this
25 Disclosure Statement nor any exchange of rights made in connection with this Disclosure
26 Statement or the Plan shall under any circumstances create an implication that there has been no
27 change in the facts set forth in the Disclosure Statement since the date the Disclosure Statement
28 was prepared. Although the Trustee believes that the contents of the Disclosure Statement are

1 complete and accurate to the best of his knowledge, information and belief, the Trustee is unable
2 to warrant or represent that the information contained herein is without any inaccuracy.

3 The financial data and other facts relied upon in formulating the Plan are based upon the
4 Debtor's books and records. The Trustee, as the Plan proponent, represents that everything
5 stated in the Disclosure Statement is true to his best knowledge and belief. The Trustee has
6 included in this Disclosure Statement as Exhibit "1" certain Financial Projections reflecting how
7 claims will be paid either through sale or refinancing of the Debtor's assets. Those projections
8 represent the Trustee's predictions of future events based upon various assumptions. Those
9 anticipated or expected future events may or may not occur, and the projections may not be
10 relied upon as either a guarantee or as other assurance that the projected results will actually
11 occur. Thus, while the Trustee believes that such projections are reasonable, there is no
12 assurance that they will prove to be accurate. Because of all the uncertainties inherent in any
13 predictions of future events, all Creditors and other interested parties should be aware of the risk
14 associated with these projections and the possibility that the actual experience in the future may
15 differ in material or adverse ways.

16 The Bankruptcy Court has not yet confirmed the Plan described in this Disclosure
17 Statement. In other words, the terms of the Plan are not yet binding on anyone. If, however, the
18 Bankruptcy Court later confirms the plan, then the Plan will be binding on all Creditors in this
19 case, and will provide the means for treatment of all Creditors' and other parties' Claims and
20 interests.

21 The Plan is intended to resolve, compromise and settle all Claims, disputes, and Causes
22 of Action between and among all participants and as to all matters relating to these proceedings,
23 except as expressly provided otherwise in the Plan. If the Bankruptcy Court confirms the Plan,
24 Creditors' Claims, if and to the extent allowed, will receive the treatment provided by the terms
25 of the Plan.

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1 **III.**

2 **VOTING INSTRUCTION AND THE PLAN CONFIRMATION PROCESS**

3 All Creditors are asked to vote to accept or reject the Plan. All voting will be by ballots
4 in a form approved by the Bankruptcy Court. Based on the results of voting, the Bankruptcy
5 Court will examine whether each Creditor Class has accepted the Plan by the requisite majority.
6 If all Classes vote to accept the Plan, the Plan will be confirmed if the Bankruptcy Court
7 determines that the Plan meets certain legal requirements. See generally, Bankruptcy Code
8 section 1129(a). If at least one Class of Creditors, but fewer than all Classes, has voted to accept
9 the Plan (without considering the vote of insiders), the Trustee will seek confirmation of the Plan
10 pursuant to the "cramdown" provisions of Bankruptcy Code section 1129(b). Cramdown is
11 discussed in greater detail in section III(D)(4) below.

12 **A. Approval of the Disclosure Statement**

13 The Bankruptcy Code requires that a disclosure statement contain "adequate information"
14 sufficient to allow a reasonable hypothetical investor to make an informed decision regarding a
15 plan of reorganization. The document you are reading is a combined disclosure statement and
16 plan of reorganization. The disclosure statement aspect of this document has been conditionally
17 approved by the Bankruptcy Court's order entered August 21, 2008. It has not yet received final
18 approval by the Bankruptcy Court. The Bankruptcy Court will address the issue of final
19 approval of the disclosure statement aspect of this document at a hearing on November 17, 2008.
20 If you wish to object to the adequacy of this Disclosure Statement, you must file an objection
21 with the Bankruptcy Court and serve it on the undersigned counsel and other parties requesting
22 special notice in this case no later than October 21, 2008.

23 **B. Holders of Claims Eligible to Vote For or Against the Plan**

24 Under the Bankruptcy Code, only the members of those Classes whose Claims are
25 impaired under the Plan are entitled to vote for acceptance or rejection of the Plan. "Impaired"
26 generally means "changing or altering the legal or equitable rights of such Creditor." In this
27 case, Classes 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 are impaired under the Plan.
28

1 Accordingly, the holders of all Claims in those Classes are entitled to vote to accept or to reject
2 the Plan.

3 **C. Voting Instructions**

4 A ballot accompanies this document for Creditors to use in voting on the Plan. To vote
5 on the Plan, indicate the amount of your Claim, and whether you accept or reject the Plan on the
6 ballot. If you have a Claim in more than one Class, you should submit a ballot for each Claim
7 falling within each Class. Creditors entitled to vote to accept or reject the Plan may vote by
8 completing, dating, signing and returning the accompanying ballot via regular United States
9 Postal Service mail or by personal hand delivery to the Trustee's counsel, Sullivan, Hill, Lewin,
10 Rez & Engel, Attn: James P. Hill Esq., 228 South Fourth Street, First Floor, Las Vegas, Nevada,
11 89101, or via facsimile actually received at (702) 384-9102.

12 IN ORDER TO BE COUNTED, YOUR BALLOT MUST BE RECEIVED NOT LATER
13 THAN 5:00 P.M. (PACIFIC) ON NOVEMBER 3, 2008. The risk of non-receipt or late receipt
14 of ballots, whether due to United States Postal Service error or any other reason, is entirely on
15 the voting Creditor.

16 **D. Acceptance of the Plan**

17 For the Plan to be accepted and thereafter confirmed without resort to "cramdown," it
18 must be accepted by each impaired Class.

19 1. Acceptance by a Class of Claims

20 In accordance with Bankruptcy Code section 1126, a particular Class of Claims will be
21 deemed to have accepted the Plan only if holders representing at least two-thirds (2/3) in amount
22 and more than one-half (1/2) in number of Claims against the Debtor that have voted in that
23 Class have accepted the Plan.

24 2. Deemed Acceptance/Rejection

25 Pursuant to Bankruptcy Code section 1126(f), an unimpaired Class and each holder of a
26 Claim in that Class are deemed to have accepted the Plan, and those Creditors do not vote on the
27 Plan. Under the Plan, Classes I and 11 are unimpaired, and, accordingly, such Classes are
28 deemed to have accepted the Plan under this provision.

1 3. Comparison to Chapter 7

2 In order to confirm the Plan, the Bankruptcy Court must determine that the Plan provides
3 to each Creditor (in an impaired class) who does not accept the Plan property of a value, as of the
4 Effective Date, not less than the Distribution that such Creditor would receive or retain if the
5 Debtor were liquidated in a case under Chapter 7 of the Bankruptcy Code. This requirement, set
6 forth in Bankruptcy Code section 1129(a)(7)(A), is commonly referred to as the "best interests of
7 creditors" test. The Trustee believes that the Plan meets this requirement and that, if necessary,
8 the Bankruptcy Court will make such a determination. A hypothetical Chapter 7 liquidation
9 analysis is set forth in detail at section IX below.

10 4. Confirmation Without Acceptance ("Cramdown")

11 Bankruptcy Code section 1129(b) provides that the Plan may be confirmed by the
12 Bankruptcy Court, even if not accepted by every impaired Class, if (i) at least one impaired Class
13 has accepted the Plan (determined without including any acceptance of the Plan by any insider),
14 and (ii) the Bankruptcy Court finds that the Plan does not discriminate unfairly against, and is
15 fair and equitable with respect to, the rejecting Class(es).

16 With respect to each Class of Secured Claims, the requirement that the Plan be fair and
17 equitable to an impaired rejecting Class means that a Plan must provide:

18 (a) that each holder of a Claim in such Class will (i) retain the liens securing such
19 Claim, and (ii) receive deferred cash payments totaling at least the value of the security interest
20 (as of the effective date of the plan);

21 (b) for the sale of property subject to the liens securing such Claim, free and clear of
22 such liens, with the liens to attach to the proceeds of such sale, and to be treated as described in
23 section (a) above or (c) below; or

24 (c) for the realization by each holder of a Claim in such Class of the indubitable
25 equivalent of such Claim.

26 With respect to each Class of Unsecured Claims, the requirement that the Plan be fair and
27 equitable to an impaired rejecting Class means that (i) each holder of a Claim in such Class will
28 receive property of a value equal to the allowed amount of such Claim, plus interest, or (ii) no

holder of a Claim or Equity Interest that is junior to such Class will receive any property under the Plan on account of such junior Claim or Equity Interest.

If any impaired Class does not accept the Plan, the Trustee will seek confirmation by the "cramdown" provisions of section 1129(b), provided that all of the applicable requirements of section 1129(a), other than section 1129(a)(8), have been met.

5. Confirmation Hearing

The Bankruptcy Court will hold a hearing with respect to confirmation of the Plan to determine whether the Plan has been accepted by the requisite number of Creditors and whether the other requirements for confirmation of the Plan have been satisfied. The issues to be determined through the confirmation hearing include (without limitation) issues relating to notice, value of property, and feasibility of the Plan. In the event of a cramdown, the Trustee must also prove, among other things, that the Plan does not discriminate unfairly against, and is fair and equitable to, any non-accepting Class(es). THE TIME, PLACE AND DATE OF THE HEARING ON CONFIRMATION, AND THE DATE BY WHICH OBJECTIONS TO CONFIRMATION MUST BE FILED AND SERVED, ARE SPECIFIED IN THE BANKRUPTCY COURT ORDER APPROVING THIS DISCLOSURE STATEMENT AND THE NOTICE OF HEARING THAT ACCOMPANIES THIS DISCLOSURE STATEMENT.

6. Identity of Person to Contact For More Information Regarding the Plan

Any interested party desiring further information about the Plan should contact the Trustee's general bankruptcy counsel, James P. Hill, Esq., of Sullivan, Hill, Lewin, Rez & Engel, whose contact information is set forth above on the cover sheet to this combined Plan and Disclosure Statement.

E. The Trustee Recommends That You Vote to Accept the Plan

Based on the factors described in this document, the Trustee believes that his Plan will allow for the greatest possible Distributions to Creditors. Accordingly, the Trustee strongly urges all Creditors to vote to accept the Plan in accordance with the procedures described herein.

IV.

FACTUAL BACKGROUNDA. The Debtor's Background and Pre-Bankruptcy Operating History

The Debtor is a limited liability company formed under the laws of the State of Nevada. Rodney C. Yanke is the sole member and manager of the Debtor, holding 100 percent of its Equity Interests. The Debtor's most significant asset consists of a real estate development project comprising approximately 15 acres of partially developed real property located in the Southwest Las Vegas Valley along the I-215 Beltway at Buffalo, commonly referred to as the Spanish View Tower Homes. The real property was initially purchased by the Debtor in July of 2004 through an acquisition and development loan from OneCap. The project as presently configured contemplates three 21-floor condominium towers, each with 144 luxury residential units with projected sales prices in the \$800,000 to \$8,000,000 range. The Debtor asserts that an approved tract map has been filed; all necessary government permits, exemptions, entitlements and approvals have been obtained; and substantially all excavation work has been completed. Foundations are in place for Towers "A" and "B." The parking deck platform has been completed for Tower "A." Due to the Debtor's inability to secure sufficient financing to continue construction, minimal work has been performed on the project since the spring of 2006. The real property and its improvements may be described herein as the "Property."

The project was originally envisioned to cost over \$600,000,000. The Debtor alleges that approximately \$90,000,000 has been invested in the project to date, including \$28,000,000 from Yanke and his affiliates. OneCap asserts that it is the loan servicer for and services three separate fractionalized promissory notes secured by fully perfected deeds of trust against the Property upon which the Debtor owes OneCap's noteholders approximately \$36,000,000 secured against the Property. In addition, various mechanics' lien claimants assert that they are owed in excess of \$30,000,000, secured by valid and perfected mechanics' liens on the Property. Benchmark Enterprises, LLC asserts that it is owed approximately \$15,000,000 secured by a junior deed of trust on the Property. Sizable additional Claims are also asserted by parties who claim to have made down payments or pre-payments toward the purchase of individual

1 condominium units. Other Creditors have asserted Unsecured Claims entitled to neither priority
2 or secured status. The Debtor's bankruptcy schedules list over \$100,000,000 in debt of all
3 Classes (i.e., secured and unsecured). Over the last two years, the Debtor has attempted to obtain
4 additional financing for the project, but has been unable to do so.

5 **B. Events Leading to the Debtor's Bankruptcy**

6 In 2006, with the project far from complete, the Debtor began to experience financial
7 difficulties. The Debtor attempted to obtain additional financing to continue developing the
8 Property, but was unable to do so due to the deteriorating real estate and credit markets. The
9 Debtor defaulted on various obligations owed to OneCap, and in response, OneCap threatened to
10 foreclose on the Property. On May 31, 2007, three mechanics' lienholders, HBParkco
11 Construction, Inc., Regional Steel Corporation, and Nevada Ready Mix Corporation, filed an
12 involuntary bankruptcy petition against the Debtor under section 303 of the Bankruptcy Code in
13 order to stay foreclosure of the Property.

14 **C. The Chapter 11 Case**

15 On August 21, 2007, with the consent of the Debtor, the Bankruptcy Court entered an
16 order for relief in the Bankruptcy Case. Almost immediately thereafter, various Creditors and
17 parties in interest began to seek the appointment of a trustee in the Bankruptcy Case. On January
18 18, 2008, the Bankruptcy Court entered its order approving the United States Trustee's
19 appointment of the Trustee as the Chapter 11 trustee in the Bankruptcy Case.

20 Upon his appointment, the Trustee began investigating the Debtor's assets, liabilities and
21 prospects for reorganization. He quickly determined that whatever course the case was to take,
22 immediate funding was required in order to preserve the value of the Property. Absent such
23 funding, the Property might suffer significant devaluation in the form of damaged property;
24 stolen property; degraded property; loss of permits; loss of entitlements; increased fees; and
25 penalties. Accordingly, the Trustee filed motions seeking Bankruptcy Court approval of interim
26 super-priority financing for the Estate to provide essential funding through Plan confirmation and
27 beyond. On May 7, 2008, the Bankruptcy Court approved the Trustee's motion to borrow
28 \$550,000 from Bank of George on a super-priority, priming lien basis. The proceeds of this SPF

1 Financing are to be used specifically to pay certain critical expenses, which must be satisfied in
2 order to avoid potential significant loss of value of the Property. Bank of George is secured by a
3 senior priority lien against the Property and must be repaid from the first dollars recovered by the
4 Estate from any source, including but not limited to any sale or refinancing of the Property.

5 Based on his investigation of the Debtor's assets, liabilities and prospects for
6 reorganization, the Trustee has proposed the Plan on the terms set forth below.

7 V.

8 **CRITICAL PLAN PROVISIONS**

9 A. **Overview**

10 The Trustee's Plan provides for two possible solutions (alternatives) for payment of
11 Creditors' Claims. If the Plan is confirmed, the Debtor will be afforded a very short window of
12 time to attempt to reorganize by refinancing the Property in a fashion which brings into the
13 Estate sufficient funds to allow the Trustee to satisfy all Allowed Claims against the Estate. If
14 the Debtor fails to achieve a Timely Refinancing (as defined below), then the Trustee will
15 instead liquidate the Debtor's assets, including by an orderly sale of the Property, and will
16 distribute the proceeds to Creditors in accordance with the terms of this Plan. The Plan
17 embodies the results of extensive arms length negotiations between the Trustee, Yanke, OneCap
18 and the Mechanics' Lien Claimants, and the votes of these creditors and parties in interest on the
19 Plan represent their respective consents and agreements to the treatment afforded each of them
20 and one another under the Plan.

21 B. **First Alternative - Refinancing**

22 1. **Generally**

23 Under the first Plan alternative, the Debtor will be allowed a "Refinance Period" during
24 which it may attempt to refinance the project. Under this alternative, the Debtor will have 60
25 days from the Confirmation Date to deliver to the Trustee a binding commitment from a credible
26 lender to provide financing, which commitment shall be:

- 27 (i.) in form and content satisfactory to the Trustee in the Trustee's reasonable
28 discretion;

- 1 (ii.) is subject only to reasonable conditions which are capable of being satisfied
- 2 within the period provided;
- 3 (iii.) for an amount under which the Estate would receive funds sufficient to satisfy in
- 4 full all Allowed Claims against the Estate (considering reduced amounts
- 5 negotiated between Creditors and the Debtor and/or Yanke); and
- 6 (iv.) is accompanied by sufficient evidence in Trustee's reasonable discretion of
- 7 lender's ability to close the transaction timely upon satisfaction of all applicable
- 8 conditions.

9 The financing commitment may provide for the lender to obtain a senior priority deed of trust
10 against the Property free and clear of all liens, claims and interests (other than the Bank of
11 George Claim, which shall be satisfied from refinancing proceeds directly from the close of
12 escrow), with all such other existing liens, claims and interests to attach to the proceeds of the
13 refinancing, pursuant to Bankruptcy Code section 1129(b)(2)(A), and to be deemed
14 unenforceable and no longer valid against the Property, pursuant to Bankruptcy Code sections
15 1123(b)(1) and (5).

16 If the Debtor timely delivers a binding financing commitment satisfactory to the Trustee,
17 then the Trustee will file a notice with the Bankruptcy Court that Debtor will have an additional
18 30 days to close such financing (with the Bank of George Claim to be paid in full directly from
19 the proceeds of closing) and to cause the balance of the refinancing proceeds to be deposited
20 with the Trustee for satisfaction of Creditors' Claims as provided for below.

21 2. Determination of Amount Needed to Satisfy All Claims

22 For purposes of determining whether the refinancing proceeds are sufficient to satisfy all
23 Allowed Claims against the Estate, each Claim will be tallied at the amount shown on its
24 respective proof of claim, or, if no proof of claim was filed, at the amount shown in the Debtor's
25 bankruptcy schedules. As part of the foregoing process, the Debtor or Yanke may deliver to the
26 Trustee during the Refinance Period consents by Creditors of any Class to have their Claims
27 allowed at amounts less than either scheduled or filed.

28 3. Effect of Timely Refinancing

1 In the event that the Debtor accomplishes all of the foregoing within the Refinancing
2 Period, the Debtor will have achieved a "Timely Refinancing." In the event that the Debtor
3 achieves a Timely Refinancing:

- 4 (i.) the Trustee will file with the Bankruptcy Court and serve on all Creditors and
5 parties in interest notice of such Timely Refinancing;
6 (ii.) upon closing of the Timely Refinancing, and payment of the proceeds thereof to
7 Bank of George and the Trustee, as provided above, the Debtor will immediately
8 be granted control over the Property, including the right to continue developing it,
9 to encumber it, or to transfer it; and
10 (iii.) Yanke will retain his Equity Interest in the Debtor.

11 In the event of a dispute over whether or not the Debtor has either provided the Trustee
12 with a sufficient binding financing commitment or has otherwise achieved a Timely Refinancing,
13 the Bankruptcy Court shall determine the issue upon noticed motion. The Debtor and/or Yanke
14 shall have 120 days from the Confirmation Date to file and serve such a motion. Absent (y) a
15 timely filing of such motion or (z) the Trustee's filing of the notice described in subparagraph (i)
16 above, no Timely Refinancing will have taken place, and the time to achieve a Timely
17 Refinancing will have expired.

18 4. Control of Estate Funds/Satisfaction of Claims

19 Confirmation of the Plan will not terminate the Estate nor re-vest Estate assets in the
20 Debtor. The Trustee shall direct and control all Distributions made to Creditors on account of
21 Allowed Claims. Until such time as all Allowed Claims against the Estate are satisfied, all
22 proceeds of any refinancing shall remain under the control of the Trustee. Any funds remaining
23 in the Estate after full satisfaction of all Allowed Claims against the Estate shall remain property
24 of the Estate, and shall re-vest in the Debtor upon entry of a final decree.

25 The Trustee questions whether the Debtor can achieve a Timely Refinancing, particularly
26 given the time the Debtor has had to date to secure refinancing. The Trustee believes, however,
27 that the Debtor should be given the opportunity to attempt to do so for a variety of reasons,
28 including because a Timely Refinancing would allow for the full satisfaction of all Allowed

1 Claims against the Estate -- a result that may not be achieved under the second Plan alternative
2 discussed immediately below. During the Refinance Period afforded to the Debtor, the Trustee
3 will not file a motion seeking Bankruptcy Court approval of a sale of the Property; provided,
4 however, that during such Refinance Period, the Trustee will begin the process of marketing and
5 selling the Property, including, but not limited to, seeking Bankruptcy Court approval of the
6 retention of real estate professionals, preparing due diligence materials, exposing the Property to
7 prospective buyers, and other similar steps.

8 **C. Second Alternative - Liquidation**

9 **1. Generally**

10 The second Plan alternative will control in the event the Debtor does not achieve a
11 Timely Refinancing. Under the second Plan alternative, if the Debtor does not achieve a Timely
12 Refinancing, the Trustee will liquidate all of the Debtor's assets, pursuant to Bankruptcy Code
13 section 1123(b)(4), and distribute the net proceeds to pay Creditors' Allowed Claims in
14 accordance with the priorities set forth in this Plan, which priorities track those established under
15 Chapter 7 of the Bankruptcy Code. Any remaining net proceeds from the liquidation of the
16 Debtor's assets after payment of Creditors' Allowed Claims as treated under this alternative will
17 be paid to holders of Equity Interests in the Debtor. As described above, the Trustee does not
18 believe that the liquidation of the Debtor's assets will result in full satisfaction of all Allowed
19 Claims against the Estate. As also described above, confirmation of the Plan will not terminate
20 the Estate nor re-vest Estate assets in the Debtor.

21 **2. Sale Procedure**

22 The following "Sale Procedure" will govern the sale of the Property, pursuant to
23 Bankruptcy Code section 1123(b)(4): Upon the Effective Date, the Trustee will begin marketing
24 the Property for sale, although, as described above, during the Debtor's Refinance Period, the
25 Trustee will not file a Sale Motion seeking Bankruptcy Court approval of a sale of the Property;
26 provided, however, that during the Refinance Period, the Trustee will begin the process of
27 marketing and selling the Property.

28 The Trustee will market the Property for a minimum of 60 days following the Effective

1 Date prior to filing a motion to sell the Property, or for a minimum of 90 days in the event that
2 the Debtor timely delivers a binding financing commitment satisfactory to the Trustee. The
3 marketing will include publication of the opportunity in national and regional publications. Any
4 asset purchase agreement entered into by the Trustee must contain the following terms:

- 5 (a) The initial bidder must provide the Trustee with a deposit in the amount of
6 \$1,000,000, which deposit is non-refundable unless (i) the initial bidder is not
7 approved by the Bankruptcy Court as the purchaser, or (ii) the sale does not close
8 despite the initial bidder's timely performance of all its obligations.
- 9 (b) The sale shall be subject to overbid, with an initial overbid increment of three
10 percent (3%) of the purchase price, and subsequent overbid increments of one
11 percent (1%) of the purchase price.
- 12 (c) In the event that (i) the initial bidder is not approved by the Bankruptcy Court as
13 the purchaser, or (ii) the sale does not close despite the initial bidder's timely
14 performance of all its obligations, the initial bidder shall be entitled to a "break
15 up fee" of the lesser of (i) reasonable and actual out-of-pocket due diligence costs
16 as determined by the Bankruptcy Court (including fees and costs of attorneys,
17 accountants, bankers, and other professionals customarily used in transactions of
18 a similar nature), or (ii) one percent (1%) of the purchase price.
- 19 (d) The party approved as the purchaser at the sale hearing shall have 10 days from
20 entry of a Bankruptcy Court order approving the sale to close the transaction.
- 21 (e) The Trustee shall be authorized to accept one or more back-up bids.

22 Parties wishing to overbid must "qualify" no later than 5 days prior to the hearing on the
23 Trustee's sale by:

- 24 (i) entering into an asset purchase agreement with the Trustee in form substantially
25 identical to that entered into by the initial bidder,
- 26 (ii) depositing with the Trustee a deposit in the amount of \$1,000,000, which deposit
27 is non-refundable unless (i) the overbidder is not approved by the Bankruptcy
28 Court as the purchaser, or (ii) the sale does not close despite the overbidder's

timely performance of all its obligations; and

(iii) providing evidence of financial ability to close, satisfactory to the Trustee.

In the event that the Trustee has not received a satisfactory offer within 180 days following the Effective Date, he will file and serve on all creditors and parties in interest a notice of a sale hearing at which the Bankruptcy Court will conduct a “no-minimum” auction of the Property.

3. Sale Free and Clear/Credit Bids

The Property will transfer to the successful purchaser free and clear of all liens, claims and interests, allowing the purchaser to obtain fully insurable “clear” title, pursuant to Bankruptcy Code sections 1123(b)(1) and (5). All such liens, claims and interests shall attach to the proceeds of the sale, pursuant to Bankruptcy Code section 1129(b)(2)(A). Amounts outstanding to Bank of George will be paid directly from sale proceeds at closing.

Rights of Secured Creditors to “credit bid” at any sale of the Property are fully preserved, whether such rights arise under Bankruptcy Code section 363(k) or otherwise.

Any other terms of the sale may be addressed in the Trustee’s Sale Motion.

4. Operation of Bankruptcy Code Section 506(a)

In the event that the Property is sold in accordance with the Sale Procedures, the sale will be deemed to have fairly and conclusively determined the fair market value of the Property, and accordingly, the values of the various Secured Claims against the Property, for purposes of determining the extent to which such Claims are Secured Claims under Bankruptcy Code section 506(a). The holder of any Secured Claim not satisfied in full from the proceeds of a sale shall receive an Unsecured Claim to the extent of any such deficiency, to be treated in Class 14.

D. Allowance and Satisfaction of Claims

Regardless of whether the Debtor achieves a Timely Refinance or the Trustee sells the Property, the Trustee shall direct the process of satisfying Claims, including holding and accounting for all funds of the Estate, and making Distributions to Creditors on account of Allowed Claims in accordance with the terms of this Plan. Pursuant to Bankruptcy Code section 502, any party in interest may file an objection to a Claim.

E. Timing of Distributions

Upon a Timely Refinancing or sale of the Property, the Trustee, as soon as practicable, shall distribute the proceeds thereof in accordance with the terms of this Plan. The Trustee shall not distribute the proceeds of the liquidation of any other assets of the Estate to Creditors (other than Bank of George, pursuant to the SPF Financing) until such time as the Plan is substantially consummated, and the Trustee is prepared to move the Bankruptcy Court for a final decree.

VI.

DESIGNATION AND TREATMENT OF UNCLASSIFIED CLAIMS

Bankruptcy Code section 1123(a)(1) provides that a plan should classify all Claims other than Claims of the kinds specified in sections 507(a)(2), 507(a)(3), and 507(a)(8). As such, the Trustee has not placed the following Claims in separate Classes:

A. Administrative Expense Claims

Administrative Expense Claims consist of Claims entitled to priority under Bankruptcy Code section 507(a)(2). They include professional fees and expenses incurred in connection with administering the Bankruptcy Case. Administrative Expense Claims also include obligations incurred by the Debtor or the Trustee after the Petition Date. The Bankruptcy Code generally requires that all Administrative Expense Claims be paid in full in Cash on the Effective Date (or on such later date as the Administrative Expenses Claims are approved by a Final Order of the Bankruptcy Court), unless a particular Administrative Claimant agrees to a different treatment.

The Plan provides that, upon (i) the closing of a sale or a refinancing of the Property, and (ii) the full satisfaction of the Bank of George Claim, all Allowed Post-Trustee Administrative Expense Claims will be paid in full in Cash directly from the proceeds of such sale or refinancing, with each Class of Secured Claims to bear its Ratable Share of Administrative Expenses.

///

All Allowed Pre-Trustee Administrative Expense Claims will be paid at such time as the Estate has sufficient available Cash to do so, in the Trustee's reasonable discretion, whether from

1 the proceeds of a sale or refinancing (after payment of Allowed Secured Claims), or from
2 recoveries from other sources. The Trustee is informed and believes that all Persons holding
3 Pre-Trustee Administrative Expense Claims consent to such treatment.

4 **B. Section 506(c) Stipulation**

5 Pursuant to the Stipulation Re Plan Treatment of Petition Creditors' and Joining
6 Creditors' Administrative Expense Claims entered into among the Trustee, OneCap and more
7 than a majority in number and more than two-thirds in amount of the Class 5 claimants:

8 1. All allowed Post-Trustee Administrative Expense Claims (inclusive of the fees
9 and costs of the Trustee and his professionals from and after the Confirmation Date) constitute
10 reasonable and necessary costs and expenses of preserving or disposing of the Property, and as
11 such are entitled to be paid as a "surcharge" or assessment against the Property, pursuant to
12 Bankruptcy Code section 506(c) and the Plan, to be satisfied in accordance with Section VI(A)
13 of the Plan.

14 2. All allowed Petitioning Creditors' Administrative Expense Claims (as defined in
15 the Stipulation) constitute reasonable and necessary costs and expenses of preserving or
16 disposing of the Property, and as such are entitled to be paid as a "surcharge" or assessment
17 against the Property, pursuant to Bankruptcy Code section 506(c) and the Plan, to be satisfied in
18 accordance with Section VI(A) of the Plan.

19 3. All allowed administrative expense claims of the Joining Creditors ("Joining
20 Creditors' Administrative Expense Claims") constitute reasonable and necessary costs and
21 expenses of preserving or disposing of the Property, and as such are entitled to be paid as a
22 "surcharge" or assessment against the Property, pursuant to Bankruptcy Code section 506(c) and
23 the Plan, to be satisfied in accordance with Section VI(A) of the Plan.

24 4. Post-Trustee Administrative Expense Claims, Petitioning Creditors'
25 Administrative Expense Claims and Joining Creditors' Administrative Expense Claims are
26 subject to Court review, approval and allowance.

27 **C. Priority Tax Claims**

28 Priority Tax Claims consist of the Claims of governmental units that are entitled to

1 priority under Bankruptcy Code section 507(a)(8). The Bankruptcy Code requires that each
 2 holder of an Allowed Priority Tax Claim receive the present value of such Claim in deferred
 3 Cash payments, over a period not exceeding six years from the date of the assessment of such
 4 tax, unless the holder of a Priority Tax Claim agrees to a different treatment. The Plan provides
 5 that all Allowed Priority Tax Claims will be paid in full in Cash from the proceeds of the SPF
 6 Financing, or if such proceeds are insufficient, then directly from the proceeds of the sale or
 7 refinancing of the Property, as applicable. The SPF Loan Documents require the Trustee to pay
 8 all real property tax claims on a timely basis, and the Trustee has done so.

9 VII.

10 DESIGNATION, CLASSIFICATION AND TREATMENT

11 OF CLAIMS AND INTERESTS

12 All other Claims or Equity Interests are classified and treated in 16 different Classes
 13 under the Plan. Unless provided otherwise below, after satisfaction of all Allowed Unclassified
 14 Claims, then Allowed Classified Claims shall be paid in the priority set forth below from the net
 15 proceeds of a Timely Refinancing if one is achieved, or from the net proceeds of the sale of the
 16 sale of the Property, and in any event from the net proceeds of any additional Estate assets from
 17 which value can be realized. In the event that insufficient funds are available to pay a Class in
 18 full, then the claimants within such Class shall share all remaining available funds on a Pro Rata
 19 basis based upon their respective Allowed Claim amounts. The treatment set forth herein
 20 represents the results of arms length settlement negotiations between and among the Trustee,
 21 Yanke, OneCap (as holder of multiple classes and priorities of Claims), the Mechanics' Lien
 22 Claimants, and the Pre-Purchaser Claimants. Under the Plan, Classes 1 and 11 are unimpaired.
 23 Classes 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15 and 16 are impaired.

24 A. Class 1

- 25 1. Classification: Class 1 consists of the super-priority Secured Claim of
 26 Bank of George for funds advanced under the Super-Priority Financing
 27 Facility approved by the Bankruptcy Court's order entered May 7, 2008,
 28 which claim is secured by a first priority, fully perfected "priming lien"

1 upon all of the Debtor's assets.

2 2. Treatment: The Class 1 Claim shall be paid in full in accordance with the
3 SPF Loan Documents. The Plan shall not alter the rights of Bank of
4 George under the SPF Loan Documents, nor extend or modify any
5 obligation of the borrower under the SPF Loan Document, the provisions
6 of which shall survive confirmation of the Plan.

7 Pursuant to the Bankruptcy Court's May 7, 2008 order, the terms
8 of the SPF Financing cannot be altered through this Plan or any other, and
9 the terms of the May 7, 2008 order are incorporated herein. The automatic
10 stay set forth in Bankruptcy Code section 362 shall not apply to Bank of
11 George, including to Bank of George's rights to take any other action or to
12 exercise any other right or remedy as permitted to Bank of George under
13 the SPF Financing loan documents. No entity shall be entitled to any
14 relief which may operate to delay or interfere with Bank of George's
15 rights (including, without limitation, any injunction or stay), whether or
16 not any changed circumstance or cause is demonstrated. The foregoing
17 provisions mean that, should the Estate default on its obligations to Bank
18 of George, the bank (owed approximately \$270,000 as of the filing of this
19 pleading) could foreclose on the Property (worth tens of millions of
20 dollars). Such a foreclosure, which is not subject to stay or injunction by
21 the Bankruptcy Court or any other court, is likely to yield far less proceeds
22 to pay Creditors than would a sale through this Plan.

23 As provided by the SPF Loan Documents, the Bank of George
24 Claim must be repaid via cashier's check, wire transfer, or other cash
25 equivalent, on the earliest of the following:

- 26 (a) June 7, 2009;
27 (b) The sale of substantially all of the Debtor's assets;
28 (c) The funding of additional financing secured by a lien or liens on

the Property.

(d) Such date as the Trustee may determine in his discretion is in the best interests of the Estate; or

(e) Upon Default under the SPF Financing loan documents.

Class 1 is unimpaired.

B. Class 2

1. Classification: Class 2 consists of the Secured Claim of the Clark County, Nevada Treasurer's Office for real property taxes. As of the filing of this Plan, all such taxes had been paid in full; nonetheless, such taxes will continue to accrue going forward.

2. Treatment: Any amounts then outstanding on the Class 2 Claim shall be paid in full in Cash from the proceeds of the SPF Financing, or if such proceeds are insufficient, directly from the proceeds of the sale or refinancing of the Property, as applicable. In the event that the foregoing proceeds are insufficient to pay the Class 2 Claim in full, the Class 2 claimant shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 2 is impaired.

C. Class 3

1. Classification: Class 3 consists of the Secured Claim of OneCap arising out of a promissory note in the original principal amount of \$9,500,000, which is secured by a deed of trust against the Property recorded December 22, 2004 held by various entities by and through their collateral agent and loan servicer, OneCap.

2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 3 Ratable Share of Administrative Expenses), the Class 3 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the then outstanding principal balance of that

note together with interest at the non-default rate plus \$2,000,000.² The Trustee shall make the Distribution on account of the Class 3 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or (ii) entry of a Final Order fixing and allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 3 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 3 is impaired.

D. Class 4

1. Classification: Class 4 consists of the Secured Claim of OneCap arising out of a promissory note in the original principal amount of \$13,000,000 secured by a deed of trust recorded December 22, 2004 held by various entities by and through their collateral agent and loan servicer, OneCap.
2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 4 Ratable Share of Administrative Expenses), the Class 4 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the then outstanding principal balance of that note together with interest at the non-default rate. The Trustee shall make the Distribution on account of the Class 4 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or (ii) entry of a Final Order allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a

² The treatment afforded to OneCap herein was negotiated by the Debtor prior to the Trustee's appointment. The Trustee believes that such treatment is in the best interest of the Debtor's Creditors and the Estate. Because the Estate will likely lack Cash on the Effective Date sufficient to cure the default in the OneCap Claims, the Plan cannot utilize section 1124(2) of the Bankruptcy Code which allows a debtor to "de-accelerate" a debt that was accelerated pre-petition. Accordingly, in order to confirm the Plan, OneCap's consent to the Plan is required.

sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 4 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 4 is impaired.

E. Class 5

1. Classification: Class 5 consists of all Claims of all Mechanics' Lien Creditors asserting mechanics' lien claims under applicable state law. In general, mechanics' lien claims are subject to adjustment due to accrued interest and attorneys' fees and costs under Nevada law and the Bankruptcy Code. Importantly, under applicable state law, including Nevada Revised Statute 108.236(1), certain types of mechanics' lien claims are subordinate to other types of mechanics' lien claims. This legal framework could possibly result in "sub-priorities" within Class 5.

2. Treatment:

(a) Allowance of Secured Claims: Each Mechanics' Lien Creditor listed below shall be deemed to hold an allowed secured Class 5 Claim in the respective amounts listed below, secured as a mechanics' lien Claim against the Property recognized under Nevada state law, specifically under Nevada Revised Statute 108.236(1). The Allowed Class 5 Claims will be paid in whole or in part after satisfaction of all senior priority secured Claims (including the Class 5 Ratable Share of Administrative Expenses). The Allowed Claim amounts listed below for each of the Class 5 Creditors represents the results of arms length settlement negotiations between and among the Trustee, Yanke, OneCap (as holder of multiple classes and priorities of Claims) and the Mechanics' Lien Claimants:

1	AHERN RENTAL	\$17,008.60
2	ALLIED TRENCH SHORING SERVICE	\$22,407.00
3	ATLAS MECHANICAL, INC.	\$185,000.00
4	BUILDING CONSENSUS, INC.	\$1,500,000.00 ³
5	CASHMAN EQUIPMENT	\$62,000.00
6	DESERT FIRE PROTECTION	\$151,000.00
7	FERGUSON ENTERPRISES	\$2,963.13
8	GEOTEK, INC.	\$151,599.52
9	GRG, INC.	\$50,874.57
10	HBPARKCO CONSTRUCTION	\$15,734,066.49 ⁴
11	HELIX ELECTRIC	\$470,500.00
12	HUGHES WATER & SEWER, LTD.	\$105,815.91
13	JADE SUMMIT, LLC	\$181,138.76 ⁵
14	LAS VEGAS BUILDING DEVELOPMENT	\$1,826,406.64
15	LAS VEGAS PAVING	\$12,600.00
16	LEDOR CONSTRUCTION, INC.	\$2,003,432.64
17	NEVADA READY MIX, CORP.	\$1,507,647.86
18	OLSEN PRECAST	\$8,000.00
19	REGIONAL STEEL CORP.	\$2,925,381.23
20	SOUTHERN NEVADA STORM DRAIN	\$17,900.00
21	STANTEC CONSULTING, INC.	\$86,486.88
22	THE PLUMBER, INC.	\$81,588.00
23	WATER MOVERS	\$31,574.55
24	WPH ARCHITECTURE	\$997,755.22

(b) Issues of Priority Reserved: All issues of relative priority of liens against the Property between and among the individual Class 5 claimants, including which individual Claims within Class 5 may be senior to and which may be subordinate to one another within this Class under applicable state law, including Nevada Revised Statute 108.236(1), are fully reserved, to be determined, if and to

³ This claim includes the claims of Harley Ellis Devereaux, formerly known as Fields Devereaux Architects and Engineers, and Fields Devereaux Miyamoto International, which have a total principal amount of \$3,153,613.88. Additionally, the Debtor asserts an affirmative claim against Building Consensus in the amount of \$5.2 million. The Debtor had previously proposed a compromise and settlement of these potentially offsetting claims in the form of a payment to Building Consensus in the amount of \$400,000, and those settlement negotiations are ongoing. The Debtor and Building Consensus have agreed to continue their discussions in good faith in an effort to determine the dollar amount of the Building Consensus Allowed Claim.

⁴ This amount does not include the claims of Nevada Ready Mix and Regional Steel.

⁵ This amount does not include the claims of Ahern Rental, Allied Trench, Ferguson Enterprises, Hughes Water, Southern Nevada Storm Drain and Stantec.

1 the extent required, by subsequent proceedings in the Bankruptcy
2 Court as more fully discussed below. The settlements embodied
3 within this Plan, however, fully resolve all disputes as to the
4 relative priority of the liens against the Property held by all Class 5
5 claimants, considered in the aggregate, on the one hand, as
6 measured against, on the other hand, the respective liens against
7 the Property of other secured creditors provided under this Plan
8 (meaning Classes 1, 2, 3, 4, 6, 7 and 8).

9 (c) Possible Mootness of Priority: In the event that the net proceeds of
10 the sale or refinancing of the Property after payment of all senior
11 priority Secured Claims and assessments either (i) are not
12 sufficient to pay any amount on account of any portion of an
13 Allowed Class 5 Claim, or (ii) are sufficient to pay all Class 5
14 Claims in full in the Allowed amounts set forth above in the
15 aggregate, then all issues of sub-priority between and among the
16 various holders of Class 5 Claims under applicable state law,
17 including Nevada Revised Statute 108.236(1), will be moot and
18 will not require further Bankruptcy Court determination.

19 (d) Future Determination of Priority (If Needed): If, however, the net
20 proceeds of sale or refinancing of the Property after payment of all
21 senior priority Secured Claims and assessments as provided above
22 are sufficient to pay only part of but not all of the Allowed Class 5
23 Claims in the aggregate, then the Bankruptcy Court will proceed to
24 determine and fix (in the adversary proceeding described below)
25 the relative priority between and among each of the individual
26 holders of Class 5 Claims under applicable state law, including
27 Nevada Revised Status 108.236(1), for purposes of determining
28 which claimant or claimants within Class 5 are entitled to be paid

1 first, second, third, and so on within Class 5 until all available net
2 proceeds of sale are exhausted.

- 3 (e) Stay of Adversary Proceeding: The Bankruptcy Court will make
4 all determinations of relative priorities between and among Claims
5 within Class 5 as part of the currently-pending Adversary No. 07-
6 1150 (Building Consensus, Inc. v. Tower Homes, LLC, et al.).

7 Upon confirmation of the Plan, all proceedings within Adversary
8 No. 07-1150 shall be stayed until such time as (i) net proceeds of
9 sale or refinancing are available for distribution among members
10 of Class 5, and the Trustee or any other party in interest notices
11 and schedules a status conference in Adversary No. 07-1150 (and
12 serves notice of same on all holders of Class 5 Claims and any
13 other affected parties), or (ii) the Bankruptcy Court enters a final
14 decree closing the Bankruptcy Case, at which time Adversary No.
15 07-1150 may be dismissed.

- 16 (f) Distributions: If particular Claims within Class 5 fall within the
17 same sub-priority under applicable Nevada state law, then such
18 similarly ranked sub-priority Claims will be paid on a Pro Rata
19 basis within such sub-priority until the net proceeds of sale or
20 refinancing are exhausted within that sub-priority. If and to the
21 extent all or a portion of any Claim within Class 5 is not paid in
22 full, then the unsatisfied deficiency portion of such Claim shall be
23 allowed and treated as a general unsecured Claim within Class 14.
24 Distributions on account of Class 5 Claims will be made as soon as
25 practicable in the Trustee's reasonable discretion once (i) net
26 proceeds of sale or refinancing become available for distribution to
27 holders of Class 5 Claims after satisfaction of all senior priority
28 secured Claims(including the Class 5 Ratable Share of

Administrative Expenses), and (ii) all issues with respect to relative priority between and among holders of Class 5 Claims have been resolved by Final Order of the Bankruptcy Court within Adversary No. 07-1150. Prior to distributing any funds on account of a Class 5 Claim, the Trustee will file with the Bankruptcy Court and serve upon all holders of Class 5 Claims a notice of his intended distributions, providing that interested parties shall have 30 calendar days from date of service of such notice to request and schedule a status conference in Adversary No. 07-1150 and to ask the Bankruptcy Court to hear and determine any dispute as to relative priority of Claims within Class 5, as described above.

- (g) Compromise of Claims: The treatment set forth above for Class 5 Claims is intended to be a compromise and settlement of the Claims asserted in Adversary No. 07-1150. Class 5 is impaired.

F. Class 6

1. Classification: Class 6 consists of the Secured Claim of OneCap arising out of a promissory note in the original principal amount of \$5,200,000 secured by a deed of trust recorded March 16, 2006 held by various entities by and through their collateral agent and loan servicer, OneCap, and encumbering the Property in a position junior to the Class 5 Creditors.
2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 6 Ratable Share of Administrative Expenses), the Class 6 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the then outstanding principal balance of that note together with interest at the non-default rate. The Trustee shall make the Distribution on account of the Class 6 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or

(ii) entry of a Final Order allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 6 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 6 is impaired.

G. Class 7

1. Classification: Class 7 consists of the Claim of Benchmark arising out of a promissory note dated in the original principal amount of \$15,000,000 purportedly secured by the deed of trust recorded May 2, 2006 held by Benchmark encumbering the Property in a position junior to the Class 6 Creditors.
2. Treatment: To the extent Allowed and secured by a lien against the Property after satisfaction of all senior Claims (including the Class 7 Ratable Share of Administrative Expenses), the Class 7 Claim shall be paid in Cash from the net proceeds of the sale or refinancing of the Property an amount equal to the Allowed Amount of the Claim (believed to be \$4,300,000 in principal) together with interest at the non-default rate. The Trustee shall make the Distribution on account of the Class 7 Claim no later than 30 days from the later of (i) closing of the sale or refinancing of the Property, or (ii) entry of a Final Order allowing such Secured Claim pursuant to Bankruptcy Code sections 502 and 506. In the event that the proceeds of a sale or refinancing of the Property are insufficient to pay in full the Claim allowed herein, then the holder of the Class 7 Claim shall be Allowed a "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 7 is impaired.

H. Class 8

1. Classification. Class 8 consists of the Claim of OneCap arising from a

1 "Memorandum of Revenue Participation" recorded August 14, 2006.

- 2 2. Treatment. To the extent Allowed and secured by a lien against the
3 Property after satisfaction of all senior Claims (including the Class 8
4 Ratable Share of Administrative Expenses), the Class 8 Claim shall be
5 paid in Cash from the net proceeds of the sale or refinancing of the
6 Property an amount equal to the then outstanding principal balance of that
7 note together with interest at the non-default rate. The Trustee shall make
8 the Distribution on account of the Class 8 Claim no later than 30 days
9 from the later of (i) closing of the sale or refinancing of the Property, or
10 (ii) entry of a Final Order allowing such Secured Claim pursuant to
11 Bankruptcy Code sections 502 and 506. In the event that the proceeds of a
12 sale or refinancing of the Property are insufficient to pay in full the Claim
13 allowed herein, then the holder of the Class 8 Claim shall be Allowed a
14 "deficiency" Claim in Class 14 for any remaining unpaid balance. Class 8
15 is impaired.

16 I. Class 9

- 17 1. Classification: Class 9 consists of any other Allowed Claims secured by
18 the Property in a position junior to the Class 8 Creditors.
- 19 2. Treatment: To the extent Allowed and secured by a lien against the
20 Property after satisfaction of all senior Claims (including the Class 9
21 Ratable Share of Administrative Expenses), each Class 9 Claim shall be
22 paid in Cash from the net proceeds of the sale or refinancing of the
23 Property an amount equal to the Allowed Amount of such Claim. The
24 Trustee shall make the Distribution on account of the Class 9 Claim no
25 later than 30 days from the later of (i) closing of the sale or refinancing of
26 the Property, or (ii) entry of a Final Order allowing such Secured Claim
27 pursuant to Bankruptcy Code sections 502 and 506. In the event that the
28 proceeds of a sale or refinancing of the Property are insufficient to pay in

1 full the Claim allowed herein, then the holder of the Class 9 Claim shall be
2 Allowed a "deficiency" Claim in Class 14 for any remaining unpaid
3 balance. Class 9 is impaired.

4 **J. Class 10**

- 5 1. Classification: Class 10 consists of the Secured Claim of Lexus Financial
6 Services secured by a 2007 Lexus 460, on which both the Debtor and
7 Yanke are obligated.
- 8 2. Treatment: Lexus shall retain its lien in the vehicle. Yanke will retain the
9 vehicle and will continue making the required monthly payments on the
10 debt. In the event that he defaults on such payments (or other
11 obligations), Lexus will have the right to foreclose upon its lien against the
12 vehicle. In the event that the proceeds of a foreclosure are insufficient to
13 satisfy Lexus' Claim, Lexus will be entitled to a general unsecured Class
14 14 Claim for any deficiency remaining. The Estate waives any further
15 rights in the vehicle. Class 10 is impaired.

16 **K. Class 11**

- 17 1. Classification. Class 11 consists of the Secured Claim of GMAC secured
18 by a 2005 Cadillac Escalade, on which both the Debtor and Yanke are
19 obligated.
- 20 2. Treatment. The Claim of GMAC has been paid in full by Yanke, and
21 GMAC has released its lien against the automobile. GMAC shall be
22 Allowed no claim against the Estate, and shall receive no distribution from
23 the Estate. The Estate shall retain the vehicle and any rights to dispose of
24 it, provided, however, that Yanke shall be entitled to credit for amounts he
25 actually paid towards the vehicle. Class 11 is unimpaired.

26 ///

27 **L. Class 12**

- 28 1. Classification: Class 12 consists of all Priority Non-Tax Claims, other

1 than unclassified Claims and Claims held by the Pre-Purchaser Claimants.

- 2 2. Treatment: Allowed Class 12 Claims shall be paid from the proceeds of a
3 Timely Refinancing if one is achieved, or from the proceeds of the sale of
4 the sale of the Property, and of any additional assets of the Debtor from
5 which value can be realized. The Trustee believes that there are no
6 priority Unsecured Claims. Class 12 is impaired.

7 **M. Class 13**

- 8 1. Classification: Class 13 consists of all Claims of Pre-Purchaser
9 Claimants. Attached as Exhibit "2" hereto is a list of all Pre-Purchaser
10 Claimants presently known to the Trustee.

11 2. Treatment:

- 12 (a) Allowance. Each Class 13 Claim shall be allowed in an amount
13 equal to (i) the actual dollars paid by such creditor as a deposit
14 toward a condominium unit in the Property, plus simple interest of
15 4 percent per annum, less (ii) any recoveries achieved to date or
16 which may hereafter be achieved from any third party source,
17 including but not limited to Yanke; Prudential Real Estate
18 Affiliates, Inc.; Americana LLC; Americana Group; Mark L.
19 Stark; Jeannine Cutter; David Berg; Equity Title of Nevada, LLC;
20 any surety or insurance company; or any affiliate of any of the
21 foregoing, with any such reduction applied first to the Priority
22 Non-Tax Claim (described below), and then to the general
23 unsecured portion of the Class 14 claim (described below).

- 24 (b) Relief from Stay. Pursuant to agreement between the Class 13
25 creditors and the Trustee on behalf of the Estate, each member of
26 Class 13 shall, upon the Effective Date, be granted relief from the
27 automatic stay provided in Bankruptcy Code section 362 in order
28 to prosecute claims against any third parties relating to their

1 contracts of purchase and their payments toward the purchase of
2 condominium units in the Property, whether asserted in Case No.
3 A541668 currently pending in the Eighth Judicial District, Nevada
4 or otherwise; furthermore, each member of Class 13 shall be
5 granted relief from the automatic stay to collect against insurance
6 policies, if any, insuring the Debtor for acts relating to claims of
7 Pre-Purchaser Claimants, but not against any other assets of the
8 Debtor or the Estate. Payment of Class 13 Claims from property
9 of the Debtor or the Estate shall only be in accordance with the
10 terms of this Plan.

11 (c) Priority Non-Tax Claim Treatment. To the extent the holder of an
12 allowed Class 13 Claim is an individual who deposited funds
13 before the commencement of this Case for the purchase of one or
14 more condominium units for their own personal, family, or
15 household use, the first \$2,425 of such allowed Class 13 Claim
16 shall receive treatment under this plan as a Priority Non-Tax Claim
17 pursuant to Bankruptcy Code section 507(a)(7). Each member of
18 Class 13 shall be deemed to have consented to this treatment of the
19 priority portion of their Allowed Class 13 Claim, and to have
20 waived any right to payment in full on plan confirmation, if any
21 such right exists, under Bankruptcy Code section 1129(a)(9).

22 (d) General Unsecured Claim Treatment. Each holder of an Allowed
23 Class 13 Claim shall receive the same treatment afforded under
24 this Plan to Allowed Class 14 Claims (General Unsecured Claims,
25 as described below), to be paid out at the same time and at the
26 same rate on a pari passu basis as such Allowed Class 14 Claims,
27 in an amount equal to the amount allowed under subparagraph
28 2(a) above, less any distributions received under subparagraph 2(c)

1 in this section above.

2 (e) Distributions. Payment on account of the Claims Allowed herein
3 shall be made on the later of (i) the Effective Date, or (ii), such
4 date as the Trustee determines that the Estate has sufficient
5 unrestricted funds to make such distributions, after payment of all
6 allowed Secured Claims and all allowed senior priority Claims.
7 Prior to making such distributions, the Trustee will file with the
8 Court and serve on all holders of Class 13 Claims a notice of his
9 intent to distribute, which will attach a form declaration to be filled
10 out and executed by the Class 13 Claim creditor regarding (1) the
11 amount and nature of the pre-purchase deposit made for personal,
12 family or household use, and (2) the amount of recoveries from
13 third parties, as described in section 2(b) above, which declaration
14 shall be completed and executed by each claimant and returned to
15 the Trustee no later than 30 days following service of the notice of
16 intent. In the event of a dispute over the nature of a deposit or the
17 amount due on account of a Class 13 Claim, either the Pre-
18 Purchaser Claimant or the Trustee may move the Bankruptcy
19 Court for a resolution of the dispute through the claim objection
20 process.

21 (f) Compromise of Claims. The treatment set forth above for Class 13
22 Claims is intended to be a compromise and settlement of the
23 Claims asserted in Case No. A541668 and elsewhere, and
24 represents the results of arms length negotiations between the
25 Trustee and the Pre-Purchaser Claimants. Class 13 is impaired.

26 N. Class 14

27 1. Classification: Class 14 consists of all general, non-priority Unsecured
28 Claims.

2. Treatment: All Allowed Unsecured Claims shall be paid if and only if all Allowed unclassified Claims, Secured Claims and Priority Non-Tax Claims have been fully satisfied. The total amount of Allowed Class 14 Claims may increase over time by virtue of (i) rejection damage Claims arising from the Debtor's rejection of executory contracts and leases, and (ii) deficiency Claims arising as a result of one or more Secured Creditors' Secured Claims not being fully satisfied by a sale of the Property. In the event that the estate has sufficient funds to pay Claims in this Class after satisfaction of all senior Claims, the Trustee will consider conducting a comprehensive round of Claim objections. The Trustee believes that the Claim objection process would dramatically reduce the Allowed amount of Class 14 Claims. Class 14 is impaired.

O. Class 15

1. Classification: Class 15 consists of all Claims subordinated pursuant to section 510 of the Bankruptcy Code. As of the filing of this Plan, no Claims exists in this Class. The Class is reserved for Claims which may be subordinated pursuant to (i) agreements with Creditors negotiated by Yanke; (ii) litigation prosecuted by the Trustee; or (iii) other means.
2. Treatment: All Allowed subordinated Claims shall be paid after all Allowed unclassified Claims, Secured Claims and Priority Non-Tax Claims, and Unsecured Claims have been paid in full. Class 15 is impaired.

P. Class 16

1. Classification: Class 16 is comprised of all Equity Interests.
2. Treatment: In the event of a Timely Refinancing, the holders of Equity Interests in the Debtor shall retain such interests. In the event that no Timely Refinancing is achieved, the holder(s) of the Debtor's Equity Interests shall receive the remainder of the net proceeds of the Trustee's

liquidation of all Estate assets, if any, only if all senior Claims are paid in full, and all Equity Interests will be cancelled. Class 16 is impaired.

VIII.

MEANS OF IMPLEMENTATION OF THE PLAN

A. Assets and Liabilities of the Estate

In August of 2007, the firm of Integra Realty Resources-Nevada issued an appraisal of the Property. That report indicated an "as is" value (without any improvements) of \$42,400,000, and a value of \$89,700,000 if the costs of improvement as reported by the Debtor are added to this amount. The value of the Debtor's other assets (such as recoveries by the Trustee from transfers avoidable as fraudulent or preferential) is uncertain, and the Trustee is not likely to be able to place a value on such other assets until after Plan confirmation. Pursuant to Bankruptcy Code section 546, the Trustee must file avoidance actions under Chapter 5 of the Bankruptcy Code no later than August 21, 2009 (although Chapter 5 claims may be asserted by the Trustee against parties asserting claims against the Estate at any time).

According to Debtor's schedules on file with the Bankruptcy Court, the Debtor's liabilities are \$106,900,000 or more.

B. Source of Funds to Pay Claims

As described in section V(B)(1) above, the Debtor will be afforded a brief Refinancing Period during which it may attempt to refinance the Property, including by granting a lender a first priority deed of trust against the Property (junior only to Bank of George). In the event of a Timely Refinancing, all liens against the Property will attach to the proceeds of the refinancing, pursuant to Bankruptcy Code section 1129(b)(2)(A), and will be deemed unenforceable and no longer valid against the Property, pursuant to Bankruptcy Code sections 1123(b)(1) and (5). The Trustee will use the proceeds of the refinancing to satisfy in full all Allowed Claims.

Absent a Timely Refinancing, the Trustee will liquidate the Debtor's assets, including the Property, in accordance with Bankruptcy Code section 1123(b)(4) and the Sale Procedures described in section V(C)(2) above. All liens against the Property will attach to the proceeds of the sale, pursuant to Bankruptcy Code section 1129(b)(2)(A), and will be deemed unenforceable

1 and no longer valid against the Property, pursuant to Bankruptcy Code sections 1123(b)(1) and
2 (5). The Trustee will distribute the proceeds in accordance with the payment scheme set forth
3 herein (which tracks that established by the Bankruptcy Code). The Trustee believes that the
4 proceeds of a Timely Refinancing would allow for significantly greater Distributions to Creditors
5 as a whole than would be possible if the Trustee liquidates the Debtor's assets.

6 The Trustee may but shall not be required to set off or recoup against any Claim or the
7 payments to be made pursuant to this Plan in respect of such Claim (before any Payment is made
8 on account of such Claim), claims of any nature whatsoever that the Trustee, the Debtor or the
9 Reorganized Debtor may have against the holder of such Claims to the extent such Claims may
10 be set off or recouped under applicable law, but neither the failure to do so nor the allowance of
11 any Claim hereunder shall constitute a waiver or release by the Trustee or the Debtor of any such
12 Claim that either of them may have against such holder.

13 **C. Continued Management of the Debtor**

14 From and after the Effective Date, the Trustee shall continue to manage the affairs of the
15 Debtor's Estate, until such time as the Bankruptcy Court enters a final decree closing the
16 Bankruptcy Case, or enters an order otherwise. The Trustee will be responsible for the collection
17 and disbursement of all funds under the Plan. In the event of a Timely Refinancing, the Debtor
18 will obtain control of the Property as described in section V(B)(3) above. From and after the
19 Effective Date, the Trustee shall not be required to maintain a bond.

20 **D. Further Development of Property/Additional Debt**

21 From and after the Effective Date, the Trustee shall be authorized, without further order
22 of the Bankruptcy Court:

- 23 (1) to further develop the Property from its current state, and
24 (2) to obtain credit or incur debt (including debt secured by an interest in the
25 Property)

26 as the Trustee in his reasonable discretion determines likely to maximize the value ultimately
27 realized from the Property or other assets of the Estate. Prior to exercising any powers under this
28 section, the Trustee shall consult on the subject with the Debtor, OneCap, and William Noall,

1 Esq. and Laurel Davis, Esq., counsel for the two largest groups of Mechanics' Lien Creditors.
2 No transfer of any interest in the Property or lien thereon will be permitted absent prior payment
3 in full of the Bank of George Claim, and absent the consent of Bank of George, any such transfer
4 shall trigger an obligation on the Estate's part to repay in full amounts outstanding under the SPF
5 Financing.

6 **E. Objections to Claims**

7 1. Generally

8 The deadline for any party in interest to file objections to Claims within a given Class
9 shall be the Claims Objection Date, unless the Bankruptcy Court, upon request, extends such
10 period. Such extension may be granted without notice to the affected Creditor. Objections may
11 include a request for subordination pursuant to Bankruptcy Code section 510. Filing, service and
12 prosecution of such objections shall be subject to and in accordance with the Bankruptcy Rules
13 and local rules and procedures.

14 2. Resolution of Disputes

15 Disputes regarding the validity or amount of Claims shall be resolved pursuant to the
16 procedures established by the Bankruptcy Court, the Plan, the Bankruptcy Code, the Bankruptcy
17 Rules, and other applicable law, and such resolution shall not be a condition precedent to
18 confirmation or consummation of the Plan.

19 3. Settlement

20 From and after the Effective Date, the Trustee may compromise, liquidate or otherwise
21 settle any undetermined or objected to Claim or Cause of Action without notice and a hearing
22 and without approval of the Bankruptcy Court.

23 ///

24 4. Allowed Amount

25 No holder of a Claim shall receive a Distribution in excess of the amount allowed, either
26 by the Bankruptcy Court or as provided herein, with respect to such Allowed Claim.

27 **F. Assumption or Rejection of Unexpired Leases and Executory Contracts**

28 1. Assumption or Rejection

Pursuant to sections 365 and 1123 of the Bankruptcy Code, the Confirmation Order will constitute Bankruptcy Court approval of both: (1) the rejection of all executory contracts and unexpired leases to which the Debtor may be a party, other than any executory contract or unexpired lease that is the subject of a motion to assume filed prior to the Confirmation Date; and (2) the assumption of all executory contracts and unexpired leases that are the subject of one or more motions to assume filed prior to the Confirmation Date; provided, however, that in the event that a Timely Refinancing is achieved, then, with respect to all executory Purchase Contracts, the Confirmation Order will constitute Bankruptcy Court approval of both: (1) the assumption of all executory Purchase Contracts to which the Debtor may be a party, other than any executory contract or unexpired lease that is the subject of a motion to reject filed prior to the Confirmation Date; and (2) the rejection of all executory Purchase Contracts and unexpired leases that are the subject of one or more motions to reject filed prior to the Confirmation Date.

2. Reservation of Rights

The Trustee reserves the right to file applications or motions for the assumption or rejection of any executory contract or unexpired lease at any time prior to the Confirmation Date, and to prosecute any such application to entry of a Final Order any time thereafter. The SPF Loan Documents shall not be subject to rejection, and shall not be modified by the Plan (or otherwise, except as specifically permitted in the SPF Loan Documents, with the written consent of the Bank of George). Notwithstanding the rejection of any executory contract or unexpired lease, the Trustee reserves any and all rights or defenses he, the Debtor or the Estate may hold or may have held against the other parties to such contract or lease. In the event that the Bankruptcy Court enters a Final Order denying assumption of a particular executory contract or unexpired lease, such Final Order shall be deemed to be a rejection by the Trustee of such executory contract or unexpired lease. In the event that the Bankruptcy Court enters a Final Order denying rejection of a particular executory contract or unexpired lease, such Final Order shall be deemed to be an assumption by the Trustee of such executory contract or unexpired lease.

3. Proof of Claim for Rejection Damages

Each Person that is a party to an executory contract or unexpired lease rejected pursuant to the Plan, and only such Person, shall be entitled to file, not later than thirty (30) days after the Confirmation Date, a proof of claim for damages alleged to arise from the rejection or termination of the contract or lease to which such entity is a party. Any such timely-filed Claim will be determined by the Bankruptcy Court pursuant to Bankruptcy Code section 502(g), and to the extent allowed, will be classified in the appropriate Class. Any Claim for rejection damages not timely filed in accordance with this paragraph will be deemed disallowed.

G. Retention of Liens

In the event of a Timely Refinancing, all valid, duly-perfected and enforceable liens against the Property (other than that held by Bank of George) shall attach to the proceeds of the refinancing, and shall no longer be valid and enforceable against the Property itself. In the event of a sale of the Property under the Plan, such sale shall be made free and clear of all liens, claims and interests (other than that held by Bank of George), and such liens, claims and interests shall attach to the proceeds of the refinancing, and shall no longer be valid and enforceable against the Property itself. Holders of Secured Claims shall retain any valid, perfected liens against Estate assets other than the Property.

Each of the foregoing provisions in the paragraph above is expressly subject to the provisions of this Plan, and to any avoidance actions or Claim objections that the Trustee may bring.

H. Deadline For Administrative Expense Claims/Other Claims Related to Bankruptcy Case

All Administrative Claimants shall file motions for allowance of Administrative Expense Claims incurred from and after the Petition Date through and including the Confirmation Date not later than sixty (60) days after the Effective Date of the Plan or such Administrative Expense Claims shall be disallowed and forever barred. Any Creditor or party in interest having any Claim or cause of action against the Debtor, the Trustee or against any of the Debtor's or the Trustee's professionals relating to any actions or inactions in regard to the Bankruptcy Case must pursue such Claim or cause of action by the commencement of an adversary proceeding in the

Bankruptcy Case within sixty (60) days after the Effective Date of the Plan, or such Claim or cause of action shall be forever barred and released. Nothing in this section shall be construed to modify, extend or otherwise affect the Bar Date for filing pre-petition Claims against the Debtor, which Bar Date was January 1, 2008. This section shall not apply to the Bank of George Claim, which shall be an Allowed Claim without further proceeding or order.

I. Post-Confirmation Compensation of Professional Persons

Compensation for services rendered and for reimbursement of expenses incurred by the Trustee or a Professional Person after the Confirmation Date need not be approved by the Bankruptcy Court. Professional Persons may invoice the Trustee directly, providing a copy of the invoice to the United States Trustee and any other person requesting such a copy in writing after the Confirmation Date. The Trustee shall follow the same procedure with respect to his own fees. If ten days pass without objection, all objections are deemed waived, and the Trustee may pay such invoices without further Order of the Bankruptcy Court; provided, however, that in the event of a dispute regarding such compensation or reimbursement, the Trustee or Professional Person may submit an application to the Bankruptcy Court for review of the request for compensation and reimbursement, and the Bankruptcy Court retains jurisdiction to hear and approve such application and compel payment thereon. Such post-Confirmation Date compensation for services rendered and reimbursement of expenses shall be considered an ordinary expense of the Estate.

J. Compensation of the Trustee

The Trustee's Fee for all services rendered in the Bankruptcy Case, both pre- and post-confirmation, shall be calculated as follows:

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1. In the event the Property is sold for a gross purchase price of \$45,000,000 or less, or is refinanced in a fashion which yields the Estate gross proceeds of \$45,000,000 or less, then the Trustee shall be allowed a Trustee's Fee of \$250,000 plus his actual hourly rate, capped at 1 percent of the gross sales price or gross refinancing amount.

2. In the event the Property is sold for a gross purchase price of between

\$45,000,000.01 and \$55,000,000, or is refinanced in a fashion which yields the Estate gross proceeds of between \$45,000,000.01 and \$55,000,000, then the Trustee shall be allowed a Trustee's Fee (a) as described in paragraph 1 above, plus (b) an additional amount equal to 2 percent of the difference between (i) the gross sale price or gross refinance amount, as applicable, and (ii) \$45,000,000.

3. In the event the Property is sold for a gross purchase price of greater than \$55,000,000, or is refinanced in a fashion which yields the Estate gross proceeds of greater than \$55,000,000, then the Trustee shall be allowed a Trustee's Fee (a) as described in paragraph 2 above, plus (b) an additional amount equal to 3 percent of the difference between (i) the sale price or refinance amount, as applicable, and (ii) \$55,000,000.

The Trustee's Fee was negotiated with certain key Creditors, and is expected to result in a fee ultimately paid to the Trustee in an amount less than the fee provided under Bankruptcy Code section 326.

K. Net Operating Reserve

Notwithstanding any other provision herein, until final Distributions are made to Creditors in accordance with this Plan, the Trustee shall maintain at all times a net operating reserve in the Estate in an amount of his discretion, but in no event less than \$100,000.

L. Re-vesting of Assets in the Debtor

In the event that both (i) the Debtor achieves a Timely Refinancing, and (ii) all Claims against the Estate are fully satisfied, then the Trustee will seek a final decree from the Bankruptcy Court providing for, among other things, the re-vesting of all Estate assets in the Debtor.

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M. Cancellation of the Debtor's Stock

In the event that the assets of the Estate are exhausted before all Allowed Claims against the Estate are fully satisfied, the Trustee will seek a final decree from the Bankruptcy Court providing for, among other things, the cancellation of all Equity Interests in the Debtor.

IX.

LIQUIDATION ANALYSIS

A. In General

For Creditors to make an informed decision about whether to accept or reject the Plan, the Trustee provides the following liquidation analysis. The data contained in the Financial Projections accompanying this document are estimates only, based upon the best information currently available. The Trustee reserves the right to revise the data as more accurate information becomes available.

If any Creditor votes to reject the Plan, the Bankruptcy Court must determine that each such Creditor will receive or retain under the Plan property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Creditor would receive or retain if the Debtor were liquidated in a case under Chapter 7 of the Bankruptcy Code. This is commonly referred to as the "best interest of Creditors test." The Trustee believes that the Plan complies with the test.

B. The Plan Priorities Follow the Chapter 7 Priorities

The Trustee believes that the "best interest of creditors" test is satisfied by the Plan for a variety of reasons, the most important of which may be this: The priorities set forth in the Plan precisely follow those set forth in Chapter 7 of the Bankruptcy Code. Thus, essentially by definition, under the Plan, Creditors will receive no less than they would under a Chapter 7 liquidation. For the reasons discussed below, the Trustee believes that Creditors will ultimately receive more under the Plan than they would under a Chapter 7 liquidation.

C. Timing of Distributions

Under a Chapter 7 liquidation of the Debtor's non-exempt assets, most Classes of Creditors would probably be forced to wait longer for payment on account of Claims than they would under the Trustee's proposed Plan. Absent approval of the Plan, significant litigation would likely ensue, including litigation with Yanke, OneCap, the Mechanics' Lien Creditor, the Pre-Purchaser Claimants, and others. Such litigation could easily last a year or two, possibly longer, considering appeals. Under the Plan, this litigation is avoided, and Distributions to Creditors can begin as soon as Claims in a given Class are fixed and sufficient assets exist to pay them.

1 **D. Amount of Distributions**

2 The timing of the Distributions will affect the amounts ultimately paid to Creditors here.
3 The longer Creditors wait for the liquidation of the Property, the more interest continues to
4 accrue on senior Secured Claims, thus eroding the ultimate Distributions to junior Creditors.
5 Because the Plan avoids the litigation described above, it avoids the delay inherent therein, thus
6 preserving more value for Creditors. The Plan also avoids the significant expense that would be
7 involved with such litigation, again preserving more value for Creditors.

8 In the event of a Timely Refinancing under the Plan, all Allowed Claims will be satisfied
9 in full -- a result not probable in a liquidation under either Chapter 7 or the Plan.

10 The Trustee believes that one key to a successful outcome in this Bankruptcy Case lies in
11 realizing maximum value for the Property. Absent confirmation of the Plan, the Trustee believes
12 that senior Secured Creditors would likely foreclose on the Property, and that a foreclosure sale
13 would not realize maximum value for the Property. The Plan embodies the results of extensive
14 arms length negotiations between the Trustee, Yanke, OneCap and the Mechanics' Lien
15 Claimants, and the votes of these creditors and parties in interest on the Plan represent their
16 respective consents and agreements to the treatment afforded each of them and one another under
17 the Plan. As such, the Plan avoids a hurried "fire sale" of the Property, and instead provides for
18 a fully-advertised sale of the Property over a reasonable time period with the help of seasoned
19 professionals -- all of which should help realize maximum value for the Property. The Trustee
20 believes that the Sale Procedure established in the Plan will accomplish this goal.

21 The Trustee believes that a second key to a successful outcome in this Bankruptcy Case
22 lies in the following: Were this case administered under Chapter 7, the Trustee could do nothing
23 other than liquidate the Debtor's assets, object to and fix Claims, and distribute the proceeds of
24 the non-exempt assets in strict conformity with the priorities established by the Bankruptcy
25 Code. Under Chapter 7, the Trustee believes that relief from the automatic stay would likely be
26 granted to all senior priority creditors (e.g., OneCap, the Mechanics' Lien Creditors, etc.), and
27 that those Creditors would likely foreclose on their secured interests in the Property outside of
28 the jurisdiction of the Bankruptcy Court, with no opportunity for orderly marketing and

1 overbidding in accordance with the Sales Procedures provided under this Plan. Section 1123(b)
 2 of the Bankruptcy Code, by contrast, allows the Trustee (through the Plan) much greater
 3 flexibility, including the ability to impair certain Classes of Claims; to assume certain contracts;
 4 to provide for the settlement of certain Claims; to permit the retention by various parties of their
 5 interests in assets of the Debtor; and to modify the rights of holders of Secured Claims. The
 6 Trustee's Plan does all of these things. In utilizing the greater flexibility provided under Chapter
 7 11, the Plan achieves a more favorable resolution of key Claims than would be possible under
 8 Chapter 7, thus reducing the amount of Claims that will ultimately have to be paid. This
 9 resolution is achieved through a more efficient procedure than would be possible in a Chapter 7
 10 liquidation -- meaning administrative expenses are likely to be less. These factors allow
 11 Creditors a greater chance at a better recovery than could be achieved in a Chapter 7 liquidation,
 12 if at all.

13 Additionally, the Plan allows the Estate to take advantage of provisions of the
 14 Bankruptcy Code which may avoid millions of dollars in default interest, late charges, and
 15 accelerated debt owed to OneCap, and instead "cure" that debt at a much lower amount than
 16 would be possible outside Chapter 11. And the Plan allows for a reasonable amount of time to
 17 adequately market the Property, thus avoiding the risk of a forced sale which is likely to yield a
 18 lower price.

19 Based on all of the foregoing factors, the Trustee believes that the Plan will realize a
 20 higher net return for Creditors than would a Chapter 7 liquidation, and thus satisfies the best
 21 interest test.

22 ///

23 E. The Trustee's Financial Projections

24 1. Overview

25 The Trustee's Financial Projections are attached as Exhibit "1" hereto. The Financial
 26 Projections show various possible outcomes for Creditors in the Bankruptcy Case. Each model
 27 provides the following information:

- 28 (1) The amount for which the Property is sold or refinanced under a given scenario.

1 This figure is at the top of each model.

2 (2) The aggregate dollar amount of Claims that the Trustee estimates may be Allowed
3 in each Class under a given scenario. These figures are found in the column titled "Amount
4 Tentatively Allowed."

5 (3) The aggregate dollar amount that the Trustee estimates the estate may be able to
6 pay each Class under a given scenario. These figures are found in the column titled "Proposed
7 Payment." This column also illustrates at what priority level Estate assets would be fully
8 depleted under a given scenario.

9 (4) The percentage distributions that the Trustee estimates will be paid on account of
10 Allowed Claims in each Class. These figures are found in the "Distribution %" column.

11 2. The Different Possible Outcomes

12 Model "A" illustrates a worst-case scenario, with the Property selling for \$30 million.
13 Model "F" illustrates the opposite end of the spectrum -- a best-case scenario, with the Property
14 selling for \$90 million, and the Trustee conducting a comprehensive round of claim objections,
15 thereby reducing the total Allowed Amount of Class 14 Claims which share in the sale proceeds.
16 The models in between "A" and "F" illustrate various middle grounds. Model "G" illustrates
17 Yanke or the Debtor achieving a Timely Refinancing, with net refinancing proceeds of \$80
18 million, and Yanke or the Debtor having negotiated substantial reductions to Class 14 Claims.

19 The models make clear that in order for Class 14 Unsecured Claims to receive any
20 distribution, (i) Yanke must achieve a Timely Refinancing (including the required negotiation of
21 discounted Claim amounts), or (ii) the Property must sell for \$90 million or more, and the
22 Trustee must achieve success with Claim objections.

23 3. The Models Are Liquidation Analyses

24 Other than Model "G," each model provides a liquidation analysis at various sale prices,
25 because, as described above, the priorities set forth in the Plan precisely follow those set forth in
26 Chapter 7 of the Bankruptcy Code. Thus, essentially by definition, under the Plan, Creditors will
27 receive no less than they would under a Chapter 7 liquidation.

28 4. Disclaimer

The projections contained in the models represent the Trustee's predictions of future events based upon various assumptions. Those anticipated or expected future events may or may not occur, and the projections may not be relied upon as either a guarantee or as other assurance that the projected results will actually occur. Thus, while the Trustee believes that such projections are reasonable, there is no assurance that they will prove to be accurate. Because of all the uncertainties inherent in any predictions of future events, all Creditors and other interested parties should be aware of the risk associated with these projections and the possibility that the actual experience in the future may differ in material or adverse ways.

X.

MISCELLANEOUS PROVISIONS OF THE PLAN

A. All section 1129(a)(4) Payments Subject to Bankruptcy Court Review

As required by Bankruptcy Code section 1129(a)(4), all payments made or to be made by the Trustee for services or for costs and expenses in or in connection with the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, are subject to approval of the Bankruptcy Court as reasonable. To the extent that any such payment is not subject to the procedures and provisions of Bankruptcy Code sections 326 through 330, then such Bankruptcy Court approval shall be deemed to have been given through entry of the Confirmation Order unless, within ninety (90) days of such payment or request for such payment, the Bankruptcy Court, the United States Trustee, the party making the payment, or the party receiving the payment challenges or seeks approval of the reasonableness of such payment. No other parties or entities shall have standing to make such a challenge or application for approval. Nothing in this provision shall affect the duties, obligations and responsibilities of any entity under Bankruptcy Code Sections 326 through 330.

B. Default

1. Events of Default

The following shall be events of default under the Plan:

- (a) The failure of the Trustee to make any payment required under the Plan when

due; provided, however, that, except as otherwise provided in this Plan or the SPF Loan Documents, no default shall be deemed to have occurred if such missed payment is made within thirty (30) days of its due date.

(b) Failure to comply with any provision of this Plan.

2. Consequences of Default

Except as otherwise provided in this Plan, an order of the Bankruptcy Court issued upon application by a party in interest, or the SPF Loan Documents, if an event of default under this Plan occurs and is not cured within thirty (30) days after service of written notice of default on the Trustee, any holder of an Allowed Claim may seek relief from the Bankruptcy Court, including but not limited to filing motions to enforce the Plan, to revoke the Confirmation Order, to convert the Bankruptcy Case to one under Chapter 7, or to dismiss the Bankruptcy Case. Any party requesting such relief shall bear the burden of proof with respect thereto. Such notice or relief is not required to be sought by Bank of George prior to enforcing its rights under the SPF Loan Documents.

C. Litigation

The Trustee has lacked funds or other resources in the Estate to finance an investigation as to claims or Causes of Action that he, the Estate or the Debtor may hold. Accordingly, from and after the Confirmation Date, the Trustee and the Estate shall retain all claims or Causes of Action that they have or hold against any party, including against "insiders" of the Debtor (as that term is defined in section 101(31) of the Bankruptcy Code), whether arising pre- or post-petition, subject to applicable state law statutes of limitation and related decisional law, whether sounding in tort, contract or other theory or doctrine of law or equity. Confirmation of the Plan effects no settlement, compromise, waiver or release of any Cause of Action unless the Plan or Confirmation Order specifically and unambiguously so provide. The nondisclosure or nondiscussion of any particular Cause of Action is not and shall not be construed as a settlement, compromise, waiver or release of such Cause of Action. Upon the Effective Date, the Trustee will be designated as representative of the Estate under section 1123(b)(3) of the Bankruptcy Code and shall, except as otherwise provided herein, have the right to assert any or all of the

1 above Causes of Action post-confirmation in accordance with applicable law. Notwithstanding
2 the foregoing, neither the Trustee, the Debtor, nor the Estate have, or shall assert, any claims or
3 Causes of Action against Bank of George, or with respect to the SPF Financing.

4 **D. Modification/Amendment of Plan**

5 1. Amendments Prior to Confirmation

6 The Trustee may propose any number of amendments to or modifications of the Plan, or
7 may rescind and withdraw the Plan in its entirety (with or without substitution of a replacement
8 plan), at any time prior to confirmation. If the Trustee revokes or withdraws the Plan, or if either
9 confirmation or the Effective Date does not occur, then the Plan shall be deemed null and void,
10 and in any such event, nothing contained herein shall be deemed to constitute an omission or a
11 waiver or release of any Claims or interests by or against the Trustee, the Debtor or any other
12 Person, or to prejudice in any manner the rights of the Trustee, the Debtor or any other Person in
13 any further proceedings involving the Debtor.

14 2. Amendments After Confirmation

15 The Plan may be modified by the Trustee at any time after the Confirmation Date,
16 provided that such modification meets the requirements of the Bankruptcy Code. The Trustee
17 may, with the approval of the Bankruptcy Court, and so long as it does not materially or
18 adversely affect the interests of Creditors, remedy any defect or omission, or reconcile any
19 inconsistencies in the Plan or in the Confirmation Order, in such manner as may be necessary to
20 carry out the purposes and intent of the Plan.

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23 3. Effect on Claims

24 A Creditor that has previously accepted or rejected this Plan shall be deemed to have
25 accepted or rejected, as the case may be, this Plan, as modified, unless, within the time fixed by
26 the Bankruptcy Court, such Creditor elects in writing to change its previous acceptance or
27 rejection.

1 **E. Reservation of Section 1129(b) Rights (Cramdown)**

2 If any Class of Creditors holding Claims against the Debtor rejects the Plan, the Trustee,
3 pursuant to Bankruptcy Code section 1129(b), will seek confirmation of the Plan if all of the
4 applicable requirements of Bankruptcy Code section 1129(a), other than those of section
5 1129(a)(8), have been met.

6 **F. Exemption from Transfer Taxes**

7 Pursuant to section 1146(a) of the Bankruptcy Code, (a) the transfer of the Property or
8 any other property under this Plan; (b) the creation, modification, consolidation or recording of
9 any deed of trust or other security interest under this Plan, and the securing of additional
10 indebtedness by such means or by other means under this Plan; (c) the making, delivery or
11 recording of a deed or other instrument of transfer under this Plan; and (d) any transaction
12 contemplated above, or any transactions arising out of, contemplated by or in any way related to
13 the foregoing (including any Trustee's Deed upon sale in connection with the SPF Loan
14 Documents), shall not be subject to any document recording tax, stamp tax, conveyance fee,
15 intangible or similar tax, mortgage tax, stamp act or real estate transfer tax, mortgage recording
16 tax or other similar tax or governmental assessment. All applicable state and local governments
17 and their officials and agents shall be directed to forego the collection of any such tax or
18 assessment, and to accept for filing or recordation any of the foregoing instruments or other
19 documents without the payment of any such tax or assessment.

20 **G. Post-Confirmation Status Reports and Final Decree**

21 The Trustee shall file status reports with the Bankruptcy Court on a quarterly basis after
22 entry of the Confirmation Order, describing the progress toward consummation of the Plan. The
23 status reports shall be served on the United States Trustee and any other party in interest which
24 has requested in writing after the Confirmation Date that the Trustee provide it with a copy of
25 any such status reports. The status reports shall include a disclosure of the Debtor's Cash
26 position and the extent of any prepayments of the Debtor's obligations during the reported
27 quarter.

28 When the Plan is fully administered in all material respects, the Trustee shall file an

1 application for a final decree. The effect of a final decree entered by the Bankruptcy Court will
2 be to close the Bankruptcy Case, and to re-vest all remaining Estate assets, if any, in the Debtor.
3 After such closure, a party seeking any type of relief relating to a Plan provision can seek such
4 relief in a state court of general jurisdiction or can petition the Bankruptcy Court to re-open the
5 Bankruptcy Case.

6 **H. Post-Confirmation United States Trustee Fees**

7 The Trustee shall pay post-confirmation fees pursuant to section 1930 of Title 28 of the
8 United States Code to the extent required by law. The amount of fees due shall be calculated and
9 paid based on disbursements made pursuant to this Plan. Non-plan disbursements shall not be
10 counted for purposes of the calculation.

11 **I. Post-Confirmation Jurisdiction**

12 **1. Purposes**

13 Except as otherwise provided in this Plan, the Bankruptcy Court shall retain jurisdiction
14 over the Bankruptcy Case subsequent to the Confirmation Date to the fullest extent permitted
15 under section 1334 of Title 28 of the United States Code, including, without limitation, for the
16 following purposes:

- 17 (a) To allow, disallow, determine, liquidate, classify, estimate,
18 subordinate or establish the priority or secured or unsecured status
19 of any Claim, including the resolution of any request for payment
20 of any Administrative Expense Claim and the resolution of any and
21 all objections to the allowance or priority of Claims;
- 22 (b) To determine any and all fee applications of the Trustee or
23 Professional Persons and any other fees and expenses authorized to
24 be paid or reimbursed in accordance with the Bankruptcy Code or
25 the Plan;
- 26 (c) To resolve any matters related to the assumption, assignment or
27 rejection of any executory contract or unexpired lease, and to hear,
28 to determine and, if necessary, to liquidate, any Claims arising

therefrom or cure amounts related thereto;

- (d) To ensure that payments to holders of Allowed Claims and Distributions to Equity Interest holders are accomplished pursuant to the provisions of this Plan;
- (e) To decide or resolve any motions, adversary proceedings, contested or litigated matters and any other matters that may be pending on the Effective Date;
- (f) To hear and determine any and all actions initiated by the Trustee to collect, realize upon, reduce to judgment or otherwise liquidate any Causes of Action;
- (g) To enter such orders as may be necessary or appropriate to implement or consummate the provisions of this Plan and all contracts, instruments, releases and other agreements or documents created in connection with this Plan and/or confirmation, including actions to enjoin enforcement of Claims inconsistent with the terms of the Plan, except as otherwise provided herein;
- (h) To decide or resolve any cases, controversies, suits or disputes that may arise in connection with the consummation, interpretation or enforcement of any Final Order entered in this Case, this Plan, confirmation or any party's obligations incurred in connection with this Case;

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- (i) To hear and determine any dispute or Claim involving or against the Trustee, or involving or against any Professional Person employed by the Trustee;
- (j) To modify this Plan pursuant to section 1127 of the Bankruptcy Code, or to modify any contract, instrument, release or other

1 agreement or document created in connection with this Plan; or to
2 remedy any defect or omission or reconcile any inconsistency in
3 any Bankruptcy Court order or any contract, instrument, release or
4 other agreement or document created in connection with this Plan
5 in such manner as may be necessary or appropriate to consummate
6 this Plan, to the extent authorized by the Bankruptcy Code;

7 (k) To issue injunctions, enter and implement other orders or to take
8 such other actions as may be necessary or appropriate to carry out
9 the intent of this Plan or to restrain interference by any party with
10 consummation, implementation or enforcement of any order or this
11 Plan, except as otherwise provided herein;

12 (l) To determine disputes regarding title of the property claimed to be
13 property of the Debtor or its Estate;

14 (m) To decide or resolve any matter over which the Bankruptcy Court
15 has jurisdiction pursuant to section 505 of the Bankruptcy Code;

16 (n) To hear and determine disputes concerning any event of default or
17 alleged event of default under this Plan, as well as disputes
18 concerning remedies upon any event of default;

19 (o) To determine any other matters that may arise in connection with
20 or relate to this Plan, any order entered in this Bankruptcy Case, or
21 any contract, instrument, release or other agreement or document
22 created in connection with this Plan, except as otherwise provided
23 herein;

24 (p) To hear any other matters not inconsistent with the Bankruptcy
25 Code; and

26 (q) To enter a final decree closing the Case.

27 2. Abstention

28 If the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction, or is

otherwise without jurisdiction, over any matter arising out of the Bankruptcy Case, this post-confirmation jurisdiction section shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction by any other court having competent jurisdiction with respect to such matter.

J. General Provisions

1. Unclaimed Funds

Any Distribution by check to any holder of an Allowed Claim, if unclaimed or uncashed by the payee thereof within 120 days after issuance and delivery by regular United States Postal Service mail shall become property of the Estate, and all liabilities and obligations of the Trustee to such payee and any holder of such check shall thereupon cease. Any check distributed to a holder of an Allowed Claim shall bear a legend that the check shall be void if not cashed or presented for payment within 120 days of the date of issuance.

2. Notice

Notices provided pursuant to the Plan shall be served as follows:

If to the Debtor:

Tower Homes, LLC
Attn: Rodney Yanke
8337 West Sunset Road, #300
Las Vegas, NV 89113-2201

With a copy to:

Tower Homes, LLC
c/o William L. McGimsey, Esq.
516 S. Sixth Street, Suite 300
Las Vegas, NV 89101

If to the Trustee:

William A. Leonard, Jr.
5030 Paradise Road
Suite B-216
Las Vegas, NV 89119

With a copy to:

Sullivan, Hill, Lewin, Rez & Engel
Attn: James P. Hill, Esq.
228 South Fourth Street, First Floor
Las Vegas, NV 89101

Additional copies to:

OneCap Mortgage Corporation: c/o James MacRobbie, Esq. Jeffrey R. Sylvester, Esq. Sylvester & Polednak, Ltd. 7371 Prairie Falcon, Suite 120 Las Vegas, NV 89128	William Noall, Esq. c/o Gordon & Silver 3960 Howard Hughes Pkwy., 9th Floor Las Vegas, NV 89109
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Laurel E. Davis, Esq. Fennemore Craig, P.C. 300 S. Fourth Street, Suite 1400 Las Vegas, NV 89101	Donna M. Osborn, Esq. Terry A. Coffing, Esq. Marquis & Aurbach 10001 Park Run Drive Las Vegas, NV 89145
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Bank of George
c/o Candace C. Carlyon, Esq.
Shea & Carlyon, Ltd.
701 Bridger Avenue, Suite 850
Las Vegas, NV 89101

3. Headings

The article and section headings used herein are for convenience and reference only, and do not constitute a part of the Plan or in any manner affect the terms, provisions, or interpretations of the Plan.

4. Severability

If any provision of this Plan is determined by the Bankruptcy Court to be invalid, illegal or unenforceable or this Plan is determined to be not confirmable pursuant to section 1129 of the Bankruptcy Code, the Bankruptcy Court shall have the power to alter and interpret the Plan or any provision thereof to make it valid or enforceable to the maximum extent practicable, consistent with the original purpose of the term or provision held to be invalid, void or unenforceable, and such term or provision shall then be applicable as altered or interpreted. Notwithstanding any such holding, alteration or interpretation, the remainder of the terms and provisions of this Plan shall remain in full force and effect and will in no way be affected, impaired or invalidated by such holding, alteration or interpretation. The Confirmation Order shall constitute a judicial determination and shall provide that each term and provision of this

1 Plan, as it may have been altered or interpreted in accordance with the foregoing, is valid and
2 enforceable pursuant to its terms.

3 5. Governing Law

4 Except to the extent that the Bankruptcy Code or other federal law is applicable or as
5 provided in any contract, instrument, release or other agreement entered into in connection with
6 this Plan or in any document which remains unaltered by this Plan, the rights, duties and
7 obligations of the Debtor and any other Person arising under this Plan shall be governed by, and
8 construed and enforced in accordance with, the internal laws of the State of Nevada without
9 giving effect to Nevada's choice of law provisions.

10 6. Successors and Assigns

11 The rights and obligations of any entity named or referred to in the Plan shall be binding
12 upon, and shall inure to the benefit of, the successors and assigns of such entity.

13 7. Plan Is Self Executing

14 The terms and provisions of this Plan are self-executing on the Effective Date.

15 **XI.**

16 **EFFECT OF CONFIRMATION**

17 **A. Binding Effect**

18 Confirmation of the Plan will not terminate the Estate nor re-vest Estate assets in the
19 Debtor. To the contrary, from and after the Effective Date, the provisions of the Plan, the
20 Confirmation Order, and any associated findings of fact or conclusions of law shall bind the
21 Trustee, the Estate, the Reorganized Debtor, any entity acquiring property under the Plan, and
22 any Creditor of the Debtor, whether or not the Claim of such Creditor is impaired under the Plan
23 and whether or not such Creditor has accepted the Plan.

24 **B. Possible Discharge of the Debtor**

25 In the event of a Timely Refinancing, the Reorganized Debtor may apply to the
26 Bankruptcy Court for a discharge.⁶ Any discharge will have no effect on the Bank of George

27
28 ⁶ A discharge may have little to no actual effect, because in the event of a Timely Refinancing, all claims will be paid in full, thus leaving no claims to discharge. The Trustee has included this provision, however, at the request of

1 Claim. Otherwise, the Reorganized Debtor is not entitled to receive a discharge, pursuant to
2 section 1141(d)(3)(A) or (B) of the Bankruptcy Code.

3 **C. Post-Confirmation Conversion or Dismissal**

4 A Creditor or party in interest may bring a motion to convert or dismiss the Bankruptcy
5 Case under Bankruptcy Code section 1112(b)(7) after the Plan is confirmed if there is a default
6 in performing the Plan. If the Bankruptcy Court orders the case converted after the Plan is
7 confirmed, property of the Estate that has not been disbursed pursuant to the Plan will revert in
8 the Chapter 7 estate and the automatic stay will be reimposed upon the revested property to the
9 extent that relief from the automatic stay was not previously authorized by the Bankruptcy Court
10 during the case.

11 The order confirming the Plan may also be revoked under very limited circumstances.
12 The Bankruptcy Court may revoke the order if and only if the order of confirmation was
13 procured by fraud and if a party in interest brings a motion to revoke confirmation within 180
14 days after entry of the order of confirmation.

15 **D. Tax Consequences**

16 ANY PERSON CONCERNED WITH THE TAX CONSEQUENCES OF THE PLAN
17 SHOULD CONSULT WITH HIS/HER/ITS OWN ACCOUNTANTS, ATTORNEYS, AND/OR
18 ADVISORS TO DETERMINE HOW THE PLAN MAY AFFECT HIS/HER/ITS TAX
19 LIABILITY. The following disclosure of possible tax consequences is intended solely for the
20 purpose of alerting readers about possible tax issues the Plan may present to THE DEBTOR'S
21 ESTATE. The Trustee CANNOT and DOES NOT represent that the tax consequences
22 contained below are the only tax consequences of the Plan, because the Internal Revenue Code
23 embodies many complicated rules which make it difficult to completely and accurately state all
24 of the tax implications of any action or transaction.

25 The Trustee is unaware of any adverse tax consequences of the Plan as to the Estate. The
26 Trustee expects to minimize the tax liability upon the Estate and, to the extent permitted by the

27 _____ (continued)
28 the Debtor, which has informed the Trustee that the Debtor's potential lending sources may insist on a discharge as a
type of "clean up" order.

1 Internal Revenue Code, will seek to expense from current income the amounts paid under the
2 Plan. Notwithstanding the foregoing, the feasibility of the Plan does not depend on the
3 deductibility of amounts paid.

4 To the extent that funds of the Estate (as opposed to third party funds) are used to pay
5 back taxes or tax penalties of the Estate, those expenditures may not represent payments that can
6 be deducted as expenses for federal or state income tax purposes, potentially resulting in
7 increased tax liability to the Estate.

8 The Trustee is unaware of any adverse tax consequences of the Plan to Creditors
9 generally. It is not necessary or practicable to present a detailed explanation of the federal
10 income tax aspects of the Plan or the related bankruptcy tax matters involved in the Bankruptcy
11 Case. The Trustee is unaware of any tax consequences resulting from the Plan to each individual
12 Creditor which would vary significantly from the past tax consequences realized by each
13 individual Creditor upon receipt of payment from the Debtor. EACH CREDITOR IS URGED
14 TO SEEK ADVICE FROM HIS/HER/ITS OWN COUNSEL OR TAX ADVISOR WITH
15 RESPECT TO THE TAX CONSEQUENCES RESULTING FROM CONFIRMATION OF
16 THE PLAN.

17 **E. Exculpation**

18 From and after the Effective Date, neither the Trustee nor any of his respective present or
19 former members, officers, directors, managers, employees, advisors, accountants, brokers,
20 attorneys or agents, shall have or incur any liability to any holder of a Claim or Equity Interest or
21 any other party in interest, or any of their respective agents, employees, representatives, financial
22 advisors, accountant, brokers or attorneys, or any of their successors or assigns, for any act or
23 omission in connection with, relating to, or arising out of the Bankruptcy Case, the pursuit of
24 confirmation or the consummation of this Plan, except for willful misconduct, and in all respects
25 shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and
26 responsibilities under this Plan or in the context of the Bankruptcy Case. No holder of a Claim
27 or Equity Security, nor any other party in interest, including their respective agents, employees,
28 representatives, financial advisors, attorneys or Affiliates, shall have any right of action against

1 the Trustee nor any of his respective present or former members, officers, directors, managers,
 2 employees, advisors, accountants, brokers, attorneys or agents, for any act or omission in
 3 connection with, relating to, or arising out of, the Bankruptcy Case, the pursuit of confirmation
 4 of the Plan, the consummation of this Plan or the administration of this Plan, except for (a) such
 5 parties' willful misconduct; and (b) matters specifically contemplated by this Plan.

6 **F. Injunction/Further Actions**

7 From and after the Effective Date, the assets of the Debtor dealt with under the Plan shall
 8 be free and clear from any and all Claims or the holders of Claims, except as specifically
 9 provided otherwise in the Plan or the Confirmation Order, and all entities that have held,
 10 currently hold or may hold a Claim or other debt or liability or an Equity Interest are
 11 permanently enjoined from taking any of the following actions on account of any such Claims,
 12 debts, liabilities or terminated Equity Interests or rights: (1) commencing or continuing in any
 13 manner any action or other proceeding against the Trustee, the Reorganized Debtor or property
 14 of the Estate; (2) enforcing, attaching, collecting or recovering in any manner any judgment,
 15 award, decree or order against the Trustee, the Reorganized Debtor or property of the Estate; (3)
 16 creating, perfecting or enforcing any Lien or encumbrance against the Trustee, the Reorganized
 17 Debtor or property of the Estate; (4) asserting a setoff, right of subrogation or recoupment of any
 18 kind against any debt, liability or obligation due to the Trustee, the Reorganized Debtor or the
 19 Estate; and (5) commencing or continuing any action, in any manner or any place, that does not
 20 comply with or is inconsistent with the provisions of this Plan or the Bankruptcy Code,
 21 including, without limitation, the assertion of any claim or defense against Bank of George or
 22 with respect to the SPF Loan Documents. By accepting Distributions pursuant to this Plan, each
 23 holder of an Allowed Claim receiving Distributions pursuant to this Plan will be deemed to have
 24 specifically consented to the injunction set forth in this section.

25 From and after the Effective Date, the Trustee shall be entitled to control the financial
 26 affairs of the Estate without further order of the Bankruptcy Court and to use, acquire and
 27 distribute assets of the Estate free of any restrictions of the Bankruptcy Code or the Bankruptcy
 28 Court, except as specifically provided otherwise in the Plan or the Confirmation Order. The

Trustee shall be authorized to take such actions and to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and to take such actions as may be necessary or appropriate to effectuate, implement and further evidence the terms and conditions of this Plan and any securities issued, transferred or canceled pursuant to this Plan.

XII.

CONCLUSION AND RECOMMENDATION

The Trustee believes that this combined Plan and Disclosure Statement and its exhibits demonstrate that the Trustee's Plan will provide the greatest amount of funds for the payment of the legitimate Claims of Creditors. The Trustee strongly urges all Creditors to vote to accept the Plan. You are urged to complete the enclosed ballot and return it immediately in accordance with the instructions in section III(C) above.

XIII.

GLOSSARY OF DEFINED TERMS

As used in this Plan, the following terms shall have the respective meanings specified below:

1. Administrative Claimant: Any Person entitled to payment of an Administrative Expense Claim.
2. Administrative Expense Claim: Any cost or expense of administration of the Bankruptcy Case that is entitled to priority in accordance with Bankruptcy Code sections 503(b) and 507(a)(1), including, without limitation: any actual and necessary expenses of preserving the Estate incurred from and after the Petition Date through and including the Confirmation Date; all allowances of compensation and reimbursement of costs and expenses to Professional Persons, as approved by a Final Order of the Bankruptcy Court; and any fees or charges assessed against the Estate under Chapter 123 of Title 28 of the United States Code.
3. Allowed: With respect to a Claim of any nature, a Claim is "Allowed" if it meets either of the following two requirements:
 - a. proof of such Claim was filed on or before the Bar Date, or, if no proof of claim is filed, the Claim has been or hereafter is listed by the Debtor in its

schedules as liquidated in amount and not disputed or contingent as to liability, and, in either case, no objection to the allowance of such Claim has been filed on or before the Claims Objection Date; or

- b. a Claim as to which any objection has been filed and such Claim has been allowed in whole or in part by a Final Order of the Bankruptcy Court.

4. Bank of George Claim: All amounts due to Bank of George pursuant to the SPF Loan Documents, including, without limitation, all principal, interest, default rate interest, late charges, attorneys' fees, appraisal fees, reconveyance fees, and other fees and costs.

5. Bankruptcy Case: The instant bankruptcy case.

6. Bankruptcy Code: The United States Bankruptcy Code, Title 11 of the United States Code, sections 101, et seq., as amended.

7. Bankruptcy Court: The unit of the United States District Court for the District of Nevada, constituted pursuant to section 1515 of Title 28 of the United States Code, having jurisdiction over the Bankruptcy Case to the extent of any reference made pursuant to section 157(a) of Title 28 of the United States Code, or in the event such court ceases to exercise jurisdiction over the Bankruptcy Case, such court or adjunct thereof that has jurisdiction over the Bankruptcy Case.

8. Bankruptcy Rules: The Federal Rules of Bankruptcy Procedure, as amended.

9. Bar Date: January 1, 2008, as established by the Bankruptcy Court order entered August 27, 2007, pursuant to Federal Rule of Bankruptcy Procedure 3003(c)(3), after which any proof of claim or interest filed will not be allowed and will have no effect upon the Plan and the holder of such filed proof of claim or interest shall have no right to vote upon or participate in any Distributions under the Plan.

10. Benchmark: Benchmark Enterprises, LLC, a Nevada limited liability company.

11. Business Day: Any day that is not a Saturday, Sunday or legal holiday as identified in Federal Rule of Bankruptcy Procedure 9006.

12. Cash: Cash and cash equivalents, including, but not limited to, bank deposits, checks and other similar items.

1 13. Causes of Action: All causes of action, claims for relief, Claims, debts, defenses,
2 offsets, or other rights of any kind at law or in equity, held at any time by the Trustee, the Debtor
3 or the Estate, whether or not such rights are the subject of presently pending lawsuits, adversary
4 proceedings or appeals, including, without limitation, (i) causes of action belonging to the Debtor
5 or the Trustee as of the Petition Date, (ii) causes of action belonging to the Debtor, the Trustee or
6 the Estate that arose after the Petition Date, and (iii) rights exercisable by the Debtor as a Debtor
7 In Possession or by the Trustee pursuant to Bankruptcy Code sections 506, 510, 544, 545, 547,
8 548, 549, 550 or 553.

9 14. Claim: Any right to payment from the Debtor, whether or not such right is
10 reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed,
11 undisputed, legal, equitable, secured or unsecured, or any right to an equitable remedy for breach
12 of performance if such breach gives rise to a right to payment from the Debtor, whether or not
13 such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured,
14 disputed, undisputed, secured or unsecured.

15 15. Claims Objection Date: With respect to each Class, the date initial distributions
16 are made to Creditors in such Class, or such other date(s) as the Court may order.

17 16. Class: A group of Claims classified together in a Class designated in section VII
18 of this Plan.

19 17. Confirmation Date: (i) If no appeal of the Confirmation Order is filed, the first
20 Business Day after the expiration of time for an appeal of the Confirmation Order; or (ii) if an
21 appeal of the Confirmation Order has been filed, the first Business Day after the expiration of
22 time for an appeal of the Confirmation Order provided that no stay of the Confirmation Order
23 pending appeal has been granted; or (iii) if an appeal of the Confirmation Order has been filed
24 and a stay of the Confirmation Order has been granted, the first Business Day after the expiration
25 or termination of such stay.

26 18. Confirmation Order: The order entered by the Bankruptcy Court confirming the
27 Plan in accordance with the provisions of Chapter 11 of the Bankruptcy Code.

28 ///

1 19. Creditor: Any Person who has a Claim against the Debtor that arose on or before
2 the Petition Date, or a Claim against the Debtor of any kind specified in section 502(g), 502(h) or
3 502(i) of the Bankruptcy Code.

4 20. Debtor: Tower Homes, LLC, a Nevada limited liability company.

5 21. Debtor In Possession: The Debtor, during the time in which it was acting as a
6 Debtor In Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

7 22. Disclosure Statement: The Trustee's disclosure statement filed pursuant to
8 Bankruptcy Code section 1125, as embodied in this document.

9 23. Distribution: The property required by the Plan to be distributed to the holders of
10 Allowed Claims.

11 24. Effective Date: The Confirmation Date or such other date as the Bankruptcy
12 Court may order.

13 25. Equity Interest: The interest, whether or not asserted, of any holder of an "equity
14 security," as that term is defined in Bankruptcy Code section 101(17). The Trustee is informed
15 and believes that Yanke holds all Equity Interests in the Debtor.

16 26. Estate: The Debtor's Estate, arising under Bankruptcy Code section 541.

17 27. Final Order: An order or a judgment of a court which has not been reversed,
18 stayed, modified or amended, and as to which (i) the time to appeal or to seek review by
19 certiorari or rehearing has expired and no appeal, review, certiorari or rehearing petition has been
20 filed, or (ii) any appeal, review, certiorari or rehearing proceeding that has been filed has been
21 finally determined or dismissed, and the time to further appeal or to seek further review by
22 certiorari or rehearing has expired and no further appeal, review, certiorari or rehearing petition
23 has been filed.

24 28. Financial Projections: The Trustee's financial projections attached as Exhibit "1"
25 hereto.

26 29. Mechanics' Lien Creditors: All Claims of all Creditors asserting mechanics' lien
27 Claims under applicable state law.

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1 30. Net Recoveries: Proceeds of Causes of Action pursued by the Debtor or the
2 Trustee, less costs of prosecution of such Claims, including attorneys' fees, expert witness fees,
3 filing fees, and related costs of litigation.

4 31. OneCap: OneCap Mortgage Corporation, a Nevada corporation.

5 32. Person: An individual, governmental entity, partnership, corporation, or other
6 form of business entity.

7 33. Petition Date: May 30, 2007, the date the Petitioning Creditors filed their
8 involuntary petition for relief, commencing the Bankruptcy Case.

9 34. Plan: The Trustee's Plan of Reorganization, as embodied in the instant document,
10 either in its present form or as it may be altered, amended or modified from time to time.

11 35. Post-Trustee Administrative Expense Claims: (i) Administrative Expense Claims
12 incurred between the Trustee's appointment date of January 18, 2008 and the Confirmation Date;
13 and (ii) Administrative Expense Claims incurred by the Trustee and his professionals on or after
14 the Confirmation Date.

15 36. Pre-Purchaser Claimants: Persons who made pre-purchase deposit payments
16 toward the purchase of condominium units in the Property, irrespective of which Bankruptcy
17 Code section under which they assert Claims, Priority Non-Tax Claims, or otherwise. A list of
18 Pre-Purchaser Claimants known to the Trustee is attached as Exhibit "2" hereto.

19 37. Pre-Trustee Administrative Expense Claims: Administrative Expense Claims
20 incurred before the Trustee's appointment date of January 18, 2008.

21 38. Priority Non-Tax Claim: Any Claim entitled to priority and payment under
22 section 507 of the Bankruptcy Code other than Administrative Expense Claims and Priority Tax
23 Claims.

24 39. Priority Tax Claim: Any Claim entitled to priority and payment under section
25 507(a)(8) of the Bankruptcy Code.

26 40. Professional Person: Any attorney, accountant, or other professional: (i) engaged
27 by the Debtor or the Trustee and approved by order of the Bankruptcy Court in the Bankruptcy
28 Case; or (ii) engaged by the Trustee after the Effective Date.

1 41. Pro Rata: Proportionately, so that the ratio of the amount of a particular Claim to
2 the total amount of Allowed Claims of the Class in which a particular Claim is included is the
3 same as the ratio of the amount of consideration distributed on account of such particular Claim
4 to the consideration distributed on account of the Allowed Claims of the Class as a whole in
5 which the particular Claim is included.

6 42. Property. The Debtor's real estate development project comprising approximately
7 15 acres of partially developed real property located in the Southwest Las Vegas Valley along
8 the I-215 Beltway at Buffalo, commonly referred to as the Spanish View Tower Homes.

9 43. Purchase Contracts: All executory contracts with the Debtor under which Pre-
10 Purchaser Claimants agreed to purchase one or more condominium units within the Property.

11 44. Ratable Share of Administrative Expenses: The amount of Administrative
12 Expense Claims to be assessed against each respective Class of Secured Claims on a Pro Rata
13 basis, based on Distribution amounts paid and to be paid to each such Class from proceeds of a
14 sale or refinancing of the Property, as a surcharge pursuant to Bankruptcy Code section 506(c).

15 45. Refinance Period: The period of time described in section V(B)(1) above, during
16 which the Debtor will be afforded an opportunity to deliver to the Trustee a binding financing
17 commitment, satisfactory to the Trustee, under which the Estate would receive funds sufficient to
18 provide for the payment in full of all Allowed Claims against the Estate. If the Debtor timely
19 delivers a binding financing commitment satisfactory to the Trustee, then the Debtor will have an
20 additional 30 days of Refinance Period to close such financing and have the funds on deposit
21 with the Estate in an account under the Trustee's control.

22 46. Reorganized Debtor: The Debtor, to the extent that (i) a Timely Refinancing is
23 achieved, and (ii) a final decree is entered by the Bankruptcy Court providing that the Debtor is
24 to emerge from bankruptcy protection as a Reorganized Debtor.

25 47. Sale Procedure: The procedure set forth in section V(C)(2) above, under which
26 the Trustee will market and sell the Property (absent a Timely Refinancing), pursuant to
27 Bankruptcy Code section 1123(b)(4), with the Property to transfer free and clear of all liens,
28 claims and interests, pursuant to Bankruptcy Code section 1123(b)(1) and (5), and with such

1 liens, claims and interests attaching to sale proceeds, pursuant to Bankruptcy Code section
2 1129(b)(2)(A).

3 48. Sale Motion: A motion filed by the Trustee in the Bankruptcy Case seeking
4 Bankruptcy Court approval of a sale of the Property in accordance with Bankruptcy Code section
5 1123(b)(4) and the terms of this Plan.

6 49. Secured Claim: A Claim to the extent such Claim is secured as defined in
7 Bankruptcy Code section 506, inclusive of a Creditor's right of setoff or recoupment under
8 Bankruptcy Code section 553.

9 50. Secured Creditor: Any Creditor that is the holder of a Secured Claim, to the
10 extent of such Secured Claim.

11 51. SPF Financing: The post-petition financing provided to the Estate by Bank of
12 George, as approved by the Bankruptcy Court's order entered May 7, 2008.

13 52. Timely Refinancing: A refinancing of the Property on the terms and conditions
14 set forth in section V(B) above.

15 53. Trustee's Fee: The fee payable to the Trustee in accordance with the agreement
16 described in section VIII(J) of this Plan.

17 54. Unsecured Claim: Any Claim other than an Administrative Expense Claim, a
18 Priority Tax Claim, a Priority Non-Tax Claim, or a Secured Claim, and all Claims of Secured
19 Creditors to the extent such Claims are valued as unsecured pursuant to section 506(a) of the
20 Bankruptcy Code.

21 55. Unsecured Creditor: Any Creditor holding an Unsecured Claim.

22 56. Yanke: Rodney Yanke, the Debtor's principal.

23 The words "herein" and "hereunder" and other words of similar import refer to this Plan
24 as a whole and not to any particular section, subsection or clause contained in this Plan, unless
25 the context requires otherwise. Whenever from the context it appears appropriate, each term
26 stated in either the singular or the plural includes the singular and the plural, and pronouns stated
27 in the masculine, feminine or neuter gender include the masculine, feminine and the neuter. The

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1 section headings contained in the Plan are for reference purposes only and shall not affect in any
2 way the meaning or interpretation of the Plan.

3 A term used in this Plan and not defined herein but that is defined in the Bankruptcy
4 Code has the meaning assigned to the term in the Bankruptcy Code. A term used in this Plan and
5 not defined herein or in the Bankruptcy Code, but which is defined in the Bankruptcy Rules, has
6 the meaning assigned to the term in the Bankruptcy Rules.

7
8 Dated: November __, 2008

SULLIVAN, HILL, LEWIN, REZ & ENGEL
A Professional Law Corporation

9
10 By: /s/ James P. Hill
11 James P. Hill
12 Christine A. Roberts
13 Attorneys for William A. Leonard, Jr.,
14 Chapter 11 Trustee
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EXHIBIT 1

Tower Homes, LLC - Case No. 07-13208
Proposed Distribution at \$30 Million

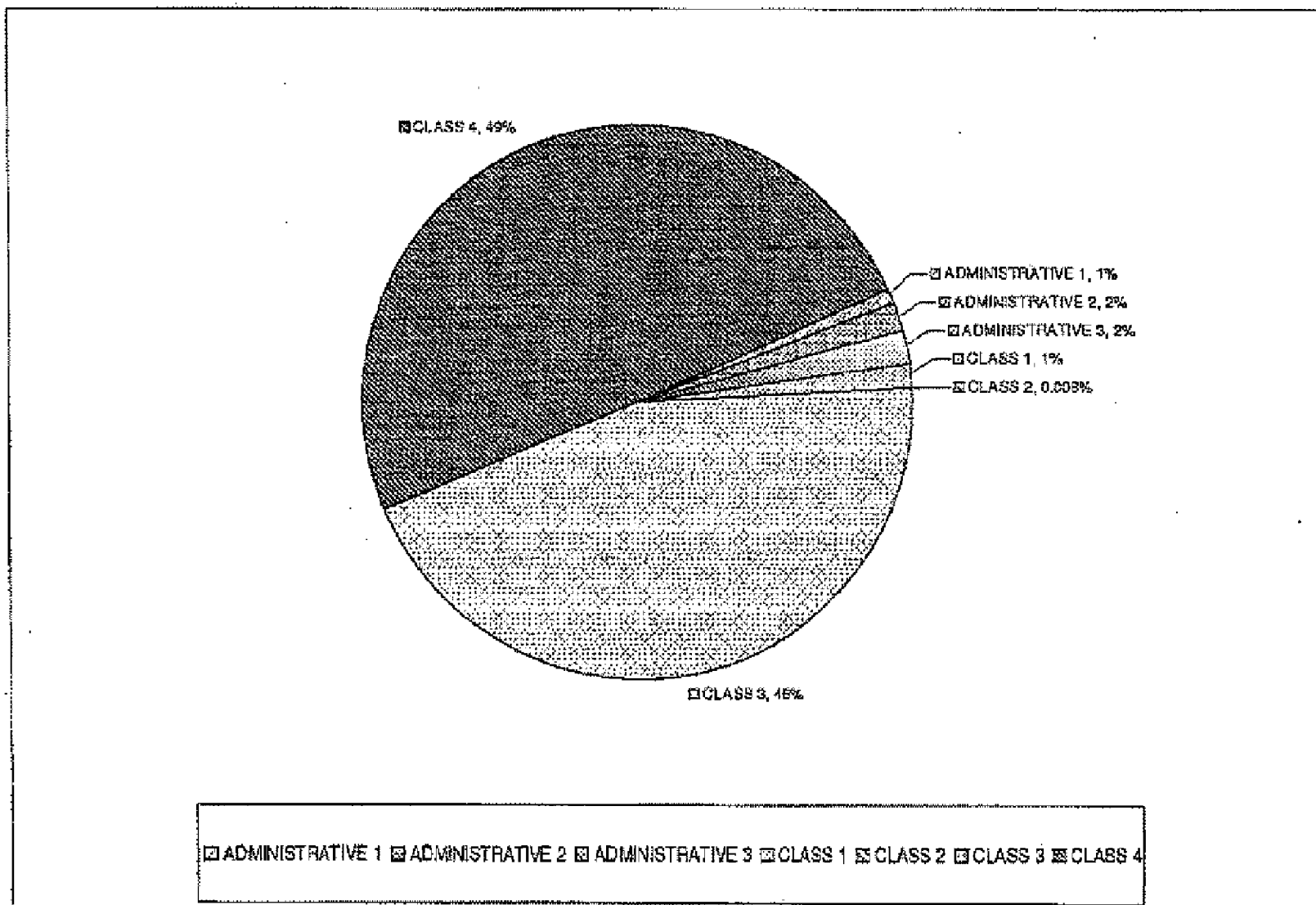
A

Bank Balances 8/1/08	\$0
Proposed Sale Price	\$30,000,000
Funds Available for Distribution	\$30,000,000

SPED-ORC CLASS	DESCRIPTION	Amount Tentatively Allowed	Proposed Payment	\$30,000,000	Distribution %
ADMINISTRATIVE 1	TRUSTEE	\$250,000	(\$250,000)	\$29,750,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$500,000	(\$500,000)	\$29,250,000	100.00%
ADMINISTRATIVE 3	BROKER	\$600,000	(\$600,000)	\$28,650,000	100.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$28,275,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$28,272,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$9.5M	\$13,369,288 ²	(\$13,369,288)	\$14,903,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$14,903,452)	\$0	92.96%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	\$0	\$0	0.00%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	\$0	\$0	0.00%
CLASS 7	BENCHMARK	\$4,300,000	\$0	\$0	0.00%
CLASS 8	ONECAP MOP	\$0	\$0	\$0	0.00%
CLASS 9	SECURED	\$502,500	\$0	\$0	0.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$0	0.00%
CLASS 11	GMAO	\$0	\$0	\$0	0.00%
CLASS 12	PRIORITY NON-TAX	\$0.00	\$0	\$0	0.00%
CLASS 13	PRIORITY NON TAX (PRE-PURCHASERS)	\$84,875	\$0	\$0	0.00%
CLASS 14	GENERAL UNSECURED	\$21,865,114 ³	\$0	\$0	0.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$93,328,115	(\$20,000,000)	\$0	47.20%

FUNDS REMAINING IN ESTATE

\$0.00



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2008.

³ This figure represents the total value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing. In the event that the estate has sufficient funds to pay claims in this class after satisfaction of all senior claims, the Trustee will consider conducting a comprehensive round of claims objections. The Trustee believes that the claim objection process would dramatically reduce this figure.

Tower Homes, LLC - Case No. 07-13208
Proposed Distribution at \$50 Million

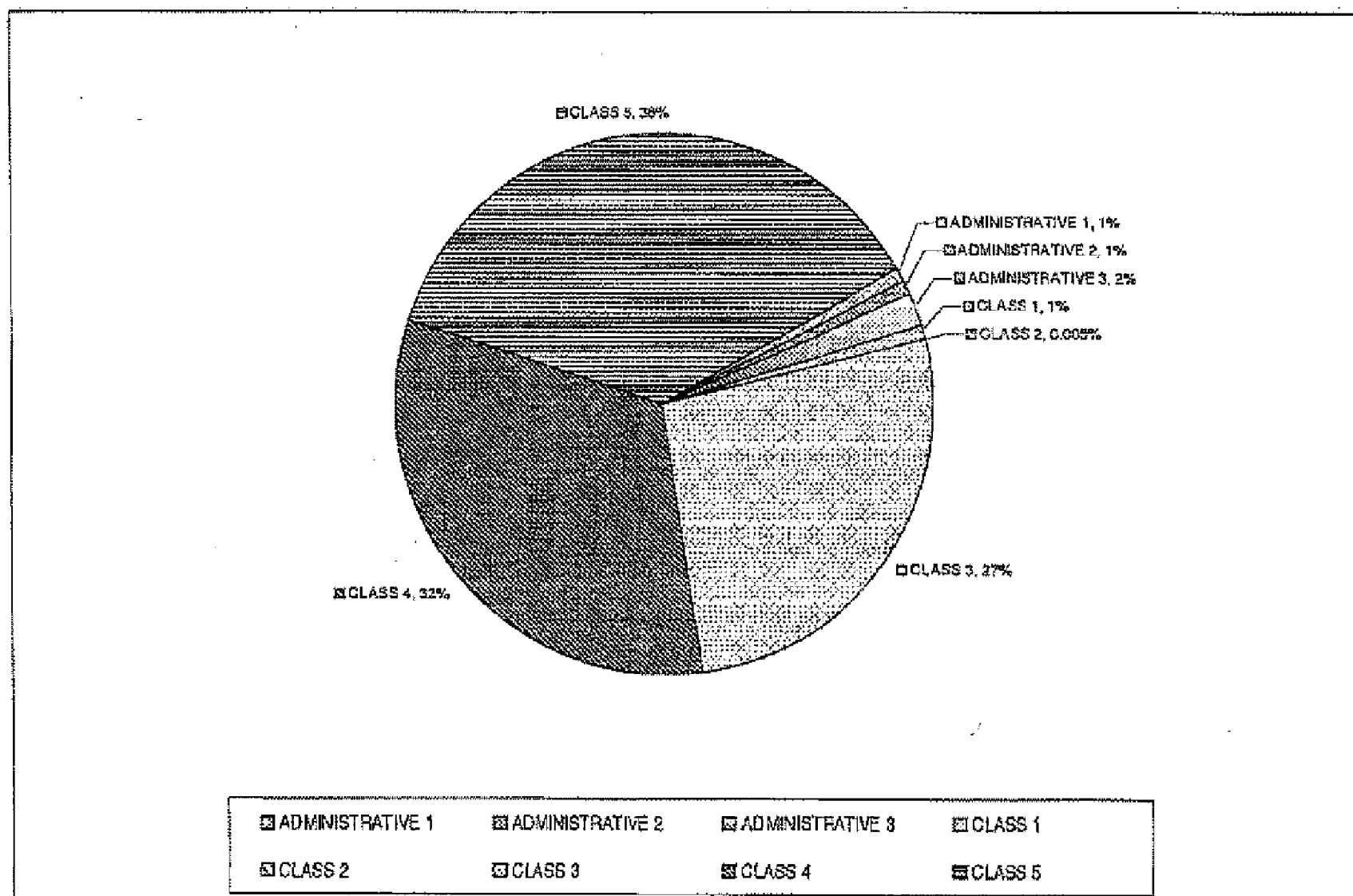
B

Bank Balances 8/1/08	\$0
Proposed Sale Price	\$50,000,000
Funds Available for Distribution	\$50,000,000

CLAIM CLASS	DESCRIPTION	Amount Terminally Allowed	Proposed Payment	\$50,000,000	Distribution %
ADMINISTRATIVE 1	TRUSTEE	\$350,000	(\$350,000)	\$49,650,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$500,000	(\$500,000)	\$49,150,000	100.00%
ADMINISTRATIVE 3	BROKER	\$1,000,000	(\$1,000,000)	\$48,150,000	100.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$47,775,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$47,772,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$9.5M	\$13,369,288 ²	(\$13,369,288)	\$34,403,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$16,031,671)	\$18,371,781	100.00%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	(\$18,371,781)	\$0	65.29%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	\$0	\$0	0.00%
CLASS 7	BENCHMARK	\$4,300,000	\$0	\$0	0.00%
CLASS 8	ONECAP MOP	\$0	\$0	\$0	0.00%
CLASS 9	SECURED	\$502,500	\$0	\$0	0.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$0	0.00%
CLASS 11	GMAC	\$0	\$0	\$0	0.00%
CLASS 12	PRIORITY NON-TAX	\$0	\$0	\$0	0.00%
CLASS 13	PRIORITY NON TAX (PRE-PURCHASERS)	\$84,875	\$0	\$0	0.00%
CLASS 14	GENERAL UNSECURED	\$21,865,114 ³	\$0	\$0	0.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$91,825,173	(\$50,000,000)	\$0	35.27%

FUNDS REMAINING IN ESTATE

\$0.00



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2008.

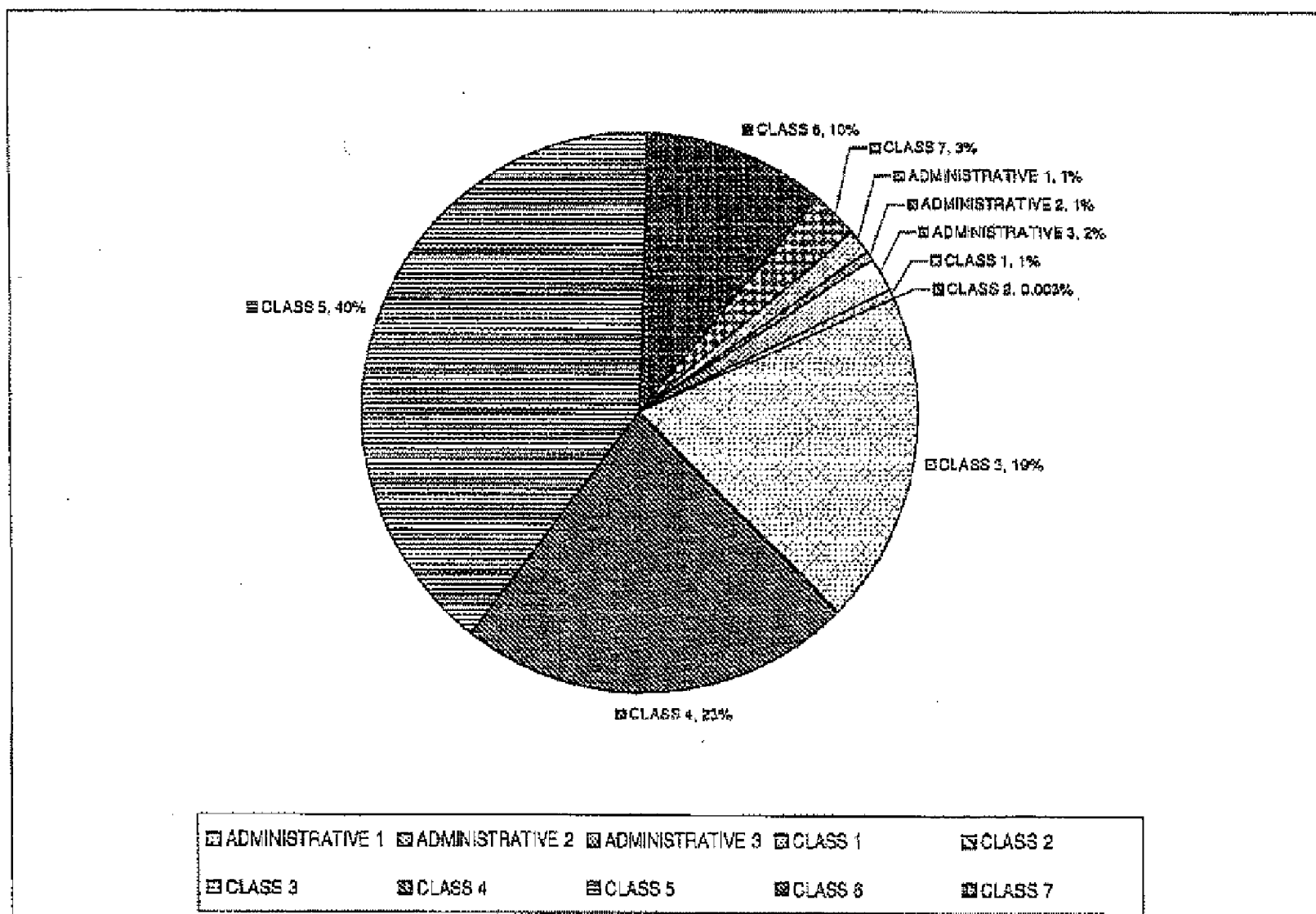
³ This figure represents the total value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing. In the event that the estate has sufficient funds to pay claims in this class after satisfaction of all senior claims, the Trustee will consider conducting a comprehensive round of claims objections. The Trustee believes that the claim objection process would dramatically reduce this figure.

Tower Homes, LLC - Case No. 07-13208
Proposed Distribution at \$70 Million

C

Bank Balances 8/1/08	\$0
Proposed Sale Price	\$70,000,000
Funds Available for Distribution	\$70,000,000

CREDITOR CLASS	DESCRIPTION	Amount Tentatively		\$70,000,000	Distribution %
		Allowed	Proposed Payment		
ADMINISTRATIVE 1	TRUSTEE	\$900,000	(\$900,000)	\$69,100,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$500,000	(\$500,000)	\$68,600,000	100.00%
ADMINISTRATIVE 3	BROKER	\$1,400,000	(\$1,400,000)	\$67,200,000	100.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$66,825,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$66,822,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$8.5M	\$13,369,288 ²	(\$13,369,288)	\$53,453,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$16,031,671)	\$37,421,781	100.00%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	(\$28,139,544)	\$9,282,237	100.00%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	(\$7,307,923)	\$1,974,314	100.00%
CLASS 7	BENCHMARK	\$4,300,000	(\$1,974,314)	\$0	45.91%
CLASS 8	ONECAP MOP	\$0	\$0	\$0	0.00%
CLASS 9	SECURED	\$502,500	\$0	\$0	0.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$0	0.00%
CLASS 11	GMAC	\$0	\$0	\$0	0.00%
CLASS 12	PRIORITY NON TAX	\$0	\$0	\$0	0.00%
CLASS 13	PRIORITY NON TAX (PRE-PURCHASERS)	\$84,875	\$0	\$0	0.00%
CLASS 14	GENERAL UNSECURED	\$21,865,114 ³	\$0	\$0	0.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$84,793,235	(\$70,000,000)	\$0	72.79%
FUNDS REMAINING IN ESTATE				\$0.00	



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2008.

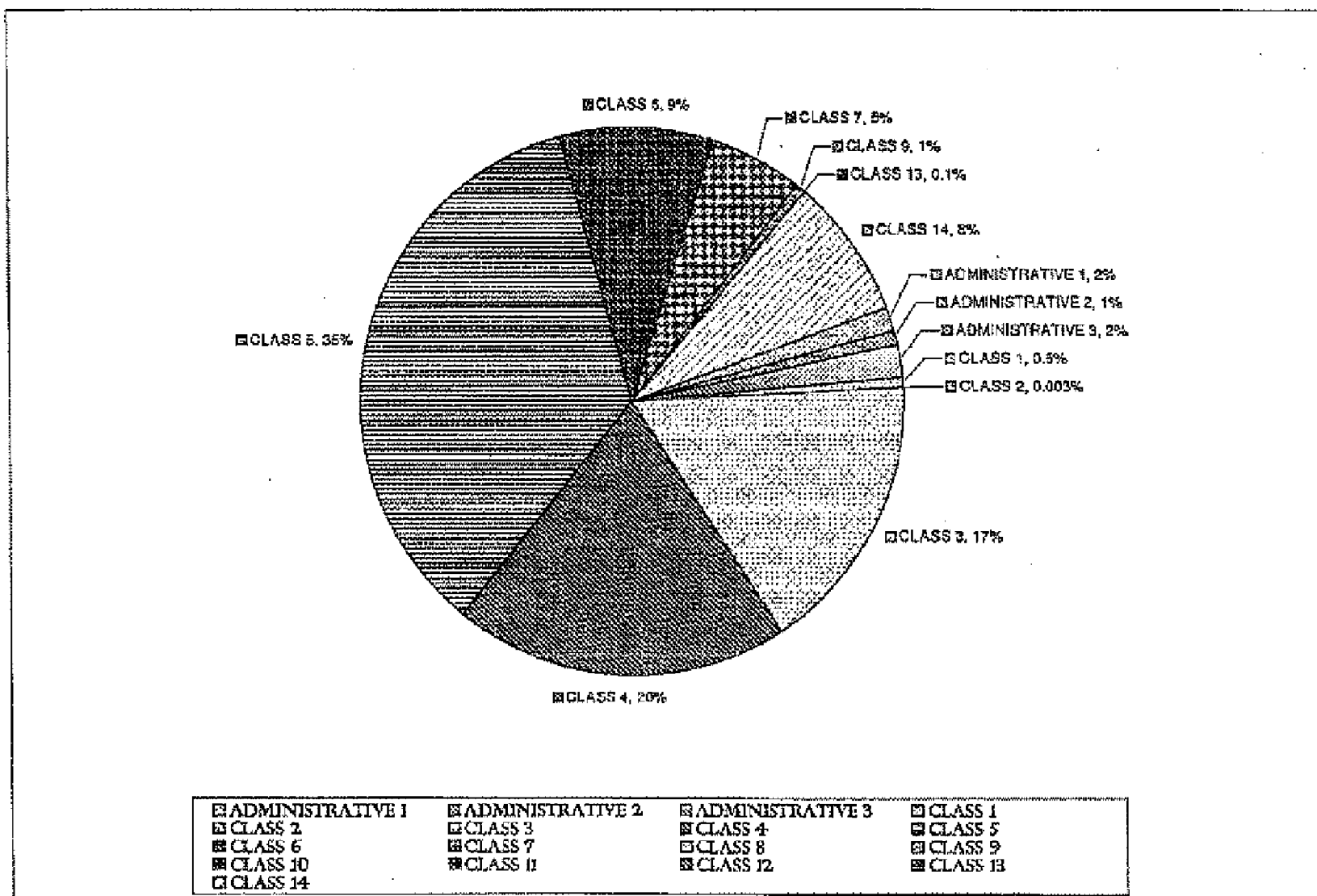
³ This figure represents the total value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing. In the event that the estate has sufficient funds to pay claims in this class after satisfaction of all senior claims, the Trustee will consider conducting a comprehensive round of claims objections. The Trustee believes that the claim objection process would dramatically reduce this figure.

Tower Homes, LLC - Case No. 07-13208
Proposed Distribution at \$80 Million

D

Bank Balances 8/1/08	\$0
Proposed Sale Price	\$80,000,000
Funds Available for Distribution	\$80,000,000

CREDITOR CLASS	DESCRIPTION	Amount (Negative)		\$80,000,000	Distribution %
		Allowed	Proposed Payment		
ADMINISTRATIVE 1	TRUSTEE	\$1,200,000	(\$1,200,000)	\$78,800,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$500,000	(\$500,000)	\$78,300,000	100.00%
ADMINISTRATIVE 3	BROKER	\$1,600,000	(\$1,600,000)	\$76,700,000	100.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$76,325,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$76,322,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$9.5M	\$13,369,288 ²	(\$13,369,288)	\$62,953,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$16,031,671)	\$46,921,781	100.00%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	(\$28,139,544)	\$18,782,237	100.00%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	(\$7,307,923)	\$11,474,314	100.00%
CLASS 7	BENCHMARK	\$4,300,000	(\$4,300,000)	\$7,174,314	100.00%
CLASS 8	ONECAP MOP	\$0	\$0	\$7,174,314	0.00%
CLASS 9	SECURED	\$502,500	(\$502,500)	\$6,671,814	100.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$6,671,814	0.00%
CLASS 11	GMAC	\$0	\$0	\$6,671,814	0.00%
CLASS 12	PRIORITY NON-TAX	\$0	\$0	\$6,671,814	0.00%
CLASS 13	PRIORITY NON TAX (PRE-PURCHASERS)	\$84,875	(\$84,875)	\$6,586,939	100.00%
CLASS 14	GENERAL UNSECURED	\$21,865,114 ³	(\$6,586,939)	\$0	30.13%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$80,000,000	(\$80,000,000)	\$0	0.00%



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2008.

³ This figure represents the total value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing. In the event that the estate has sufficient funds to pay claims in this class after satisfaction of all senior claims, the Trustee will consider conducting a comprehensive round of claims objections. The Trustee believes that the claim objection process would dramatically reduce this figure.

Tower Homes, LLC - Case No. 07-13208
Proposed Distribution at \$90 Million

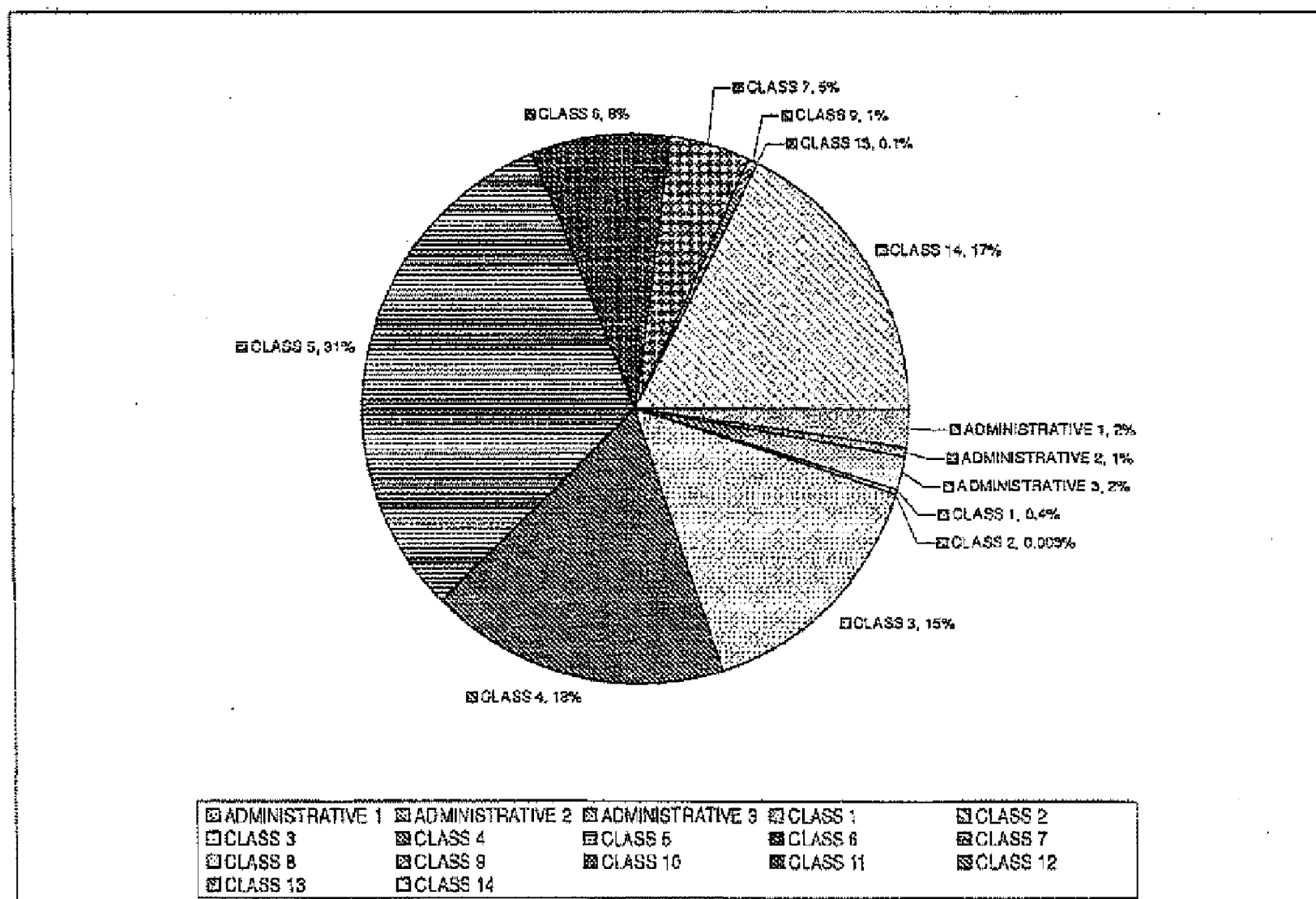
E

Bank Balances 8/1/08	\$0
Proposed Sale Price	\$90,000,000
Funds Available for Distribution	\$90,000,000

CREDITOR CLASS	DESCRIPTION	Amount	Proposed Payment	\$90,000,000	Distribution %
ADMINISTRATIVE 1	TRUSTEE	\$1,900,000	(\$1,900,000)	\$88,100,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$500,000	(\$500,000)	\$87,600,000	100.00%
ADMINISTRATIVE 3	BROKER	\$1,800,000	(\$1,800,000)	\$85,800,000	100.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$85,425,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$85,422,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$9.5M	\$13,369,288 ²	(\$13,369,288)	\$72,053,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$16,031,671)	\$56,021,781	100.00%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	(\$28,139,544)	\$27,882,237	100.00%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	(\$7,307,923)	\$20,574,314	100.00%
CLASS 7	BENCHMARK	\$4,300,000	(\$4,300,000)	\$16,274,314	100.00%
CLASS 8	ONECAP MOP	\$0	\$0	\$16,274,314	0.00%
CLASS 9	SECURED	\$502,500	(\$502,500)	\$15,771,814	100.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$15,771,814	0.00%
CLASS 11	GMAC	\$0	\$0	\$15,771,814	0.00%
CLASS 12	PRIORITY NON-TAX	\$0	\$0	\$15,771,814	0.00%
CLASS 13	PRIORITY NON TAX (PRE-PURCHASERS)	\$84,875	(\$84,875)	\$15,686,939	100.00%
CLASS 14	GENERAL UNSECURED	\$21,865,114 ³	(\$15,686,939)	\$0	71.74%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$75,135,175	(\$75,135,175)	\$0	0.00%

FUNDS REMAINING IN ESTATE

\$0.00



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2009.

³ This figure represents the total value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing. In the event that the estate has sufficient funds to pay claims in this class after satisfaction of all senior claims, the Trustee will consider conducting a comprehensive round of claims objections. The Trustee believes that the claim objection process would dramatically reduce this figure.

Tower Homes, LLC - Case No. 07-13208
Proposed Distribution at \$90 Million
Version 2

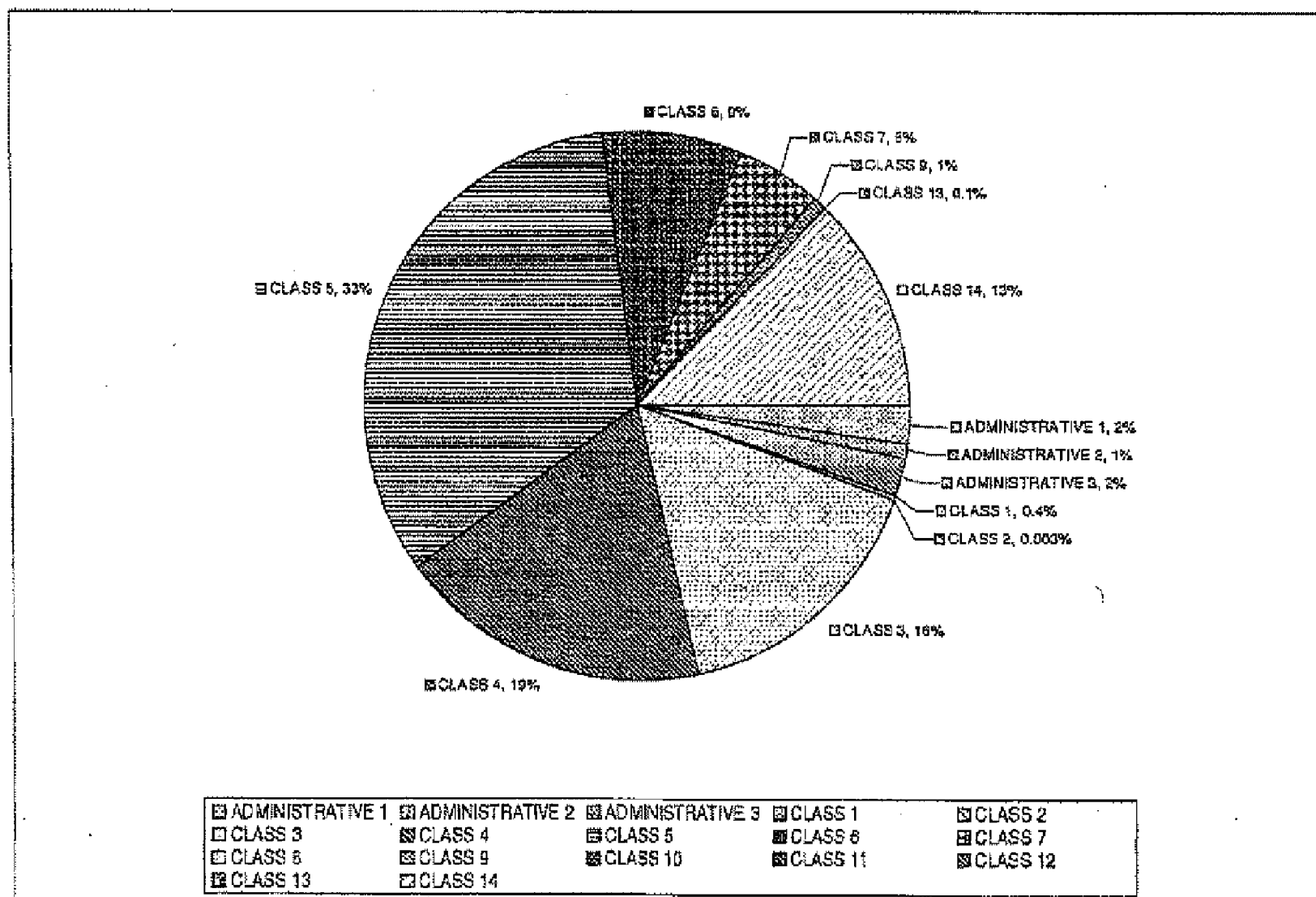
F

Bank Balances 8/1/08	\$0
Proposed Sale Price	\$90,000,000
Funds Available for Distribution	\$90,000,000

CREDITOR CLASS	DESCRIPTION	Amount Tentatively		\$90,000,000	Distribution %
		Allowed	Proposed Payment		
ADMINISTRATIVE 1	TRUSTEE	\$1,900,000	(\$1,900,000)	\$88,100,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$750,000	(\$750,000)	\$87,350,000	100.00%
ADMINISTRATIVE 3	BROKER	\$1,800,000	(\$1,800,000)	\$85,550,000	100.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$85,175,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$85,172,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$8.5M	\$13,369,288 ²	(\$13,369,288)	\$71,803,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$16,031,671)	\$55,771,781	100.00%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	(\$28,139,544)	\$27,632,237	100.00%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	(\$7,307,923)	\$20,324,314	100.00%
CLASS 7	BENCHMARK	\$4,300,000	(\$4,300,000)	\$16,024,314	100.00%
CLASS 8	ONECAP MOP	\$0	\$0	\$16,024,314	0.00%
CLASS 9	SECURED	\$502,500	(\$502,500)	\$15,521,814	100.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$15,521,814	0.00%
CLASS 11	GMAC	\$0	\$0	\$15,521,814	0.00%
CLASS 12	PRIORITY NON-TAX	\$0	\$0	\$15,521,814	0.00%
CLASS 13	PRIORITY NON TAX (PRE-PURCHASERS)	\$84,875	(\$84,875)	\$15,436,939	100.00%
CLASS 14	GENERAL UNSECURED	\$10,932,557 ³	(\$10,932,557)	\$4,504,382	100.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$45,405,618	(\$45,405,618)	\$4,504,382	100.00%

FUNDS REMAINING IN ESTATE

\$4,504,381.94



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2008.

³ This figure represents the value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing, discounted by 50 percent. In the event that the estate has sufficient funds to pay claims in this class after satisfaction of all senior claims, the Trustee will consider conducting a comprehensive round of claims objections. The Trustee believes that such a process would dramatically reduce the aggregate allowed amount of claims from that presently asserted.

Tower Homes, LLC - Case No. 07-13208
Refinanced at \$80 Million

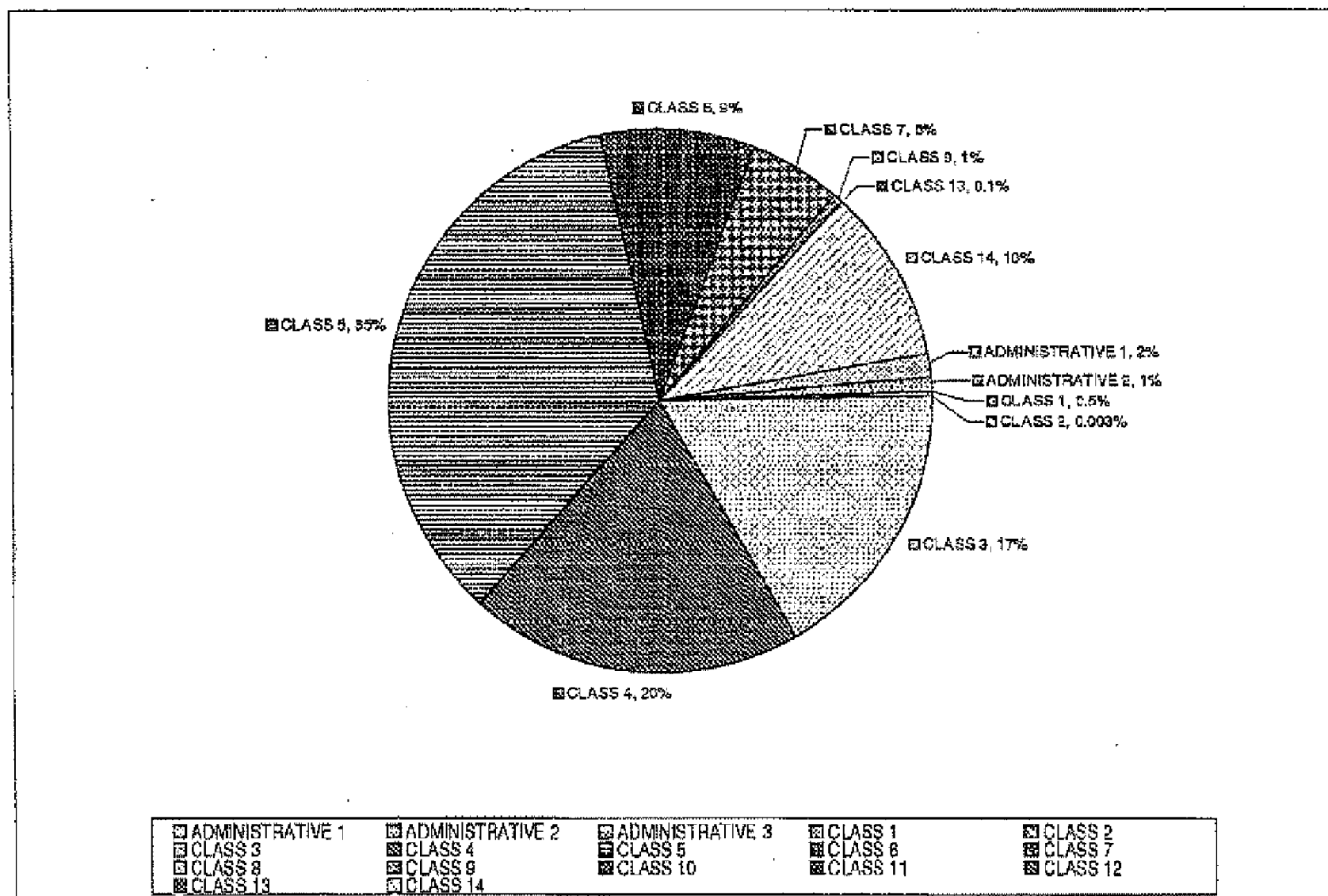
G

Bank Balances 8/1/08	\$0
Refinance Price	\$80,000,000
Funds Available for Distribution	\$80,000,000

CREDITOR CLASS	DESCRIPTION	Amount (Estimated)		\$80,000,000	Distribution %
		Allowed	Proposed Payment		
ADMINISTRATIVE 1	TRUSTEE	\$1,200,000	(\$1,200,000)	\$78,800,000	100.00%
ADMINISTRATIVE 2	SHLRE	\$500,000	(\$500,000)	\$78,300,000	100.00%
ADMINISTRATIVE 3	BROKER	\$0	\$0	\$78,300,000	0.00%
CLASS 1	BANK OF GEORGE ¹	\$375,000	(\$375,000)	\$77,925,000	100.00%
CLASS 2	PRIORITY TAX CLAIMS	\$2,260	(\$2,260)	\$77,922,740	100.00%
CLASS 3	ONECAP CLAIM 44 - \$9.5M	\$13,369,288 ²	(\$13,369,288)	\$64,553,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$16,031,671	(\$16,031,671)	\$48,521,781	100.00%
CLASS 5	MECHANICS LIEN CLAIMS	\$28,139,544	(\$28,139,544)	\$20,382,237	100.00%
CLASS 6	ONECAP CLAIM 43 - \$5.2M	\$7,307,923	(\$7,307,923)	\$13,074,314	100.00%
CLASS 7	BENCHMARK	\$4,300,000	(\$4,300,000)	\$8,774,314	100.00%
CLASS 8	ONECAP MOP	\$0	\$0	\$8,774,314	0.00%
CLASS 9	SECURED	\$502,500	(\$502,500)	\$8,271,814	100.00%
CLASS 10	LEXUS/TOYOTA	\$0	\$0	\$8,271,814	0.00%
CLASS 11	GMAC	\$0	\$0	\$8,271,814	0.00%
CLASS 12	PRIORITY NON-TAX	\$0	\$0	\$8,271,814	0.00%
CLASS 13	PRIORITY NON-TAX (PRE-PURCHASERS)	\$84,875	(\$84,875)	\$8,186,939	100.00%
CLASS 14	GENERAL UNSECURED	\$8,186,939 ³	(\$8,186,939)	\$0	100.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$80,000,000	(\$80,000,000)	\$0	100.00%

FUNDS REMAINING IN ESTATE

\$0.00



¹ As of the preparation of this model, the Trustee has drawn \$272,250.00 from the Bank of George line of credit, and intends to draw an additional \$100,000.00.

² The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2008.

³ This figure represents the value of all claims allowed against the estate (\$21,872,399) after discounts negotiated by Yanke with various creditors (\$13,680,600), as required under the Trustee's plan.

EXHIBIT 2

TOWER HOMES
PLAN AND DISCLOSURE STATEMENT

PRE-PURCHASER CLAIMANTS

1	BERG, DAVID
2	BIRKETT, KAREN & BORJA, WENDY
3	BROWN, MELVA
4	CHANDLER, BARBARA L.
5	CHANDLER, BARBARA L. as Trustee of the SARA LEE M. BOWERS TRUST
6	CLARK, EDWARD & SANDRA
7	COOLEY, JUDGE W.
8	DEMORALES, DAN
9	DK IV LIMITED PARTNERSHIP JOHN & JENNIFER KILPATRICK
10	EDEJER, EDWIN & GAIL M.
11	EMBLETON, ROBERT
12	GAYNOR, ALLISON G.
13	GLANTZ, LARRY & MORALES, MAYRA
14	GOODALL, RICHARD
15	GRANDE, EILEEN
16	HARRIS, ANDREA
17	HERZLICH, HAROLD J. AND CAROL P.
18	JONES, DEBRA
19	KALMAN, TIMUCIN
20	KOMAN, CHRISTOPHER
21	MERZANIS, DAVID & ROBERTA
22	MIDORA, DAHN
23	MUELLER, ANN & ROBERT
24	MUSTAPHA, ASSI
25	NEVADA BROWN, LLC.
26	ORION STAR TRUST
27	RCY LEASING
28	SHIFFMAN, IRVING & JUDITH
29	SIEMANS, ABE
30	STROMER, PHILLIP & KATHERINE
31	TEJADA, CLIFFORD & CARMENCHITA
32	TOUMAIAI, MARTIN
33	WESTFIELD, LISA
34	WILLIAMS, ARTHUR
35	WOODCOCK, JACK

EXHIBIT 2

1 OF 1

AA000140

EXHIBIT C

EXHIBIT C



Entered on Docket
June 03, 2010

Bruce A. Markell

Hon. Bruce A. Markell
United States Bankruptcy Judge

MARQUIS & AURBACH

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Marquis & Aurbach
TERRY A. COFFING, ESQ.
Nevada Bar No. 4949
DAVID A. COLVIN, ESQ.
Nevada Bar No. 4096
BRIAN HARDY, ESQ.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
bhardy@marquisaurbach.com
(702) 382-0711
Attorneys for the Tower Homes Purchasers

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re:

TOWER HOMES, LLC, a Nevada limited
liability company, dba Spanish View Tower
Homes.

Debtor.

Case No.: BK-07-13208-BAM
Chapter:11

Hearing Date: June 1, 2010
Hearing Time: 10:00 a.m.

**ORDER GRANTING MOTION TO APPROVE STIPULATION TO RELEASE CLAIMS
AND ALLOW MARQUIS & AURBACH, AS COUNSEL FOR THE TOWER HOMES
PURCHASERS, TO PURSUE CLAIMS ON BEHALF OF DEBTOR**

This matter having come before the Court for a hearing on June 1, 2010, on the Motion to Approve Stipulation to Release Claims and Allow Marquis & Aurbach as Counsel for the Tower Homes Purchasers to Pursue Claims on Behalf of the Debtor, Tower Homes Purchasers appearing by and through their counsel of record, Brian Hardy, Esq. of Marquis & Aurbach, the Court finding based upon the reasons stated on the record, the papers and pleadings on file

herein, the Motion, the oral arguments of counsel, and good cause appearing;

IT IS HEREBY ORDERED ADJUDGED AND DECREED that the Motion to Approve the Stipulation to Release Claims and Allow Marquis & Aurbach as Counsel for the Tower Homes Purchasers to Pursue Claims on Behalf of the Debtor, attached hereto as Exhibit 1, is hereby granted;

IT IS SO ORDERED.

Respectfully Submitted By:

MARQUIS & AURBACH

By 

Brian Hardy, Esq.
Nevada Bar No. 10068
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorney(s) for Tower Homes Purchasers

ALTERNATIVE METHOD RE: RULE 9021

In accordance with LR 9021, counsel submitting this document certifies as follows (check one):

☐ The court has waived the requirement of approval under LR 9021.

☐ This is a chapter 7 or 13 case, and either with the motion, or at the hearing, I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐ This is a chapter 9, 11, or 15 case, and I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☒ I certify that I have served a copy of this order with the motion, and no parties appeared or filed written objections.

###

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

MARQUIS & AURBACH
TERRY A. COFFING, ESQ.
Nevada Bar No. 4949
DAVID A. COLVIN, ESQ.
Nevada Bar No. 4096
BRIAN HARDY, ESQ.
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Las Vegas, Nevada 89145
dcolvin@marquisaurbach.com
(702) 382-0711
Attorneys for the Tower Homes Purchasers

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In Re:
TOWER HOMES, LLC, a Nevada limited
liability company, dba Spanish View Tower
Homes.
Debtor.

Case No.: BK-07-13208-BAM
Chapter:11

**STIPULATION TO RELEASE CLAIMS AND ALLOW MARQUIS & AURBACH, AS
COUNSEL FOR THE TOWER HOMES PURCHASERS, TO PURSUE CLAIMS ON
BEHALF OF DEBTOR**

Creditors, Allison Gaynor, Barbara Chandler individually and as trustee of the Saralee M. Bowers Trust, Melva Nevada Brown, Richard Goodall, Harold & Carol Herzlich, Robert Embleton, Dahn Midora, Arthur Williams, Larry & Judy Shiffman, Edwin & Gail Edejer, Judge Angel Cooley, Debra Jones, Abe Siemens; John & Jennifer Kilpatrick, Clifford & Carmen Chita Tejada, Lisa Westfield, Ann & Robert Mueller, Phillip & Katherine Stromer, Karen Birkett, Wendy Borja, Eileen Grande, and Edward Goldin (collectively the "Tower Homes Purchasers"), by and through their counsel, David A. Colvin, Esq. of Marquis & Aurbach, and William A. Leonard, Jr., Post-Confirmation Chapter 11 Trustee (the "Trustee") by and through his counsel Christine A. Roberts, Esq. of Sullivan, Hill, Lewin, Rez & Engel, hereby stipulate and agree as follows:

1) The Trustee has determined that he does not intend and, in any event, does not have sufficient funds in the Estate to pursue claims on behalf of the Debtor against Rodney

MARQUIS & AURBACH
10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

1 C. Yanke, Americana LLC dba Americana Group, Mark L. Stark, Jeannine Cutter, David
2 Berg, Equity Title of Nevada, LLC or any other individual or entity later identified through
3 discovery which has or may have liability to Debtor or others for the loss of the earnest
4 money deposits provided by purchasers for units in the Spanish View Tower Homes
5 condominium project.

6 2) The Trustee has determined that the claims against Rodney C. Yanke, Americana
7 LLC dba Americana Group, Mark L. Stark, Jeannine Cutter, David Berg, Equity Title of
8 Nevada, LLC or any other individual or entity later identified through discovery which has or
9 may have liability to Debtor or others for the loss of the earnest money deposits provided by
10 purchasers for units in the Spanish View Tower Homes condominium project are or may be
11 direct claims held by the Tower Homes Purchasers and, therefore, are not claims held solely
12 and exclusively by the Estate.

13 3) The Trustee hereby stipulates and agrees to release to the Tower Homes
14 Purchasers any and all claims on behalf of the Debtor against Rodney C. Yanke, Americana
15 LLC dba Americana Group, Mark L. Stark, Jeannine Cutter, David Berg, Equity Title of
16 Nevada, LLC or any other individual or entity later identified through discovery which has or
17 may have any liability or owed any duty to Debtor or others for the loss of the Tower Homes
18 Purchasers earnest money deposits and all claims to any and all earnest money deposits
19 provided by purchasers for units in the Spanish View Tower Homes condominium project.

20 4) The Trustee hereby stipulates and agrees to allow Marquis & Aurbach, as counsel
21 for the Tower Homes Purchasers, to pursue any and all claims on behalf of the Debtor
22 against Rodney C. Yanke, Americana LLC dba Americana Group, Mark L. Stark, Jeannine
23 Cutter, David Berg, Equity Title of Nevada, LLC or any other individual or entity later
24 identified through discovery which has or may have any liability or owed any duty to Debtor
25 or others for the loss earnest money deposits provided by purchasers for units in the Spanish
26 View Tower Homes condominium project.

27 5) The Trustee hereby stipulates and agrees to allow Marquis & Aurbach, as counsel
28 for the Tower Homes Purchasers, to recover any and all earnest monies deposits, damages,

attorneys fees and costs, and interest thereon on behalf of Debtor and the Tower Homes
Purchasers with respect to those claims released to the Tower Homes Purchasers herein.

Dated, this ____ day of April, 2010.

MARQUIS & AURBACH

SULLIVAN, HILL, LEWIN, REZ & ENGEL

By: 

By: 

Terry A. Coffing, Esq.
Nevada Bar No. 4949
10001 Park Run Drive
Las Vegas, Nevada 89145
Attorneys for the Tower
Homes Purchasers

Christine A. Roberts, Esq.
Nevada Bar No. 6472
228 South Fourth Street, First Floor
Las Vegas, NV 89101
Attorneys for William A. Leonard, Jr.,
Post-Confirmation Chapter 11 Trustee

MARQUIS & AURBACH

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Las Vegas, Nevada 89145
(702) 382-0711 FAX (702) 382-5816

EXHIBIT D

EXHIBIT D

DEANER, DEANER, SCANN, MALAN & LARSEN
Attorneys at Law

Charles W. Deaner
J. Douglas Deaner (1944-1990)
Susan Williams Scann
Douglas R. Malan
Brent A. Larsen

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720 South Fourth Street, Suite 300
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Telephone (702) 382-6911
Fax (702) 366-0854
www.ddenallaw.com

Anthony Culla
Lawrence E. Kulp, Jr.
Paul R. Connaghan

August 11, 2006

*Via Fax - 387-7897
and First Class Mail*

Tower Homes, LLC &
Rodney C. Yanke, Managing Member
c/o William H. Heaton, Esq.
Nitz, Walton & Heaton
601 South Tenth Street, Suite 201
Las Vegas, NV 89101

RE: Mueller, Robert & Ann - vs - Tower Homes, LLC, aka Spanish View Tower Homes

- NOTICE OF SELLER DEFAULT -

Dear Will:

As we discussed by phone on August 8, 2006, this law firm represents Robert and Ann Mueller. The Muellers signed a "Purchase Contract" (the "Contract") with your client, Tower Homes, LLC on or about July 12, 2005. When I attempted to phone Rodney Yanke, Managing Member of Tower Homes, his office referred me to you. I understand from speaking with you that you or your firm, in fact, represents Tower Homes and is familiar with the Contract, having assisted in its preparation. A copy of the subject Contract is enclosed for your convenience.

Tower Homes agreed to complete and sell to the Muellers, within two (2) years, "Unit No. 1803, on the 18th floor of Spanish View Tower Homes (the "Project"), Tower No. A" for \$1.1 million. The Muellers deposited earnest money of \$219,000.00 with Equity Title.

According to Section 8 of the Contract, Tower Homes promised "that the Unit shall be completed within two years after the execution of this Contract." Tower Homes promised to build "subject to normal and acceptable tolerances and pursuant to standard building practices found in residential construction in Las Vegas, Clark County, Nevada." The Project is not being built subject to "acceptable tolerances" or "pursuant to standard building practices". Tower Homes is, therefore, in default, in light of the indefinite work stoppage (which I am informed exceeds thirty (30) days), combined with a lack of funding and Project mismanagement, which

NWH0646

William H. Heaton, Esq.
August 11, 2006
Page No. 2

have resulted in a raft of mechanic lien claims, for millions of dollars, and numerous clouds on title. With regard to Project funding, David Berg, one of the agents hired by Tower Homes, informed me by telephone on August 8, 2006, that Tower Homes is seeking more funding. You informed me that Tower Homes is seeking a "cash infusion" after having already spent approximately \$50 to \$60 million. Tower Homes is out of money and has fallen into an indefinite stall. Tower Homes is therefore in default because the present facts and circumstances are not "acceptable tolerances" or "standard building practices."

In addition to the defaults outlined above, Tower Homes has anticipatorily repudiated, breached or defaulted, because it cannot timely deliver the Unit at Spanish Towers. I understand that John Sisslewood (Vice President of the project's supposed current general contractor, Lcdcor Construction) informed that there is no way that the project will be anywhere near completion by July of 2007, in line with the two (2) year delivery date Tower Homes promised to the Muellers. Mr. Sisslewood added that even if construction were to start back up, now, the developer would be lucky to complete Tower A by August of 2008.

Tower Homes has placed The Muellers under great personal and financial distress. They relied on the promise to deliver the Unit within 2 years, and were even provided a handwritten (enclosed) representation in April of 2005 by Tower Homes agent, David Berg, that "top off" of Tower A would occur "around Dec/Jan 05/06". An (enclosed) article on April 5, 2005 by reporter Hubble Smith in the *Las Vegas Review Journal* about Spanish View Tower contained comments from Tower Homes other agent, Jeannine Cutter of Prudential Americana. The article states: "Occupancy is expected in summer 2006." The Muellers are moving from California, and require housing here in order to care for their daughter and son-in-law, both of whom are disabled, and to care for their three (3) grandchildren.

With regard to the Muellers' \$219,000.00 deposit, I am informed that Mr. Yanke has refused to divulge the location of, or to account for the deposit. In subsection 2(e), the Contract provides that the \$219,000.00 would be placed "into an interest bearing trust account or money market account of the Seller", with "Seller's Depository", which "shall be Business Bank of Nevada (or another depository designated by Seller, whose accounts are insured by a governmental agency or instrumentality)." "The Trust Account may be pledged by Seller as security for a line of credit to be issued to Seller by the Depository ... provided, however, that the Depository shall: . . . (ii) release and deliver the Initial Payments (and all accrued interest thereon) to Purchaser in the event Seller defaults under this Contract, pursuant to the provisions of Paragraph 18 below." Therefore, based on the Contract the Muellers' \$219,000.00 should still be held in Trust "insured by a governmental agency or instrumentality"; and they have the unfettered, senior and superior right (prior to any claim of security by the Depository) to the return of their \$219,000.00, with interest, in the event of a Seller default.

NWH0647

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William H. Heaton, Esq.
August 11, 2006
Page No. 3

I asked you in our telephone conversation to immediately find out and disclose the location of the Muellers' \$219,000.00, and to expedite its return to them. You agreed to look into where the money is, and although you said that you would be gone beginning August 10th until August 15th, it should be very simple to inform where the Trust Account or Seller's Depository is, which should be holding the Muellers' money. There can be no excuse under the Contract for that money not still being in Trust for the Muellers, and Mr. Yanke and Tower Homes are under a fiduciary duty to immediately account for it. As such, Mr. Yanke must be able, without hesitation, to immediately report the name and location of the insured institution where the money is located; and he must provide an account number, an address for the institution, as well as a phone number of the person most knowledgeable with the institution about the Trust Account. As a fiduciary, Mr. Yanke must provide the most recent statement from the institution for the Trust Account, and state the number of Purchaser deposits that have been collected on the project, and the precise amount of each deposit, so that the Muellers can assure that all the money that should be in the Trust Account is still there, and verify that their money remains safe and in Trust.

If Mr. Yanke, or you on his behalf, cannot supply the information requested in the preceding paragraph, in writing, to me on or before August 17, 2006, the Muellers will be left with little choice but to treat this as a criminal matter, and will file charges with local, state and/or federal authorities.

The Muellers also request, and are entitled to the original cost breakdown and draw schedule, an immediate accounting for all moneys spent on the Project, as well as a cost breakdown and draw schedule for the Project going forward.

Paragraph 18 provides for a thirty (30) day notice, within which Seller is to cure a default. However, Seller has incurably defaulted in having stopped building for more than thirty (30) days, and in failing in its guarantee to deliver the Unit to the Muellers on or before July of 2007. While reserving all rights and waiving none at law and in equity, and based upon Seller's defaults, as described above, and pursuant to Sections 2(e)(ii), 9 and 18, of the Contract, the Mueller's hereby notify Tower Homes that it has thirty (30) days to satisfactorily cure its defaults by causing the immediate return, with interest and \$1,000 in attorney's fees, of their \$219,000.00.

Note that the Muellers were provided a letter in August of 2005, from Cutter and Berg on behalf of Tower Homes. A copy of the letter is enclosed for your reference. Assuming the letter

NWH0648

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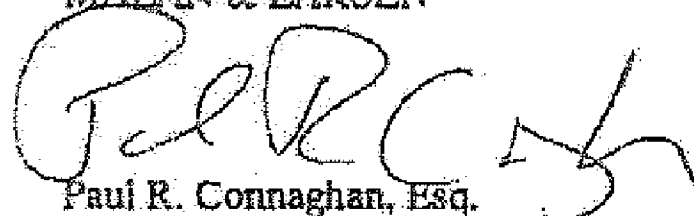
William H. Heaton, Esq.
August 11, 2006
Page No. 4

was delivered in good faith, Tower Homes gave an open ended offer to the Muellers to opt out under Option #2, and "Request a full refund of [their] down payment money and cancel [their] contract." With the Muellers not yet having exercised either option, and with the offer still being open, they hereby elect option #2 and request a full refund of their deposit and cancellation of the Contract.

The Muellers reserve all rights at law and in equity. I look forward to your immediate reply.

Very truly yours,

DEANER, DEANER, SCANN
MALAN & LARSEN


Paul R. Connaghan, Esq.

PRC:pc
enclosures

cc. Richard H. Bryan, Esq. (Via fax only, 383-8845, w/o enclosures)

EXHIBIT E

EXHIBIT E

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re

TOWER HOMES, LLC,
Debtor.

No. BK-S-07-13208

DEPOSITION OF ROD YANKE
Las Vegas, Nevada
Wednesday, October 3, 2007
Volume 1

Reported by:
Mary E. Howard
CCR No. 762, RPR
Job No. 8-73654

1 APPEARANCES:

2
3 LEWIS & ROCA, LLP
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15 GORDON & SILVER
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18
19 LAW OFFICES OF WILLIAM L. MCGIMSEY
BY: WILLIAM L. MCGIMSEY
20 Attorney at Law
21 601 E. Charleston
Las Vegas, NV. 89104
(702)382-9948
22
23 Also Present:
24 Ann Mueller
Robert Mueller
25

Page 1

Page 3

1 UNITED STATES BANKRUPTCY COURT
2 DISTRICT OF NEVADA

4 In re

5 TOWER HOMES, LLC,

6 Debtor. No. BK-S-07-13208

13 Deposition of ROD YANKE, Volume 1, taken at 530 Las
14 Vegas Boulevard South, Las Vegas, Nevada, beginning at 3:24
15 p.m. and ending at 5:14 p.m. on Wednesday, October 3, 2007,
16 before Mary E. Howard, Certified Shorthand Reporter No. 762

Page 2

1 INDEX

2 WITNESS EXAMINATION
3 ROD YANKE
VOLUME 1
4 BY MR. OLSON 5
5 BY MR. COFFING 50
6

7 EXHIBITS

8 PAGE

9
10 22 (Retained by Mr. Olson.) 64
11 23 (Retained by Mr. Olson.) 64
12 24 (Retained by Mr. Olson.) 64
13 25 (Retained by Mr. Olson.) 64
14 26 (Retained by Mr. Olson.) 64
15 27 (Retained by Mr. Olson.) 64
16 28 (Retained by Mr. Olson.) 64
17 29 (Retained by Mr. Olson.) 64
18 30 (Retained by Mr. Olson.) 64
19 31 (Retained by Mr. Olson.) 64
20 32 (Retained by Mr. Olson.) 64
21 33 (Retained by Mr. Olson.) 64
22 34 (Retained by Mr. Olson.) 64
23 35 (Retained by Mr. Olson.) 64
24 36 (Retained by Mr. Olson.) 64
25 37 (Retained by Mr. Olson.) 64
38 (Retained by Mr. Olson.) 64

Page 4

1 (Pages 1 to 4)

1 Las Vegas, Nevada, Wednesday, October 3, 2007
2 3:24 p.m. - 5:14 p.m.
3
4 ROD YANKE,
5 having been administered an oath, was examined and testified
6 as follows:

7
8 EXAMINATION

9 BY MR. OLSON:

10 Q Good afternoon, Mr. Yanke. My name is Bob Olson.
11 I represent several of the purchasers of units at the Nevada
12 Towers project; Andrea Clark and Edward and Sandra -- I'm
13 sorry, Andrea Harris and --

14 A This is not Nevada Towers.

15 Q Spanish View, I'm sorry, Tower Homes -- can we
16 just start over? I've got too many cases on my mind.

17 Mr. Yanke, my name is Bob Olson. I am an attorney
18 here in town. I represent Andrea Harris and Ed and Sandra
19 Clark in the Tower Homes bankruptcy. They're purported
20 purchasers of two units in that building.

21 Before we get started, it's my understanding that
22 you're here today both pursuant to a Rule 2004 Examination
23 order that I obtained directing you to appear and testify,
24 as well as in response to an order directing the person most
25 knowledgeable of Tower Homes; is that correct?

Page 5

1 A Spanish Trail?
2 Q Spanish Towers, I'm sorry.
3 A These lights, would you please turn the lights
4 down way low or off.
5 Q I am not sure I know how to do that.
6 Does that help?
7 A No.
8 Q Is that better? I don't have a dimmer switch.
9 A I'm sorry, I just have a major headache that is a
10 problem.
11 Q I think that's really the best I can do with the
12 lights, other than sitting here in the dark.
13 A Okay.
14 Q Can you turn to what's been marked as Exhibit No.
15 9.
16 A Yes.
17 Q Do you recognize this form of purchase contract?
18 A Yes.
19 Q Who prepared that contract?
20 A Nitz, Walton & Heaton. Jim Walton.
21 Q Who did they prepare the contract for?
22 A Tower Homes, LLC.
23 Q When this contract was prepared, did you ask to
24 have it prepared in compliance with Nevada law?
25 A Yes.

Page 7

1 A That's correct.
2 Q Mr. Yanke, how many times have you had your
3 deposition taken before?
4 A Many.
5 Q Many. So you know all the rules --
6 A Yes.
7 Q -- associated with depositions?
8 A Yes.
9 Q You're under the obligation to tell the truth.
10 A Yes.
11 Q Okay. You know that you need to understand the
12 questions, and if you don't understand a question, to ask me
13 to repeat it or restate the question?
14 A Yes.
15 Q Okay. Is there anything that would prevent you
16 from testifying today?
17 A (Witness nods head.)
18 Q Mr. Yanke, I'm going to hand you a binder of
19 exhibits I've given to the court reporter.
20 So the record's clear, I'm having what should have
21 been inserted as Exhibits 22 through 26 marked. Those are
22 copies of the orders and the subpoenas compelling you and
23 the person most knowledgeable to be here.
24 Can you turn to the -- what has been marked as
25 Exhibit No. 9. It's the purchase contract, Spanish Trails.

Page 6

1 Q To the best of your knowledge, is the purchase
2 contract that's been marked as Exhibit No. 9, with the
3 exception of some of the notes on it, a true and correct
4 copy of the purchase contract for Andrea Harris? You're
5 looking at a different exhibit.
6 A Okay.
7 Q I think you just went through Exhibit 9.
8 Were the first 20 pages of that a true and correct
9 copy of Andrea Harris's purchase contract?
10 A It appears to be.
11 Q Did Miss Harris place any money down when she
12 executed this purchase contract?
13 A I believe so.
14 Q Do you know where that money was deposited?
15 A Equity Title.
16 Q Do you recall how much money Miss Harris deposited
17 with Equity Title?
18 A No.
19 Q Did you ever instruct Equity Title to transfer
20 that money to Business Bank?
21 A Me personally, I don't know. I mean, either my
22 bookkeeper or myself.
23 Q And who is your bookkeeper?
24 A Susan Spotts.
25 Q Would anybody other than you or your bookkeeper

Page 8

2 (Pages 5 to 8)

1 transfer dated 9/01 of \$346,000. Do you know where that
2 \$346,000 went?
3 A Again, I'm not gonna answer any questions
4 regarding the purchaser's money. As instructed by counsel,
5 I'm taking the Fifth.
6 Q Was Account No. 3301842 a checking account? I
7 mean, you testified it's a money market account. Did you
8 have checking privileges?
9 A 3301842?
10 Q Yes, sir.
11 A Is that the number?
12 Q Yes.
13 A You know, I -- I'm sorry, I don't -- I don't know
14 what the account numbers are for different accounts.
15 Q The money market account, did you have checking
16 privileges with that account?
17 A Did I have checking privileges?
18 Q Yes. Could you write checks against the account?
19 A Could I write checks?
20 Q Let me rephrase that. Could anyone write checks
21 on that account or against that account on behalf of the
22 debtor?
23 A Again, I think this is relating to the same
24 question, line of questions of purchaser's money, so I'm
25 going to follow my counsel's instructions and invoke the

Page 21

1 30. For the record, that's a telephone transfer form dated
2 July 28, '05, from Business Bank. It says the name of
3 caller is Rod. Would that be you?
4 A Could be me.
5 Q Are there any other Rods on your staff?
6 A No, I'm the only one.
7 Q Did you call Business Bank and initiate this
8 \$1,800,000 transfer described on Exhibit No. 30?
9 A I don't remember if I did or didn't.
10 Q Can you turn to the next page. Should be July of
11 1. Oh, there it is.
12 For the record, that's a May 31, '06, Business
13 Bank telephone transfer form for \$100,000. Did you initiate
14 the \$100,000 transfer?
15 A I don't remember whether I did or didn't. I just
16 don't remember.
17 Q Can you turn to Exhibit No. 31. First document
18 says it's an advice of credit, July 19, 2005, for \$511,800.
19 Do you know who prepared this form?
20 A No.
21 Q Can you turn to the next page.
22 For the record, the next page is cashier's check
23 055071, dated July 19, 2005, from Equity Title to Tower
24 Homes for the same amount. Do you know if Tower Homes ever
25 received this check?

Page 23

1 Fifth.
2 Q Who had authority to withdraw funds from that
3 account? Did you have authority to withdraw funds from the
4 account?
5 (Witness confers with counsel.)
6 A I am the signature on all the accounts --
7 Q Okay. Was anyone --
8 A -- at Business Bank.
9 Q Okay. Was anybody else a signatore on that
10 account?
11 A No. I am the only signature on any account at
12 Business Bank.
13 Q Did anybody have the ability to phone Business
14 Bank and initiate a telephone transfer?
15 A Call Business Bank. I believe on all of the
16 accounts at Business Bank which takes a signature, my
17 accounting staff has the signature stamp. So my name would
18 be on that account.
19 Q Do you know of any instance where your staff had
20 misused your signature stamp?
21 A No.
22 Q Do you have any reason to believe any member of
23 your staff used that stamp without your authority?
24 A It would be under my authority.
25 Q Can you turn to what's been marked as Exhibit No.

Page 22

1 A I -- I wouldn't. I would assume so, but I don't
2 know.
3 Q Mr. Yanke, as a developer of Tower Homes, did you
4 know whether or not Tower Homes had to comply with Nevada
5 Revised Statutes Chapter 116 governing common interest
6 communities?
7 A I have no idea what that statute is.
8 Q Do you know how many laws that you had to comply
9 with in order to sell units in a condominium complex?
10 A All paperwork was done by Nitz, Walton & Hinton
11 and Lionel Sawyer. So, you know, do I know those laws? I
12 instruct them to put together a contract that would pass the
13 state. They put together a contract that would pass the
14 state and we got a real estate exemption.
15 Q But they put the contract together. Was it just
16 the Nitz firm or was it Nitz and Lionel Sawyer or just
17 Lionel Sawyer?
18 A It was both.
19 Q Both firms. And the contracts that I showed you
20 previously, I believe your testimony was that they were
21 prepared by the Nitz firm; is that correct?
22 A Nitz firm did the contracts; Lionel Sawyer got the
23 real estate exemption.
24 Q Who at Lionel Sawyer did you work with?
25 A Several people. I can't remember. Senator Brian

Page 24

6 (Pages 21 to 24)

1	
2	
3	
4	
5	
6	
7	
8	
9	I, ROD YANKE, do hereby declare
10	under penalty of perjury that I have read the foregoing
11	transcript; that I have made any corrections as appear
12	noted, in ink, initialed by me, or attached hereto;
13	that my testimony as contained herein, as corrected, is
14	true and correct.
15	EXECUTED this _____ day of _____,
16	20____, at _____,
17	(City) (State)
18	
19	
20	SIGNATURE WAIVED
21	_____ ROD YANKE
22	
23	
24	
25	

Page 65

1	I, the undersigned, a Certified
2	Shorthand Reporter of the State of Nevada, do hereby
3	certify:
4	That the foregoing proceedings were
5	taken before me at the time and place herein set forth; that
6	any witnesses in the foregoing proceedings, prior to
7	testifying, were duly sworn; that a record of the
8	proceedings was made by me using machine shorthand which was
9	thereafter transcribed under my direction; that the
10	foregoing transcript is a true record of the testimony
11	given.
12	Further, that if the foregoing pertains
13	to the original transcript of a deposition in a Federal
14	Case, before completion of the proceedings, review of the
15	transcript [] was [] was not requested.
16	I further certify I am neither
17	financially interested in the action nor a relative or
18	employee of any attorney of party to this action.
19	IN WITNESS WHEREOF, I have this date
20	subscribed my name.
21	
22	Dated: _____
23	
24	_____ MARY E. HOWARD
25	CCR No. 762

Page 66

EXHIBIT F

EXHIBIT F

PURCHASE CONTRACT

THIS IS A BINDING CONTRACT BY WHICH YOU AGREE TO PURCHASE AN INTEREST IN REAL PROPERTY. YOU SHOULD EXAMINE YOUR RIGHTS OF REVOCATION CONTAINED ELSEWHERE IN THIS CONTRACT. THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND SHOULD BE READ THOROUGHLY AND UNDERSTOOD PRIOR TO SIGNING. IF YOU HAVE ANY QUESTIONS ABOUT YOUR RIGHTS OR RESPONSIBILITIES UNDER THIS DOCUMENT, YOU MAY WISH TO CONSULT AN ATTORNEY.

BY YOUR EXECUTION OF THIS DOCUMENT, YOU ACKNOWLEDGE RECEIPT OF THE PUBLIC OFFERING STATEMENT ("POS") FOR SPANISH VIEW TOWER HOMES. IT IS RECOMMENDED THAT YOU READ THE PUBLIC OFFERING STATEMENT BEFORE EXECUTING THIS CONTRACT.

1. Parties/Property Description. The undersigned _____ (the "Purchaser", whether one or more), agrees to purchase from Tower Homes, LLC (the "Seller"), and Seller agrees to sell, upon the terms and conditions of this Purchase Contract ("Contract"), the following described real estate:

Unit No.# _____, on the _____ floor of Spanish View Tower Homes, Tower No. _____ (the "Unit"), a building to be constructed and submitted to a condominium regime and located on the land described in Exhibit A attached hereto and made a part hereof ("Land"), as same is shown, located and defined in the POS, together with the undivided interest in the Common Elements of the condominium regime that is associated with such Unit, all as more particularly described in the Declaration of Spanish View Tower Homes ("Declaration") proposed to be created, together with the exclusive use of the following as Limited Common Elements: Garage Parking Spaces #s _____ and _____ and Storage Space No. _____. Terms used in the Declaration when used in this Contract shall have the same meaning as they have set forth in the Declaration unless otherwise specifically indicated. The above-described Unit and related rights thereto described above are referred to as the "Property", and the Spanish View Tower Homes regime is referred to as the "Condominium". Purchaser acknowledges that Seller has the right to modify or amend any of the documents required for the establishment of the condominium regime, including without limitation those attached to or referred to in the POS.

2. Purchase Price/Closing Costs/Pre-Sale Condition.

(a) Purchase Price. The purchase price is set forth as follows:

(i)	Property	\$ _____
(ii)	Storage Room No. _____ (optional)	\$ _____
(iii)	Extra garage space No. _____ (optional)	\$ _____
(iv)	Other (specify) _____	\$ _____
(iii)	Total Purchase Price ("Purchase Price")	\$ _____

(b) Terms of Payment. The Purchase Price shall be paid by Purchaser to Seller as follows:

- (i) A series of initial payments (the "Initial Payments") shall be paid as provided in Section 2(c) below.
- (ii) The balance of the Purchase Price shall be deposited by Purchaser with the Title Company (defined below) in immediately available funds prior to the Closing which shall be paid in immediately available funds to Seller through the Title Company upon the transfer of title to the Property (the "Closing"). If a portion of the Purchase Price is to be derived by Purchaser from a loan (the "Loan"), Purchaser will pay the lender, at Closing, all required prepaid items (points, prepaid interest, taxes and insurance) and pay all Closing costs except for the cost of the Owner's Policy of Title Insurance, any tax certificates and real property transfer taxes and prorations applicable to Seller.

(c) The Initial Payments. Purchaser shall deliver the Initial Payments to Equity Title Co. (the "Title Company"), 7360 W. Flamingo Rd. Las Vegas, Nevada 89147 (Attn: _____). The Initial Payments shall be delivered to the Title Company as follows:

- (i) Before commencement of construction of the Condominium:
 - (1) 10% of the Purchase Price upon execution of this Contract by Purchaser;
 - (2) An additional 15% of the Purchase Price within ten (10) business days of notice from Seller of commencement of construction; and
 - (3) An additional 15% of the Purchase Price within ten (10) business days of notice from Seller that the construction of the Condominium has "topped-out" (meaning that construction has reached the final floor of the Condominium).
- (ii) After construction of the Condominium has been commenced:
 - (1) If at the time of execution of this Contract by Purchaser construction has already commenced on the Condominium, then Purchaser shall deliver 25% of the Purchase Price upon execution of this Contract by Purchaser;
 - (2) An additional 15% of the Purchase Price shall be delivered within ten (10) business days of notice that Seller has "topped-out" (as defined above).
- (iii) Purchase after construction of the Condominium has reached the "topped-out" phase.

- (1) If Purchaser is executing this Contract after the construction of the Condominium has "topped-out" (as defined above), then Purchaser shall deliver the entire 40% of the Purchase Price upon execution of this Contract.

(d) Subject to availability, if Purchaser desires to have a storage room or an extra garage space as part of the Limited Common Elements appurtenant to the Unit, the Purchase Price shall be increased by five thousand dollars (\$5,000.00) for each such room or space, which additional amount will be payable at Closing.

(e) Any Initial Payment delivered to the Title Company within five (5) days of the "Purchaser's Execution Date" (which is the date in which this Contract is executed by Purchaser), shall be held in escrow at the Title Company pending the expiration of the Purchaser's five (5) day right of cancellation provided below. If Purchaser gives Seller a written notice of cancellation by midnight of the fifth calendar day following Purchaser's Execution Date, then Seller shall immediately advise Title Company of such cancellation and of the date such cancellation notice was received by Seller (the "Seller's Notice Date") and Title Company shall refund such Initial Payment to Purchaser within fifteen (15) days after the Seller's Notice Date. If within ten (10) days following the Purchaser's Execution Date, the Title Company has not received notice from Seller that Purchaser has timely cancelled this Contract, then, except as provided in Paragraph 3 below, the Title Company shall deliver such Initial Payment to the "Seller's Depository" (defined below) for deposit into an interest bearing trust account (the "Trust Account") designated solely for the purpose of holding Initial Payments received from purchasers of units in the Condominium, where such Initial Payment shall be held or distributed as provided below. The Seller's Depository shall be Business Bank of Nevada (or another depository designated by Seller, whose accounts are insured by a governmental agency or instrumentality). Except as provided in Paragraph 3 below, all Initial Payments received by Title Company more than five (5) days after the Purchaser's Execution Date shall be delivered to Seller's Depository for deposit into the Trust Account where such Initial Payments shall also be held or distributed as provided below. The parties agree that the Initial Payments from all purchasers of units in the Condominium may be pooled and held by the Depository in the same Trust Account. The Title Company shall cause the Initial Payments delivered to it, to be delivered to whichever party shall become entitled thereto pursuant to the terms of this Contract, promptly after such party becomes so entitled to such delivery. All interest on Initial Payments deposited into the Trust Account shall be deemed to be part of such Initial Payments. In the event the Initial Payments are refunded to Purchaser in accordance with this Contract, then such interest shall also be refunded to Purchaser. In the event the Initial Payments are turned over to Seller, then the interest on such Initial Payments shall also be turned over to Seller. Upon Closing, the Initial Payments and the interest accrued thereon shall be delivered to Seller as part of the Purchase Price, and applied to the Purchase Price. For purposes of this Contract, the "Initial Payments" shall refer for purposes of any given time, only to the portion of the sums described by such term in subparagraph (a) above as have been paid by Purchaser to the Title Company by such time, together with accrued interest thereon.

The Trust Account may be pledged by Seller as security for a line of credit to be issued to Seller by the Depository, which line of credit may, among other things, be used by Seller towards construction of the Condominium; provided, however, that the Depository shall:

- (i) release and deliver the Initial Payments (and all accrued interest thereon) to Seller at Closing.
- (ii) release and deliver the Initial Payments (and all accrued interest thereon) to Seller upon Purchaser's default and Seller's cancellation of this Contract pursuant to the provisions of Paragraph 18 below.
- (iii) release and deliver the Initial Payments (and all accrued interest thereon) to Purchaser in the event Seller defaults under this Contract, pursuant to the provisions of Paragraph 18 below.

The Initial Payments shall not be refundable to Purchaser except as provided in Sections 3 or 18, or upon cancellation of this Contract by Seller.

(f) At Closing, Purchaser agrees to pay to the homeowner's association of the Condominium, through the Title Company, an initial Common Expense assessment that will be based on the size of the unit, which shall be a monthly expense, pro-rated for the first month from the date of Closing, plus one (1) full monthly assessment (pre-paid), together with a non-refundable initial reserve assessment in an amount equal to two (2) monthly assessments as a reserve for capital expenditures.

3. Loan Application and Approval. In the event any portion of the Purchase Price as set forth in Paragraph 2 is to be financed by a Loan, Purchaser and Seller agree to the following additional terms and conditions:

(a) Purchaser shall apply for the Loan from a lender acceptable by both the Purchaser and Seller ("Lender") within three (3) business days after the Effective Date of this Contract.

(b) Purchaser agrees to comply with all requirements of the loan application process with Lender and agrees and authorizes Seller to obtain any information on the status of Purchaser's loan application from Lender at any time.

(c) Purchaser shall obtain a written commitment from Lender for the Loan and provide written documentation of such loan approval to Seller within twenty (20) days from the Effective Date of this Contract. The date that such loan approval documentation is provided to Seller is referenced as the "**Loan Approval Date**". It is understood and agreed that such loan approval will be conditioned on the approval of additional information or other events, which Purchaser agrees to provide and/or perform accordingly;

(d) Once Purchaser has provided Seller with written documentation of loan approval, whether conditional or not, this Contract becomes unconditional insofar as financing is concerned and Purchaser becomes personally liable to close this transaction; and

(e) In the event loan approval is conditional and/or expires during the term of this Contract, Purchaser represents and warrants to Seller that Purchaser will fulfill any and all further requirements and conditions, including without limitation, any renewal, replacement or reinstatement of such loan commitment prior to Closing and will accept all terms and conditions of such Loan at the time of Closing. Changes in Purchaser's financial circumstances and/or economic market conditions shall not excuse Purchaser from closing this transaction.

(f) The Initial Payments shall not be delivered to the Seller's Depository prior to the Loan Approval Date.

(g) Any appraisals shall be paid for by Purchaser.

Purchaser's failure to timely apply for the Loan, execute and furnish all required documentation related thereto, and provide to Seller evidence of loan approval, whether conditional or not, within twenty (20) days from the Effective Date of this Contract, shall constitute a breach of contract. In the event Purchaser fails to cure such breach within three (3) days following Seller's written notice of such breach, Seller may, at Seller's option, cancel this Contract and Seller shall be entitled to all remedies set forth herein with the exception that in the event Purchaser is unable to obtain loan approval within said twenty (20) day period after diligent and reasonable effort and following written notification to Seller, Purchaser will be entitled to a refund of the Initial Payments, less Two Thousand Dollars (\$2,000.00), which shall be paid to Seller as consideration for Seller's removing the Unit from the market and administrative expenses, and the parties shall have no further obligations to each other.

4. Selection of Materials/Alteration of Unit. Purchaser agrees to make selections of materials, fixtures and finishes within one hundred twenty (120) days from the Effective Date of this Contract unless extended in writing by Seller or the general contractor selected by Seller in its sole and absolute discretion ("**General Contractor**"). Absent timely, written selections being made, Seller is authorized, at its option, to use its own pre-selected, standard materials, fixtures and finishes to maintain its normal construction schedules. Purchaser acknowledges that this Contract does not contemplate the construction of an individually designed Unit except to the extent that special features or upgrades are specifically set forth herein or in a subsequent written amendment to this Contract agreed to by both Purchaser and Seller. The Purchaser therefore, agrees that Purchaser shall not seek or demand additional features and amenities, adjustments in the Plans and Specifications, or the expansion of warranties beyond the terms of this Contract or any written amendments. If Purchaser violates the agreements in this paragraph, that violation shall be a material breach of this Contract and shall entitle Seller immediately to cancel this Contract and receive or retain the Initial Payments, and all other sums paid by Purchaser pursuant to this Contract as liquidated damages. It is further noted that Seller's use of model units or reference to other construction by Seller is intended only to demonstrate the quality of finish detail, the basic floor plans and styles of the units available for purchase. The Unit may not conform, except as herein noted, to any model unit in any respect, or contain some or all of the amenities featured, such as finishings. Until such time as all of the units in the Condominium have been sold, Seller reserves the right to make such use of the unsold units and the Common Elements as are necessary for its sales program. Such use, however, shall not unreasonably interfere with the enjoyment of the Condominium by the other owners of units. Seller reserves the right to lease or rent all remaining unsold units to such persons and upon such terms as Seller may provide in its sole discretion.

5. Change Orders/Upgrades/Customizing. NO CHANGES, UPGRADES, OR CUSTOMIZING will be allowed after this Contract is signed by both Purchaser and Seller unless a change order is signed by both Purchaser and Seller and such Change Order is paid in full prior to commencement of the work. All approved changes, upgrades and customizing will require drawing revisions provided by the Purchaser's Architect and signed by both Purchaser and Seller's General Contractor, regardless of

how minimal the change. Payment for changes, upgrades and customizing will be required to be paid directly to Seller (and not through Title Company) prior to commencement of the work. Also, the General Contractor will provide project milestone date requirements for all of the following:

- A. Purchaser changes and customizing.
- B. Purchaser furnished materials.
- C. Purchaser furnished work.

In the event that any change, material substitutions, or customizing work will not be available by the milestone date, the building standard material will be installed so as not to delay the issuance of a Certificate of Occupancy. Purchaser will then have to customize or install special order materials that did not arrive by the milestone date after Closing.

All changes, upgrades and customizing shall be completed (drawing approved and signed by the Purchaser and Seller) no later than such date approved by the General Contractor.

Due to certain project constraints, such as base building systems, design, and schedule, the Seller reserves the right to disallow requested changes, upgrades and/or customizing.

6. Insulation. The Unit will have insulation installed in accordance with applicable building codes.

7. Activities by Purchaser/Construction Hazards/Indemnity. The Purchaser, unless otherwise agreed to by Seller in writing, shall not do or cause to be done any work, or alter or cause the alteration of any portion of the work, whether complete or incomplete, on the Property or in the Unit before Closing. This prohibition includes actions by Purchaser individually, as well as requests by Purchaser for work to be done by third parties or requests directly to Seller's employees or subcontractors. Purchaser, or anyone acting on behalf of Purchaser, shall coordinate all activities to which Seller does agree with Seller's Project Manager to ensure that any work performed does not damage, restrict or delay Seller's construction activities. Any damages by Purchaser or Purchaser's agents to work done by Seller, or delay caused by Purchaser or its agents, shall be reflected in a Change Order and paid by Purchaser upon presentation. Because of potential safety and health hazards present during construction of the Unit, the Purchaser agrees to restrict Purchaser's entry onto the Property or in the Unit prior to Closing. Purchaser's entry onto the property or into the Unit prior to closing shall be by appointment only and not more often than Saturdays and Sundays during regular office hours of the Sales Office. Should Purchaser, its agents, representatives, or invitees enter onto the Property or into the Unit prior to Closing, **PURCHASER SHALL AND HEREBY AGREES TO INDEMNIFY AND HOLD SELLER AND SELLER'S GENERAL CONTRACTOR HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS OR CAUSES OF ACTION ARISING IN FAVOR OF PURCHASER, OR ANY THIRD PARTY WHO ENTERS ONTO THE PROPERTY WITH OR AT THE REQUEST OF PURCHASER, ON ACCOUNT OF BODILY INJURY, DEATH OR DAMAGE TO OR LOSS OF PROPERTY IN ANY WAY OCCURRING OR INCIDENT TO THE CONDITION OF THE PROPERTY AND/OR THE UNIT. THIS INDEMNITY IS GIVEN TO SELLER REGARDLESS OF WHETHER SELLER OR ITS AGENTS OR EMPLOYEES ARE NEGLIGENT IN WHOLE OR IN PART AND EVEN WHEN THE INJURY, DEATH OR DAMAGE IS CAUSED BY THE SOLE NEGLIGENCE OF SELLER.**

8. Construction Schedule/Effects of Building Activities. The unit is or will be constructed substantially in accordance with plans and specifications to be prepared by Seller's architect (the "**Plans and Specifications**") based on the preliminary plans and specifications proposed by Seller's architect, and reviewed by Purchaser and any Change Orders, subject to normal and acceptable tolerances and pursuant to standard building practices found in residential construction in Las Vegas, Clark County, Nevada. The construction of the Unit is also subject to any changes in the Plans and Specification, materials, fixtures or methods as are required by federal, state or local governmental authority, and other amendments and adjustments to the Plans and Specifications by Seller that do not affect the fair market value of the Property or the Unit. In constructing the Unit, Seller shall employ its normal construction schedule, which shall be subject to change orders, delays by third parties or Purchaser, and other conditions beyond the Seller's control. Seller and Purchaser recognize it is not possible to agree to a specific date of completion of the Unit. Purchaser expressly acknowledges Seller has not represented, warranted, guaranteed or committed to any completion date or schedule other than as set forth herein. Accordingly, any failure to complete the Unit by Purchaser's desired or anticipated completion date shall not excuse Purchaser from performance or give Purchaser the right to terminate this Contract, and Seller shall not be liable to Purchaser for any damages resulting from Seller's inability or failure to complete the Unit except for those provided for in Paragraph 18 of this Contract. Purchaser recognizes that the construction of the Condominium imposes an inherent risk to health of landscaping presently located on the Property, if any, and hereby acknowledges that Seller cannot guarantee the viability of any such landscaping. Purchaser further recognizes that at the time of Closing and for a reasonable period of time thereafter, the Common Elements and amenities for the Condominium may not be completed (for example, the swimming pool, lobby, landscaping, corridor finishes, carpeting, etc.), which may be damaged by the process of unit owners moving in. The incompleteness of any such construction shall not affect the final inspection, approval of the Purchaser's Unit, and execution of the Certificate of Acceptance as hereinafter set forth.

9. Final Inspection and Approval of Unit. If any portion of the Unit has been completed at the time this Contract is executed, Purchaser acknowledges that Purchaser has inspected and has had the opportunity to have the Unit, all improvements and the Land inspected by a licensed inspector, engineer, or other professional of Purchaser's choice (which inspections shall be at Purchaser's expense and shall be strictly by appointment scheduled through Seller's Project Manager or Building Supervisor) and hereby accepts the Unit and Condominium building, together with all improvements on the Land as built. If the Unit has not been completed as of the date of this Contract, Purchaser agrees promptly to comply with Seller's request for Purchaser to conduct a final walk-through inspection of the Unit and Condominium building, together with all improvements on the Land prior to Closing, and to certify in writing on the Certificate of Acceptance and Final Punch List form attached as Exhibit B (the "**Certificate of Acceptance**") that the Unit and Condominium building, together with all improvements on the Land have been completed in substantial conformity with the applicable Plans and Specifications and this Contract. Purchaser's failure or refusal to execute the Certificate of Acceptance shall constitute and unqualified acceptance of the Unit, and shall relieve Seller of any obligation to remedy all deficiencies and nullify any of the warranties referenced in Paragraph 12 of this Contract. Additionally, Seller may, at its option, treat Purchaser's refusal to execute the Certificate of Acceptance as a material breach of this Contract, entitling Seller to cancel this Contract and retain all deposits and payments (including without limitation the Initial Payments). Purchaser is encouraged to perform a comprehensive inspection at the time of the

walk-through since this inspection will be Purchaser's only opportunity to identify for Seller those items requiring correction or adjustment. Any exceptions noted on the Certificate of Acceptance by Purchaser during that inspection shall not delay the Closing, but shall be substantially remedied by Seller as soon as practicable, subject to delays caused by the weather, availability of materials and labor, and other occurrences beyond the control of Seller. Purchaser shall provide Seller with written confirmation that the exceptions have been remedied.

10. CLOSING PROCEDURE.

A. THE CLOSING OF THIS TRANSACTION SHALL OCCUR IN ACCORDANCE WITH THE FOLLOWING TERMS AND CONDITIONS:

1. PURCHASER SHALL SCHEDULE AND COMPLETE A FINAL PRE-CLOSING WALK THROUGH INSPECTION AND EXECUTE A FINAL PUNCH LIST WITHIN FIVE (5) BUSINESS DAYS FOLLOWING NOTIFICATION TO PURCHASER BY FACSIMILE OR PERSONAL DELIVERY FROM SELLER OR SELLER'S GENERAL CONTRACTOR THAT A CERTIFICATE OF OCCUPANCY OR ITS EQUIVALENT FOR THE UNIT HAS BEEN OBTAINED BY SELLER OR EARLIER BY MUTUAL AGREEMENT BETWEEN SELLER AND PURCHASER. THE PUNCH LIST SHALL BE SIGNED AND DATED BY SELLER AND PURCHASER AND ATTACHED AS AN EXHIBIT TO THE CERTIFICATE OF ACCEPTANCE REFERENCED HEREIN ABOVE IN PARAGRAPH 9.

2. WITHIN FIVE (5) BUSINESS DAYS FOLLOWING THE DATE OF EXECUTION OF THE PUNCH LIST, PURCHASER SHALL CAUSE PURCHASER'S LENDER, IF ANY, TO SCHEDULE AND PERFORM LENDER'S FINAL INSPECTION.

3. CLOSING SHALL OCCUR WITHIN FIVE (5) BUSINESS DAYS FOLLOWING THE LENDER'S FINAL INSPECTION, OR IN THE EVENT THERE IS NO LENDER, CLOSING SHALL OCCUR WITHIN FIVE (5) BUSINESS DAYS FROM THE DATE OF EXECUTION OF THE PUNCH LIST.

B. PURCHASER AGREES TO PAY TO SELLER AT CLOSING THE CASH SUM OF TWO HUNDRED FIFTY DOLLARS (\$250.00) PER DAY FOR EACH DAY CLOSING AND FUNDING DOES NOT OCCUR AFTER TEN (10) DAYS FROM THE DATE SELLER AND PURCHASER EXECUTE THE PUNCH LIST, AS LIQUIDATED DAMAGES, AND NOT AS A PENALTY, FOR PURCHASER'S DELAY IN CLOSING. PURCHASER AND SELLER AGREE THAT SELLER'S DAMAGES FOR PURCHASER'S DELAYED CLOSING ARE DIFFICULT TO ASCERTAIN AT THE EXECUTION OF THIS CONTRACT AND THE DAILY LIQUIDATED DAMAGES ARE A REASONABLE ESTIMATE OF SUCH DAMAGES.

C. THE GENERAL CONTRACTOR OF SELLER SHALL COMPLETE THE FINAL PUNCH LIST ITEMS WITHIN THIRTY (30) BUSINESS DAYS AFTER THE DATE OF CLOSING OR THE DATE OF THE PUNCH LIST WALK THROUGH, WHICHEVER IS LATER, AND SHALL BE EXTENDED AS REASONABLY NECESSARY DUE TO ANY DELAY CAUSED BY ANY ENTITY OR PERSON OTHER THAN SELLER AND GENERAL CONTRACTOR, INCLUDING WITHOUT LIMITATION, THE LEAD TIME REQUIRED FOR ORDERING MATERIALS, ACTS OR OMISSIONS OF THIRD PARTIES PROVIDING WORK FOR PURCHASER OR THE UNIT, OR ANY LIMITATIONS ON ACCESS TO THE UNIT.

D. POSSESSION OF THE PROPERTY SHALL BE DELIVERED BY SELLER TO PURCHASER UPON CLOSING AND FUNDING. PRIOR TO SUCH DATE, PURCHASER SHALL HAVE NO RIGHT OF POSSESSION, INCLUDING, BUT NOT LIMITED TO ANY RIGHT TO THE PERFORMANCE OF ANY WORK, MODIFICATIONS OR CHANGES OF ANY KIND TO THE PROPERTY. FURTHER, IT IS UNDERSTOOD AND AGREED PURCHASER MAY NOT OCCUPY THE PROPERTY AS A RESIDENCE UNTIL THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY ON THE BUILDING SHELL AND A BUILDING FINAL INSPECTION OF THE UNIT (OR ITS EQUIVALENT) HAVE BEEN ISSUED.

E. IMMEDIATELY UPON THE CLOSING, TITLE COMPANY SHALL PAY TO SELLER IN IMMEDIATELY AVAILABLE FUNDS THE PURCHASE PRICE AND ALL OTHER SUMS TO BE PAID TO SELLER AT CLOSING PURSUANT TO THIS PURCHASE CONTRACT, LESS ANY PORTION OF THE PURCHASE PRICE THAT HAS PREVIOUSLY BEEN PAID TO SELLER, OR WHICH IS TO BE PAID TO SELLER BY THE DEPOSITORY AT CLOSING FROM THE TRUST ACCOUNT.

F. THE FOLLOWING SHALL SURVIVE CLOSING: UPON CLOSING, PURCHASER WILL BE DEEMED TO HAVE WAIVED ALL CLAIMS TO THE EXTENT PERMITTED BY LAW AND TO HAVE ACKNOWLEDGED THAT SELLER HAS FULFILLED ALL ITS CONTRACTUAL OBLIGATIONS EXCEPT FOR PERFORMANCE OF ITEMS ON THE CERTIFICATE OF ACCEPTANCE AND ANY WARRANTY CLAIMS COVERED IN SELLER'S LIMITED WARRANTY (SEE PARAGRAPH 12).

11. Conveyance of Title and Closing Costs.

(a) Seller agrees to convey the Property to Purchaser by a grant, bargain and sale deed, free and clear of all liens except those created incident to the funding of the Loan and free of all other limitations except the Declaration, and other encumbrances, easements, future ad valorem taxes and assessments and other matters of record affecting the Property that are common to the platted subdivision of which the Property is part, as well as minor encroachments that do not unreasonably restrict the use of the Property and whatever easements and restriction indentures Seller deems necessary for maintenance and servicing of sanitary and storm sewers, streets, and maintenance and operation of all common facilities and common areas (collectively referred to as the "Permitted Exceptions"). Current year's ad valorem taxes will be prorated by the total number of Units to the date of Closing and Purchaser shall at Closing pay the current installment of the current year's ad valorem taxes. Purchaser must change the name on the tax rolls and split out the account on the Unit.

(b) At the Closing, Seller shall furnish at its expense, the grant bargain and sale deed and a CLTA Standard Form Owner's Title Insurance Policy from the Title Company insuring the title to the Property for the full Purchase Price and shall pay any transfer taxes imposed in connection with the recordation of the deed. The title policy shall contain only the usual standard exceptions and the Permitted Exceptions. The County Assessor has the authority to re-assess the Property, as newly constructed property, at the time the Property is conveyed to Purchaser. At that time, the Assessor may issue a supplemental tax bill to Purchaser for the tax difference resulting from that re-assessment. Purchaser shall be solely obligated for payment of such difference to the County. All prorations of taxes as provided in Section 11(a), shall be based on the pre-closing taxes for the Property and Seller shall have no responsibility for any subsequent adjustment.

12. Limited Warranty on Unit. Seller warrants the Unit against defects in workmanship and material but only in accordance with, and as limited by, the limited warranty (the "Seller's Limited Warranty") provided by Seller and delivered to Purchaser at Closing, a copy of which is attached to the POS. Seller's Limited Warranty shall not become effective, however, until Purchaser has paid to Seller the total Purchase Price, plus all sums due and not previously paid under any Change Order, and Purchaser has satisfied all of Purchaser's obligations under this Contract, including execution of the Certificate of Acceptance. **IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY UNDER THIS CONTRACT FOR THE CONSTRUCTION OF THE UNIT ON THE PROPERTY DESCRIBED HEREIN IS LIMITED TO THE REMEDIES PROVIDED IN SELLER'S LIMITED WARRANTY AND ENFORCEABLE SOLEY THROUGH THE ARBITRATION PROCEDURES PRESCRIBED HEREIN.** As to items not of Seller's manufacture, such as any air conditioner, water heater, refrigerator, range, dishwasher and other appliances, equipment or "consumer products", as defined by the Federal Trade Commission, Seller agrees to pass along to Purchaser the manufacturer's warranty, without recourse. Purchaser acknowledges that Purchaser has been provided an opportunity to review the warranties for all consumer products to be included within the Unit and realizes that Seller itself is making no warranty on such items. If any consumer products with manufacturer's or supplier's written warranties have not been installed in the Unit as of the date of this Contract, Seller, as representative only of the manufacturer or supplier, agrees to make those warranties, if any, available to Purchaser upon Purchaser's request before such products are installed. **SELLER'S LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THIS PURCHASE. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING UNDER STATE LAW OR THE MAGNUSON-MOSS WARRANTY ACT, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF GOOD AND WORKMANLIKE CONSTRUCTION, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY, ARE DISCLAIMED AND EXCLUDED. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES BASED ON ALLEGED DIMINUTION IN THE VALUE OF THE PROPERTY OR THE UNIT. AS TO ANY WARRANTY WHICH CANNOT BE DISCLAIMED ENTIRELY, AND AS TO ANY EXPRESS WARRANTY THE TIME IN WHICH A JUDICIAL OR ARBITRATION PROCEEDING FOR BREACH OF ANY SUCH WARRANTY MAY BE BROUGHT SHALL BE TWO (2) YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES.** The provisions of this Paragraph 12 shall survive the Closing.

13. Notice of Reliance on Written Information from Third Parties and Government Agencies. Seller has relied upon written information from various third parties and governmental agencies concerning the selection of the Property as a home site and the materials, components and construction techniques incorporated into the Unit. Generally, this written information concerns matters about which these third parties and governmental agencies have special expertise, or which is provided to Seller or disseminated to the public pursuant to specific statutory, regulatory or other legal requirements. This written information pertains to the flood zone characterization of the Property, soil characteristics, the suitability of the Property and the surrounding subdivision for habitation, the propriety of construction techniques, and the suitability of the materials and components incorporated into the Unit.

14. Land Use. Seller has informed Purchaser and Purchaser acknowledges, recognizes and agrees to the following:

(a) Seller has no control over and is not responsible for any easements on, adjacent to, or in the vicinity of the Property and Purchaser understands that individuals, corporations and/or utilities may have specific rights granted by those easements, if any, including, but not limited to, access and use of the property described by the easements, which easement rights may exist whether or not such easements are being utilized at the present time;

(b) Seller has no control over the land which is not owned by it that is neighboring or in the vicinity of the Property and makes no representation as to what subdivision or project amenities may be provided or what use is or will be made of neighboring land. Without limiting the generality of the foregoing, views from the Unit may be obstructed by future development of neighboring land and Seller disclaims any representation that views from the Unit will not be altered or obstructed by development of neighboring land; and

(c) Seller reserves the right to alter, change, and/or discontinue its prices and building program on any units.

15. Environmental Conditions Disclaimer. SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ABOUT ANY EXISTING OR FUTURE HEALTH HAZARD OR ANY OTHER ENVIRONMENTAL CONDITIONS ON THE PROPERTY, IN THE UNIT OR FROM ADJACENT SOURCES, INCLUDING, BUT NOT LIMITED TO, MOLD AND/OR MILDEW, EXPOSURE TO ELECTRIC AND MAGNETIC FIELDS, SHIFTING OR INSTABILITY OF SOIL CONDITIONS AND POSSIBLE PRESENT OR FUTURE POLLUTION OF THE AIR, WATER OR SOIL (INCLUDING RADON GAS) FROM AN SOURCES OR IN ANY MANNER.

16. Soil Conditions, Foundations and Landscaping. Seller discloses and represents to Purchaser that the foundation plans for the Condominium will have been signed and sealed by a Registered Public Engineer of the State of Nevada and approved for construction as designed and supervised during construction by the applicable municipal or governmental authority. Due to the soil conditions in and around Clark County, Nevada containing significant amounts of expansive clays which expand dramatically if there is water penetration or seepage in the immediate proximity or under the foundation and contract significantly if there is an absence of moisture content in the immediate proximity or under the foundation, Seller cannot have responsibility for foundation cracks, shifts, damage, or worse, due to the soil conditions and the presence or absence of water in, under or around the foundation. These expansion and contraction characteristics of the soil can and will cause foundation cracks, shifts, damage and/or worse. **THIS CIRCUMSTANCE OF THE SOIL CONDITIONS AND POTENTIAL FOUNDATION PROBLEMS RELATED TO WATER OR THE ABSENCE THEREOF ARE NOT COVERED BY THE ATTACHED SELLER'S LIMITED WARRANTY. SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ALL WARRANTIES EXPRESSED OR IMPLIED, WHETHER ARISING UNDER STATE LAW OR THE MAGNUSON-MOSS WARRANTY ACT, INCLUDING BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF GOOD AND WORKMANLIKE CONSTRUCTION, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY OR HABITABILITY. PURCHASER EXPRESSLY AGREES THAT IF SELLER IS EVER FOUND OR DETERMINED TO BE LIABLE FOR DAMAGES TO PURCHASER BY VIRTUE OF ANY CONDUCT, ACT OR OMISSION RELATED, DIRECTLY OR INDIRECTLY, TO THE FOUNDATION, THAT SELLER'S LIABILITY SHALL BE STRICTLY LIMITED TO THE REPAIR OF THE FOUNDATION AND THE UNIT AND THAT SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGE, INCLUDING,**

WITHOUT LIMITATION, ANY DAMAGES FOR DIMINUTION IN THE MARKET VALUE OF THE PROPERTY OR UNIT.

17. Continuation of Agreements and Understandings. None of the representations, warranties, covenants, agreements and disclaimers of Seller and Purchaser that are contained in this Contract shall survive and remain in effect after the Closing unless otherwise specifically provided.

18. Stipulated Damages/Default. If Purchaser fails to perform any of Purchaser's obligations under the Contract (including making the Initial Payments, scheduled deposits and other payments) Purchaser will be in "default". If Purchaser is still in default ten (10) days after Seller sends Purchaser notice thereof, Seller shall be entitled to the remedies provided herein. If, however, Purchaser's default is in failing to close on the scheduled date, then Seller shall have the absolute right in its sole discretion, to cancel this Contract without giving Purchaser any prior (or subsequent) notification or opportunity to close at a later date.

Upon Purchaser's default (and the expiration of any notice period, if applicable), all Purchaser's rights under this Contract will end and Seller can resell the Property without any accounting to Purchaser. Purchaser understands that because Seller has taken the Property off the market in contemplation of Purchaser's faithful performance of the terms of this Contract, has spent money on sales, advertising, promotion and construction and has incurred other costs incident to this sale, Purchaser's default will damage Seller. As compensation for this damage in the event Seller cancels this Contract because of Purchaser's default, (including, without limitation, Purchaser's failure to close on the scheduled date), Purchaser agrees to turn over to Seller and authorizes Seller to keep the Initial Payments and all deposits and other pre-closing advance payments (including, without limitation, those on options, extras, upgrades and the like) Purchaser has then made (and which could have been required to have been made had Purchaser not defaulted) and all interest which was, or would have been, earned on them, all as liquidated damages (and not as a penalty). Purchaser and Seller specifically agree that Seller's damages for Purchaser's default are difficult to ascertain at the execution of this Contract and that there is no other precise method of determining Seller's damages, and Purchaser and Seller agree that this is a reasonable estimate of Seller's actual damages.

Alternatively, Seller will have the right to specifically enforce this Contract, but will not sue Purchaser for any other damages. If Purchaser defaults, Purchaser promises not to sue for the return of any part of the Initial Payments, Purchaser's deposits or other payments. Any damage or loss that occurs to the Property while Purchaser is in default will not affect Seller's right to liquidated damages.

Upon receiving written notification from Seller in the form of a "Notice of Default Under Purchase Contract", the Depository and the Title Company are explicitly, expressly and irrevocably authorized, instructed and directed by Purchaser to immediately release the Initial Payments and all deposits and other pre-closing advance payments, and all interest accrued thereon, to the Seller without any further instruction from the Purchaser, and to do so without regard to any subsequent or future objection to such release by the Purchaser. Purchaser agrees that, in connection with such release to the Seller by the Depository or the Title Company, Purchaser releases, remises and relinquishes the Depository and the Title Company from and against any and all responsibility and/or liability to Purchaser as a result of the delivery of the Initial Payments and deposit/advance payments to Seller as set forth hereinabove.

If Seller defaults under this Contract, Purchaser will give Seller thirty (30) days written notice of it and if Seller has not cured the default within such period or, if the cure cannot be completed within thirty (30) days and Seller has not begun to cure the default within such thirty (30) day period, Purchaser shall have the right to request and receive a return of the Initial Payments and all of the Purchaser's deposits named hereunder, and all accrued interest thereon, and shall be entitled to reimbursement of reasonable out-of-pocket expenses incurred in connection with this transaction up to, but not to exceed five hundred dollars (\$500.00). The remedy afforded Purchaser in this paragraph as a result of a default by Seller constitutes Purchaser's sole and exclusive remedy and Purchaser agrees that Purchaser will not sue for specific performance or for any other claim, or otherwise pursue Seller for any other damages.

This Paragraph 18 will survive Closing.

19. Arbitration/Limitation of Claims. All claims, including, without limitation, construction defects, breach of this Contract, breach of warranty, or otherwise, are limited solely to the specific remedies provided for herein, including Paragraph 18 above, and Paragraph 24 below. Purchaser and Seller hereby further agree that any controversy, claim or dispute arising out of or relating to (a) this Contract, (b) any breach thereof, (c) the sales transaction reflected in this Contract, (d) the construction of the residence which is the subject of this Contract, and/or (e) any representations or warranties, express or implied, relating to the Property and the Unit, shall be decided by mandatory and binding arbitration. Seller and Purchaser agree the following shall apply: (a) the arbitration shall be decided by one (1) arbitrator. The Parties shall choose a mutually acceptable arbitrator, and in the event the parties cannot agree on the selection of the arbitrator, each party shall choose an arbitrator and those two (2) arbitrators shall agree upon the appointment of a third arbitrator who shall be the sole arbitrator; (b) the fees for the arbitration shall be shared equally by the parties and reimbursed to the prevailing party by the non-prevailing party, and such fees shall be consistent with the fees currently charged by arbitrators in Clark County, Nevada without regard to the amount in controversy; (c) a final binding award by the arbitrator shall be made within thirty (30) days from the date of the first notice of the dispute unless extended by mutual agreement or good reason by the arbitrator; and (d) the arbitrator shall be required to enforce the terms of this Contract and apply applicable law to support the arbitration decision.

All decisions by the arbitrator shall be final, and any judgment upon the award rendered by the arbitrator may be confirmed, entered and enforced in any court having proper jurisdiction. Any action, regardless of form, arising out of the transactions under this Contract must be brought by Purchaser within two (2) years from the date the cause of action accrues.

20. Brokerage and Finder's Fees. Seller has retained, by a separate written agreement a licensed real estate broker ("Listing Broker") to represent Seller. Any other Broker is Purchaser's Agent. Except for the brokers previous listed, Seller and Purchaser hereby represent and warrant to the other that neither has contracted with any real estate broker, finder or other party in connection with the purchase of the Property, and that no other third party (including Purchaser) shall be entitled to payment of any fee or compensation as a result of Purchaser's acquiring the Property. Seller shall pay Listing Broker the fee specified by separate agreement between Listing Broker and Seller. Listing Broker shall pay any other broker three percent (3%) of the sales price out of their commission, unless agreed to otherwise, upon Closing and funding. Each party hereby agrees to indemnify and hold the other harmless from

any loss, liability, damage, cost or expense (including reasonable attorney's fees) resulting from the breach of the foregoing representations and warranties.

21. Attorney's Fees. If either party employs an attorney or attorneys to enforce the terms of this Contract, either by arbitration, litigation or negotiation, the losing party agrees to reimburse the prevailing party for reasonable attorney's fees, arbitration fees, court costs and expenses incurred.

22. Fire and Casualty. Should the Unit be partially or wholly destroyed by fire, windstorm, vandalism, terrorism, Act of God, the result of a construction accident or other unanticipated event or casualty prior to Closing, Seller shall have the option to rebuild the Unit as soon as practicable, or cancel this Contract and return any Initial Payments to Purchaser. Seller's decision to rebuild the Unit or cancel the Contract shall be communicated to Purchaser in writing within forty-five (45) days of the loss. Purchaser acknowledges that Purchaser shall have no claim to or interest in any insurance proceeds attributable to the loss, and Purchaser shall remain obligated to purchase the Property upon completion of the repairs or construction.

23. Notices. All notices required or permitted hereunder shall be in writing and shall be sent by messenger or first-class mail to Purchaser or Seller at the addresses indicated in this Contract. Time limits specified in this Contract shall commence on delivery or three (3) days after mailing, whichever is less.

24. Miscellaneous Provisions. Time is of the essence of each and every provision of this Contract. All remedies of Seller under this Contract shall be cumulative. No waiver of a right provided by this Contract shall be effective unless stated in writing and signed by the party against whom enforcement of the waiver is sought. No waiver by Seller or Purchaser of any breach of any provision of this Contract shall be construed as a waiver of any later breach. Subject to the next sentence, this Contract is binding upon the heirs, executors, administrations, successors and assigns, of the respective parties. Purchaser's rights under this Contract may not be assigned, transferred, pledged, mortgaged or, encumbered by Purchaser without the prior written consent of Seller and any attempt to do so shall be void and of no effect. Seller's failure to give its consent to an assignment shall not give rise to any claims or damages against Seller. Furthermore, this Contract shall not be recorded. Purchaser shall not market, list or advertise the Unit for sale or lease in any public medium, whether print or electronic media multiple listing service or any other publicly available method or form until said unit is closed and funded. The preceding sentence is not intended to limit Purchaser's right to convey and transfer the Unit after Closing, but rather to limit public marketing of the Unit that competes with Seller for a limited period of time. Purchaser acknowledges that Seller would not sign this Contract but for Purchaser's promises in this Section 24.

In the event Seller damages any Purchaser-furnished item or work, Seller may at its option either replace same or repair same in a reasonable manner and to a reasonable extent; provided however, in no event shall Seller be required to expend more than five hundred dollars (\$500.00) to repair or replace any Purchaser-furnished item or work.

PURCHASER ACKNOWLEDGES RECEIPT OF THE PUBLIC OFFERING STATEMENT AND ALL ATTACHMENTS THERETO AND AS A PART OF THE CONSIDERATION HEREIN, AGREES TO BE BOUND BY ALL TERMS AND CONDITIONS CONTAINED THEREIN WHICH SHALL SURVIVE CLOSING.

25. Contract Represents Entire Agreement. This Contract contains the entire agreement between Seller and Purchaser with respect to the purchase of the Property and the construction of the Unit, and replaces all prior agreements or understandings, if any. Seller is not bound by any statement, promise, condition or stipulation not specifically set forth in this Contract. **NO SALESPERSON OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO MAKE ANY ORAL STATEMENTS OR AGREEMENTS THAT MODIFY, ADD TO OR CHANGE THE TERMS AND CONDITIONS OF THIS CONTRACT, AND PURCHASER ACKNOWLEDGES THAT PURCHASER HAS NOT RECEIVED ANY PROMISE OR BEEN ADVISED OF ANY MATERIAL FACT NOT SPECIFICALLY SET FORTH IN THIS CONTRACT.** The verbal statements made to Purchaser on behalf of the Seller are not intended to, and do not, form any part of any agreement between Seller and Purchaser, as they were understood and agreed to have been merely made in the course of negotiations of the parties. No advertising or promotional activities made or conducted by Seller or Seller's agents or representatives shall be binding upon Seller unless the same are expressly set forth in this Contract or in a subsequent written agreement executed by Seller and Purchaser. Neither this Contract nor any memorandum thereof shall be recorded in the Official Public Records of Real Property of Clark County, Nevada. In the event of recordation by Purchaser, this Contract may be terminated at the option of Seller upon notice by Seller to Purchaser, and the Initial Payments shall be retained by Seller herein.

26. Special Provisions, if any (if none, write "None"):

27. Performance of Acts on Business Days. As used herein, the term "business days" shall mean Monday through Friday, unless any of such days is a U.S. federal holiday. Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. In the event that the final date for payment of any amount or performance of any act hereunder falls on a Saturday, Sunday or holiday, such payment may be made or act performed on the next succeeding business day.

28. Counterparts and Fax Signatures. This Contract and related documents may be executed in any number of counterparts, with each counterpart being deemed to be an original instrument, but all such counterparts together shall constitute but one agreement. Fax signatures on documents will be treated the same as original signatures, however, each party agrees that they will promptly forward originally executed documents to the other party if requested.

29. Addendum A and Addendum B are incorporated herein as part of this Contract.

IN WITNESS HEREOF, the parties have executed this contract. The "Effective Date" of this Contract shall be the date on which the later to sign of Seller or Purchaser shall execute this Contract and deliver at least one fully executed counterpart to the other party hereto or to the