

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
www.flsb.uscourts.gov

In re:

ABERDEEN LAND II, LLC
d/b/a ABERDEEN

Chapter 11

Case No. 3:13-bk-04103-JAF

Debtor(s).

**LIMITED RESPONSE AND OPPOSITION TO THE (I) JOINT
MOTION TO DISMISS BANKRUPTCY CASE, AND (II) JOINT MOTION
FOR RELIEF FROM STAY FILED BY ABERDEEN COMMUNITY
DEVELOPMENT DISTRICT AND U.S. BANK, NATIONAL ASSOCIATION**

BBX Capital Asset Management, LLC (“**BBX**”), through undersigned counsel, files this limited response and opposition (“**Response**”) to the (I) *Joint Motion to Dismiss Bankruptcy Case* [ECF No. 57] (“**Dismissal Motion**”), and (II) *Joint Motion for Relief from the Automatic Stay* [ECF No. 59] (“**Stay Relief Motion**,” and together with the Dismissal Motion, the “**Motions**”) filed by the Aberdeen Community Development District (the “**CDD**”) and U.S. Bank, National Association, as indenture trustee (the “**Indenture Trustee**,” and collectively with the CDD, the “**Movants**”), and in support of this Response, respectfully states as follows:

BACKGROUND

1. On July 1, 2013 (“**Petition Date**”), the Debtor filed with this Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.
2. On October 4, 2013, the Debtor filed its *First Amended Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [ECF No. 65]. On October 4, 2013, the Debtor filed a disclosure statement in support of the First Amended Plan [ECF No. 66].
3. On October 7, 2013, the Court approved the First Amended Disclosure Statement

subject to certain additional revisions and filing of a further amended Disclosure Statement and Plan.

4. On October 11, 2013, the Debtor filed the *Second Amended Disclosure Statement for Second Amended Plan of Reorganization of the Debtor Pursuant to Chapter 11 of the United States Bankruptcy Code (“Disclosure Statement”)* [ECF No. 74] and *Second Amended Plan of Reorganization for Aberdeen Land II, LLC (the “Plan”)* [ECF No. 73].

5. On October 17, 2013, the Court entered an Order approving the Disclosure Statement and setting a Confirmation Hearing on January 16, 2014. *See* ECF No. 77.

6. The Debtor owns land in, and operates and/or is otherwise affiliated with, the fully integrated, high quality master-planned residential community known as “Aberdeen” (“*Aberdeen Development*”) located in Northwest St. Johns County just west of Durbin Crossing. The Aberdeen Development comprises approximately 1,300 acres nestled around large wetland conservation area.

7. Specifically, the Debtor owns 912 undeveloped single family and multifamily residential lots in the Aberdeen Development, as well as 28.1 +/- acres of property which is zoned for the development of commercial and/or office space (“*Property*”). The Aberdeen Wood Lots referenced in the Motions are those lots owned by the Debtor and located in the Aberdeen Development Phase 2 residential subdivision and consisting of (i) 125 undeveloped residential lots located within Parcel A and (ii) 135 undeveloped residential lots located within Parcels G2 and K (“*Aberdeen Wood Lots*”).

8. On August 30, 2004, Aberdeen of St. Johns, LLC (“*ASJ*”), an entity not affiliated with the Debtor, executed a Promissory Note (“*ASJ Note*”) and Mortgage Deed and Security Agreement (“*Mortgage*”) in favor of BankAtlantic (“*BankAtlantic*”) in the principal amount of \$18,790,000. The Mortgage was recorded on September 15, 2004, in the Public Records of St. Johns County, Florida. The ASJ Note was also secured by, among other things, the Aberdeen Wood Lots. On January 31, 2010, ASJ, as Borrower, executed a Mortgage Modification Agreement and renewal notes modifying and

trifurcating the ASJ Note as follows: (i) Renewal/Amended and Restated Promissory Note dated as of February 1, 2010 in the principal amount of \$6,000,000 (“*Note A*”); (ii) Renewal/ Amended and Restated Promissory Note dated as of February 1, 2010 in the principal amount of \$1,500,000 (“*Note B*”); and (iii) Renewal/Amended and Restated Promissory Note dated as of February 1, 2010 in the principal amount of \$13,317,593.89 (“*Note C*”). In accordance with an *Assignment of Mortgage and Related Loan Documents*, and certain related documents, dated as of July 13, 2012 (“*Assignment*”), BBX acquired BankAtlantic’s position with respect to the ASJ Note and the ASJ Mortgage and related loan and security documents.

9. On January 30, 2013, ASJ and the Debtor entered into an Agreement (“*Sale Agreement*”) which conveyed to the Debtor the Aberdeen Woods Lots for \$100,000. The CDD special assessments remained in place, as did the ASJ Mortgage.

BBX’S RESPONSE AND OPPOSITION TO MOTIONS

10. BBX, which is unaffiliated with the Debtor, supports the Debtor’s efforts to reorganize and pursue confirmation of its proposed plan. For that reason, BBX entered into its Plan Support Agreement with the Debtor. It appears the Debtor has acted expediently to move towards confirmation of its Plan as soon as reasonably practicable for the benefit of all interested parties. Providing the Debtor an opportunity to seek confirmation in two months should not prejudice the Movants.

11. In connection with a pre-petition arms-length transaction, ASJ sold the Aberdeen Woods Lots to the Debtor subject to the ASJ Mortgage held by BBX. BBX was not obligated to release its liens on the Aberdeen Woods Lots and was entitled to retain its lawful liens.

12. BBX’s proof of claim (POC #6) (“*BBX Claim*”) notes that the Debtor was indebted to BBX as of the Petition Date in the amount of \$16,857,764.90 pursuant to Note B and Note C. While Note B has since been paid, resulting in Note C being forgiven, BBX retains a right to share in a portion

of Lot sale proceeds going forward. As such, BBX agreed, in accordance with the Plan Support Agreement to accept certain amounts in resolution of the Debtor's remaining obligations to BBX – *i.e.* between \$2.6MM and \$4.16MM, depending on when the Debtor paid the release price.

13. Accordingly, BBX opposes the dismissal of the Debtor's chapter 11 case and the granting of the Movants' requested relief from the automatic stay. Given the Debtor's progress to date coupled with the impending January 16, 2014 confirmation hearing, BBX asserts that the Debtor should be afforded an opportunity to pursue confirmation of its Plan and therefore respectfully submits that the Motions should be denied.

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that a true and correct copy of the foregoing was served on November 13, 2013, via (i) the Court's Notice of Electronic Filing upon the Registered Users listed on the attached Exhibit "1" and (ii) E-mail to Paul J. Battista, Esq. (pbattista@gjb-law.com), Jonathan Sykes, Esq. (jonathan.sykes@burr.com) and Marc P. Solomon, Esq. (msolomon@burr.com).

s/ Michael S. Budwick

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EXHIBIT 1

3:13-bk-04103-JAF Notice will be electronically mailed to:

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Jonathan Sykes on behalf of Creditor U.S. Bank National Association as Trustee under that certain Master Trust Indenture dated as of October 1, 2005 by and between Aberdeen Community Development District and the Trustee

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