

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

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

5                                   Plaintiff,

6  
7           vs.

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

12  
13                                   Defendants.

CASE NO.: 65755

Electronically Filed  
Feb 05 2015 10:42 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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

15                                   **VOLUME 4**

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

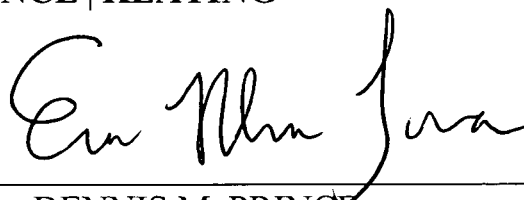
## CHRONOLOGICAL APPENDIX OF DOCUMENTS

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		

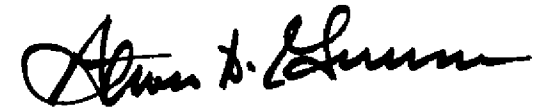
DATED this 4<sup>th</sup> February, 2015.

**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*



CLERK OF THE COURT

1 V. ANDREW CASS  
Nevada Bar No. 005246  
2 [cass@lbbslaw.com](mailto:cass@lbbslaw.com)  
JEFFREY D. OLSTER  
3 Nevada Bar No. 008864  
[olster@lbbslaw.com](mailto:olster@lbbslaw.com)  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Tel: 702.893.3383  
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**

11  
12 TOWER HOMES, LLC, a Nevada limited  
liability company;

13 Plaintiff,

14 vs.

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

18 Defendants.  
19

Case No.: A-12-663341-C  
Dept. No.: 26

**REPLY TO OPPOSITION TO 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, submit the following reply  
23 memorandum of points and authorities to “Tower Homes, LLC’s Opposition to Defendants’  
24 Motion to Dismiss, or in the Alternative, Motion for Summary Judgment” (hereafter the  
25 “Opposition”).  
26  
27  
28

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

In its Opposition, Tower concedes that the only authority for its purported right to bring this action in its own name (as opposed to through its bankruptcy trustee) is the Marquis Aurbach Order. Tower, however, fails to explain how the Marquis Aurbach Order, *which authorizes only the law firm of Marquis Aurbach Coffing to bring claims on behalf of the Tower Homes Purchasers against certain enumerated parties (none of whom are Mr. Heaton or NWH)*, somehow authorizes Tower to maintain the instant action, in its own name, through a different law firm, against parties (Mr. Heaton and NWH) who Marquis Aurbach Coffing were not authorized to sue. Accordingly, this action should be dismissed because Tower lacks the standing and requisite bankruptcy court authority to bring this action.

Additionally, even if, hypothetically, Tower had the requisite standing and authority to bring and maintain this action, it is still time-barred as a matter of law. In its Opposition, Tower effectively asks this Court to disregard well-established Nevada law based on a misplaced theory of “tolling.” Specifically, Tower maintains that its bankruptcy proceedings somehow tolled or “stayed” the running of the statute of limitations during the pendency of the Underlying Lawsuit. Tower cites no authority for its contention. While the automatic bankruptcy stay operates to stay actions *against a debtor*, it does not affect, toll or stay actions *by* a debtor. Accordingly, under well-established accrual rules for legal malpractice claims arising out of alleged transactional malpractice, Tower “sustained damages” within the meaning of the controlling statute, NRS 11.207, when the Underlying Lawsuit was filed on May 23, 2007, which was more than four years before this action is filed.<sup>1</sup> There are no factual issues of “discovery” or “tolling” – rather, the controlling statute of limitations accrual rules in this case are governed by principles that have been firmly established and reaffirmed by Nevada courts. This action is therefore subject to

<sup>1</sup> Again, in raising the statute of limitations defense, Mr. Heaton and NWH in no way, shape or form concede any of Tower's substantive allegations relating to the underlying representation. Mr. Heaton and NWH vehemently deny Tower's allegations of malpractice.

1 dismissal, and/or Defendants are entitled to summary judgment, as a matter of law.

## 2 II. REPLY ARGUMENT

### 3 A. The Marquis Aurbach Order does not authorize Tower to bring and maintain this 4 action.

5 In its Opposition, Tower makes several notable concessions. First, Tower concedes that,  
6 once it was in bankruptcy proceedings, a bankruptcy estate consisting of *all* of its interests, legal  
7 and equitable, in *all* of its property, tangible and intangible, is created. (Opp. at 8:7-16.) The  
8 bankruptcy trustee, as the representative of the estate, is then required to marshal all estate  
9 property for the estate's benefit. (*Id.*) Accordingly, Tower had the obligation to surrender all  
10 property to the trustee. (*Id.*) This lawsuit, of course, as Tower impliedly concedes, is part of the  
11 property that it was required to surrender to the trustee.<sup>2</sup>

12 Tower then further impliedly concedes, as it must, that, *but for the Marquis Aurbach*  
13 *Order, it would not have capacity to bring this action*, as this action would otherwise belong  
14 solely and exclusively to the trustee and the bankruptcy estate.<sup>3</sup> Tower goes on to concede the  
15 substance and effect of the Marquis Aurbach Order. (Opp. at 9:8 – 10:11.) That is, Tower admits  
16 that “the Trustee released to the Tower Homes Purchasers all claims on behalf of Tower against  
17 third parties<sup>4</sup> *who may have been liable to Tower for lost [sic] of the Tower Homes Purchasers’*  
18 *earnest deposits monies*. Further, the Trustee agreed to allow the Tower Homers Purchasers’  
19 counsel, *Marquis Aurbach Coffing*, to pursue all claims on behalf of Tower for the benefit of the  
20 Tower Homes Purchasers.” (Opp. at 10:6-11 [emphasis added].) Despite the clear and  
21

---

22 <sup>2</sup> The Plan Confirmation Order further confirms this undisputed conclusion of law that “the Trustee and the  
23 Estate shall retain all claims or Causes of Action that they have or hold against *any* party.” (See Ex. B to  
Motion to Dismiss [the “Motion”] at 48:18-19 [emphasis added].)

24 <sup>3</sup> “A bankruptcy trustee is vested with the exclusive power to raise legal claims on behalf of the estate.”  
25 *Spirto v. One San Bernardino County Sup. Ct.*, 443 F.3d 1172, 1175 (9<sup>th</sup> Cir. 2006) (citations omitted);  
*Mwangi v. Wells Fargo Bank*, 473 B.R. 802, 810 (D. Nev. 2012) (“[T]he bankruptcy code endows the  
bankruptcy trustee with the exclusive right to sue on behalf of the estate.”).

26 <sup>4</sup> Tower mischaracterizes the Marquis Aurbach Order in that the Order did not provide for claims “against  
27 third parties.” Rather, the Order only released claims against specific individuals and entities, as well as  
28 against “any other individual or entity later identified through discovery,” which undisputedly did not  
include Mr. Heaton or NWH.

1 unambiguous language of this Marquis Aurbach Order, Tower nevertheless asks this Court to  
2 disregard the language of the Order by maintaining that it somehow has the proper capacity and  
3 standing to bring this action.

4 Tower's first contention as to why this Court should disregard the language of the Marquis  
5 Aurbach Order is that only Tower, and not the Tower Homes Purchasers, has standing to bring a  
6 legal malpractice claim against NWH because Tower, and not the purchasers, had the attorney-  
7 client relationship with NWH. While this assertion is partially true – the Tower Homes  
8 Purchasers never had an attorney-client relationship with NWH – this does not somehow  
9 magically confer Tower with the authority to bring an action that is simply not permitted by  
10 federal bankruptcy law, or by the Marquis Aurbach Order.<sup>5</sup> If the Tower bankruptcy trustee  
11 wanted to bring a malpractice claim against NWH, he was free to do so. Such a claim, however, is  
12 simply not within the scope of the Marquis Aurbach Order, nor is any intent to allow Tower to  
13 pursue legal malpractice claims expressed anywhere in the Order. If the trustee had such an  
14 intention, he was free to assign or relinquish the claim to the appropriate party (i.e., Tower).

15 Tower further concedes in the Opposition that, “if Tower is successful in this legal  
16 malpractice action, Tower will not be the recipient of any award of damages. Instead, any award  
17 of damages will be for the benefit of the Tower Homes Purchasers pursuant to the Marquis  
18 Aurbach Order.” (Opp. at 12:10-14.) Tower provides no evidentiary support for this assertion  
19 that it will simply fork over any monies it might recover in this action to the Tower Homes  
20 Purchasers (either from the language of the Marquis Aurbach Order itself or some other  
21 document).<sup>6</sup> Moreover, even if this were the case, it doesn't change the undisputable conclusion  
22 that the Marquis Aurbach Order simply does not authorize Tower to bring this action. The  
23

---

24 <sup>5</sup> Tower also asserts a deceptive straw-man argument – i.e., that NWH maintains that the Tower Homers  
25 Purchasers are the “proper plaintiffs” in this action. (Opp. at 10:18-20.) NWH makes no such argument –  
there are no “proper plaintiffs” in this action.

26 <sup>6</sup> Furthermore, if and to the extent any such agreement exists, it would be unenforceable because it violates  
27 Nevada's prohibition against assignment of legal malpractice causes of action. *See Achrem v. Expressway*  
28 *Plaza Limited Partnership*, 112 Nev. 737, 739-741, 917 P.2d 447, 448-49 (1996); *Chaffee v. Smith*, 98 Nev.  
222, 645 P.2d 966 (1982) (prohibiting assignment of legal malpractice claim).

1 Marquis Aurbach Order authorizes *only the Tower Homes Purchasers* to bring claims, not Tower  
2 itself.

3 Tower further concedes that the Marquis Aurbach Order authorizes *only the law firm of*  
4 *Marquis Aurbach Coffing* to sue any party for loss of the purchasers' earnest money deposits.  
5 (See Motion, Ex. C at 2:20-26; Opp. at 12:20-22.) Tower now apparently seeks to circumvent this  
6 clear and unambiguous mandate from the Marquis Aurbach Order by arguing that Marquis  
7 Aurbach has "associated" the law firm of Prince & Keating to pursue this action. (Opp. at 12:22-  
8 25.) Even assuming this factual representation as true for purposes of the instant Motion, it still  
9 does not avoid the mandate of the Marquis Aurbach Order.<sup>7</sup> If Tower (or the Tower Homes  
10 Purchasers) sought to bring this action by any law firm other than Marquis Aurbach, *it was*  
11 *incumbent upon Tower to obtain the approval of the bankruptcy trustee and the bankruptcy court*  
12 *prior to bringing this action.*

13 Finally, Tower dismisses the undisputed fact that Mr. Heaton and NWH are not among the  
14 parties that the Marquis Aurbach Order authorizes the law firm of Marquis Aurbach to sue.  
15 Arguing only that the Marquis Aurbach Order was meant to be "illustrative," and "expansive, not  
16 restrictive," Tower ignores the fact that neither Mr. Heaton nor NWH are among the parties listed  
17 in the Marquis Aurbach Order who may be sued by the Tower Homes Purchasers. There is no  
18 language whatsoever in the Marquis Aurbach Order indicating that the enumerated parties who  
19 may be sued by the Tower Homes Purchasers is merely "illustrative." The only arguably  
20 "expansive" language in the Marquis Aurbach Order is its provision for a lawsuit by the Tower  
21 Homes Purchasers against "any other individual or entity later identified through discovery." (Ex.  
22 C to Motion at Page 5 of 6, lines 13-19.) This language, however, does not provide blank check  
23 authority to allow the Tower Homes Purchasers to sue anyone. Moreover, it certainly does not  
24 apply to Mr. Heaton and NWH because, at the time the Marquis Aurbach Order was entered on  
25

---

26 <sup>7</sup> This is a liberal assumption, as Tower notably produces no writing with the Opposition (other than  
27 counsel's own affidavit regarding a telephone call) that evidences this "association," or, more importantly,  
28 the consent of Tower, the bankruptcy trustee and the bankruptcy court to the purported "association."



1 June 3, 2010, *both the Tower Homes Purchasers and the Marquis Aurbach firm undisputedly*  
2 *knew that NWH represented Tower* in connection with the preparation of the contracts for the  
3 Project. (See Motion at 11:5-28.) Indeed, the evidence presented with the Motion shows that the  
4 identities of Mr. Heaton and NWH were known years before the entry of the Marquis Aurbach  
5 Order. (See Exhibits D and E to Motion.) Tower ***does not dispute*** that the identities of Mr.  
6 Heaton and NWH were known well before the Order was entered, and, thus, ***neither Mr. Heaton***  
7 ***nor NWH could possibly be individuals or entities “later identified through discovery.”*** Tower  
8 merely contends, once again, that the clear, unambiguous language of the Marquis Aurbach Order  
9 should be disregarded as somehow meaningless or merely advisory. Federal law precludes Tower  
10 from playing so fast and loose with bankruptcy court orders.

11 If and to the extent the Tower bankruptcy trustee wanted to pursue a legal malpractice  
12 claim against Tower, he had two options: (1) bring the claim himself; or (2) authorize Tower to  
13 bring the action in its own right ***in the form of a properly approved and bankruptcy law***  
14 ***compliant order.*** Neither was done here. The *only* order from the Bankruptcy Court that  
15 authorizes *anyone* to bring any claim that belonged to Tower (in whole or in part) is the Marquis  
16 Aurbach Order, which simply does not permit the instant action as a pure matter of law. The  
17 inquiry ends here, and this case should be dismissed.

18 **B. This action is barred by the statute of limitations as a matter of law.**

19 Even if Tower was hypothetically authorized to bring this action, this action still must be  
20 dismissed because it is barred by the statute of limitations as a matter of law.

21 **1. The Nevada Supreme Court has established that the statute of limitations**  
22 **for a legal malpractice claim arising out of *transactional* legal work**  
23 **commences to run when a lawsuit arising out of the allegedly negligent**  
24 **transactional work is filed.**

25 In its Opposition, Tower erroneously contends that the statute of limitations for a legal  
26 malpractice claim does not commence to run until the conclusion of the underlying litigation  
27 where the malpractice occurred. (Opp. at 14:15-18.) While this legal conclusion may be true for  
28 legal malpractice actions arising out alleged malpractice committed during the course of a

1 representation involving litigation, a fundamentally different principle applies when the alleged  
2 malpractice arises out of transactional representation – when there is no pending action at the time  
3 the legal work is performed. When transactional legal work is at issue, *the statute of limitations*  
4 *begins to run, as a matter of law, when a lawsuit allegedly caused by the allegedly negligent*  
5 *transactional work is filed.* See *Gonzales v. Stewart Title*, 111 Nev. 1350, 1354-55, 905 P.2d 176  
6 (1995) (granting attorney’s motion to dismiss based on statute of limitations pursuant to NRS  
7 11.207(1) when legal malpractice lawsuit arose out of transactional work).

8       None of the authorities cited by Tower in its Opposition dictate otherwise, as they all  
9 involve legal malpractice actions arising out alleged **litigation** malpractice (i.e., alleged legal  
10 malpractice committed during the course of representation in a litigated matter). See *Kopicko v.*  
11 *Young*, 114 Nev. 1333, 971 P.2d 789 (1998) (statute of limitations on legal malpractice claim  
12 arising out of attorneys’ representation of clients for litigation purposes did not commence to run  
13 until underlying litigation was completed); *K.J.B., Inc. v. Drakulich*, 107 Nev. 367, 811 P.2d 1305  
14 (1991) (same); *Semenza v. Nevada Med. Liability Ins. Co.*, 104 Nev. 666, 765 P.2d 184 (1988)  
15 (same). Notably, Tower places primary reliance on *Kopicko, supra* (Opp. at 14:18-19), a case in  
16 which the Nevada Supreme Court *reaffirmed the distinction between transactional and litigation*  
17 *malpractice for ascertaining the commencement of running of statute of limitations.* See  
18 *Kopicko, supra*, 114 Nev. at 1337 n. 3.

19       Notwithstanding Tower’s reliance on inapposite authorities, there is no dispute that the  
20 instant case involves allegations of transactional malpractice, not litigation malpractice.  
21 Specifically, Tower alleges that NWH was retained to form Tower as a business entity and to draft  
22 the purchase contracts for the Project. (See Complaint ¶¶ 6, 9; Opp. at 3:26-4:3.) Tower further  
23 alleges that NWH committed malpractice by failing to advise Tower regarding the handling of  
24 earnest money deposits, and by failing to properly draft the purchase contracts as required by  
25 Nevada law. (See Complaint ¶¶ 11-13.) This is classic **transactional** legal representation, and  
26 Tower does not argue otherwise in its Opposition.

27       This distinction between transactional and litigation representation, which Tower largely  
28 ignores in its Opposition, is of critical significance for statute of limitations purposes. Again, as

1 fully discussed in the Motion (at 13:13-14:24), a client who retains an attorney for transactional  
2 legal work “sustains damage,” within the meaning of NRS 11.207(1), from any attorney  
3 negligence in connection with this transactional work when a lawsuit caused by the allegedly  
4 negligent transactional work *is filed*. See *Gonzales v. Stewart Title*, 111 Nev. 1350, 1354-55, 905  
5 P.2d 176 (1995) (granting attorney’s motion to dismiss based on statute of limitations pursuant to  
6 NRS 11.207(1) based on commencement of statute upon filing of lawsuit arising out of  
7 transactional malpractice); *see also Kopicko, supra*, 114 Nev. at 1337 n. 3, 971 P.2d at 791 (1998)  
8 (reaffirming distinction between transactional and litigation malpractice for determining  
9 commencement of running of statute of limitations); *New Albertson’s, Inc. v. Brady, Vorwerck,*  
10 *Ryder & Caspino*, 2012 U.S. Dist. Lexis 42369 at \*14-\*15 (D. Nev. March 28, 2012) (recent  
11 reaffirmation and recognition by federal court of the distinction between transaction-based and  
12 litigation-based causes of action for legal malpractice for purposes of analyzing statute of  
13 limitations).

14 Here, Tower concedes in its Complaint that the underlying lawsuit against Tower, which  
15 arose out of NWH’s alleged malpractice, was filed on May 23, 2007. (Complaint ¶ 15; Ex. A to  
16 Motion.) In the Underlying Complaint, the Tower Homes Purchasers alleged precisely same  
17 wrongs that Tower now alleges NWH should somehow have prevented. (See Ex. A to Motion,  
18 Underlying Complaint ¶¶ 32-39, 54, 79-93, 95). ***Accordingly, by May 23, 2007, Tower***  
19 ***“sustained damage” within the meaning of NRS 11.207, thereby commencing the four-year***  
20 ***statute of limitations. See Gonzales, supra***, 111 Nev. at 1354-55. Under this outside four-year  
21 measure provided by NRS 11.207(1), ***Tower had until May 23, 2011, at the very latest, to file its***  
22 ***legal malpractice claim against NWH.*** Tower did not file its Complaint until June 12, 2012 –  
23 over a year too late.<sup>8</sup>

24  
25 <sup>8</sup> The Tower Homes Purchasers filed an amended complaint against Tower on October 23, 2007. (See  
26 Opposition, Exhibit C.) In this amended complaint, the Purchasers added a cause of action for alleged  
27 violations of NRS 116 relating to the earnest money deposits. (Opp., Ex C at 12-13.) Even if the filing of  
28 this amended pleading is used as the accrual date, this action is still time-barred. The amended complaint  
was filed more than four years before Tower filed its Complaint in the instant case. Note also that in  
September 2007 the Tower Homes Purchasers filed Proofs of Claim in the Tower Bankruptcy Proceedings  
(footnote continued)

1 Throughout its Opposition, Tower seeks refuge in the general and oft-stated proposition  
2 that the question of whether Tower should have discovered facts constituting its legal malpractice  
3 action presents an issue of fact. (Opp. at 15:1-4.) Plaintiffs seeking to avoid statute of limitations  
4 motions frequently resort to this standard verbiage, but they almost always leave out the second  
5 part of the legal proposition, which is that the time of a plaintiff's discovery of a defendant's  
6 allegedly wrongful conduct *may be decided as a matter of law when uncontroverted evidence*  
7 *shows when a plaintiff discovered, or should have discovered, the alleged malpractice. See, e.g.,*  
8 *Gonzales, supra*, 111 Nev. 1350, 1354-55 (granting attorney's motion to dismiss pursuant to NRS  
9 11.207); *Siragusa v. Brown*, 114 Nev. 1384, 1391, 971 P.2d 801, 806 (1998); *Bemis v. Estate of*  
10 *Bemis*, 114 Nev. 1021, 1025, 967 P.2d 437, 440 (1998); *see also Phoebe Leal v. Computershare*,  
11 2010 U.S. Dist. Lexis 101710 (D. Nev. 2010) (summary judgment granted on statute of limitations  
12 grounds, and dismissing claim for breach of fiduciary duty, where it was undisputed that the  
13 plaintiff's attorney had received a letter advising of the facts that established the plaintiff's claim);  
14 *Robin Orr v. Bank of America*, 285 F.2d 764 (9th Cir. 2002) (summary judgment affirmed on  
15 statute of limitations grounds where it was undisputed that plaintiff was aware of facts underlying  
16 a possible claim).

17 Here, it is uncontroverted that the Underlying Lawsuit was filed on May 23, 2007.  
18 Accordingly, because this case undisputedly involves allegations of transactional legal  
19 malpractice, and not litigation malpractice, Tower had, as a matter of law (NRS 11.207 and  
20 *Gonzales*), until May 23, 2011 to file this action. It is uncontroverted that this action was not filed  
21 until almost a year later, on June 23, 2012. Accordingly, this action is time-barred as a matter of  
22

23  
24 (many through the Marquis Aurbach firm) in which they quantified the damages being sought against  
25 Tower. (See printout of Claims Register, attached hereto as **Exhibit H**.) Even if this September 2007 date  
26 is used as the accrual date for statute of limitations purposes, the action is still time barred. Again, the  
27 *Gonzales* case makes it clear that, in transactional malpractice matters, damages are sustained when the  
28 client becomes aware of the existence of damages (i.e., when the underlying lawsuit is filed), not when the  
extent of damages becomes certain. The filing of the first Proof of Claim by a Tower Homes Purchaser in  
September 2007 (i.e, more than four years prior to the date Tower filed its complaint in this action)  
removed any possible doubt , if any, about the existence of damages.

1 law.<sup>9</sup>

2                   **2. The Tower bankruptcy proceedings did not toll the running of the statute**  
3                   **of limitations.**

4           In its Opposition, Tower argues that *Gonzales* is “clearly distinguishable” because, shortly  
5 after the Underlying Lawsuit was filed, the Tower bankruptcy proceedings were initiated. (Opp.  
6 at 21:2-7.) Tower then appears to contend that the bankruptcy proceedings operated as a “stay” to  
7 somehow toll the statute of limitations. (Opp. at 18:17-20:9.) In support of this contention, Tower  
8 cites an old Federal Rule of Bankruptcy Procedure that no longer exists,<sup>10</sup> and two cases, *Chubb*  
9 *Pacific Indem. Group v. Twin Lakes Village, Inc.*, 98 Nev. 521, 654 P.2d 530 (1982) and  
10 *Greystone Bank v. Rosenson*, 2011 U.S. Dist. Lexis 104948 at \*5 (D. Nev. 2011). (*Id.*) All of  
11 these authorities, however, stand for the unremarkable and entirely inapplicable proposition that  
12 actions *against* a bankruptcy debtor are stayed during the bankruptcy proceedings.<sup>11</sup> In contrast,  
13 actions *by the debtor* are not stayed. *See, e.g., Phillips v. Okla. Publ’g Co.*, 2011 U.S. Dist. Lexis  
14 119077 at \*22-23 (W.D. Wash. 2011) (automatic stay applies only to actions against the debtor,  
15 and not to lawsuits brought by the debtor) (citations omitted); *Brown v. Armstrong*, 949 F.2d 1007  
16 (8th Cir. 1991); *Carley Capital Group v. Fireman’s Fund Ins. Co.*, 889 F.2d 1126 (D.C. Cir.

---

18 <sup>9</sup> All of the cases relied upon by Tower to support its assertion that the date of accrual for statute of  
19 limitations presents a question of fact, including the *Siragusa* case, are readily distinguishable. First and  
20 foremost, none of the cases cited by Tower involve legal malpractice actions arising out of transactional  
21 work. For example, the *Shinn* case (Opp. at 15:4) was a breach of contract case applying Colorado law.  
22 The *Doyle* case (Opp. at 15:11), aside from being uncitable pursuant to SCR 123, was a medical  
23 malpractice case, which implicates an entirely different body of law relating to statute of limitations  
24 accrual. The *Siragusa* case was not a malpractice case at all, but a fraud, conspiracy and RICO case in  
25 which the plaintiff alleged that she did not know of her attorney’s participation in the in the alleged  
26 fraudulent conspiracy. Here, in stark contrast, NWH’s involvement in the preparation of the purchase  
27 contract is not in dispute – it was undisputedly known to the Tower Homes Purchasers as early as 2006,  
28 and was obviously known at all times to Tower.

24 <sup>10</sup> The non-existent Federal Rule of Bankruptcy Procedure relied upon by Tower (Opp. at 18 n. 3), on its  
25 face, only stays actions “against the debtor.” (Opp. at 18 n. 3 [citing former F.R.B.P. 11-44, which only  
26 applied under the former Bankruptcy Act].) The rule says nothing about statutes of limitations applicable  
27 to claims by a debtor.

26 <sup>11</sup> Specifically, the “automatic stay” provision of the Bankruptcy Code provides generally that a  
27 bankruptcy filing “operates as a stay, applicable to all entities, of (1) the commencement or continuation,  
28 including the issuance or employment of process, of a judicial, administrative, or other action or proceeding  
against the debtor.” 11 U.S.C. § 362(a) (emphasis added).

1 1989); *Rett White Motor Sales Co. v. Wells Fargo Bank*, 99 B.R. 12 (N.D. Cal. 1989); *In re Kaiser*  
2 *Aluminum Corp.*, 303 B.R. 299 (D. Del. 2003).

3 *Tower cites no authority in support of its argument that the filing of its own bankruptcy*  
4 *somehow extends the statute of limitations for its own actions.* Furthermore, Tower ignores the  
5 language of the Order Approving Disclosure Statement and Confirming Plan of Reorganization  
6 from the bankruptcy proceedings (attached as Exhibit B to the Motion), which provides that  
7 “[T]he Trustee and the Estate shall retain all claims or Causes of Action that they have or hold  
8 against any party . . . whether arising pre- or post-petition, *subject to applicable state law statutes*  
9 *of limitation and related decisional law*, whether sounding in tort, contract or other theory or  
10 doctrine of law or equity.” (Motion, Ex. B at 48:18-22 [emphasis added].) In other words,  
11 Tower’s own bankruptcy trustee recognized that he retained the right to assert Tower’s claims  
12 against other parties, but only subject to state statutes of limitations.

13 Federal courts in other jurisdictions have enforced state law statutes of limitations in  
14 response to legal malpractice actions brought by bankruptcy debtors. *See, e.g., Laddin v. Belden*  
15 *(In re Verilink)*, 408 B.R. 420 (N.D. Ala. 2009) (defendant attorneys’ motion to dismiss debtor’s  
16 legal malpractice claims granted based on statute of limitations), *reversed on other grounds in*  
17 *later proceeding*, 410 B.R. 697 (N.D. Ala. 2009); *Ranasinghe v. Compton*, 341 B.R. 556 (E.D. Va.  
18 2006) (same); *see also Bruce v. Homefield Financial*, 2011 U.S. Dist. Lexis 110243 at \*5-\*6 (D.  
19 Nev. 2011) (plaintiff bankruptcy debtor’s claims under Truth-in-Lending Act barred by the statute  
20 of limitations).

21 As discussed in the *Laddin* and *Ranasinghe* cases, *supra*, the only potential grounds for  
22 “tolling” a debtor’s own claim under the Bankruptcy Code is 11 U.S.C. § 108 -- a provision which  
23 is notably *not* cited by Tower in its Opposition, as it does not change the result here. Section  
24 108(a) provides, in relevant part: “If applicable nonbankruptcy law . . . fixes a period within  
25 which the debtor may commence an action, and such period has not expired before the date of the  
26 filing of the petition, *the trustee* may commence such action only before the later of -- (1) the end  
27 of such period, including any suspension of such period occurring on or after the commencement  
28 of the case; or (2) two years after the order for relief. 11 U.S.C. § 108(a) (emphasis added). First,

1 by its terms, this provision only applies to actions commenced by trustees. See *Ranasinghe*,  
2 *supra*, 341 B.R. at 564 (“[W]hen a trustee is serving in a chapter 11 case, only the trustee and not  
3 the debtor receives the benefit of the § 108(a) extension.”) A trustee (William A. Leonard, Jr.) is  
4 serving in the Tower bankruptcy proceedings, but the instant action is brought and maintained by  
5 Tower itself. Second, even if Tower hypothetically could take advantage of Section 108, this  
6 action is still time-barred. Section 108 gives the trustee only until the later of the end of the statute  
7 of limitations period (here, May 23, 2011, as discussed above), or until two years after the order  
8 for relief. The “Order for Relief Under Chapter 11” was entered in the Tower bankruptcy  
9 proceedings on August 21, 2007 (see attached **Exhibit I**), thereby giving the trustee until August  
10 21, 2009 to hypothetically have filed this action under the limited “tolling” provided by Section  
11 108. Under either of Section 108’s options, this action is still time-barred as a matter of law.

12 Recognizing that it has no basis in law to “toll” the running of the statute of limitations,  
13 Tower next argues that, because the Underlying Lawsuit did not conclude until July 5, 2011,  
14 “there was no way for Tower to even determine whether it suffered any damages” because the  
15 other defendants in the Underlying Lawsuit may have been able to compensate the Tower Homes  
16 Purchasers for their losses. (Opp. at 19:15-23.) This argument is fundamentally misplaced. First  
17 and foremost, as discussed above (and in the Motion), Tower suffered damages relating to any  
18 alleged negligence by NWH, as a matter of law, when it was sued by the Tower Homes Purchasers  
19 based on NWH’s alleged malpractice. See *Gonzales, supra*, 111 Nev. at 1354-55. The statute of  
20 limitations accrual analysis ends here. Whether other alleged tortfeasors could conceivably have  
21 compensated the Tower Homes Purchasers for their losses is entirely immaterial to the issue of  
22 when the statute of limitations began to run on Towers’ own legal malpractice claims.

23 Second, Tower fails to explain how the completion of the Underlying Lawsuit has any  
24 logical relationship to the bankruptcy proceedings for statute of limitations purposes. Again,  
25 under Tower’s (unsupported and incorrect) theory, the bankruptcy proceedings somehow tolled  
26 the running of the statute of limitations. As discussed above, this theory is simply incorrect as a  
27 matter of federal law. Yet, Tower contends, apparently in an effort to concoct some alternative  
28 statute of limitations commencement date, that Tower finally “discovered” its damages on July 5,

1 2011, when the Underlying Lawsuit concluded. Nowhere does Tower explain or demonstrate  
2 what it “discovered” on July 5, 2011, or why this date should commence the running of the statute.  
3 Moreover, if, as Tower alleges, the bankruptcy proceedings somehow tolled the running of the  
4 statute of limitations, it is unclear why the completion of the Underlying Lawsuit (which was a  
5 separate filed state court action wholly independent of the bankruptcy proceedings) would have  
6 any effect whatsoever on tolling purportedly created by the bankruptcy.

7 The bottom line is that the bankruptcy proceedings initiated against Tower had *no effect*  
8 *whatsoever* on the statute of limitations applicable to any claims *by* Tower. As such, its claims in  
9 this lawsuit are time-barred.

10 **3. This action is also barred by the two-year measure provided by NRS**  
11 **11.207 as a matter of law.**

12 As fully discussed above, the commencement of the running of the statute of limitations is  
13 established as a pure matter of Nevada law because this matter involves alleged transactional legal  
14 malpractice. Accordingly, because the Underlying Lawsuit arising out of this transactional work  
15 was filed on May 23, 2007, the four-year statute set forth in NRS 11.207 ran on May 23, 2011  
16 pursuant to *Gonzales*, and *any analysis of the two-year measure under NRS 11.207 is entirely*  
17 *unnecessary* because the two-year measure cannot extend the statute of limitations beyond May  
18 23, 2011. Again, NRS 11.207 establishes that a legal malpractice action “must be commenced  
19 within 4 years after the plaintiff sustains damage or within 2 years after the plaintiff discovers or  
20 through the use of reasonable diligence should have discovered the material facts which constitute  
21 the cause of action, *whichever occurs earlier*.” (Emphasis added.) Because Tower sustained  
22 damage within the meaning of NRS 11.207 by May 23, 2011, the two-year measure cannot, as a  
23 matter of law, extend the running of the statute of limitations beyond this date.

24 Nevertheless, even if we apply the two-year measure, which examines when a client  
25 discovers or through the use of reasonable diligence should have discovered the material facts  
26 constituting the cause of action, it is apparent that the statute of limitations ran well before May  
27 23, 2011 (the latest possible statute of limitations deadline). NWH demonstrated in the Motion  
28 that, in August 2006, Tower received copies of demand letters from counsel for one of the Tower



1 Homes Purchasers. (See Motion at 13:1-7 and Exhibits D and G, and Declaration of William H.  
2 Heaton ¶¶ 6, 9.)

3 In the August 11, 2006 demand letter (Ex. D to Motion), counsel for the purchasers  
4 demanded the return of two of the purchasers' earnest money deposits, and argued that the money  
5 should be held in trust. (Ex. D at page 3.) Contrary to Tower's argument in its Opposition, this  
6 demand was more than just a notice of default -- it advised Tower (through Yanke, its sole owner  
7 and principal) that the deposits were supposed to be held in trust, and therefore should be  
8 immediately available to return to the purchasers. *If this indeed was news to Yanke* (as Tower now  
9 apparently alleges in its Complaint and Opposition), *then he obviously knew that NWH failed to*  
10 *advise him of the requirement to hold the deposits in trust as early as August 2006.*<sup>12</sup> Moreover,  
11 Tower incurred attorneys' fees for having to respond to this letter. Accordingly, the statute of  
12 limitations, under this two-year measure, ran on August 11, 2008.

13 The same analysis applies to the August 23, 2006 letter from the purchasers' counsel. (Ex.  
14 G to Motion.) In this letter, counsel accused Yanke of criminal conduct, and quoted the applicable  
15 statute, NRS 116.411, which establishes the escrow requirements for deposits. (Ex. G at page 2.)  
16 So, again, if, as Tower now apparently contends, Yanke's mishandling of the deposits was done  
17 because of something that NWH did or did not do, then Yanke (i.e., Tower) certainly knew, or  
18 should have known as a matter of law, that he had been given bad legal advice by August 2006  
19 based on the content and tenor of the demand letter. Accordingly, under the two-year measure,  
20 again, this action had to be filed by August 23, 2008 – almost four years before this action was  
21 actually filed.<sup>13</sup>

---

22  
23 <sup>12</sup> Again, Mr. Heaton and NWH vehemently dispute this version of the facts, as they fully advised Yanke  
24 of the requirements for handling purchaser deposits, and properly drafted the purchase contract in  
accordance with Nevada law.

25 <sup>13</sup> The cases cited by Tower with respect to the two-year statute of limitations measure are readily  
26 distinguishable. The *Kopit* case (Opp. at 15:21) is an unpublished opinion and involved litigation-based  
27 legal malpractice. The *Clark* case (Opp. at 15:24) involved legal malpractice arising out of criminal  
28 representation, which presents an entirely different and inapplicable analysis. Finally, the *Kopicko* case  
(Opp. at 15:25), as discussed above, involved malpractice claims arising out of litigation, and therefore  
turns on a completely different statute of limitations analysis.

1 In its Opposition, Tower splits hairs by arguing that the purchasers' counsel did not explain  
2 in his August 2006 letters why the purchase contracts did not comply with Nevada law, and that  
3 counsel merely stated that Yanke (as opposed to Tower) was in violation of Nevada law. Again,  
4 counsel's primary concern in the letter is the precise whereabouts of the purchasers' deposits,  
5 which, pursuant to NRS 116.411 (quoted in the letter), had to be placed in escrow, and could not  
6 be the subject of any lien. So, again, if, as Tower alleges, NWH had failed to advise Tower (i.e.,  
7 Yanke, *Tower's sole owner and employee*) of the requirements of NRS 116.411, the two demand  
8 letters, as a matter of law (and common sense), put Yanke on notice of this alleged failure in  
9 August 2006. Two years from August 23, 2006 is August 23, 2008 – Tower's complaint was not  
10 filed until almost *four years* later.

11 Thus, under either the four-year or two-year measures provided by NRS 11.207, this action  
12 is time-barred as a matter of law.

13 **C. Tower's cause of action for breach of fiduciary duty does not exist, and in any**  
14 **event is also time-barred as a matter of law.**

15 Tower's second cause of action for "breach of fiduciary duty" simply does not exist in the  
16 attorney-client relationship context, and, in any event, is barred by the statute of limitations (based  
17 on NRS 11.207 and the analysis set forth above and in the Motion).

18 Again, the Nevada Supreme Court has made it clear that a separate breach of fiduciary  
19 duty cause of action does not exist in the context of a claim arising out of the attorney-client  
20 relationship: "A cause of action for legal malpractice *encompasses breaches of contractual as*  
21 *well as fiduciary duties* because both 'concern the representation of a client and involve the  
22 fundamental aspects of an attorney-client relationship.'" *Stalk v. Mushkin*, 125 Nev. Adv. Rep. 3,  
23 199 P.3d 838, 843 (2009) (statute of limitations for breach of fiduciary duty claim against attorney  
24 subject to and analyzed under NRS 11.207) (emphasis added). In other words, "claims for breach  
25 of fiduciary duty arising out of an attorney-client relationship *are legal malpractice claims* subject  
26 to NRS 11.207(1)'s limitation period." *Id.* at 844 (emphasis added). In its Opposition, rather than  
27 engaging in a substantive discussion, Tower merely charges that Defendants have misinterpreted  
28 *Stalk*, or that Defendants are attempting to mislead the Court. Defendants submit that the

1 language of the *Stalk* opinion – i.e., that claims for breach of fiduciary duty in the attorney-client  
2 context “are legal malpractice claims” could not be clearer – a cause of action styled as “breach of  
3 fiduciary” duty is unnecessary and duplicative in the attorney-client context.

4 In any event, Tower concedes that its breach of fiduciary duty cause of action – if it has an  
5 independent existence – is subject to the legal malpractice statute of limitations (i.e., NRS 11.207).  
6 Accordingly, as demonstrated in the Motion and above, Tower’s breach of fiduciary duty cause of  
7 action, if and to the extent it exists separate and apart from a legal malpractice claim, is barred by  
8 the statute of limitations as a matter of law, under either the four-year or two-year measures.

9 **III. CONCLUSION**

10 Based on the foregoing, as well as the points and authorities and evidence set forth in the  
11 Motion, defendants William H. Heaton and Nitz, Walton & Heaton, Ltd. respectfully request that  
12 the Complaint be dismissed in its entirety, with prejudice. Alternatively, Defendants seek the  
13 entry of summary judgment in their favor and against Tower. Tower lacks the capacity and  
14 requisite bankruptcy court authorization to sue and, even if it had the requisite capacity and  
15 authorization to sue, the causes of action asserted are barred by the statute of limitations as a  
16 matter of law.

17 DATED this 19<sup>th</sup> day of September, 2012

18 LEWIS BRISBOIS BISGAARD & SMITH LLP

19  
20 By Jeffrey D. Olster  
21 V. Andrew Cass  
22 Nevada Bar No. 005246  
23 Jeffrey D. Olster  
24 Nevada Bar No. 008864  
25 6385 S. Rainbow Boulevard, Suite 600  
26 Las Vegas, Nevada 89118  
27 Attorneys for Defendants  
28 *William H. Heaton and Nitz, Walton & Heaton,  
Ltd.*

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

**DECLARATION OF JEFFREY D. OLSTER**

I, Jeffrey D. Olster, do hereby declare,

1. I am a partner at the firm Lewis Brisbois Bisgaard & Smith LLP, counsel of record for defendants William H. Heaton and Nitz, Walton & Heaton, Ltd. I have personal knowledge of the matters set forth herein, and if called upon to do so, I would testify competently to these matters.

2. Attached as **Exhibit H** is a true and correct copy of the Claims Register from the Tower Homes, LLC bankruptcy proceedings (United States Bankruptcy Court, District of Nevada, Case No. 07-13208-BAM).

3. Attached as **Exhibit I** is a true and correct copy of the “Order for Relief Under Chapter 11” (Doc. 64) from the Tower Homes, LLC bankruptcy proceedings.

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

DATED on this 19th day of September, 2012.

/s/ Jeffrey D. Olster  
Jeffrey D. Olster



# EXHIBIT "H"

 CM/ECF  ?

- [Query](#)
- [Reports](#)
- [Utilities](#)
- [Logout](#)

## District of Nevada Claims Register

07-13208-bam TOWER HOMES, LLC

**Judge:** BRUCE A. MARKELL

**Chapter:** 11

**Office:** Las Vegas

**Last Date to file claims:** 01/01/2008

**Trustee:** WILLIAM A LEONARD

**Last Date to file (Govt):**

*Creditor:* (2987103)

CLARK COUNTY TREASURER  
500 S GRAND CENTRAL PKWY  
PO BOX 551220  
LAS VEGAS, NV 89155

**Claim No:** 1

*Original Filed*  
*Date:* 06/04/2007  
*Original Entered*  
*Date:* 06/04/2007  
*Last Amendment*  
*Filed:* 06/08/2007  
*Last Amendment*  
*Entered:* 06/08/2007

*Status:*

*Filed by:* CR  
*Entered by:* CLARK COUNTY  
TREASURER  
*Modified:*

Amount claimed: \$43515.24

Secured claimed: \$43515.24

*History:*

Details    1-1    06/04/2007 Claim #1 filed by CLARK COUNTY TREASURER, Amount claimed: \$41272.54 (CLARK COUNTY TREASURER)

Details    1-2    06/08/2007 Amended Claim #1 filed by CLARK COUNTY TREASURER, Amount claimed: \$43515.24 (CLARK COUNTY TREASURER)

*Description:* (1-1) TAXES, PENALTIES, INTEREST AND FEES PURSUANT TO NRS 361-450  
(1-2) TAXES, PENALTIES, INTEREST AND FEES PURSUANT TO NRS 361-450

*Remarks:* (1-2) AMEND, INCORRECT AMOUNT FILED

*Creditor:* (2992419)

THE PLUMBER, INC.  
C/O WILLIAMS & WIESE  
501 S. RANCHO DRIVE, ST. 0-22  
LAS VEGAS, NV 89106

**Claim No:** 2

*Original Filed*  
*Date:* 06/07/2007  
*Original Entered*  
*Date:* 06/08/2007

*Status:*

*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$109588.00

Secured claimed: \$109588.00

*History:*

Details    2-1    06/07/2007 Claim #2 filed by THE PLUMBER, INC., Amount claimed: \$109588.00 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3074620)  
Irving & Judith Shiffman  
10744 Jubilee Mountain Ave.  
Las Vegas, NV 89129

*Claim No:* 3  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$181730.42

Priority claimed: \$181730.42

*History:*

Details 3-1 09/10/2007 Claim #3 filed by Irving & Judith Shiffman, Amount claimed: \$181730.42 (OSBORN, DONNA )

*Description:* (3-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102295)  
ARTHUR WILLIAMS C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 4  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007  
*Last Amendment*  
*Filed:* 02/04/2008  
*Last Amendment*  
*Entered:* 02/04/2008

*Status:*  
*Filed by:* CR  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$158491.52

Priority claimed: \$158491.52

*History:*

Details 4-1 09/10/2007 Claim #4 filed by ARTHUR WILLIAMS C/O, Amount claimed: \$128600.40 (OSBORN, DONNA )

Details 4-2 02/04/2008 Amended Claim #4 filed by ARTHUR WILLIAMS C/O, Amount claimed: \$158491.52 (OSBORN, DONNA )

Details 4-3 02/04/2008 Amended Claim #4 filed by ARTHUR WILLIAMS C/O, Amount claimed: \$158491.52 (OSBORN, DONNA )

*Description:* (4-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

(4-2) DEPOSIT ON CONDO PURCHASE

(4-3) CONDO PURCHASE DEPOSIT

*Remarks:*

*Creditor:* (3102297)  
JUDGE W. COOLEY C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 5  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$82706.60

Priority claimed: \$82706.60

*History:*

Details 5-1 09/10/2007 Claim #5 filed by JUDGE W. COOLEY C/O, Amount claimed: \$82706.60 (OSBORN, DONNA )

*Description:* (5-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*



*Creditor:* (3102298)  
EDWIN AND GAIL M. EDEJER C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 6  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$209925.00

Priority claimed: \$209925.00

*History:*

Details 6-1 09/10/2007 Claim #6 filed by EDWIN AND GAIL M. EDEJER C/O, Amount claimed: \$209925.00  
(OSBORN, DONNA )

*Description:* (6-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102299)  
BARBARA L. CHANDLER C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 7  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$226284.86

Priority claimed: \$226284.86

*History:*

Details 7-1 09/10/2007 Claim #7 filed by BARBARA L. CHANDLER C/O, Amount claimed: \$226284.86 (OSBORN,  
DONNA )

*Description:* (7-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102300)  
ROBERT EMBLETON C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 8  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$184695.95

Priority claimed: \$184695.95

*History:*

Details 8-1 09/10/2007 Claim #8 filed by ROBERT EMBLETON C/O, Amount claimed: \$184695.95 (OSBORN,  
DONNA )

*Description:* (8-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102302)  
DAHN MIDORA C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 9  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$256937.50

Priority \$256937.50

claimed:

*History:*

Details 9-1 09/10/2007 Claim #9 filed by DAHN MIDORA C/O, Amount claimed: \$256937.50 (OSBORN, DONNA.)

*Description:* (9-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102303)  
HAROLD J. AND CAROL P. HERZLICH  
C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

**Claim No: 10**  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$185299.15

Priority claimed: \$185299.15

*History:*

Details 10-1 09/10/2007 Claim #10 filed by HAROLD J. AND CAROL P. HERZLICH C/O, Amount claimed: \$185299.15 (OSBORN, DONNA.)

*Description:* (10-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102304)  
RICHARD GOODALL C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

**Claim No: 11**  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$353487.45

Priority claimed: \$353487.45

*History:*

Details 11-1 09/10/2007 Claim #11 filed by RICHARD GOODALL C/O, Amount claimed: \$353487.45 (OSBORN, DONNA.)

*Description:* (11-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102305)  
MELVA BROWN C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

**Claim No: 12**  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:* 02/27/2008

Amount claimed: \$253130.88

Priority claimed: \$253130.88

*History:*

Details 12-1 09/10/2007 Claim #12 filed by MELVA BROWN C/O, Amount claimed: \$253130.88 (OSBORN, DONNA.)

*Description:* (12-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:* (12-1) This claim is amended by #48, under the name of NV Brown (02/27/08 jmg)

*Creditor:* (3102306)  
BARBARA L. CHANDLER AS TRUSTEE  
OF THE SARALEE M. B  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 13  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$191323.50

Priority claimed: \$191323.50

*History:*

Details 13-1 09/10/2007 Claim #13 filed by BARBARA L. CHANDLER AS TRUSTEE OF THE SARALEE M. B,  
Amount claimed: \$191323.50 (OSBORN, DONNA )

*Description:* (13-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3102307)  
ALLISON G. GAYNOR C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 14  
*Original Filed*  
*Date:* 09/10/2007  
*Original Entered*  
*Date:* 09/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$175805.54

Priority claimed: \$175805.54

*History:*

Details 14-1 09/10/2007 Claim #14 filed by ALLISON G. GAYNOR C/O, Amount claimed: \$175805.54 (OSBORN,  
DONNA )

*Description:* (14-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3074647)  
OlsEn Precast  
2750 Marion Dr.  
Las Vegas, NV 89115

*Claim No:* 15  
*Original Filed*  
*Date:* 09/11/2007  
*Original Entered*  
*Date:* 09/13/2007

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$7691.08

Secured claimed: \$7691.08

*History:*

Details 15-1 09/11/2007 Claim #15 filed by OlsEn Precast, Amount claimed: \$7691.08 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3107883)  
DEBRA JONES C/O  
DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

*Claim No:* 16  
*Original Filed*  
*Date:* 09/14/2007  
*Original Entered*  
*Date:* 09/14/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$73383.92

Priority \$73383.92

claimed:

*History:*

Details 16-1 09/14/2007 Claim #16 filed by DEBRA JONES C/O, Amount claimed: \$73383.92 (OSBORN, DONNA )

*Description:* (16-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3074675)

Water Movers

PO Box 66693

Phoenix, AZ 85082

**Claim No: 17**

*Original Filed*

*Date:* 09/12/2007

*Original Entered*

*Date:* 09/17/2007

*Status:*

*Filed by:* CR

*Entered by:* SL Hooks

*Modified:*

Amount claimed: \$31574.55

Secured claimed: \$31574.55

*History:*

Details 17-1 09/12/2007 Claim #17 filed by Water Movers, Amount claimed: \$31574.55 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3074665)

Southern Nevada Storm Drain

PO Box 750067

Las Vegas, NV 89136

**Claim No: 18**

*Original Filed*

*Date:* 09/13/2007

*Original Entered*

*Date:* 09/17/2007

*Status:*

*Filed by:* CR

*Entered by:* SL Hooks

*Modified:*

Amount claimed: \$17900.00

Secured claimed: \$17900.00

*History:*

Details 18-1 09/13/2007 Claim #18 filed by Southern Nevada Storm Drain, Amount claimed: \$17900.00 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3115787)

THE PLUMBER, INC.

C/O DONALD H. WILLIAMS

501 S. RANCHO DR. #D-22

LAS VEGAS, NV 89106-4832

**Claim No: 19**

*Original Filed*

*Date:* 09/17/2007

*Original Entered*

*Date:* 09/21/2007

*Status:*

*Filed by:* CR

*Entered by:* SL Hooks

*Modified:*

Amount claimed: \$109588.00

Secured claimed: \$109588.00

*History:*

Details 19-1 09/17/2007 Claim #19 filed by THE PLUMBER, INC., Amount claimed: \$109588.00 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3115788)

JADE SUMMIT

810 S. CASINO CENTER #104

**Claim No: 20**

*Original Filed*

*Date:* 09/17/2007

*Status:*

*Filed by:* CR

*Entered by:* SL Hooks

LAS VEGAS, NV 89101

Original Entered  
Date: 09/21/2007

Modified:

Amount claimed: \$453541.21

Secured claimed: \$453541.21

*History:*Details 20-1 09/17/2007 Claim #20 filed by JADE SUMMIT, Amount claimed: \$453541.21 (Hooks, SL )*Description:**Remarks:**Creditor:* (3118266)  
Toyota Motor Credit Corp  
3200 West Ray Rd.  
Chandler, AZ 85226**Claim No: 21**  
*Original Filed*  
Date: 09/25/2007  
*Original Entered*  
Date: 09/25/2007*Status:*  
*Filed by:* CR  
*Entered by:* TOYOTA MOTOR CREDIT  
CORPORATION(mi)  
*Modified:*

Amount claimed: \$48533.74

Secured claimed: \$48533.74

*History:*Details 21-1 09/25/2007 Claim #21 filed by Toyota Motor Credit Corp, Amount claimed: \$48533.74 (TOYOTA MOTOR CREDIT CORPORATION(mi))*Description:**Remarks:**Creditor:* (3074585)  
Ann & Robert Mueller  
8220 Sedona Sunrise Dr.  
Las Vegas, NV 89128**Claim No: 22**  
*Original Filed*  
Date: 09/27/2007  
*Original Entered*  
Date: 09/27/2007*Status:*  
*Filed by:* CR  
*Entered by:* TIMOTHY R. O'REILLY  
*Modified:*

Amount claimed: \$236870.46

Priority claimed: \$236870.46

*History:*Details 22-1 09/27/2007 Claim #22 filed by Ann & Robert Mueller, Amount claimed: \$236870.46 (O'REILLY, TIMOTHY )*Description:* (22-1) Deposit for purchase of condo*Remarks:**Creditor:* (3129826)  
FERGUSON ENTERPRISES  
C/O DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145**Claim No: 23**  
*Original Filed*  
Date: 10/04/2007  
*Original Entered*  
Date: 10/04/2007*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$10622.25

Secured claimed: \$10622.25

*History:*Details 23-1 10/04/2007 Claim #23 filed by FERGUSON ENTERPRISES, Amount claimed: \$10622.25 (OSBORN, DONNA )

*Description:* (23-1) APN #176-04-601-019

*Remarks:* (23-1) LIEN RECORDED AGAINST APN 176-04-601-019

*Creditor:* (3129828)  
HUGHES WATER & SEWER, LTD. DBA  
STANDARD WHOLESALE,  
C/O DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NEVADA 89145

**Claim No: 24**  
*Original Filed*  
*Date:* 10/04/2007  
*Original Entered*  
*Date:* 10/04/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$131620.60

Secured claimed: \$131620.60

*History:*

Details 24-1 10/04/2007 Claim #24 filed by HUGHES WATER & SEWER, LTD. DBA STANDARD WHOLESALE,  
Amount claimed: \$131620.60 (OSBORN, DONNA )

*Description:* (24-1) APN #176-04-601-019

*Remarks:* (24-1) LIEN RECORDED AGAINST APN 176-04-601-019

*Creditor:* (3074582)  
Allied Trench & Shoring, Inc.  
6680 Surrey St.  
Las Vegas, NV 89118

**Claim No: 25**  
*Original Filed*  
*Date:* 10/03/2007  
*Original Entered*  
*Date:* 10/04/2007

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$22407.85

Unsecured claimed: \$22407.85

*History:*

Details 25-1 10/03/2007 Claim #25 filed by Allied Trench & Shoring, Inc., Amount claimed: \$22407.85 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3135781)  
Ahern Rentals, Inc.  
c/o Dixon Truman Fisher & Clifford, P.C.  
2820 W. Charleston Blvd., #23  
Las Vegas, NV 89102

**Claim No: 26**  
*Original Filed*  
*Date:* 10/10/2007  
*Original Entered*  
*Date:* 10/10/2007

*Status:*  
*Filed by:* AT  
*Entered by:* SHANE CLIFFORD  
*Modified:*

Amount claimed: \$17008.60

Secured claimed: \$17008.60

*History:*

Details 26-1 10/10/2007 Claim #26 filed by Ahern Rentals, Inc., Amount claimed: \$17008.60 (CLIFFORD, SHANE )

*Description:* (26-1) Mechanic's lien for goods rented

*Remarks:*

*Creditor:* (3074580)  
Abe Siemens  
47 Princeton Dr.  
Rancho Mirage, CA 92270

**Claim No: 27**  
*Original Filed*  
*Date:* 10/23/2007  
*Original Entered*  
*Date:* 10/23/2007

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$170106.19

Priority claimed: \$170106.19

*History:*

Details 27-1 10/23/2007 Claim #27 filed by Abe Siemens, Amount claimed: \$170106.19 (OSBORN, DONNA )

*Description:* (27-1) Other - Deposits for purchase of condo unit

*Remarks:*

*Creditor:* (3156887)

Geo Tek, Inc.

c/o Lars K. Evensen, Esq.

HOLLAND & HART LLP

3763 Howard Hughes Parkway, Suite 300

Las Vegas, NV 89169

**Claim No: 28**

*Original Filed*

*Date:* 10/26/2007

*Original Entered*

*Date:* 10/26/2007

*Status:*

*Filed by:* CR

*Entered by:* LARS EVENSEN

*Modified:*

Amount claimed: \$135290.77

Secured claimed: \$135290.77

*History:*

Details 28-1 10/26/2007 Claim #28 filed by Geo Tek, Inc., Amount claimed: \$135290.77 (EVENSEN, LARS )

*Description:* (28-1) Real Estate - Mechanic's Lien

*Remarks:*

*Creditor:* (2986792)

ATLAS MECHANICAL, INC.

c/o Laurel E. Davis

Fennemore Craig, P.C.

300 South Fourth Street, Suite 1400

Las Vegas, NV 89101

**Claim No: 29**

*Original Filed*

*Date:* 10/27/2007

*Original Entered*

*Date:* 10/27/2007

*Status:*

*Filed by:* CR

*Entered by:* LAUREL E. DAVIS

*Modified:*

Amount claimed: \$206296.54

Secured claimed: \$206296.54

*History:*

Details 29-1 10/27/2007 Claim #29 filed by ATLAS MECHANICAL, INC., Amount claimed: \$206296.54 (DAVIS, LAUREL )

*Description:*

*Remarks:*

*Creditor:* (2986791)

HELIX ELECTRIC OF NEVADA

c/o Laurel E. Davis

Fennemore Craig, P.C.

300 South Fourth Street, Suite 1400

Las Vegas, NV 89101

**Claim No: 30**

*Original Filed*

*Date:* 10/27/2007

*Original Entered*

*Date:* 10/27/2007

*Status:*

*Filed by:* CR

*Entered by:* LAUREL E. DAVIS

*Modified:*

Amount claimed: \$524820.19

Secured claimed: \$524820.19

*History:*

Details 30-1 10/27/2007 Claim #30 filed by HELIX ELECTRIC OF NEVADA, Amount claimed: \$524820.19 (DAVIS, LAUREL )

*Description:*

*Remarks:*

*Creditor:* (2986788)  
WPH ARCHITECTURE, INC.  
c/o Laurel E. Davis, Esq.  
Fennemore Craig, P.C.  
300 South Fourth Street, Suite 1700  
Las Vegas, NV 89101

**Claim No: 31**  
*Original Filed*  
*Date:* 10/27/2007  
*Original Entered*  
*Date:* 10/27/2007

*Status:*  
*Filed by:* CR  
*Entered by:* LAUREL E. DAVIS  
*Modified:*

Amount claimed: \$1076778.31

Secured claimed: \$1076778.31

*History:*

Details 31-1 10/27/2007 Claim #31 filed by WPH ARCHITECTURE, INC., Amount claimed: \$1076778.31 (DAVIS, LAUREL)

*Description:*

*Remarks:*

*Creditor:* (3162883)  
PHILLIP & KATHERINE STROMER  
C/O WALSH & FRIEDMAN, LTD.  
400 SOUTH MARYLAND PARKWAY  
LAS VEGAS, NV 89101

**Claim No: 32**  
*Original Filed*  
*Date:* 10/30/2007  
*Original Entered*  
*Date:* 10/31/2007

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$180000.00

Unsecured claimed: \$180000.00

*History:*

Details 32-1 10/30/2007 Claim #32 filed by PHILLIP & KATHERINE STROMER, Amount claimed: \$180000.00 (Hooks, SL)

*Description:*

*Remarks:*

*Creditor:* (3164780)  
LEDCOR CONSTRUCTION, INC.  
c/o Laurel E. Davis, Esq.  
Fennemore Craig, P.C.  
300 S. Fourth Street, #1400  
Las Vegas, NV 89101

**Claim No: 33**  
*Original Filed*  
*Date:* 11/01/2007  
*Original Entered*  
*Date:* 11/01/2007

*Status:*  
*Filed by:* CR  
*Entered by:* LAUREL E. DAVIS  
*Modified:*

Amount claimed: \$2133847.87

Secured claimed: \$2133847.87

*History:*

Details 33-1 11/01/2007 Claim #33 filed by LEDCOR CONSTRUCTION, INC., Amount claimed: \$2133847.87 (DAVIS, LAUREL)

*Description:*

*Remarks:*

*Creditor:* (3168896)  
Edward and Sandra Clark  
c/o Bob L. Olson, Esq.  
3993 Howard Hughes  
Suite 600  
Las Vegas, NV 89169

**Claim No: 34**  
*Original Filed*  
*Date:* 11/06/2007  
*Original Entered*  
*Date:* 11/06/2007

*Status:*  
*Filed by:* CR  
*Entered by:* MICAELA RUSTIA MOORE  
*Modified:*

Amount claimed: \$196448.15

Unsecured \$196448.15



claimed:

*History:*

Details 34-1 11/06/2007 Claim #34 filed by Edward and Sandra Clark, Amount claimed: \$196448.15 (RUSTIA MOORE, MICAELA )

*Description:* (34-1) Deposit for Purchase of Condo

*Remarks:*

*Creditor:* (3170553) History  
Andrea Harris  
2310 Fayette Avenue  
Henderson, NV 89052

**Claim No: 35**  
*Original Filed*  
*Date:* 11/07/2007  
*Original Entered*  
*Date:* 11/07/2007

*Status:*  
*Filed by:* CR  
*Entered by:* MICAELA RUSTIA MOORE  
*Modified:*

Amount claimed: \$278181.19

Priority claimed: \$2225.00

Unsecured claimed: \$275956.19

*History:*

Details 35-1 11/07/2007 Claim #35 filed by Andrea Harris, Amount claimed: \$278181.19 (RUSTIA MOORE, MICAELA )

*Description:* (35-1) Deposit for Condo

*Remarks:*

*Creditor:* (3176963)  
Nevada Ready Mix Corporatino  
c/o Matthew C. Zirzow, Esq.  
Gordon & Silver, Ltd.  
3960 Howard Hughes Pkwy, 9th Floor  
Las Vegas, Nevada 89169

**Claim No: 36**  
*Original Filed*  
*Date:* 11/13/2007  
*Original Entered*  
*Date:* 11/13/2007

*Status:*  
*Filed by:* CR  
*Entered by:* MATTHEW C. ZIRZOW  
*Modified:*

Amount claimed: \$1507647.86

Secured claimed: \$1507647.86

*History:*

Details 36-1 11/13/2007 Claim #36 filed by Nevada Ready Mix Corporatino, Amount claimed: \$1507647.86 (ZIRZOW, MATTHEW )

*Description:*

*Remarks:*

*Creditor:* (3121833)  
HB PARKCO CONSTRUCTION, INC.  
C/O MATTHEW C. ZIRZOW  
GORDON & SILVER  
3960 HOWARD HUGHES PKWY., 9TH  
FLOOR  
LAS VEGAS, NV 89169

**Claim No: 37**  
*Original Filed*  
*Date:* 11/14/2007  
*Original Entered*  
*Date:* 11/14/2007  
*Last Amendment*  
*Filed:* 11/15/2007  
*Last Amendment*  
*Entered:* 11/15/2007

*Status:*  
*Filed by:* CR  
*Entered by:* MATTHEW C. ZIRZOW  
*Modified:*

Amount claimed: \$31801483.50

Secured claimed: \$31801483.50

*History:*

Details 37-1 11/14/2007 Claim #37 filed by HB PARKCO CONSTRUCTION, INC., Amount claimed: \$31801483.50

(ZIRZOW, MATTHEW )

Details 37-2 11/15/2007 Amended Claim #37 filed by HB PARKCO CONSTRUCTION, INC., Amount claimed: \$31801483.50 (ZIRZOW, MATTHEW )

*Description:*

*Remarks:*

*Creditor:* (3121834)  
REGIONAL STEEL CORPORATION  
C/O MATTHEW C. ZIRZOW  
GORDON & SILVER  
3960 HOWARD HUGHES PKWY., 9TH  
FLOOR  
LAS VEGAS, NV 89169

*Claim No:* 38  
*Original Filed*  
*Date:* 11/14/2007  
*Original Entered*  
*Date:* 11/14/2007

*Status:*  
*Filed by:* CR  
*Entered by:* MATTHEW C. ZIRZOW  
*Modified:*

Amount claimed: \$2925381.23

Secured claimed: \$2925381.23

*History:*

Details 38-1 11/14/2007 Claim #38 filed by REGIONAL STEEL CORPORATION, Amount claimed: \$2925381.23 (ZIRZOW, MATTHEW )

*Description:*

*Remarks:*

*Creditor:* (3182401)  
DK IV LIMITED PARTNERSHIP  
JOHN & JENNIFER KILPATRICK  
c/o DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 Park Run Drive  
Las Vegas, Nevada 89145

*Claim No:* 39  
*Original Filed*  
*Date:* 11/16/2007  
*Original Entered*  
*Date:* 11/16/2007

*Status:*  
*Filed by:* CR  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$154939.34

Priority claimed: \$154939.34

*History:*

Details 39-1 11/16/2007 Claim #39 filed by DK IV LIMITED PARTNERSHIP, Amount claimed: \$154939.34 (OSBORN, DONNA )

*Description:* (39-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:*

*Creditor:* (3074657)  
Real Equity Pursuit, LLC  
26895 Aliso Creek Rd., #B573  
Aliso Viejo, CA 92656

*Claim No:* 40  
*Original Filed*  
*Date:* 12/18/2007  
*Original Entered*  
*Date:* 12/18/2007

*Status:*  
*Filed by:* CR  
*Entered by:* MICHAEL F LYNCH  
*Modified:*

Amount claimed: \$502500.00

Secured claimed: \$502500.00

*History:*

Details 40-1 12/18/2007 Claim #40 filed by Real Equity Pursuit, LLC, Amount claimed: \$502500.00 (LYNCH, MICHAEL )

*Description:*

*Remarks:*

*Creditor:* (2986789)  
BUILDING CONSENSUS, INC.  
c/o Laurel E. Davis, Esq.  
Fennemore Craig, P.C.  
300 South Fourth Street, Suite 1400  
Las Vegas, NV 89101

*Claim No:* 41  
*Original Filed*  
*Date:* 12/18/2007  
*Original Entered*  
*Date:* 12/18/2007

*Status:*  
*Filed by:* CR  
*Entered by:* LAUREL E. DAVIS  
*Modified:*

Amount claimed: \$3636909.48

Secured claimed: \$3636909.48

*History:*

Details 41-1 12/18/2007 Claim #41 filed by BUILDING CONSENSUS, INC., Amount claimed: \$3636909.48 (DAVIS, LAUREL )

*Description:*

*Remarks:*

*Creditor:* (3074648)  
OneCap Mortgage  
5440 W. Sahara Ave., 3rd Fl  
Las Vegas, NV 89146

*Claim No:* 42  
*Original Filed*  
*Date:* 12/27/2007  
*Original Entered*  
*Date:* 12/27/2007

*Status:*  
*Filed by:* CR  
*Entered by:* JEFFREY R. SYLVESTER  
*Modified:*

Amount claimed: \$24574973.00

Secured claimed: \$24574973.00

Priority claimed: \$0.00

Unknown claimed: \$0.00

Unsecured claimed: \$0.00

*History:*

Details 42-1 12/27/2007 Claim #42 filed by OneCap Mortgage, Amount claimed: \$24574973.00 (SYLVESTER, JEFFREY )

*Description:* (42-1) Real Estate Secured Loan

*Remarks:*

*Creditor:* (3074648)  
OneCap Mortgage  
5440 W. Sahara Ave., 3rd Fl  
Las Vegas, NV 89146

*Claim No:* 43  
*Original Filed*  
*Date:* 12/27/2007  
*Original Entered*  
*Date:* 12/27/2007

*Status:*  
*Filed by:* CR  
*Entered by:* JEFFREY R. SYLVESTER  
*Modified:*

Amount claimed: \$7934730.00

Secured claimed: \$7934730.00

Priority claimed: \$0.00

Unknown claimed: \$0.00

Unsecured claimed: \$0.00

*History:*

Details 43-1 12/27/2007 Claim #43 filed by OneCap Mortgage, Amount claimed: \$7934730.00 (SYLVESTER, JEFFREY )

*Description:* (43-1) Real Estate Secured Loan

*Remarks:*

*Creditor:* (3074648)  
OneCap Mortgage  
5440 W. Sahara Ave., 3rd Fl  
Las Vegas, NV 89146

*Claim No:* 44  
*Original Filed*  
*Date:* 12/27/2007  
*Original Entered*  
*Date:* 12/27/2007

*Status:*  
*Filed by:* CR  
*Entered by:* JEFFREY R. SYLVESTER  
*Modified:*

Amount claimed: \$10913405.00  
Secured claimed: \$10913405.00  
Priority claimed: \$0.00  
Unknown claimed: \$0.00  
Unsecured claimed: \$0.00

*History:*

Details 44-1 12/27/2007 Claim #44 filed by OneCap Mortgage, Amount claimed: \$10913405.00 (SYLVESTER, JEFFREY )

*Description:* (44-1) Real Estate Secured Loan

*Remarks:*

*Creditor:* (3246018)  
CLARK COUNTY ASSESSOR  
C/O M.W. SCHOFIELD  
500 S. GRAND CENTRAL PKWY  
LAS VEGAS, NV 89155

*Claim No:* 45  
*Original Filed*  
*Date:* 01/09/2008  
*Original Entered*  
*Date:* 01/10/2008

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$2259.91  
Unknown claimed: \$2259.91

*History:*

Details 45-1 01/09/2008 Claim #45 filed by CLARK COUNTY ASSESSOR, Amount claimed: \$2259.91 (Hooks, SL )

*Description:*

*Remarks:*

*Creditor:* (3276798)  
CLIFFORD AND CARMENCHITA  
TEJADA  
C/O DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NV 89145

*Claim No:* 46  
*Original Filed*  
*Date:* 02/04/2008  
*Original Entered*  
*Date:* 02/04/2008

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$21552.00  
Priority claimed: \$21552.00

*History:*

Details 46-1 02/04/2008 Claim #46 filed by CLIFFORD AND CARMENCHITA TEJADA, Amount claimed: \$21552.00 (OSBORN, DONNA )

*Description:* (46-1) CONDO UNIT PURCHASE DEPOSIT

*Remarks:*

*Creditor:* (3276831)  
LISA WESTFIELD  
C/O DONNA M. OSBORN, ESQ.

*Claim No:* 47  
*Original Filed*  
*Date:* 02/04/2008

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN

MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NV 89145

*Original Entered*  
*Date:* 02/04/2008

*Modified:*

Amount claimed: \$32546.38

Priority claimed: \$32546.38

*History:*

Details 47-1 02/04/2008 Claim #47 filed by LISA WESTFIELD, Amount claimed: \$32546.38 (OSBORN, DONNA )

*Description:* (47-1) DEPOSIT FOR PURCHASE OF CONDO

*Remarks:*

*Creditor:* (3320000)  
NEVADA BROWN, LLC  
C/O DONNA M. OSBORN, ESQ.  
MARQUIS & AURBACH  
10001 PARK RUN DRIVE  
LAS VEGAS, NV 89145

**Claim No: 48**  
*Original Filed*  
*Date:* 02/25/2008  
*Original Entered*  
*Date:* 02/25/2008

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:* 02/27/2008

Amount claimed: \$253130.88

Priority claimed: \$253130.88

*History:*

Details 48-1 02/25/2008 Claim #48 filed by NEVADA BROWN, LLC, Amount claimed: \$253130.88 (OSBORN, DONNA )

*Description:* (48-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:* (48-1) This claim amends #12 which is under the name of Melva Brown (02/27/08 jmg)

*Creditor:* (3416070)  
PAC VAN LEASING & SALES  
c/o RUBIN & LEVIN, P.C.  
500 Marott Center  
342 Massachusetts Ave.  
Indianapolis, IN 46204-2161

**Claim No: 49**  
*Original Filed*  
*Date:* 04/22/2008  
*Original Entered*  
*Date:* 04/22/2008

*Status:*  
*Filed by:* CR  
*Entered by:* RUBIN & LEVIN, P.C. (ec)  
*Modified:*

Amount claimed: \$16052.63

Unsecured claimed: \$16052.63

*History:*

Details 49-1 04/22/2008 Claim #49 filed by PAC VAN LEASING & SALES, Amount claimed: \$16052.63 (RUBIN & LEVIN, P.C. (ec))

*Description:*

*Remarks:*

*Creditor:* (3552320)  
DESIGN SPACE MODULAR  
BUILDINGS, INC.  
711 MALL RING CIRCLE, SUITE 104  
HENDERSON, NV 89014

**Claim No: 50**  
*Original Filed*  
*Date:* 06/30/2008  
*Original Entered*  
*Date:* 07/01/2008

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$6397.15

Unsecured claimed: \$6397.15

*History:*

Details 50-1 06/30/2008 Claim #50 filed by DESIGN SPACE MODULAR, Amount claimed: \$6397.15 (Hooks, SL )

*Description:**Remarks:*

*Creditor:* (3704812)  
Construction Protective Services  
c/o Becky A. Pintar, Esq.  
Gibbs, Giden, Locher, Turner & Senet LLP  
3993 Howard Hughes Parkway, Suite 530  
Las Vegas, NV 89169

**Claim No: 51**  
*Original Filed*  
*Date:* 08/26/2008  
*Original Entered*  
*Date:* 08/26/2008

*Status:*  
*Filed by:* CR  
*Entered by:* BECKY A PINTAR  
*Modified:*

Amount claimed: \$7079.84

Unsecured claimed: \$7079.84

*History:*

Details 51-1 08/26/2008 Claim #51 filed by Construction Protective Services, Amount claimed: \$7079.84 (PINTAR, BECKY )

*Description:**Remarks:*

*Creditor:* (3753050)  
PHILLIP AND KATHERINE STROMER  
MARQUIS & AURBACH  
C/O DONNA OSBORN, ESQ.  
10001 PARK RUN DRIVE  
LAS VEGAS, NV 89145

**Claim No: 52**  
*Original Filed*  
*Date:* 09/18/2008  
*Original Entered*  
*Date:* 09/18/2008

*Status:*  
*Filed by:* AT  
*Entered by:* DONNA M. OSBORN  
*Modified:*

Amount claimed: \$182425.00

Priority claimed: \$2425.00

Unsecured claimed: \$180000.00

*History:*

Details 52-1 09/18/2008 Claim #52 filed by PHILLIP AND KATHERINE STROMER, Amount claimed: \$182425.00 (OSBORN, DONNA )

*Description:* (52-1) DEPOSITS FOR PURCHASE OF CONDO UNIT

*Remarks:* (52-1) AMENDING CLAIM #32

*Creditor:* (3074657)  
Real Equity Pursuit, LLC  
26895 Aliso Creek Rd., #B573  
Aliso Viejo, CA 92656

**Claim No: 53**  
*Original Filed*  
*Date:* 10/01/2008  
*Original Entered*  
*Date:* 10/02/2008

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Amount claimed: \$500000.00

Unsecured claimed: \$500000.00

*History:*

Details 53-1 10/01/2008 Claim #53 filed by Real Equity Pursuit, LLC, Amount claimed: \$500000.00 (Hooks, SL )

*Description:**Remarks:*

*Creditor:* (3074657)  
Real Equity Pursuit, LLC  
26895 Aliso Creek Rd., #B573  
Aliso Viejo, CA 92656

**Claim No: 54**  
*Original Filed*  
*Date:* 10/02/2008  
*Original Entered*

*Status:*  
*Filed by:* CR  
*Entered by:* SL Hooks  
*Modified:*

Date: 10/06/2008

Amount claimed: \$500000.00

Unsecured claimed: \$500000.00

*History:*Details 54-1 10/02/2008 Claim #54 filed by Real Equity Pursuit, LLC, Amount claimed: \$500000.00 (Hooks, SL )*Description:**Remarks:*

*Creditor:* (3970469)  
 OTIS ELEVATOR COMPANY  
 ATTN: TREASURY SERVICES - J.  
 PARENT 3RD  
 1 FARM SPRINGS  
 FARMINGTON, CT 06032

**Claim No: 55**  
*Original Filed*  
 Date: 01/05/2009  
*Original Entered*  
 Date: 01/06/2009

*Status:*  
*Filed by:* CR  
*Entered by:* GA Buchanan  
*Modified:*

Amount claimed: \$22480.17

Unsecured claimed: \$22480.17

*History:*Details 55-1 01/05/2009 Claim #55 filed by OTIS ELEVATOR COMPANY, Amount claimed: \$22480.17 (Buchanan, GA )*Description:**Remarks:***Claims Register Summary****Case Name:** TOWER HOMES, LLC**Case Number:** 07-13208-bam**Chapter:** 11**Date Filed:** 05/31/2007**Total Number Of Claims:** 55

<b>Total Amount Claimed*</b>	\$94171326.45
<b>Total Amount Allowed*</b>	

\*Includes general unsecured claims

The values are reflective of the data entered. Always refer to claim documents for actual amounts.

	<b>Claimed</b>	<b>Allowed</b>
<b>Secured</b>	\$88855247.02	
<b>Priority</b>	\$3406997.54	
<b>Administrative</b>		

**PACER Service Center****Transaction Receipt**

09/13/2012 09:16:16			
PACER Login:	nw0187	Client Code:	
Description:	Claims Register	Search Criteria:	07-13208-bam Filed or Entered From: 5/31/2007 Filed or Entered To: 9/13/2012
Billable Pages:	6	Cost:	0.60



# EXHIBIT "I"



Entered on Docket  
August 21, 2007

A handwritten signature in black ink, appearing to read "Bruce A. Markell".

Hon. Bruce A. Markell  
United States Bankruptcy Judge

GORDON & SILVER, LTD.  
WILLIAM M. NOALL, ESQ.  
Nevada Bar No. 3549  
E-mail: wmn@gordonsilver.com  
MATTHEW C. ZIRZOW, ESQ.  
Nevada Bar No. 7222  
E-mail: mezc@gordonsilver.com  
3960 Howard Hughes Pkwy., 9th Floor  
Las Vegas, Nevada 89169  
Telephone (702) 796-5555  
Facsimile (702) 369-2666  
Attorneys for Petitioning Creditors HBParkco Construction, Inc.,  
Regional Steel Corporation and Nevada Ready Mix Corporation

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

In re:  
  
TOWER HOMES, LLC,  
a Nevada limited liability company.  
  
Debtor.

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

**ORDER FOR RELIEF UNDER  
CHAPTER 11**

Date: August 15, 2007  
Time: 10:30 a.m.

A status hearing in this involuntary bankruptcy case took place on August 15, 2007 at 10:30 a.m. William M. Noall, Esq., of the law firm of Gordon & Silver, Ltd., appeared on behalf of HBParkco Construction, Inc., Regional Steel Corporation, and Nevada Ready Mix Corporation (collectively, "Petitioning Creditors"). Laurel E. Davis, Esq., of the law firm of Fennemore Craig, PC appeared on behalf of WPH Architecture, Inc., Building Consensus, Inc., Harly Ellis Devereaux, Helix Electric of Nevada, Ledcor Construction, Inc., and Atlas Mechanical, Inc., and William L. McGimsey, Esq., appeared on behalf of Tower Homes, LLC ("Debtor"). Other counsel's appearances are reflected in the Court's record of the hearing. The

1 Creditors' Motion For Summary Judgment Re: Involuntary Petition (Dkt. No. 32) set to be  
2 argued at the same time and date as today's status conference. However, on August 13, 2007,  
3 Debtor filed a Consent to Order for Relief as a Chapter 11 Debtor-in-Possession (Dkt. No. 50).  
4 Therefore, the Motion For Summary Judgment is moot. Based upon the foregoing, and good  
5 cause appearing;

6 IT IS HEREBY ORDERED, ADJUDGED and DECREED as follows:

7 1. This Order constitutes an "Order for Relief" against Debtor under Section 303(h),  
8 Chapter 11, Title 11, United States Code.

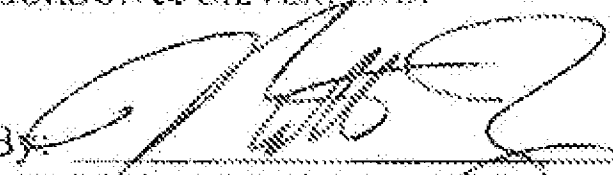
9 2. The date of the filing of the petition and the commencement of this case is  
10 May 31, 2007.

11 3. A status conference in this case shall be held on September 13, 2007 at 10:30 a.m.

12 4. The pretrial conference scheduled pursuant to Rule 7016 of the Federal Rules of  
13 Bankruptcy Procedure, trial on the involuntary petition and other deadlines set forth in this  
14 Court's Order Regarding Status Conference, Pretrial and Trial Matters entered July 16, 2007  
15 (Dkt. Nos. 41 and 42) are vacated.

16 PREPARED AND SUBMITTED BY:

17  
18 GORDON & SILVER, LTD.

19  
20   
21 WILLIAM M. NOALL, ESQ.  
22 MATTHEW C. ZIRZOW, ESQ.  
23 3960 Howard Hughes Pkwy., 9th Floor  
24 Las Vegas, Nevada 89169  
25 Attorneys for Petitioning Creditors  
26 HBParkco Construction, Inc., Regional Steel  
27 Corporation and Nevada Ready Mix  
28

1 APPROVED/DISAPPROVED

2 FENNEMORE CRAIG, PC

3

4

Laurel E. Davis, Esq.  
300 South Fourth Street  
Las Vegas, NV 89101  
Attorneys for WPH Architecture, Inc.,  
Building Consensus, Inc.,  
Hardy Ellis Deveraux,  
Helix Electric of Nevada and  
Atlas Mechanical, Inc.

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

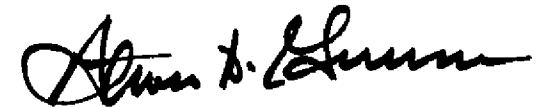
28

APPROVED/DISAPPROVED

LAW OFFICES OF WILLIAM L.  
McGIMSEY

*William L. McGimsey*  
WILLIAM L. MCGIMSEY, Esq.  
516 S. 6<sup>th</sup> Street  
Las Vegas, NV 89101  
Attorney for Debtor  
Tower Homes, LLC

# # #



CLERK OF THE COURT

1 V. ANDREW CASS  
Nevada Bar No. 005246  
2 [cass@lbbslaw.com](mailto:cass@lbbslaw.com)  
JEFFREY D. OLSTER  
3 Nevada Bar No. 008864  
[olster@lbbslaw.com](mailto:olster@lbbslaw.com)  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Tel: 702.893.3383  
6 Fax: 702.893.3789  
Attorneys for Defendants  
7 *William H. Heaton and*  
*Nitz, Walton & Heaton, Ltd.*

8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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-12-663341-C  
Dept. No.: 26

ORDER REGARDING DEFENDANTS'  
MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION FOR  
SUMMARY JUDGMENT

Date of Hearing: October 3, 2012  
Time of Hearing: 9:00 a.m.

The Motion to Dismiss, or alternatively, Motion for Summary Judgment by defendants William H. Heaton and Nitz, Walton & Heaton, Ltd. came on for hearing in Department 26 before the Hon. Gloria Sturman on October 3, 2012. Jeffrey Olster of Lewis Brisbois Bisgaard & Smith LLP appeared on behalf of defendants William H. Heaton and Nitz, Walton & Heaton, Ltd. Dennis Prince of Prince & Keating appeared on behalf of plaintiff Tower Homes, LLC.

The Court has considered the moving, opposition and reply papers, as well as the oral arguments of counsel, and good cause appearing therefore,

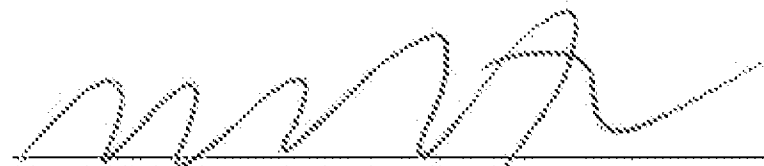
1 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, or in the alternative,  
2 Motion for Summary Judgment, is denied. Defendants seek dismissal (or summary judgment) on  
3 two grounds: (1) Plaintiff is not authorized by its bankruptcy trustee and the Bankruptcy Court to  
4 bring this action; and (2) Plaintiff's claims for relief (legal malpractice and breach of fiduciary  
5 duty) are barred by the statute of limitations.

6 With respect to the statute of limitations issue, the Court denies Defendants' Motion  
7 because the bankruptcy trustee could not have known what the claims against Tower Homes, LLC  
8 were until the underlying state court litigation was resolved. The stipulation and order dismissing  
9 the underlying state court litigation was filed on July 5, 2011.

10 With respect to the Bankruptcy Court authority issue, the Court denies Defendants' Motion  
11 because this issue presents a procedural, not a fatal, defect. The Court, however, does agree with  
12 Defendants that the "Marquis Aurbach Order" does not authorize Plaintiff bring this action  
13 through the law firm of Prince & Keating against Mr. Heaton and Nitz, Walton & Heaton, Ltd.  
14 Plaintiff may attempt to remedy this procedural defect by obtaining the requisite authority from  
15 the Tower Homes, LLC bankruptcy trustee and order from the Bankruptcy Court.

16 IT IS FURTHER ORDERED, therefore, that this matter shall be stayed until Plaintiff  
17 obtains the requisite authority for this action from the bankruptcy trustee and order from the  
18 Bankruptcy Court.

19 Dated this 31 day of October, 2012.

20  
21  
22   
23 DISTRICT COURT JUDGE  
24  
25  
26  
27  
28

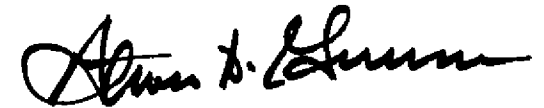
1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP



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



CLERK OF THE COURT

1 V. ANDREW CASS  
Nevada Bar No. 005246  
2 [cass@lbbslaw.com](mailto:cass@lbbslaw.com)  
JEFFREY D. OLSTER  
3 Nevada Bar No. 008864  
[olster@lbbslaw.com](mailto:olster@lbbslaw.com)  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Tel: 702.893.3383  
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**

11  
12 TOWER HOMES, LLC, a Nevada limited  
liability company;

13 Plaintiff,

14 vs.

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

18 Defendants.  
19

Case No. A-12-663341-C  
Dept. No. 26

**RENEWED MOTION TO DISMISS**

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)(1) (lack of jurisdiction over the subject matter); N.R.C.P.  
24 12(b)(5) (failure to state a claim upon which relief can be granted) and N.R.C.P. 17 (lack of legal  
25 capacity to sue).

26  
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 26<sup>th</sup> day of July, 2013

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 26 of this Court on the 28 day of AUGUST, 2013 at  
20 9 : 0 0 AM, or as soon thereafter as counsel may be heard.

21 DATED this 26<sup>th</sup> day of July, 2013

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 failed high-rise condominium development. Plaintiff Tower  
4 Homes, LLC (hereafter “Tower”) started to develop such a project back in 2004, and sought the  
5 assistance of defendant Nitz, Walton & Heaton, Ltd. (“NWH”) for legal representation, including  
6 the preparation of the purchase contracts for the condominium units. NWH did so in accordance  
7 with Nevada law and the applicable standard of care. When the development went south, largely  
8 due to a lack of funding and Tower’s own misfeasance, Tower and its sole owner and principal,  
9 Rodney Yanke (“Yanke”), were sued by purchasers (hereafter the “Tower Homes Purchasers”)  
10 who had paid earnest money deposits for units that were never built. In this underlying cases,  
11 Tower and Yanke were accused of, among other things, wrongfully misappropriating the  
12 purchaser’s deposits – in direct contravention to the advice provided by NWH. Tower was  
13 eventually forced into Chapter 11 bankruptcy proceedings by several of the contractors who had  
14 worked on the project.

15 Once the bankruptcy was filed, all of Tower’s potential and theoretical rights of action  
16 against other parties (including Mr. Heaton and NWH) became the property of the bankruptcy  
17 estate, and fell within the exclusive control of the bankruptcy trustee. Thus, unless and until  
18 Tower obtains the requisite trustee and Bankruptcy Court authority to bring a civil action, Tower  
19 lacks the capacity and authority to bring the instant action as a well-settled matter of federal law.

20 As this Court is aware, NWH raised this issue in its initial Motion to Dismiss (filed on July  
21 19, 2012 and heard by this Court on October 3, 2012). In its ruling on the original Motion to  
22 Dismiss, this Court agreed with NWH that the Bankruptcy Court order on which Tower relied as  
23 the authority for this action (referred to as the “Marquis Aurbach Order”) did not authorize this  
24 action, but ruled that Tower could attempt to remedy this perceived “procedural defect” by  
25 obtaining the requisite authority from Tower’s bankruptcy trustee and the Bankruptcy Court.

26 Tower has since obtained a new order purporting to authorize this action. *This new order,*  
27 *however, also fails to authorize this action.* Moreover, there is no provision of law that permits  
28 Tower to continue to maintain this action while at the same time attempt to cure any “procedural

1 defect.” This is a substantial *substantive*, not merely procedural, defect. Accordingly, this case  
2 should be dismissed.

## 3 **II. BACKGROUND**

### 4 **A. Factual Background**

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

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

### 19 **B. The Bankruptcy Proceedings and Trustee’s exclusive control of causes of** 20 **action belonging to Tower**

21 Due to the delays and non-payment of various creditor claims relating to the Project,  
22 Chapter 11 bankruptcy proceedings were initiated against Tower on May 31, 2007. (Complaint ¶  
23 16.)<sup>1</sup> On or about December 8, 2008, the “Order Approving Disclosure Statement and Confirming  
24 Plan of Reorganization” (hereafter the “Plan Confirmation Order”) was entered in the bankruptcy  
25

---

26 <sup>1</sup> 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 proceedings. (This Plan Confirmation Order is attached as **Exhibit A.**) Notably, in a section  
2 entitled “Litigation,” the Plan Confirmation Order provides, in relevant part, that:

3  
4 *[T]he Trustee and the Estate shall retain all claims or Causes of*  
5 *Action* that they have or hold against any party . . . whether arising  
6 pre- or post-petition, subject to applicable state law statutes of  
7 limitation and related decisional law, whether sounding in tort,  
8 contract or other theory or doctrine of law or equity. Confirmation  
9 of the Plan effects no settlement, compromise, waiver or release of  
10 any Cause of Action unless the Plan or Confirmation Order  
11 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 above Causes of*  
*Action post-confirmation in accordance with applicable law.*

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

13 **C. The first Marquis Aurbach Order**

14 Subsequent to the plan confirmation, notwithstanding his exclusive right to control all of  
15 Tower’s potential causes of action, the bankruptcy trustee, in a June 3, 2010 “Order Granting  
16 Motion to Approve Stipulation to Release Claims and Allow Marquis & Aurbach, as Counsel for  
17 the Tower Homes Purchasers, to Pursue Claims on Behalf of Debtor” (hereafter the “Marquis  
18 Aurbach Order”) agreed to relinquish certain alleged causes of action to certain enumerated parties  
19 against certain enumerated individuals or entities:

20 The Trustee hereby stipulates and agrees *to release to the Tower*  
21 *Homes Purchasers* any and all claims on behalf of [Tower] against  
22 Rodney C. Yanke, Americana LLC dba Americana Group, Mark L.  
23 Stark, Jeannine Cutter, David Berg, Equity Title of Nevada, LLC *or*  
24 *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 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.

25 (See Marquis Aurbach Order, attached as **Exhibit B**, at Page 5 of 6, lines 13-19 [emphasis  
26 added].) In other words, notwithstanding his express retention of all causes of action belonging to  
27 Tower, the bankruptcy trustee agreed to release *to the Tower Homes Purchasers* the right to  
28

1 pursue claims relating to the earnest money deposits *through its attorneys, Marquis & Aurbach*  
2 (now Marquis Aurbach Coffing).

3 **D. The instant action and NWH's first Motion to Dismiss**

4 Based on the Marquis Aurbach Order, Tower filed the instant action on June 12, 2012. On  
5 July 19, 2012, NWH filed its Motion to Dismiss, or, Alternatively, Motion for Summary  
6 Judgment” (hereafter the “MTD”). In the MTD, NWH demonstrated why Tower lacked the  
7 capacity and authority to bring the instant action based on both federal law and the Plan  
8 Confirmation Order, and why the Marquis Aurbach Order did not provide the requisite  
9 authorization that would permit Tower to bring a civil action. (See MTD at 8:6 – 12:3.)<sup>2</sup> In ruling  
10 on the MTD, this Court agreed with NWH that the Marquis Aurbach Order does not authorize  
11 Tower to bring the instant action through the law firm of Prince & Keating against Mr. Heaton and  
12 NWH. (See **Exhibit C**, Order Regarding Defendants’ Motion to Dismiss, or, Alternatively,  
13 Motion for Summary Judgment, at 2:11-13.)

14 This Court denied the MTD, however, reasoning that Tower’s lack of capacity and  
15 authority to bring the instant action “presents a procedural, not a fatal, defect.” (*Id.* at 2:10-11.)  
16 Accordingly, this Court ruled that Tower “may attempt to remedy this procedural defect by  
17 obtaining the requisite authority from the Tower Homes, LLC bankruptcy trustee and order from  
18 the Bankruptcy Court.” (Ex. C at 2:14-15.) This Court further ordered “that this matter shall be  
19 stayed until Plaintiff obtains the requisite authority for this action from the bankruptcy trustee and  
20 order from the Bankruptcy Court.” (*Id.* at 2:16-18 [emphasis added].) In other words, this action  
21 is stayed unless and until Tower obtains a proper authorization from the Bankruptcy trustee and  
22 Court to bring and maintain this action.<sup>3</sup>

23 \_\_\_\_\_  
24 <sup>2</sup> NWH also argued in the MTD that this action is barred by the statute of limitations. This Court rejected  
25 the statute of limitations argument. In response to NWH’s Petition for Writ of Mandamus, the Nevada  
26 Supreme Court recently ruled that extraordinary writ relief was not warranted. NWH still maintains that  
this action is barred by the statute of limitations as a matter of fact and law, and reserves the right to re-

27 <sup>3</sup> The parties also agreed to stay this action pending the Nevada Supreme Court’s ruling on NWH’s Writ  
28 Petition. (See Order Granting Defendants’ Motion to Stay Pending Completion of Writ Proceedings, filed  
on June 21, 2013).

1           **E.       The New Marquis Aurbach Order**

2           In an attempt to remedy the “procedural defect,” on or about April 8, 2013, Tower filed  
3 with this Court an order from the Bankruptcy Court entitled “Order Granting Motion to Approve  
4 Amended Stipulation to Release Claims and Allow Marquis Aurbach Coffing, as Counsel for the  
5 Tower Homes Purchasers, to Pursue Claims on Behalf of Debtor (hereafter the “New Marquis  
6 Aurbach Order”). (This New Marquis Aurbach Order is attached as **Exhibit D.**) The New  
7 Marquis Aurbach Order:

- 8                   •        “[A]uthorizes the Trustee to permit *the Tower Homes Purchasers* to pursue  
9                           any and all claims on behalf of Tower Homes, LLC (the “Debtor”) against  
10                          any individual or entity which has or may have any liability or owed any  
11                          duty to Debtor or others for the loss of the earnest money deposits provided  
12                          by purchasers for units in the Spanish View Tower Homes condominium  
13                          project which shall specifically include, but may not be limited to, pursuing  
14                          the action currently filed in the Clark County District Court styled as Tower  
15                          Homes, LLC v. William H. Heaton et al. Case No. A-12-663341-C.”
- 16                   •        “[A]uthorizes the law firm of Marquis Aurbach Coffing and/or Prince &  
17                           Keating, LLP, or successive counsel, *retained on behalf of Tower Homes*  
18                          *Purchasers* to recover any and all earnest money deposits, damages,  
19                          attorneys fees and costs, and interest thereon on behalf of Debtor and the  
20                          Tower Homes Purchasers and that any such recoveries shall be for the  
21                          benefit of the Tower Homes Purchasers.”

22 (Ex. D at 2 of 3, lines 7-20.)

23           As discussed below, this New Marquis Aurbach Order still does not authorize Tower to  
24 maintain the instant action. Accordingly, this action should be dismissed.

25           **III.     ARGUMENT**

26           As discussed below, this New Marquis Aurbach Order does not remedy the perceived  
27 “procedural defect,” as it, like the original Marquis Aurbach Order, only authorizes the Tower  
28 Homes Purchasers, not Tower itself, to bring the instant action. The only plaintiff in this case is

1 Tower. Accordingly, the New Marquis Aurbach Order still does not authorize this action.  
2 Furthermore, this is not merely a “procedural defect” – this is a *jurisdictional* defect. Under  
3 federal law, Tower is simply not authorized to maintain an action that is otherwise within the  
4 exclusive control of Tower’s bankruptcy trustee. This action therefore should be dismissed.

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

7       When a bankruptcy is filed, a bankruptcy estate is created pursuant to 11 U.S.C. § 541(a)  
8 consisting of **all legal and equitable interests of the debtor, including all claims and causes of**  
9 **action that belong to the debtor.** *See, e.g., Sierra Switchboard v. Westinghouse*, 789 F.2d 705,  
10 707 (9th Cir. 1986); *Weitzel v. The Mirage*, 2009 U.S. Dist. Lexis 34621 at \*7 (D. Nev. 2009);  
11 *Suter v. Goedert*, 396 B.R. 535, 540-42 (D. Nev. 2008). “Thereafter, the property of the estate is  
12 distinct from the property of the debtor.” *Suter, supra*, 396 B.R. at 541. The trustee (or debtor in  
13 possession, which is not applicable here) is the representative of the estate with the authority to  
14 sue on behalf of the estate pursuant to 11 U.S.C. §§ 323, 363 and 1107. *See Suter, supra*, 396  
15 B.R. at 546 (“Because the legal malpractice action is property of the estate, the trustee had the  
16 authority to sell, settle, or compromise non-exempt assets of the estate.”) In other words, the  
17 trustee has the **exclusive** power to sue on behalf of the bankruptcy estate. *See Estate of Spirtos v.*  
18 *One San Bernardino Cty. Sup. Ct.*, 443 F.3d 1172, 1175-76 (9<sup>th</sup> Cir. 2006) (numerous supporting  
19 citations omitted); *see also Parker v. Wendy’s Int’l, Inc.*, 365 F.3d 1268, 1272 (11<sup>th</sup> Cir. 2004)  
20 (“Thus, a trustee, as the representative of the bankruptcy estate, is the proper party in interest, and  
21 is the only party with standing to prosecute causes of action belonging to the estate.”).

22       Here, in Tower’s Chapter 11 bankruptcy, a trustee was appointed on January 18, 2008, and  
23 the trustee was the only person with the right to pursue claims on behalf of the debtor. *See* 11  
24 U.S.C. § 1141(b) (“Except as otherwise provided in the plan or the order confirming the plan, the  
25 confirmation of a plan vests all of the property of the estate in the debtor.”)

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

3           In Tower's case, the Plan Confirmation Order did "otherwise provide" within the meaning  
4 of 11 U.S.C. § 1141(b), and, pursuant to this order, it is *the trustee*, and not the debtor, that was  
5 authorized, post-confirmation, to pursue or dispose of claims. In this regard, Article X(C) of the  
6 Plan Confirmation Order provides that "...from and after the Confirmation Date, *the Trustee and*  
7 *the Estate shall retain all claims or Causes of Action* that they may have or hold *against any*  
8 *party . . . whether arising pre- or post-petition*, subject to applicable state law statutes of  
9 limitation and related decisional law, whether sounding in tort, contract or other theory or doctrine  
10 of law or equity." (See Ex. A at 48:17-22 [emphasis added].) Thus, title to the claims which are  
11 the subject of this action never vested in the debtor (Tower) pursuant to 11 U.S.C. § 1141 and/or  
12 the Plan Confirmation Order. Accordingly, Tower simply has no authority to sue and is without  
13 legal capacity to maintain this action.

14                   **2.       As recognized by this Court, the first Marquis Aurbach Order did not**  
15                   **authorize Tower to bring this action.**

16           In an attempt to authorize this action, the trustee and the Tower Homes Purchasers  
17 obtained the Bankruptcy Court approval of the Marquis Aurbach Order (Exhibit B.) In the MTD,  
18 the parties disputed whether this first Marquis Aurbach Order authorized Tower to bring the  
19 instant action. In its ruling on the MTD, this Court agreed with NWH that the first Marquis  
20 Aurbach Order did not authorize this action because that first order only authorized the Tower  
21 Homes Purchasers, not Tower itself, to bring any civil action. (Ex. B, Marquis Aurbach Order at  
22 Page 5 of 6, lines 13-19.) Moreover, the first Marquis Aurbach Order only authorized legal action  
23 against specifically enumerated parties, which did not include NWH or Mr. Heaton, and only  
24 authorized litigation by the law firm of Marquis Aurbach. (*Id.* at Page 5 of 6, lines 13-26.)

25           Rather than dismissing the case outright, however, this Court provided Tower with leave to  
26 attempt to remedy this perceived "procedural defect" by obtaining the requisite authority from the  
27 bankruptcy trustee and order from the Bankruptcy Court. (Ex. C at 2:14-15.)



1                   3.       **The New Marquis Aurbach Order does not authorize Tower to bring**  
2                                   **this action.**

3                   Tower presumably maintains that the New Marquis Aurbach Order (Exhibit D) provides  
4 the requisite Bankruptcy Court authority to maintain this action. However, the New Marquis  
5 Aurbach Order still only authorizes *the Tower Homes Purchasers* to pursue an action, *not* Tower:

6                               IT IS FURTHER ORDERED ADJUDGED AND DECREED that  
7 this Order authorizes the Trustee to permit *the Tower Homes*  
8 *Purchasers* to pursue any and all claims on behalf of Tower Homes,  
9 LLC (the “Debtor”) against any individual or entity which has or  
10 may have any liability or owed any duty to Debtor or others for loss  
11 of the earnest money deposits provided by purchasers for units in the  
12 Spanish View Tower Homes condominium project which shall  
13 specifically include, but may not be limited to, pursuing the action  
14 currently filed in the Clark County District Court styled as Tower  
15 Homes, LLC v William H. Heaton et al. Case No. A-12-663341-C.

16 (Ex. D at 2:7-14 [emphasis added].) The Tower Homes Purchasers are obviously not parties to  
17 this action.<sup>4</sup>

18                   The New Marquis Aurbach Order further provides:

19                               IT IS FURTHER ORDERED ADJUDGED AND DECREED that  
20 [the Bankruptcy] Court authorizes the law firm of Marquis Aurbach  
21 Coffing and/or Prince & Keating, LLP, or successive counsel,  
22 *retained on behalf of Tower Homes Purchasers* to recover any and  
23 all earnest money deposits, damages, attorneys fees and costs, and  
24 interest thereon on behalf of Debtor and the Tower Homes  
25 Purchasers and that any such recoveries shall be *for the benefit of*  
26 *the Tower Homes Purchasers*.

27 (Ex. C at 2:8-14 [emphasis added].) This provision merely authorizes Marquis Aurbach or Prince  
28 & Keating, *as counsel retained on behalf the Tower Homes Purchasers*, to bring the instant action  
for the benefit of the Tower Homes Purchasers. It does *not* authorize Tower to bring this action  
(for its own benefit or for anyone’s benefit). In other words, *the New Marquis Aurbach Order*  
*does nothing to alter the status quo*, which is that Tower remains unauthorized to bring this  
action. (See MTD at 8-12 and MTD Reply at 3-6).

---

<sup>4</sup> Even if the Tower Homes Purchasers were the named parties, this action still would be subject to  
dismissal as a matter of Nevada law because legal malpractice claims cannot be assigned. *See, e.g.,*  
*Chaffee v. Smith*, 98 Nev. 222, 223-24, 645 P.2d 966 (1982).

1           **B.       Because Tower lacks the requisite capacity and authority, the**  
2                   **proper remedy is dismissal of this action.**

3           Both federal and state courts, including the federal court sitting in Nevada, have  
4 consistently recognized that when a bankruptcy debtor has failed to obtain the proper bankruptcy  
5 court authorization to bring and maintain a civil action, **the appropriate remedy is a dismissal of**  
6 **the civil action** (or summary judgment). *See Bruce v. Homefield Financial, Inc.*, 2011 U.S. Dist.  
7 Lexis 110243 at \*4-\*5 (D. Nev. 2011) (bankruptcy debtor's claim dismissed because it was not  
8 properly disclosed and authorized by the bankruptcy trustee);<sup>5</sup> *see also Hamilton v. State Farm*  
9 *Fire & Cas. Co.*, 270 F.3d 778, 783-86 (9<sup>th</sup> Cir. 2001) (summary judgment properly granted on  
10 debtor's lawsuit because debtor did not disclose and obtain bankruptcy court authority for  
11 lawsuit); *In re Strada Design Ass.*, 326 B.R. 229, 235-240 (S.D.N.Y. 2005) (determining that  
12 bankruptcy debtor lacked capacity to maintain and control state court legal malpractice claim);  
13 *Wright v. Meyers & Spencer, LLP*, 849 N.Y.S.2d 274, 275 (N.Y. App. 2007) (debtor's legal  
14 malpractice claim was property of bankruptcy estate and was properly dismissed because debtor  
15 lacked capacity to bring and maintain claim).

16           Conversely, *there is no provision of law that permits a debtor that lacks the requisite*  
17 *capacity and Bankruptcy Court authorization to both maintain an improper civil action and*  
18 *simultaneously attempt to "cure" the lack of authorization.* In other words, when a bankruptcy  
19 debtor brings an unauthorized civil action – an action which belongs exclusively to the bankruptcy  
20 estate – this is not merely a "procedural defect" that can be retroactively cured. This is a  
21 substantive, jurisdictional defect. Yet, this is precisely what Tower is seeking to do in this case.  
22 This violates federal and law and should not be permitted. Instead, this action should be  
23 dismissed.

24  
25  
26  
27 <sup>5</sup> A copy of this unpublished federal opinion is attached as **Exhibit E**.

1 **IV. CONCLUSION**

2 Based on the foregoing, defendants William H. Heaton and Nitz, Walton & Heaton, Ltd.  
3 respectfully request that the Complaint be dismissed in its entirety, with prejudice.

4  
5 DATED this 26<sup>th</sup> day of July, 2013

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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  
*Attorneys for Defendants*  
*William H. Heaton and Nitz, Walton & Heaton,*  
*Ltd.*

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

2

3  
4  
5

6  
7  
8  
9

10  
11  
12  
13

14  
15  
16

17  
18  
19  
20  
21  
22

23  
24  
25

1 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and  
2 correct.

3 DATED this 26<sup>th</sup> day of July, 2013

4

5 /s/ Jeffrey D. Olster  
6 Jeffrey D. Olster

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

**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 26<sup>th</sup> day of July, 2013, a true and correct copy of the foregoing **RENEWED MOTION TO DISMISS** was placed in an envelope, postage prepaid, addressed as stated below.

Dennis M. Prince  
Eric N. Tran  
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 Etienne.  
An Employee of LEWIS BRISBOIS  
BISGAARD & SMITH LLP

# **EXHIBIT "A"**



Entered on Docket  
December 08, 2008

A handwritten signature in dark ink, appearing to read "Bruce A. Markell".

Hon. Bruce A. Markell  
United States Bankruptcy Judge

SULLIVAN, HILL, LEWIN, REZ & ENGEL  
A Professional Law Corporation  
James P. Hill, CA SBN 90478  
Christine A. Roberts, NV SBN 6472  
Elizabeth E. Stephens, NV SBN 5788  
228 South Fourth Street, First Floor  
Las Vegas, NV 89101  
Telephone: (702) 382-6440  
Fax Number: (702) 384-9102  
Email: hill@shlaw.com

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

///

///

///

///



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  
28 ///

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  
11 JAMES P. HILL  
12 ATTORNEYS FOR WILLIAM A.  
13 LEONARD, JR.,  
14 CHAPTER 11 TRUSTEE

15 APPROVED/DISAPPROVED:

16 SHEA & CARLYON, LTD.

17  
18 By: failed to respond  
19 SHLOMO S. SHERMAN, ESQ.  
20 COUNSEL FOR BANK OF GEORGE

21 APPROVED/DISAPPROVED:

22 SYLVESTER & POLEDNAK, LTD.

23 By: failed to respond  
24 JAMES MACROBBIE, ESQ.  
25 COUNSEL FOR ONECAP  
26 MORTGAGE CO.  
27  
28

1 APPROVED/DISAPPROVED:

2 | GORDON &amp; SILVER

3

By: failed to respond

4 WILLIAM M. NOALL, ESQ.  
COUNSEL FOR HB PARKCO  
5 CONSTRUCTION, INC., REGIONAL  
STEEL CORPORATION, and NEVADA  
6 READY MIX CORPORATION

7

8 APPROVED/DISAPPROVED:

9 FENNEMORE CRAIG, P.C.

10

By:           failed to respond          

11 JON T. PEARSON, ESQ.  
12 COUNSEL FOR ATLAS  
13 MECHANICAL, INC; BUILDING  
14 CONSENSUS, INC.;  
HARRY ELLIS DEVEREAUX;  
HELDX ELECTRIC OF NEVADA;  
LEDCOR CONSTRUCTION, INC.; and  
WPH ARCHITECTURE, INC.

15

16 | APPROVED/DISAPPROVED:

17 MARQUIS &amp; AURBACH

18

By:

19 DONNA M. OSBORN, ESQ.  
20 COUNSEL FOR FERGUSON  
ENTERPRISES and HUGHES WATER  
& SEWER, LTD.

21

22 | APPROVED/DISAPPROVED:

23 | MARQUIS &amp; AURBACH

24

By:

25 DONNA M. OSBORN, ESQ.  
Counsel for Numerous Pre-Purchasers

26

27

28

1 APPROVED/DISAPPROVED:

2 NITZ, WALTON & HEATON, LTD.

3

4 By: failed to respond  
5 WILLIAM H. HEATON, ESQ.  
6 COUNSEL FOR RODNEY YANKE  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



1 APPROVED/DISAPPROVED

2 PENNEMORE CRAIG, P.C.

3

4 By:

JON T. PEARSON, ESQ.  
COUNSEL FOR ATLAS  
MECHANICAL, INC; BUILDING  
CONSENSUS, INC.;  
HARRY ELLIS DEVEREAUX;  
HELIX ELECTRIC OF NEVADA;  
LEDCOR CONSTRUCTION, INC.; and  
WPH ARCHITECTURE, INC.

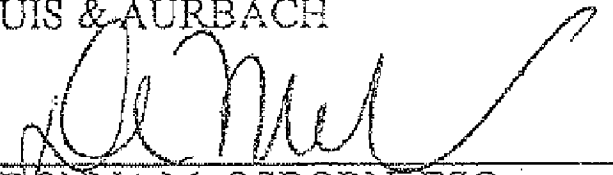
8

9 APPROVED/DISAPPROVED

10 MARQUIS & AURBACH

11

12 By:

  
DONNA M. OSBORN, ESQ.  
COUNSEL FOR FERGUSON  
ENTERPRISES and HUGHES WATER  
& SEWER, LTD.


14

15 APPROVED/DISAPPROVED

16 MARQUIS & AURBACH

17

18 By:

  
DONNA M. OSBORN, ESQ.  
Counsel for Numerous Pre-Purchasers

19

20

21 APPROVED/DISAPPROVED

22

23 NITZ, WALTON & HEATON, LTD.

24

25

26

27 By:

WILLIAM H. HEATON, ESQ.  
COUNSEL FOR RODNEY YANKE

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

**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.

###

**EXHIBIT "A"**

1 SULLIVAN, HILL, LEWIN, REZ & ENGEL  
A Professional Law Corporation  
2 James P. Hill, CA SBN 90478  
Christine A. Roberts, NV SBN 6472  
3 Elizabeth E. Stephens, NV SBN 5788  
228 South Fourth Street, First Floor  
4 Las Vegas, NV 89101  
Telephone: (702) 382-6440  
5 Fax Number: (702) 384-9102  
Email: hill@shlaw.com

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  
12 TOWER HOMES, LLC, a Nevada limited ) Chapter 11 (Involuntary)  
liability company, dba Spanish View Tower )  
13 Homes, ) **Date: November 17, 2008**  
Debtor. ) **Time: 9:30 a.m.**  
14 )  
15 ) Ctrm.: BAM - Courtroom 3  
16 ) Foley Federal Building  
300 Las Vegas Blvd. South  
17 ) Las Vegas, NV 89101  
Judge: Hon. Bruce A. Markell

18  
19 **TRUSTEE'S DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION**  
(amended as approved at confirmation hearing)  
20  
21  
22  
23  
24  
25  
26  
27  
28

# 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	A.	In General .....	42
42	B.	The Plan Priorities Follow the Chapter 7 Priorities.....	42
43	C.	Timing of Distributions .....	42
44	D.	Amount of Distributions.....	43
45	E.	The Trustee's Financial Projections .....	44
46	1.	Overview.....	44
47	2.	The Different Possible Outcomes .....	45
48	3.	The Models Are Liquidation Analyses.....	45
49	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").<sup>1</sup>

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

---

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

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

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

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

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

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

///

///

///

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.

26 ///

27 ///

28 ///

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 1 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



1                   timely performance of all its obligations; and

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

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

7                   3.       Sale Free and Clear/Credit Bids

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

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

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

16                   4.       Operation of Bankruptcy Code Section 506(a)

17           In the event that the Property is sold in accordance with the Sale Procedures, the sale will  
18 be deemed to have fairly and conclusively determined the fair market value of the Property, and  
19 accordingly, the values of the various Secured Claims against the Property, for purposes of  
20 determining the extent to which such Claims are Secured Claims under Bankruptcy Code section  
21 506(a). The holder of any Secured Claim not satisfied in full from the proceeds of a sale shall  
22 receive an Unsecured Claim to the extent of any such deficiency, to be treated in Class 14.

23                   D.       Allowance and Satisfaction of Claims

24           Regardless of whether the Debtor achieves a Timely Refinance or the Trustee sells the  
25 Property, the Trustee shall direct the process of satisfying Claims, including holding and  
26 accounting for all funds of the Estate, and making Distributions to Creditors on account of  
27 Allowed Claims in accordance with the terms of this Plan. Pursuant to Bankruptcy Code section  
28 502, 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

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

10 **D. Class 4**

- 11 1. Classification: Class 4 consists of the Secured Claim of OneCap arising  
 12 out of a promissory note in the original principal amount of \$13,000,000  
 13 secured by a deed of trust recorded December 22, 2004 held by various  
 14 entities by and through their collateral agent and loan servicer, OneCap.
- 15 2. Treatment: To the extent Allowed and secured by a lien against the  
 16 Property after satisfaction of all senior Claims (including the Class 4  
 17 Ratable Share of Administrative Expenses), the Class 4 Claim shall be  
 18 paid in Cash from the net proceeds of the sale or refinancing of the  
 19 Property an amount equal to the then outstanding principal balance of that  
 20 note together with interest at the non-default rate. The Trustee shall make  
 21 the Distribution on account of the Class 4 Claim no later than 30 days  
 22 from the later of (i) closing of the sale or refinancing of the Property, or  
 23 (ii) entry of a Final Order allowing such Secured Claim pursuant to  
 24 Bankruptcy Code sections 502 and 506. In the event that the proceeds of a  
 25

26 <sup>2</sup> The treatment afforded to OneCap herein was negotiated by the Debtor prior to the Trustee's appointment. The  
 27 Trustee believes that such treatment is in the best interest of the Debtor's Creditors and the Estate. Because the  
 28 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 <sup>3</sup>
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 <sup>4</sup>
11	HELIX ELECTRIC	\$470,500.00
12	HUGHES WATER & SEWER, LTD.	\$105,815.91
13	JADE SUMMIT, LLC	\$181,138.76 <sup>5</sup>
14	LAS VEGAS BUILDING DEVELOPMENT	\$1,826,406.64
15	LAS VEGAS PAVING	\$12,600.00
16	LEDCOR 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

<sup>3</sup> 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.

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

<sup>5</sup> 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 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)

in this section above.

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

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

**N. Class 14**

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

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

13           O.     Class 15

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

23           P.     Class 16

- 24                  1.     Classification: Class 16 is comprised of all Equity Interests.  
25                  2.     Treatment: In the event of a Timely Refinancing, the holders of Equity  
26                  Interests in the Debtor shall retain such interests. In the event that no  
27                  Timely Refinancing is achieved, the holder(s) of the Debtor's Equity  
28                  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

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

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

**C. Continued Management of the Debtor**

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

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

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

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

as the Trustee in his reasonable discretion determines likely to maximize the value ultimately realized from the Property or other assets of the Estate. Prior to exercising any powers under this 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

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

13 2. Reservation of Rights

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

28 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



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

6 **I. Post-Confirmation Compensation of Professional Persons**

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

20 **J. Compensation of the Trustee**

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

23 ///

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

28 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.

///

**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 "I" 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

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

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

5 2. Consequences of Default

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

15 C. Litigation

16 The Trustee has lacked funds or other resources in the Estate to finance an investigation  
17 as to claims or Causes of Action that he, the Estate or the Debtor may hold. Accordingly, from  
18 and after the Confirmation Date, the Trustee and the Estate shall retain all claims or Causes of  
19 Action that they have or hold against any party, including against "insiders" of the Debtor (as  
20 that term is defined in section 101(31) of the Bankruptcy Code), whether arising pre- or post-  
21 petition, subject to applicable state law statutes of limitation and related decisional law, whether  
22 sounding in tort, contract or other theory or doctrine of law or equity. Confirmation of the Plan  
23 effects no settlement, compromise, waiver or release of any Cause of Action unless the Plan or  
24 Confirmation Order specifically and unambiguously so provide. The nondisclosure or  
25 nondiscussion of any particular Cause of Action is not and shall not be construed as a settlement,  
26 compromise, waiver or release of such Cause of Action. Upon the Effective Date, the Trustee  
27 will be designated as representative of the Estate under section 1123(b)(3) of the Bankruptcy  
28 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.

21 ///

22 ///

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.

28

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;

///

///

- (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

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

- (k) To issue injunctions, enter and implement other orders or to take such other actions as may be necessary or appropriate to carry out the intent of this Plan or to restrain interference by any party with consummation, implementation or enforcement of any order or this Plan, except as otherwise provided herein;
- (l) To determine disputes regarding title of the property claimed to be property of the Debtor or its Estate;
- (m) To decide or resolve any matter over which the Bankruptcy Court has jurisdiction pursuant to section 505 of the Bankruptcy Code;
- (n) To hear and determine disputes concerning any event of default or alleged event of default under this Plan, as well as disputes concerning remedies upon any event of default;
- (o) To determine any other matters that may arise in connection with or relate to this Plan, any order entered in this Bankruptcy Case, or any contract, instrument, release or other agreement or document created in connection with this Plan, except as otherwise provided herein;
- (p) To hear any other matters not inconsistent with the Bankruptcy Code; and
- (q) To enter a final decree closing the Case.

## 2. Abstention

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:*

*If to the Trustee:*

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

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

*With a copy to:*

*With a copy to:*

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

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:	William Noall, Esq.
c/o James MacRobbie, Esq.	c/o Gordon & Silver
Jeffrey R. Sylvester, Esq.	3960 Howard Hughes Pkwy., 9th
Sylvester & Polednak, Ltd.	Floor
7371 Prairie Falcon, Suite 120	Las Vegas, NV 89109
Las Vegas, NV 89128	

Laurel E. Davis, Esq.	Donna M. Osborn, Esq.
Fennemore Craig, P.C.	Terry A. Coffing, Esq.
300 S. Fourth Street, Suite 1400	Marquis & Aurbach
Las Vegas, NV 89101	10001 Park Run Drive
	Las Vegas, NV 89145

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.<sup>6</sup> Any discharge will have no effect on the Bank of George

27  
28 <sup>6</sup> 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 reverted 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

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

5 XII.

6 **CONCLUSION AND RECOMMENDATION**

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

12 XIII.

13 **GLOSSARY OF DEFINED TERMS**

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

16 1. Administrative Claimant: Any Person entitled to payment of an Administrative  
17 Expense Claim.

18 2. Administrative Expense Claim: Any cost or expense of administration of the  
19 Bankruptcy Case that is entitled to priority in accordance with Bankruptcy Code sections 503(b)  
20 and 507(a)(1), including, without limitation: any actual and necessary expenses of preserving the  
21 Estate incurred from and after the Petition Date through and including the Confirmation Date; all  
22 allowances of compensation and reimbursement of costs and expenses to Professional Persons,  
23 as approved by a Final Order of the Bankruptcy Court; and any fees or charges assessed against  
24 the Estate under Chapter 123 of Title 28 of the United States Code.

25 3. Allowed: With respect to a Claim of any nature, a Claim is "Allowed" if it meets  
26 either of the following two requirements:

- 27 a. proof of such Claim was filed on or before the Bar Date, or, if no proof of  
28 claim is filed, the Claim has been or hereafter is listed by the Debtor in its

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

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

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

9 5. Bankruptcy Case: The instant bankruptcy case.

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

12 7. Bankruptcy Court: The unit of the United States District Court for the District of  
13 Nevada, constituted pursuant to section 1515 of Title 28 of the United States Code, having  
14 jurisdiction over the Bankruptcy Case to the extent of any reference made pursuant to section  
15 157(a) of Title 28 of the United States Code, or in the event such court ceases to exercise  
16 jurisdiction over the Bankruptcy Case, such court or adjunct thereof that has jurisdiction over the  
17 Bankruptcy Case.

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

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

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

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

27 12. Cash: Cash and cash equivalents, including, but not limited to, bank deposits,  
28 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 "I"  
25   hereto.

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

28   ///

- 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

28 ///

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  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

- THIS PAGE INTENTIONALLY LEFT BLANK -

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

EXHIBIT 1

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

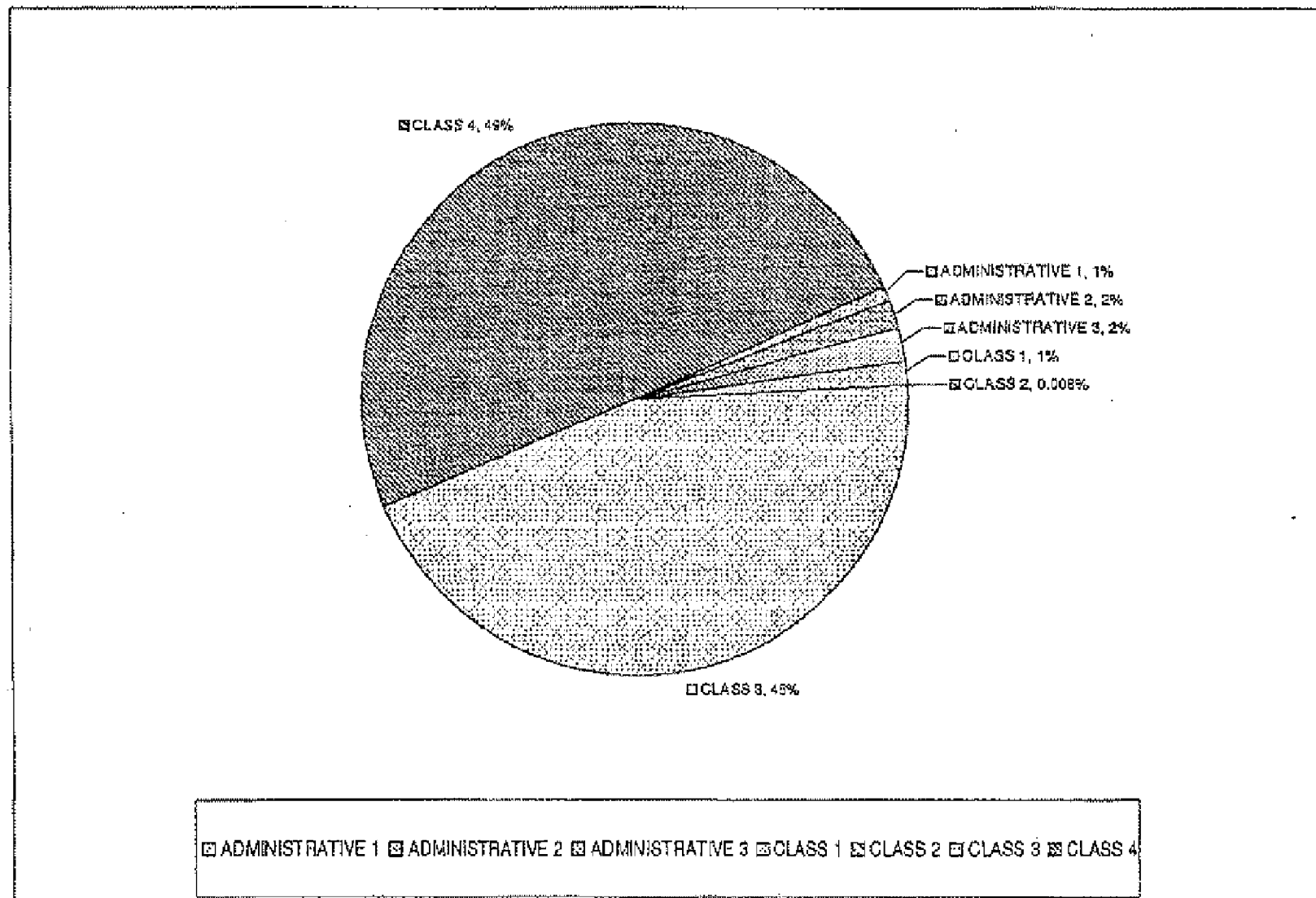
A

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

CLAIMANT CLASS	DESCRIPTION	Amount Claimed <sup>1</sup>	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 <sup>1</sup>	\$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 <sup>2</sup>	(\$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	GMAC	\$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 <sup>3</sup>	\$0	\$0	0.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$29,328,115	(\$20,000,000)	\$0	0.00%

FUNDS REMAINING IN ESTATE

\$0.00



<sup>1</sup> 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.

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

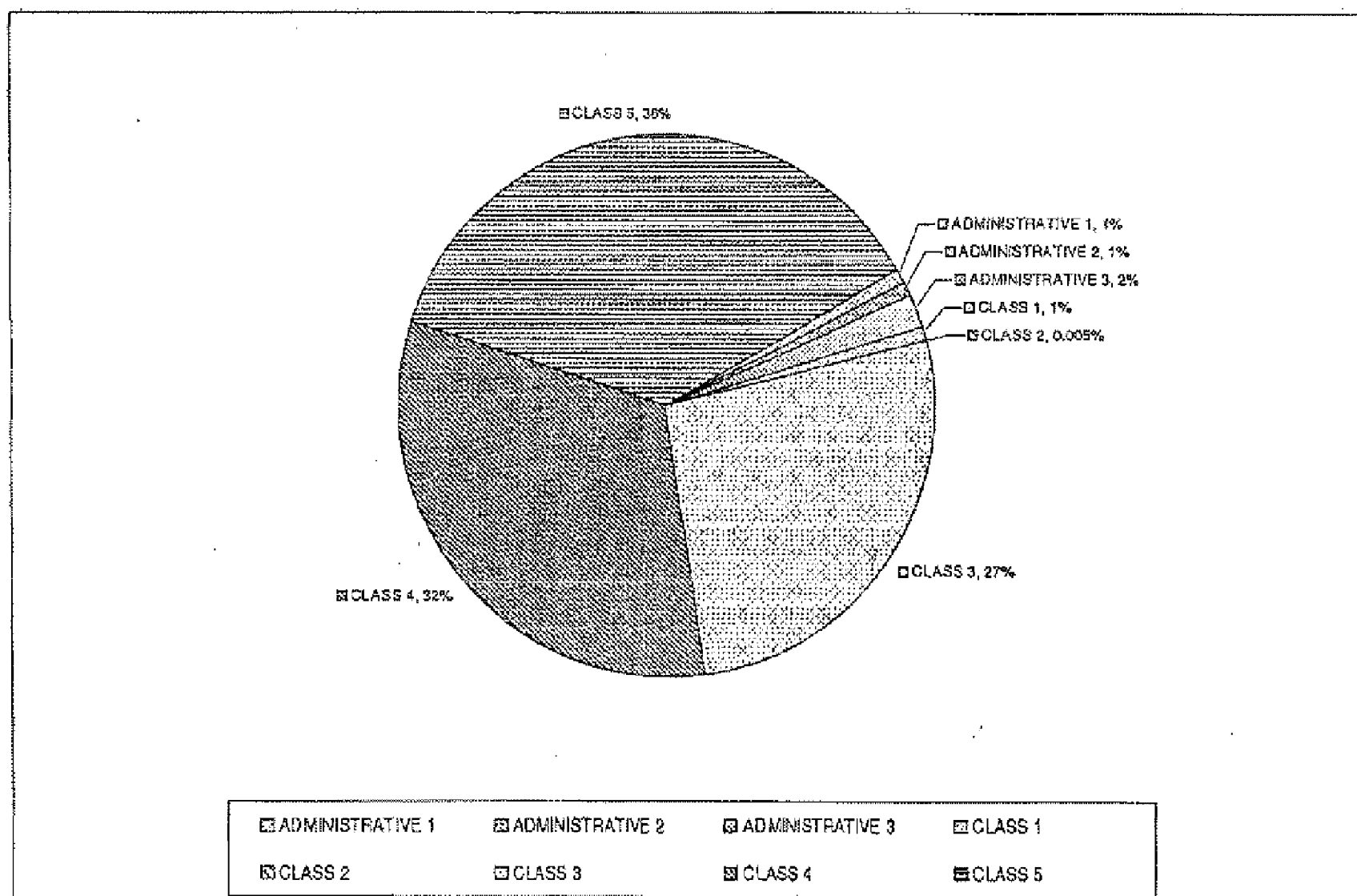
<sup>3</sup> This figure represents the total value of all claims in this class at the amounts asserted in each proof of claim, or, if no proof of claim was filed, at the amounts scheduled by the Debtor in its bankruptcy filing. In the event that the estate has sufficient funds to pay claims in this 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

CREATOR CLASS	DESCRIPTION	Amount Tentatively 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 <sup>1</sup>	\$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 <sup>2</sup>	(\$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 - \$6.2M	\$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 <sup>3</sup>	\$0	\$0	0.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$50,828,175	(\$30,000,000)	\$0	59.87%
FUNDS REMAINING IN ESTATE				\$0.00	



<sup>1</sup> 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.

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

<sup>3</sup> 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

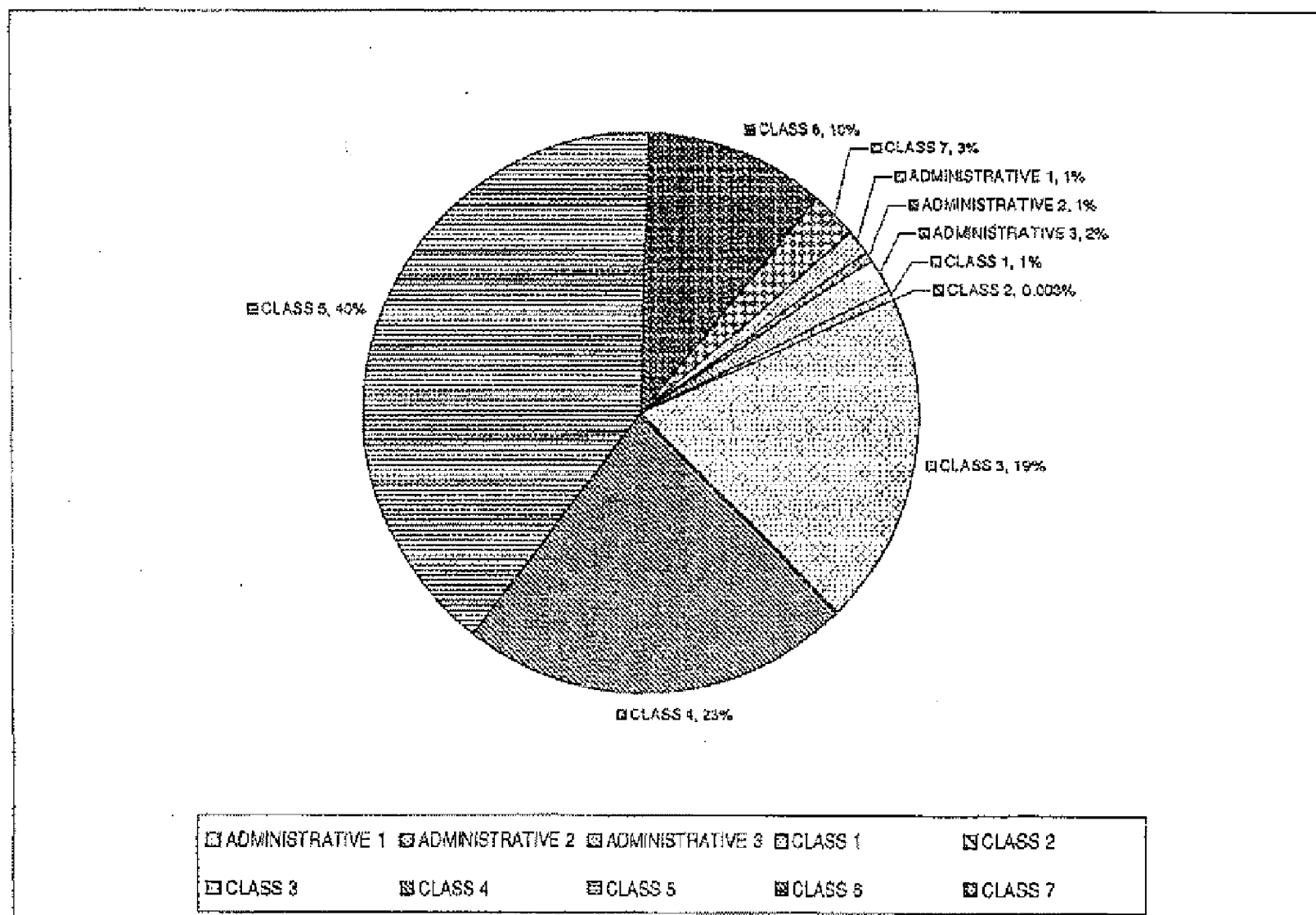
C

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

CLAIMANT CLASS	DESCRIPTION	Amount Allowed	Proposed Payment	\$70,000,000	Distribution %
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 <sup>1</sup>	\$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 <sup>2</sup>	(\$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 <sup>3</sup>	\$0	\$0	0.00%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$74,378,155	(\$70,000,000)	\$0	72.76%

FUNDS REMAINING IN ESTATE

\$0.00



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

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

<sup>3</sup> This figure represents the total value of all claims in this class at the amounts asserted in each proof of claims, 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.

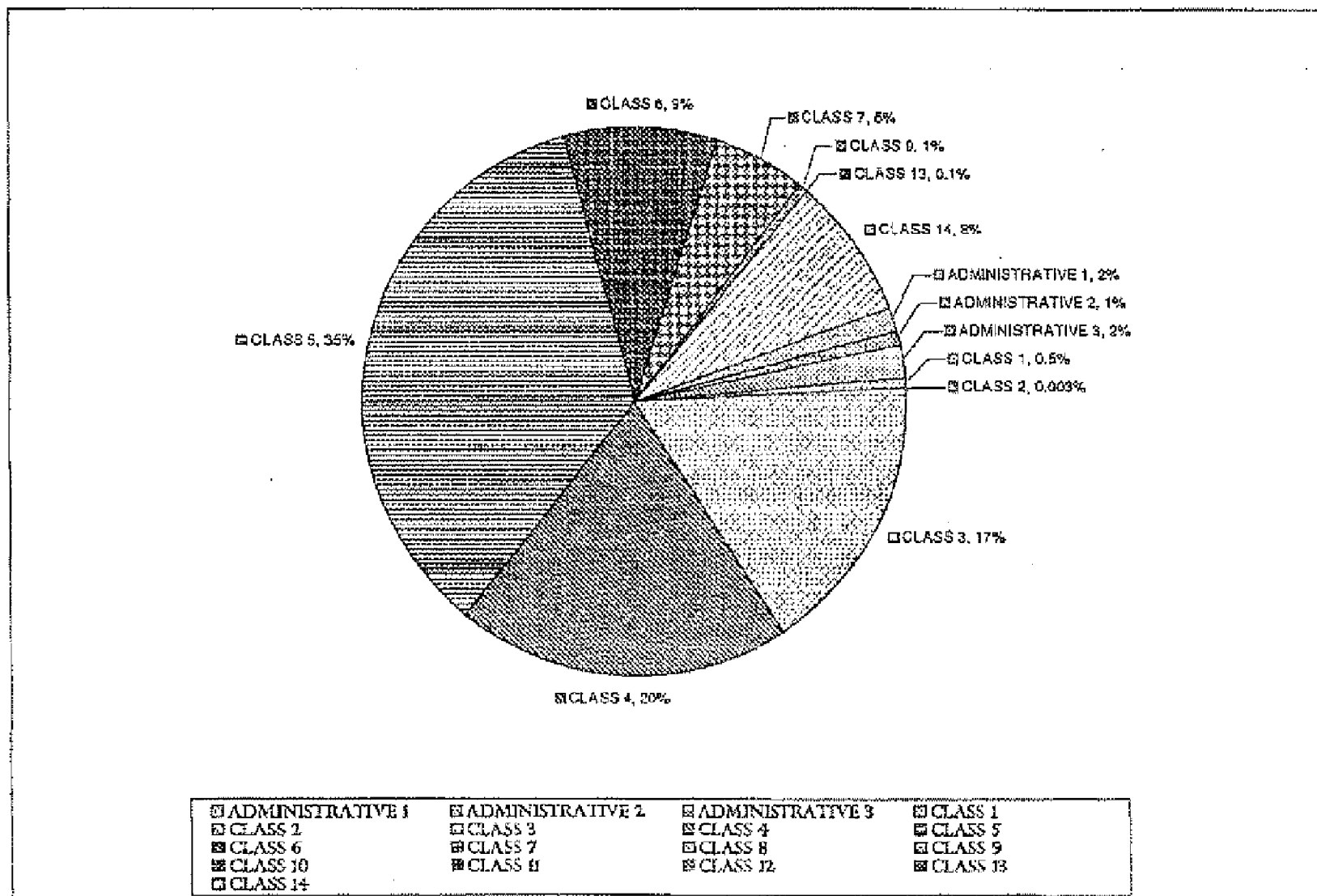


Tower Homes, LLC - Case No. 07-13208  
Proposed Distribution at \$80 Million

D

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

CREDIT CLASS	DESCRIPTION	Amount Tentatively Allowed	Proposed Payout	\$80,000,000	Distribution %
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 <sup>1</sup>	\$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 <sup>2</sup>	(\$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 <sup>3</sup>	(\$6,586,939)	\$0	30.13%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
TOTAL		\$75,275,155	(\$20,000,000)	\$0	94.63%



<sup>1</sup> 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.

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

<sup>3</sup> 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

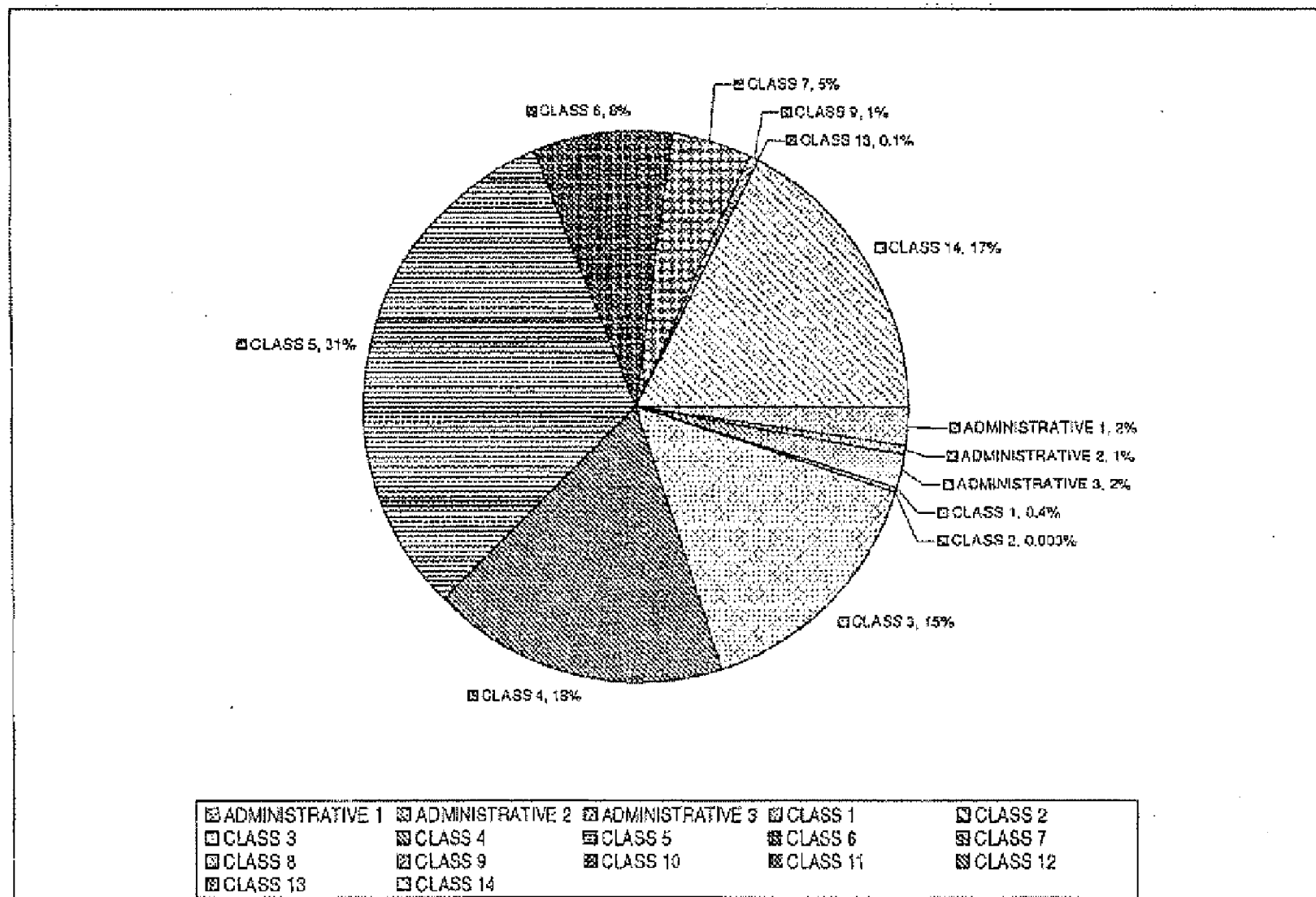
E

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

CREDITORS 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	\$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 <sup>1</sup>	\$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 <sup>2</sup>	(\$13,369,288)	\$72,053,452	100.00%
CLASS 4	ONECAP CLAIM 42 - \$13M	\$15,031,671	(\$15,031,671)	\$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 <sup>3</sup>	(\$15,686,939)	\$0	71.74%
CLASS 15	SUBORDINATED	\$0	\$0	\$0	0.00%
CLASS 16	EQUITY INTERESTS	\$0	\$0	\$0	0.00%
<b>TOTAL</b>		<b>\$90,138,515</b>	<b>(\$90,000,000)</b>	<b>\$0</b>	<b>0.00%</b>

FUNDS REMAINING IN ESTATE

\$0.00



<sup>1</sup> 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.

<sup>2</sup> The three OneCap figures represent the principal loan balances, with accrued interest, through August 14, 2005.

<sup>3</sup> 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  
Refinanced at \$80 Million

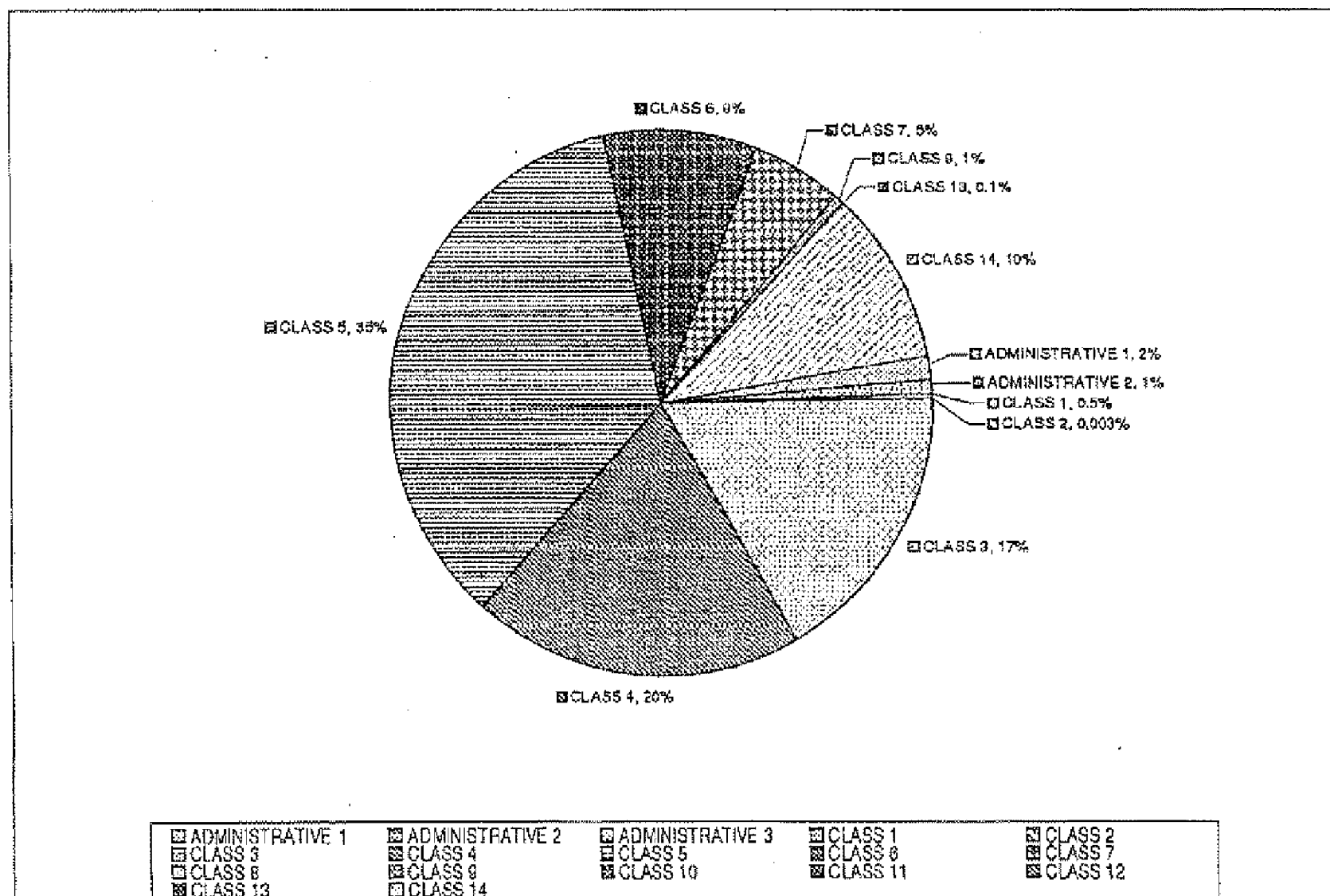
G

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

CREDITOR CLASS	DESCRIPTION	Amount Allowed <sup>1</sup>	Proposed Payment	\$80,000,000	Distribution %
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 <sup>1</sup>	\$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 <sup>2</sup>	(\$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 <sup>3</sup>	(\$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



<sup>1</sup> 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.

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

<sup>3</sup> This figure represents the value of all claims allowed against the estate (\$21,872,389) after discounts negotiated by Yankee with various creditors (\$13,686,600), as required under the Trustee's plan.

EXHIBIT 2

AA000578

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	TOUMAIAN, MARTIN
33	WESTFIELD, LISA
34	WILLIAMS, ARTHUR
35	WOODCOCK, JACK

EXHIBIT 2  
1 OF 1

AA000579

# **EXHIBIT "B"**



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.  
Nevada Bar No. 10068  
10001 Park Run Drive  
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:

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

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

Debtor.

**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

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 soley  
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:

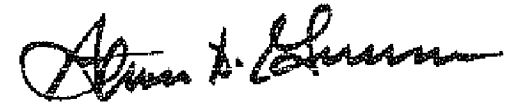
  
Terry A. Coffing, Esq.  
Nevada Bar No. 4949  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
Attorneys for the Tower  
Homes Purchasers

By:

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

# **EXHIBIT "C"**



CLERK OF THE COURT

1 V. ANDREW CASS  
Nevada Bar No. 005246  
2 [cass@lbbslaw.com](mailto:cass@lbbslaw.com)  
JEFFREY D. OLSTER  
3 Nevada Bar No. 008864  
[olster@lbbslaw.com](mailto:olster@lbbslaw.com)  
4 LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
5 Las Vegas, Nevada 89118  
Tel: 702.893.3383  
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

11 TOWER HOMES, LLC, a Nevada limited  
12 liability company;

13 Plaintiff,

14 vs.

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

18 Defendants.  
19

Case No.: A-12-663341-C  
Dept. No.: 26

ORDER REGARDING DEFENDANTS'  
MOTION TO DISMISS, OR  
ALTERNATIVELY, MOTION FOR  
SUMMARY JUDGMENT

Date of Hearing: October 3, 2012  
Time of Hearing: 9:00 a.m.

20 The Motion to Dismiss, or alternatively, Motion for Summary Judgment by defendants  
21 William H. Heaton and Nitz, Walton & Heaton, Ltd. came on for hearing in Department 26 before  
22 the Hon. Gloria Sturman on October 3, 2012. Jeffrey Olster of Lewis Brisbois Bisgaard & Smith  
23 LLP appeared on behalf of defendants William H. Heaton and Nitz, Walton & Heaton, Ltd.  
24 Dennis Prince of Prince & Keating appeared on behalf of plaintiff Tower Homes, LLC.

25 The Court has considered the moving, opposition and reply papers, as well as the oral  
26 arguments of counsel, and good cause appearing therefore,  
27  
28

1 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss, or in the alternative,  
2 Motion for Summary Judgment, is denied. Defendants seek dismissal (or summary judgment) on  
3 two grounds: (1) Plaintiff is not authorized by its bankruptcy trustee and the Bankruptcy Court to  
4 bring this action; and (2) Plaintiff's claims for relief (legal malpractice and breach of fiduciary  
5 duty) are barred by the statute of limitations.

6 With respect to the statute of limitations issue, the Court denies Defendants' Motion  
7 because the bankruptcy trustee could not have known what the claims against Tower Homes, LLC  
8 were until the underlying state court litigation was resolved. The stipulation and order dismissing  
9 the underlying state court litigation was filed on July 5, 2011.

10 With respect to the Bankruptcy Court authority issue, the Court denies Defendants' Motion  
11 because this issue presents a procedural, not a fatal, defect. The Court, however, does agree with  
12 Defendants that the "Marquis Aurbach Order" does not authorize Plaintiff bring this action  
13 through the law firm of Prince & Keating against Mr. Heaton and Nitz, Walton & Heaton, Ltd.  
14 Plaintiff may attempt to remedy this procedural defect by obtaining the requisite authority from  
15 the Tower Homes, LLC bankruptcy trustee and order from the Bankruptcy Court.

16 IT IS FURTHER ORDERED, therefore, that this matter shall be stayed until Plaintiff  
17 obtains the requisite authority for this action from the bankruptcy trustee and order from the  
18 Bankruptcy Court.

19 Dated this 31 day of October, 2012.

20  
21  
22   
23 DISTRICT COURT JUDGE  
24  
25  
26  
27  
28



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

Submitted by:

LEWIS BRISBOIS BISGAARD & SMITH LLP



V. Andrew Cass  
Nevada Bar No. 005246

Jeffrey D. Olster  
Nevada Bar No. 008864  
6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118  
Attorneys for Defendants

*William H. Heaton and  
Nitz, Walton & Heaton, Ltd.*

# **EXHIBIT "D"**

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

NEOJ  
DENNIS M. PRINCE  
Nevada Bar No. 5092  
**PRINCE & KEATING**  
3230 South Buffalo Drive, Suite 108  
Las Vegas, Nevada 89117  
Telephone: (702) 228-6800  
Facsimile: (702) 228-0443  
E-Mail: [DPrince@PrinceKeating.com](mailto: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-12-663341-C  
DEPT. NO.: XXVI

**NOTICE OF ENTRY OF ORDER**

PLEASE TAKE NOTICE that an Order was entered in Case No. BK-07-13208-BAM  
pertaining to the above-referenced matter on the 2<sup>nd</sup> day of April, 2013, a copy of which is  
attached hereto.

DATED this 8 day of April, 2013.

**PRINCE & KEATING**

  
DENNIS M. PRINCE  
Nevada Bar No. 5092  
3230 South Buffalo Drive, Suite 108  
Las Vegas, Nevada 89117  
Attorney for Plaintiff  
*Tower Homes, LLC*

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

CERTIFICATE OF MAILING

I hereby certify that on the 8 day of April, 2013, I caused service of the foregoing  
NOTICE OF ENTRY OF ORDER to be made by depositing a true and correct copy of same in  
the United States Mail, postage fully prepaid, addressed to the following:

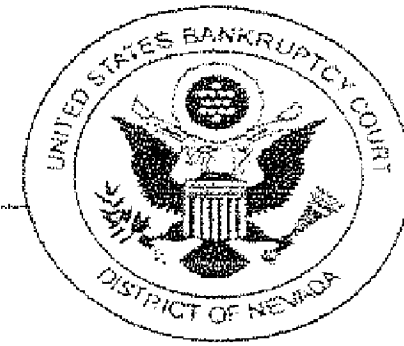
Jeffrey Olster, Esq.  
Lewis Brisbois Bisgaard & Smith  
6385 South Rainbow Boulevard  
Suite 600  
Las Vegas, NV 89118  
Attorneys for Defendants



\_\_\_\_\_  
An employee of PRINCE & KEATING

*Bruce A. Markell*

Honorable Bruce A. Markell  
United States Bankruptcy Judge



Entered on Docket  
April 02, 2013

Marquis Aurbach Coffing  
TERRY A. COFFING, ESQ.  
Nevada Bar No. 4949  
ZACHARIAH LARSON, ESQ.  
Nevada Bar No. 7787  
BRIAN HARDY, ESQ.  
Nevada Bar No. 10068  
10001 Park Run Drive  
Las Vegas, Nevada 89145  
tcoffing@maclaw.com  
zlarson@maclaw.com  
bhardy@maclaw.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: April 1, 2013  
Hearing Time: 9:00 AM  
Courtroom 3

**ORDER GRANTING MOTION TO APPROVE AMENDED STIPULATION TO  
RELEASE CLAIMS AND ALLOW MARQUIS AURBACH COFFING, 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 April 1, 2013, on the Motion to Approve Amended Stipulation to Release Claims and Allow Marquis Aurbach Coffing 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 Coffing, the Court finding based upon the reasons stated on the record, the

MARQUIS AURBACH COFFING

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

1 papers and pleadings on file herein, the Motion, the oral arguments of counsel, and good cause  
2 appearing;

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

7 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that this Order  
8 authorizes the Trustee to permit the Tower Homes Purchasers, to pursue any and all claims on  
9 behalf of Tower Homes, LLC (the "Debtor") against any individual or entity which has or may  
10 have any liability or owed any duty to Debtor or others for the loss of the earnest money deposits  
11 provided by purchasers for units in the Spanish View Tower Homes condominium project which  
12 shall specifically include, but may not be limited to, pursuing the action currently filed in the  
13 Clark County District Court styled as Tower Homes, LLC v William H. Heaton et. al. Case No.  
14 A-12-663341-C.

15 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that this Court hereby  
16 authorizes the law firm of Marquis Aurbach Coffing, and/or Prince & Keating LLP, or  
17 successive counsel, retained on behalf of Tower Homes Purchasers to recover any and all earnest  
18 money deposits, damages, attorneys fees and costs, and interest thereon on behalf of Debtor and  
19 the Tower Homes Purchasers and that any such recoveries shall be for the benefit of the Tower  
20 Homes Purchasers.

21 **IT IS SO ORDERED.**

22 Respectfully Submitted By:

23 MARQUIS AURBACH COFFING

24 By/s/ Brian Hardy, Esq.

25 Brian Hardy, Esq.  
26 Nevada Bar No. 10068  
27 10001 Park Run Drive  
28 Las Vegas, Nevada 89145  
Attorney(s) for Tower Homes Purchasers

LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☒ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below:

--	--

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

I declare under penalty of perjury that the foregoing is true and correct.

MARQUIS AURBACH COFFING

By: /s/ Brian Hardy, Esq.

Brian Hardy, Esq.  
Nevada Bar No. 10068  
10001 Park Run Drive  
Las Vegas, NV 89145  
Attorney(s) for Debtor and  
Debtor-in-Possession

###

# **EXHIBIT "E"**





SHERI BRUCE, Plaintiff, v. HOMEFIELD FINANCIAL, INC., et al., Defendants.

Case No. 2:10-CV-2164-KJD-PAL

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA

2011 U.S. Dist. LEXIS 110243

September 23, 2011, Decided  
September 23, 2011, Filed

**COUNSEL:** [\*1] Sherri Bruce, Plaintiff, Pro se, Henderson, Nv.

For Appleton Properties, LLC, Intervenor Plaintiff: Roger P. Croteau, Roger P. Croteau & Associates, LTD., Las Vegas, NV.

For Mortgage Electronic Registration Systems Inc., Specialized Loan Servicing, LLC, Defendants: Donna M. Osborn, LEAD ATTORNEY, Wright Finlay & Zak, LLP, Las Vegas, NV; Robin P. Wright, Wright, Finlay & Zak, LLP, Newport Beach, CA.

For Quality Loan Service Corporation, Defendant: Christopher M Hunter, McCarthy & Holthus, Las Vegas, NV; Kristin A Schuler-Hintz, McCarthy & Holthus, LLP, Las Vegas, NV.

Sherri Bruce, Intervenor Defendant, Pro se, Las Vegas, Nv.

**JUDGES:** Kent J. Dawson, United States District Judge.

**OPINION BY:** Kent J. Dawson

## OPINION

## ORDER

Presently before the Court is Defendant Quality Loan Service Corporation's Motion to Dismiss (#7). Defendants Mortgage Electronic Registration Systems, Inc. ("MERS") and Specialized Loan Servicing, LLC ("Specialized") filed a Joinder (#10) to the motion to dismiss. Plaintiff filed a response in opposition (#15) to which Defendant Quality replied (#16).

## I. Facts

On or about July 26, 2006, Plaintiff executed a Deed of Trust securing financing for real property located at 2914 Currant Lane, Henderson, Nevada [\*2] ("the Property"). The Deed of Trust and associated Note required Plaintiff to repay the sum of \$213,600.00 in monthly installments to the lender, Defendant Homefield Financial, Inc. ("Homefield").

On September 10, 2009, Plaintiff filed a Chapter 7 bankruptcy case in the District of Nevada. Plaintiff received a Chapter 7 bankruptcy discharge on December 16, 2009. On August 10, 2010, Defendant Quality Loan Service Corporation ("Quality"), as agent for beneficiary, recorded notice of default and election to sell due to Plaintiff's default on her obligations under the Note and Deed of Trust beginning on or about June 1, 2009. On August 23, 2010, the Deed of Trust was assigned to Deutsche Bank National Trust Company ("Deutsche Bank"), acting as the new trustee. The assignment was executed by Defendant MERS, acting as nominee for Homefield.

On September 3, 2010, Specialized, acting as agent for Deutsche Bank, substituted Quality as Trustee. Quality recorded Notice of Trustee's Sale on December 7, 2010, setting December 27, 2010 as the date for public auction. On December 27, 2010, the Property was sold to third-party, Appleton Properties, LLC. The Trustee's Deed Upon Sale was recorded on January [\*3] 19, 2011. Plaintiff filed the present complaint on December 14, 2010. Defendant Quality then filed the present motion to dismiss asserting that Plaintiff's bankruptcy discharge acts as judicial estoppel to her Truth-in-Lending Act ("TILA") claims, Plaintiff's fraud claims fail because

MERS is not required to be licensed in Nevada, and the wrongful foreclosure claims are meritless.

## II. Standard for a Motion to Dismiss

In considering a motion to dismiss, "all well-pleaded allegations of material fact are taken as true and construed in a light most favorable to the non-moving party." *Wyler Summit Partnership v. Turner Broadcasting System, Inc.*, 135 F.3d 658, 661 (9th Cir. 1998) (citation omitted). Consequently, there is a strong presumption against dismissing an action for failure to state a claim. See *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997) (citation omitted).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). Plausibility, in the context of a [\*4] motion to dismiss, means that the plaintiff has pleaded facts which allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

The *Iqbal* evaluation illustrates a two prong analysis. First, the Court identifies "the allegations in the complaint that are not entitled to the assumption of truth," that is, those allegations which are legal conclusions, bare assertions, or merely conclusory. *Id.* at 1949-51. Second, the Court considers the factual allegations "to determine if they plausibly suggest an entitlement to relief." *Id.* at 1951. If the allegations state plausible claims for relief, such claims survive the motion to dismiss. *Id.* at 1950.

## III. Analysis

### A. TILA Claims

When a bankruptcy petition is filed, an "estate" is created, consisting of all of the debtor's interests, both legal and equitable, in all property, both tangible and intangible. 11 U.S.C. § 541(a); *Hillis Motors, Inc. v. Hawaii Auto. Dealers' Ass'n*, 997 F.2d 581, 585 (9th Cir. 1993); *In re Suter*, 396 B.R. 535, 540-41 (D. Nev. 2008). Thereafter, the property of the estate is distinct from the property of the debtor. See *id.* at 541. In general, causes of action existing [\*5] at the time the bankruptcy petition is filed are considered property of the estate. See *Sierra Switchboard Co. v. Westinghouse Elec. Corp.*, 789 F.2d 705, 707 (9th Cir. 1986). A debtor is "precluded from pursuing claims" that she did not disclose during her bankruptcy proceedings. *Hamilton v. State Farm*, 270 F.3d 778, 783 (9th Cir. 2001).

Accordingly, Plaintiff's allegation of predatory lending and TILA violations must be dismissed because they are property of the estate, properly brought by the trustee. See *Fed. R. Civ. P.* 17 ("[a]n action must be prosecuted in the name of the real party in interest"). Furthermore, Plaintiff failed to disclose the claims during her bankruptcy proceedings and, therefore, is precluded from pursuing them now. See *Hamilton*, 270 F.3d at 783.

Furthermore, even if Plaintiff could pursue the claims, the statute of limitations bars them from being brought now. Plaintiff's claims under TILA are subject to a one-year statute of limitations. See 15 U.S.C. §1640(e); *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 2011 U.S. App. LEXIS 18569, 2011 WL 3911031 \*8 (9th Cir. September 7, 2011). The limitations period began to run when Plaintiff executed her loan documents, because she should [\*6] have discovered the alleged disclosure violations and discrepancies at that time. See *id.* The running of the limitations period is apparent on the face of the complaint because Plaintiff obtained the loan on or about July 26, 2006 and the present action was not filed until December 14, 2010. Accordingly, Plaintiff's claims for predatory lending and TILA violations are dismissed.

### B. Fraud

Plaintiff's second cause of action for fraud against MERS is based upon the allegation that MERS executed the assignment of the Deed of Trust, and, therefore, was doing business in Nevada without being licensed. However, Nevada has specifically excluded activities including: "(a) maintaining, defending, or settling any proceeding . . . (g) creating or acquiring indebtedness mortgages and security interest in real or personal property, (h) securing or collecting debts or enforcing mortgages and security interests in property securing the debts." *NRS § 80.015*. MERS' actions, which were directed at enforcing mortgages and protecting security interests in real property fall within the exemptions of the Nevada statute. See *Ernestberg v. Mortgage Investors Group*, 2009 U.S. Dist. LEXIS 4560, 2009 WL 160241, \*6 (D. Nev. Jan. 22, 2009). [\*7] Thus, MERS was not required to register with the Nevada Secretary of State. Therefore, the Court dismisses Plaintiff's fraud claim.

### C. Wrongful Foreclosure

Essentially, Plaintiff claims that Defendants wrongfully foreclosed on the Property, because the loan had been securitized, no party was properly authorized to act on behalf of the note holder or beneficiary, and therefore, no actions were taken in compliance with the Nevada statute, *NRS § 107.080*, authorizing non-judicial foreclosure. However, after examining each document referenced in or attached to Plaintiff's complaint, the Court

can find no deficiency in the assignments of the Deed of Trust, substitutions of Trustee, or notices required in Nevada statute. Each party that acted was authorized to take those actions by the contract, the Deed of Trust and Note, that Plaintiff executed. Furthermore, Plaintiff's claims regarding securitization of the Note and the involvement of MERS, acting as a nominee of the Lender, have been foreclosed by the Ninth Circuit. See *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 2011 U.S. App. LEXIS 18569, 2011 WL 3911031 \*8 (9th Cir. September 7, 2011).

Thus, unless Plaintiff alleges that MERS initiated foreclosure in [\*8] its own name, or that state recording and foreclosure statutes had been violated, Plaintiff's claims cannot stand. See *Cervantes*, 2011 U.S. App. LEXIS 18569, [WL] at \*7. Here, Plaintiff does not allege that MERS initiated foreclosure in its own name. Furthermore, the Court's review of the Deed of Trust and judicially noticed, recorded documents demonstrates no defect as alleged by Plaintiff. Finally, Plaintiff's wrongful foreclosure claims fail, because Plaintiff does not dispute that she is in default and cannot cure the default. Nevada recognizes the tort claim of wrongful foreclosure where a homeowner alleges that a lender wrongfully exercised the power of sale and foreclosed upon her property when the homeowner was not in default on the mortgage loan. See *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2d 610, 623 (Nev. 1983). However, Plaintiff

does not dispute her delinquency on the mortgage. Therefore, the Court dismisses Plaintiff's claim for wrongful foreclosure.<sup>1</sup>

1 To the extent that Plaintiff claims that Defendants have violated 18 U.S.C. § 1344, the Court must dismiss this claim, because there exists no private right of action under this federal, criminal statute.

#### IV. Conclusion

Accordingly, IT IS HEREBY ORDERED [\*9] that Defendant Quality Loan Service Corporation's Motion to Dismiss (#7) is **GRANTED**;

IT IS FURTHER ORDERED that all other outstanding motions are **DENIED as moot**;

IT IS FURTHER ORDERED that the Clerk of the Court enter **JUDGMENT** for Defendants and against Plaintiff.

DATED this 23rd day of September 2011.

/s/ Kent J. Dawson

Kent J. Dawson

United States District Judge