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

9 In Re: **CASE NO.: BK-N-16-51162**

10 SECURED ASSETS BELVEDERE TOWER, **CHAPTER 11**
11 LLC, a Nevada limited liability company,

12 Debtor.

**BELVEDERE DEBT HOLDINGS,
LLC'S OPPOSITION TO DEBTOR'S
AMENDED DISCLOSURE
STATEMENT IN SUPPORT OF
CHAPTER 11 PLAN OF
REORGANIZATION AND AMENDED
CHAPTER 11 PLAN OF
REORGANIZATION**

Date: March 23, 2017
Time: 2:00 p.m.
Set By: OST, Dkt. 338

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21 Secured Creditor Belvedere Debt Holdings, LLC ("BDH"), by and through its counsel,
22 Robison, Belaustegui, Sharp & Low, hereby files its Opposition (the "Opposition") to Debtor's
23 Amended Disclosure Statement in Support of Plan of Reorganization (the "Amended Disclosure
24 Statement"), Dkt. 340, and Debtor's Amended Chapter 11 Plan of Reorganization (the
25 "Amended Plan"), Dkt. 341. This Opposition is based upon the following points and authorities,
26 the Transcript of the Second Day of Settlement Conference¹, any subsequent memorandum or
27 declarations filed in support hereof, the pleadings and papers on file herein, of which this Court

28 ¹ The transcript is attached as Exhibit B to the Amended Disclosure Statement and is also attached hereto as Exhibit 1 for the Court's convenience.

1 is requested to take judicial notice, and the arguments of counsel at the hearing on this matter.

2 **PRELIMINARY STATEMENT**

3 This Court conducted a settlement conference in this matter on February 1 and 2, 2017. The
4 Debtor, Secured Assets Belvedere Towers, LLC (the “Debtor” or “SABT”); BTM, LLC (“BTM”);
5 BDH; Ananda Advisors, LLC (“Ananda Advisors”); Ananda Partners 1, LLC (“Ananda 1”); Ananda
6 Partners III, LLC (itself and as successor by merger to Ananda Partners II, LLC) (“Ananda III”);
7 Annealisa, LLC (“Annealisa”); Kalassen, LLC (“Kalassen”); Naju, LLC (“Naju”)²; and David
8 Lonich participated in the settlement conference. A copy of the Transcript of Second Day of
9 Settlement Conference (the “Transcript”) is attached hereto as Exhibit 1.

10 In this Opposition., SABT; BTM; BDH; Ananda Advisors; Ananda Partners 1; Ananda
11 Partners III; Annealisa; Kalassen; and Naju are sometimes referred to collectively as the “Settling
12 Parties.”

13 It was the intent of the Settling Parties that the settlement agreement would resolve their
14 claims and disputes in connection with this bankruptcy proceeding and that as part of that settlement
15 the rights of Mr. Lonich would be treated “in accord with the Letter Agreement.” *See, Exhibit 1,*
16 *Transcript, pg. 4., ln. 22-pg. 6, ln.4.* The Letter Agreement referred to in the Transcript is the Letter
17 Agreement dated December 17, 2014 (the “Letter Agreement”) between SABT, Ananda Advisors,
18 Ananda III, Gregg Smith, Jed Cooper, Naju, Kalassen, BTM, David Lonich and some of their
19 affiliates (which are not involved in this case).

20 The purpose of this Opposition is:

- 21
- 22 1. To point out the portions of the Amended Disclosure Statement and Amended Plan
23 which contradict or change the terms of the settlement reflected in the Transcript
24 which are pertinent to the treatment of BDH’s claim; and
 - 25 2. To point out the open issues which exist at the time of the filing of this Opposition
26 which

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28 ² Ananda Advisors, Ananda 1, Ananda III, Annealisa, Kalassen and Naju were represented at the settlement conference by L. Edward Humphrey, Esq., Humphrey Law, PLLC. *See, Dkt. 87; and Transcript, Exhibit 1.* Gregg Smith and Jed Cooper (the persons who manage and control the Debtor) also manage/control these entities. *See, Dkt. 203.*

1 need to be resolved prior to confirmation of any plan.

2 There are other discrepancies not discussed herein vis-à-vis the construction of the terms of
3 the Letter Agreement in the Amended Disclosure Statement and Amended Plan which are associated
4 with the terms of the settlement between BTM and SABB and the treatment of David Lonich. It is
5 anticipated that these issues will be addressed by counsel for BTM and Mr. Lonich.

6 **DISCUSSION**

7 The inaccuracies and outstanding unresolved issues related to the terms of the settlement as
8 they pertain to the treatment of BDH are as follows:

9 1. *Administrative Carve Out.* The Amended Plan provides for the payment of
10 Administrative Claims as follows:

11 “The Administrative Claims that the Debtor seeks approval of in this Plan and that they
12 propose to pay from the proceeds of sale of the Debtor’s Units or from a \$300,000 carveout for
13 professional fees pursuant to the Settlement Agreement.”

14 *See*, Amended Plan, pg. 10, lns. 6-8.

15 This is in direct contradiction to the terms of the settlement. The carveout for
16 administrative expenses agreed to under the terms of the settlement is \$250,000 not \$300,000.
17 *See*, Exhibit 1, Transcript at pg. 8, lns. 4-13. The agreed upon carveout is \$250,000 after which
18 the net proceeds from the sale of all Units are to be paid to BDH, along with the quarterly
19 interest payments until its claim is paid in full. *See*, Exhibit 1, Transcript, pg. 6, ln. 21 – pg. 8,
20 ln. 13.

21 The Amended Plan needs to be amended to provide for an Administrative Carve Out of
22 \$250,000, not \$300,000.

23 2. *Operating Costs & Operating Reserves.* The Amended Plan provides that: “With
24 the exception of carveouts described herein and Operating Costs, BDH will be paid 100 percent
25 of net proceeds from each of the Unit sales in The Belvedere until it is paid in full³.” *See*,
26 Amended Plan, pg. 12, ln. 2-4.

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³ This is in addition to the quarterly interest only payments provided for in the settlement and Amended Plan.

1 “Operating Costs” are defined in the Amended Plan as:

2
3 “The costs of operation, management and sale of the Units including, as defined in
4 Paragraph 19(b)(1) of the Letter Agreement, costs of sale of the Units, which includes brokerage,
5 title, escrow and other standard fees and costs customarily incurred in connection with the sale of
6 residential housing. Costs of sale also includes a pro-rata portion (calculated as the fraction
7 1/144) of marketing and advertising costs not paid by the broker, BTOA reserves and other costs
8 and expenses reasonably calculated by and associated with the sale of each Unit.”

9 *See*, Amended Plan, pg. 7, lns. 3-9, Section HH.

10 The settlement agreement does not provide for the deduction of “Operating Costs” as
11 defined by the Amended Plan from the sale proceeds before the distribution of the net proceeds
12 to BDH. *See*, Exhibit 1, pg. 6, ln. 18-pg. 8, ln. 13. The settlement agreement is silent as to the
13 definition of net proceeds. *See*, Exhibit 1. Customary costs of sale for residential housing would
14 include brokerage, title, escrow and other standard closing costs, such as recording fees. There
15 was no agreed to deduction of a pro-rata portion (calculated as the fraction 1/144) of marketing
16 and advertising costs not paid by the broker, BTOA reserves and other costs and expenses
17 reasonably calculated by and associated with the sale of each Unit.

18 With respect to the “Operating Reserves” provided for in the Amended Plan, this was
19 also not agreed to in connection with the settlement. *See*, Exhibit 1.

20 The Amended Plan provides that: “The Project Manager may establish Operating
21 Reserves, in his or her discretion.” *See*, Amended Plan, pg. 18, lns. 4-5.

22 “Operating Reserves” are defined in the Amended Plan as:

23 “The amount of cash determined in good faith by the Project Manager of BTM and the
24 Reorganized Debtor as appropriate, from time to time, to be reserved and maintained in order to
25 pay all reasonably anticipated Operating Costs of the SABL Units and the BTM Units for up to a
26 two month period of time.”

27 *See*, Amended Plan, pg. 7, lns. 10-13, Section II.

28 There was no agreement to the establishment of Operating Reserves in connection with
the settlement. *See*, Exhibit 1. BDH is willing to work with the person selected as Project
Manager (as defined in the Amended Plan) to establish a reasonable budget. The plan should be
amended to provide that the Project Manager will submit a proposed operating budget to BDH

1 for review and approval on a periodic basis. Based on discussions between counsel for BDH and
2 SABT this proposal is acceptable.

3 3. *Selection of Project Manager & Sales/Leasing Team.* Pursuant to the terms of the
4 settlement, the entire project is to be managed by a Project Manager (as defined in the Amended
5 Plan) acceptable to SABT, BTM and BDH. Furthermore, SABT, BTM and BDH were to jointly
6 agree upon a company or companies who would conduct the sales and leasing of the Units. *See,*
7 Exhibit 1, pg. 10, lns. 19-24; pg. 11, ln. 24 –pg. 12, ln. 1; and pg. 24, ln. 1-pg. 26, ln. 20. The
8 Amended Plan indicates that Harvey Fennell from Dickson Commercial Group will act as the
9 Project Manager and that Dickson Commercial Group/Dickson Realty will also perform the
10 property management, leasing and sale functions for the project. As of the date of the filing of
11 this Opposition, there has been no final agreement reached between SABT, BTM and BDH with
12 respect to the persons/organizations that will fulfill these functions.

13
14 4. *BTOA.* SABT and BTM control the majority of the owner votes in the Belvedere
15 Towers Owners Association (“BTOA”) and their managers currently serve as the members of the
16 BTOA Board of Directors. Under the settlement agreement, the individuals currently managing
17 SABT and BTM are to have no further involvement with the project, as noted above. The
18 Amended Disclosure Statement and Amended Plan do not provide any information on this issue
19 which needs to be addressed. Based on discussions between counsel for BDH, BTM and SABT,
20 the Amended Plan should be amended to provide that the control of the BTOA will be
21 transitioned to the Project Manager.

22 5. *Releases & Settlement Agreement.* The settlement between the Settling Parties
23 clearly provides that the settlement will be evidenced by a Settlement Agreement with the
24 “standard releases and terms.” *See, Exhibit 1*, Transcript at pg. 13, lns. 10-13. As of the date of
25 the filing of this Opposition, the form of Settlement Agreement has not been agreed to between
26 the Settling Parties, but it is anticipated that it will be shortly. However, this is a condition
27 precedent to the confirmation of the plan, as amended, as provided under the settlement.

28 6. *Foreclosure Units.* The terms of the settlement provide that there are 10 units

1 which were acquired at BTOA foreclosure sales (the “Foreclosure Units”) and which are deemed
2 not covered by the Letter Agreement under the terms of the settlement. *See, Exhibit 1,*
3 Transcript at pg. 12, ln. 20 – pg. 13, ln 8. The Amended Disclosure Statement and Amended
4 Plan indicate that 12 Units are not covered by the Letter Agreement which is incorrect. *See,*
5 Amended Disclosure Statement, pg. 10, ln. 25 and pg. 12, lns. 24 & 25; and Amended Plan, pg.
6 6, lns. 8-12, Section CC. This should be corrected in the Amended Disclosure Statement and
7 Amended Plan. Furthermore, recently discovered information indicates that the former lien
8 holders of record for the 10 units in question may not be limited to US Bank and the Verdugo
9 Trust and/or that these entities may not have been the holders of the deeds of trust of record at
10 the time of the BTOA foreclosures. The cloud on the title of the Foreclosure Units adversely
11 impacts the value of BDH’ s collateral. The title to the Foreclosure Units cannot be cleared until
12 confirmation of the lienholders of record at the time of the BTOA foreclosure sales is received in
13 the form of a Litigation Guaranty from a title company, which has not been obtained to date.

14 **CONCLUSION AND RESERVATION OF RIGHTS**

15
16 BDH is willing to continue to work with the Debtor and BTM to resolve the outstanding
17 issues in the Amended Disclosure Statement and Amended Plan so that the settlement between
18 the Settling Parties can be consummated.

19 Prior to plan confirmation the issues set forth herein above need to be
20 addressed/corrected/resolved. The correction of the amount of the Administrative Carveout;
21 providing for the preparation of a budget by the Project Manager and its approval by BDH as
22 well as periodic updates thereto; and the manner in which quieting title to the Foreclosure Units
23 is addressed are easily corrected/adjusted.

24 However, before a plan can be confirmed there must be mutual agreement between BTM,
25 BDH and SABT on the selection of the Project Manager, as well as on the person/entities for the
26 sales, leasing and property management functions. The issue of the transition of the control of
27 the BTOA cannot be addressed prior to the selection of a Project Manager. Selection of the
28 Project Manager is a condition precedent to the confirmation of the Amended Plan as that person

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will be responsible for the operation of the project post-confirmation. The immediate “ramp up” of the sales program is vital to the ability of the project to succeed and this cannot occur unless the Project Manager and person/entities responsible for the sales, leasing and property management functions are agreed to and in place at the time of confirmation. Additionally, the initial budget and operating reserve need to be prepared, reviewed and agreed upon prior to confirmation to ensure that the project can continue to operate post confirmation. The settlement agreement also needs to be agreed upon and executed pre-confirmation.

BDH expressly reserves its rights to supplement and amend this Objection as is necessary, its rights to introduce evidence supporting this Objection at the hearing on the Amended Disclosure Statement and Amended Plan.

DATED this 15th day of March, 2017.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503

By: /s/ Stefanie T. Sharp
Stefanie T. Sharp, Esq.
Attorneys for Belvedere Debt Holdings, LLC

CERTIFICATE OF SERVICE

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, that I am over the age of 18 and not a party to the above-referenced case, and that on the date below I caused to be served a true copy of **BELVEDERE DEBT HOLDINGS, LLC'S OPPOSITION TO DEBTOR'S AMENDED DISCLOSURE STATEMENT IN SUPPORT OF CHAPTER 11 PLAN OF REORGANIZATION AND AMENDED CHAPTER 11 PLAN OF REORGANIZATION** on all parties to this action by the method(s) indicated below:

X I hereby certify that on the date below, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

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reception@harrislawreno.com; norma@harrislawreno.com;
ellie@harrislawreno.com

JEFFREY L HARTMAN on behalf of Interested Party BTM, LLC
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DATED: This 15th day of March, 2017.

/s/ Claudia Zaehring
CLAUDIA ZAEHRINGER

**EXHIBIT 1
TRANSCRIPT**

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA (RENO)

IN RE:	.	Case No. 16-51162-gwz
	.	
	.	Chapter 11
SECURED ASSETS BELVEDERE TOWER, LLC	.	300 Booth Street
	.	Reno, NV 89509
Debtor.	.	
	.	Thursday, February 2, 2017
	.	11:41 a.m.

TRANSCRIPT OF SECOND DAY OF SETTLEMENT CONFERENCE
SECURED ASSETS BELVEDERE TOWER, LLC
BEFORE THE HONORABLE GREGG W. ZIVE
UNITED STATES BANKRUPTCY COURT JUDGE

APPEARANCES:

For the Debtor:	Lee High LTD. By: CECILIA LEE, ESQ. ELIZABETH A. HIGH, ESQ. 499 West Plumb Lane Suite 201 Reno, NV 89509 (775) 240-1717
For Ananda Partners I, LLC and Ananda Partners III, LLC:	Humphrey Law, PLLC By: L. EDWARD HUMPHREY, ESQ. 201 West Liberty Street Suite 204 Reno, NV 89501 (775) 420-3500

APPEARANCES CONTINUED.

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Proceedings recorded by electronic sound recording,
transcript produced by transcription service.

APPEARANCES (Continued):

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For Belvedere Debt
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By: STEFANIE T. SHARP, ESQ.
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1 (Proceedings commence at 11:41 a.m.)

2 THE COURT: Now, this is in the matter of Secured
3 Assets Belvedere Tower, LLC at case number 16-51162. I'm going
4 to ask counsel to enter their appearances, please.

5 MS. SHARP: Stefanie Sharp appearing on behalf of
6 secured creditor, Belvedere Debt Holdings, LLC.

7 MR. HARTMAN: Jeff Hartman on behalf of BTM, LLC,
8 Your Honor, and Mr. Zalkaski, the manager of that entity is in
9 the courtroom.

10 MR. HUMPHREY: Good morning, Your Honor. Ed Humphrey
11 on behalf of Ananda Partners I and Ananda Partners III, LLCs.

12 MS. LEE: Good morning --

13 THE COURT: I understand -- excuse me.

14 MS. LEE: I didn't put my appearance on the record.

15 THE COURT: Oh, I thought you had. I'm sorry.

16 MS. LEE: I hadn't, Your Honor. Cecilia Lee and
17 Elizabeth High, Lee & High, on behalf of the debtor, Secured
18 Assets Belvedere Towers, and I believe that our client
19 representative, Greg Smith, is on the phone.

20 MR. SMITH: Yes.

21 THE COURT: I'm now going to ask for telephonic
22 appearance.

23 Mr. Smith, are you there?

24 MR. SMITH: Yes, sir, I am. This is Greg Smith.

25 THE COURT: And do you have authority to act on

1 behalf of Secured Assets Belvedere Tower, LLC?

2 MR. SMITH: Yes, I do.

3 THE COURT: All right. Is Mr. Kendall on the phone?

4 MS. SHARP: Yes, Your Honor. Mr. Kendall is on the
5 phone.

6 MR. KENDALL: I am, yes.

7 THE COURT: Would you please identify yourself.

8 MR. KENDALL: This is Alex Kendall, manager of
9 Belvedere Debt Holdings.

10 THE COURT: And do you have authority to act on
11 behalf of Belvedere Debt Holdings, LLC?

12 MR. KENDALL: I do.

13 THE COURT: Thank you.

14 And I need you to enter your appearance, please, sir.

15 MR. ZALKASKI: Michael Zalkaski, manager of BTM, LLC.

16 THE COURT: Could you spell your last name for us,
17 please.

18 MR. ZALKASKI: Z as in zebra, A-L-K-A-S-K-I.

19 THE COURT: And do you have authority to speak on
20 behalf of BTM?

21 MR. ZALKASKI: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 There was another party to the settlement
24 negotiations that started yesterday morning, and that was David
25 Lonich, L-O-N-I-C-H. He was represented by Michael St. James.

1 Mr. St. James was here yesterday, and I excused him. His
2 client was unable to appear, and I believe the reason he was
3 unable to appear is that he's under indictment and can't leave
4 the state of California. At any rate, he was available by
5 telephone yesterday. And I did meet with Mr. St. James
6 yesterday. But as I told him when he left the courthouse
7 yesterday, it would appear, based upon the status of the
8 negotiations at that time, that his client would be treated in
9 accord with the terms of the 2014 letter agreement.

10 Based on what I've heard from counsel, who have
11 informed me they have arrived at a consensual resolution, that
12 is exactly the case. Mr. Lonich will be treated in accord with
13 the terms of the 2014 letter agreement. That is why he is not
14 here nor is Mr. St. James here today. But I would expect
15 counsel for the debtor to notify Mr. St. James of the
16 settlement, the terms, and if -- of course, if -- as I will
17 note later, the settlement will be heard either as a part of a
18 plan or a separate motion pursuant to Federal Rule of
19 Bankruptcy Procedure 9019 to approve it so that if there is any
20 objection, Mr. Lonich, through Mr. St. James or any other
21 counsel, will have an opportunity to be fully heard.

22 But the terms of this agreement do not affect him.
23 And as he noted, and we talked about it yesterday and he said
24 it, so it's not confidential, he was "agnostic," to use his
25 term, about the resolution between the three parties who are

1 about to put their agreement on the record, and -- so long as
2 the terms of the letter agreement were to apply to Mr. Lonich's
3 claim. And they will. I just wanted to make that record
4 before we proceeded.

5 Now, I understand, Ms. Lee, you are going to put the
6 terms of the settlement on the record. Is that correct?

7 MS. LEE: Yes, sir, I am. And I've gone over these
8 with the parties before Your Honor came out on the bench. In
9 my experience, Your Honor, putting some terms on the record is
10 that the devil is frequently in the details. There may be
11 terms of this that we will cover in broad stroke today, but I
12 believe that we will be able to get into enough details so that
13 everyone is comfortable with this, but we will be reducing this
14 to a settlement agreement, and I anticipate that counsel will
15 continue to work with one another to resolve any additional
16 issues that might come up as we have continued to throughout
17 this case.

18 With that as a predicate, Your Honor, the terms that
19 the parties have arrived at in resolution of the proofs of
20 claim that have been filed in this case on behalf of BDH and
21 BTM are as follows. BDH, Belvedere Debt Holdings, will have a
22 \$12.5 million principal claim as of the petition date of
23 September 19th. That principal amount will accrue interest at
24 the rate of 25 percent as a default rate during the pendency of
25 this bankruptcy until the effective date.

1 That accrual will be simple interest with no
2 compounding. On the effective date, the interest rate will
3 revert to the contract rate of 12 percent. There will be
4 periodic payments once a quarter of interest on the note, and
5 in all other respects, the terms of the note are unmodified
6 after the effective date. In the event the debtor and BTM are
7 unable to make the quarterly interest payment, and that will be
8 a rolling quarter, months one through three measured and then
9 two through five and then three through six, the creditor will
10 be in a position where it can exercise its state remedies of
11 foreclosure.

12 The lender's costs associated with this bankruptcy,
13 which are estimated at \$130,000, will be added to the note.
14 And with the exception of the carveouts that are set forth --
15 that I'm going to set forth next, the lender will be paid in
16 full from the sale -- excuse me, let me phrase that
17 differently. The lender will be paid the net proceeds of sale
18 from each sale until the lender is paid in full. The
19 anticipated payout date is November of 2019. The maturity date
20 of the note will be three years from the effective date.

21 With respect to a carveout, the parties agree that
22 the special assessment from the Belvedere Homeowners
23 Association will be earmarked from the upcoming sales that we
24 will be asking Your Honor to approve on February 14th. We
25 believe that those will be sufficient to pay SABB's portion.

1 And once this agreement is inked, there -- we will agree to
2 release that special assessment to the homeowners association.
3 The debtor's portion of it is approximately 345- to \$350,000.

4 Of the pre-confirmation sales that the debtor has had
5 approval of and has closed, approximately \$250,000 will be
6 earmarked for the payment of administrative expenses to Ms.
7 High's firm and mine. We are currently holding approximately
8 \$170,000 in our trust account, and we anticipate that from the
9 next sale that has closed, that that will be sufficient to
10 cover the 250,000. Of course, the actual payment from trust to
11 our firm is subject to a duly noticed fee application hearing,
12 which I anticipate probably would be a final fee application
13 hearing.

14 There are unsecured claims in this estate, Your
15 Honor. There is a priority and unsecured claim owed to Washoe
16 County for taxes, and there's the secured claim of Woodburn &
17 Wedge. The secured creditor and the debtor agree to follow up
18 with respect to how these claims can be paid, as well as any
19 remaining administrative expenses of the estate, which would
20 include approximately \$40,000 that is an outstanding balance
21 owed to Davis, Graham & Stubbs, which is my former firm and Ms.
22 High's former firm, from the period of time between the
23 petition date and when Ms. High and I left that firm on October
24 31st, 2016.

25 The parties stipulate to continue the motion to

1 appoint a trustee and the two claim objections to the hearing
2 date on confirmation. We will ask Your Honor whether or not
3 placing that stipulation on the record is sufficient or whether
4 or not you would require us to actually submit a written
5 stipulation and you would conduct an order.

6 THE COURT: Well, I have the movant and the opposing
7 party stipulating on the record. Isn't that correct, Ms.
8 Sharp?

9 MS. SHARP: That is correct, Your Honor. We are
10 going --

11 THE COURT: That's all I need.

12 MS. LEE: Okay. The parties further agree that
13 pending matters, such as Rule 2004 exams, would similarly be
14 continued out.

15 THE COURT: In other words, there will be a
16 standstill.

17 MS. LEE: There's a standstill, Your Honor.

18 THE COURT: All right.

19 MS. LEE: With one very important exception, and that
20 is -- two important exceptions. The first is a motion to sell
21 that is coming up on the 14th and the cash collateral motion,
22 which is coming up on the 14th. The -- Your Honor will recall
23 that we filed a motion to approve the use of cash collateral in
24 which we placed directly at issue our attorneys' fees, and that
25 drew objections from several parties.

1 We have a stipulation to be able to continue to use
2 cash collateral through the 14th based on the January budget.
3 What we will do is continue to -- we will stipulate to continue
4 the use of the cash collateral pursuant to that budget, which
5 has not changed materially, pending plan confirmation. And
6 that should take care of the cash collateral issue.

7 THE COURT: I'm assuming that I will not have a
8 contested cash collateral hearing because --

9 MS. LEE: Correct.

10 THE COURT: -- you've arrived at this stipulation.

11 MS. LEE: Correct, Your Honor.

12 THE COURT: Would that be correct?

13 MS. SHARP: That is correct, Your Honor.

14 THE COURT: Who else objected?

15 MS. LEE: BTM did.

16 THE COURT: Is that correct, Mr. Hartman?

17 MR. HARTMAN: That's correct, Your Honor.

18 THE COURT: Thank you.

19 MS. LEE: Okay. The parties are -- intend to meet
20 next week with representatives of Dickson to work out a joint
21 management understanding, and I think that as a result of that,
22 we'll know further the fate of the debtor's motion to employ
23 Dickson as its real estate agent on an ongoing basis, which is
24 also set for the 14th of February. So instead of --

25 THE COURT: Well, I'll take -- do you want me to take

1 that off calendar?

2 MS. LEE: I do not, not at this point in time. The
3 point of that motion, Your Honor, was that instead of seeking
4 to employ them with every single motion to sell that we
5 filed --

6 THE COURT: I thought I had employed two Dickson
7 Realty brokers, but was that only on one deal because --

8 MS. LEE: Every single employment so far has been
9 transactional only.

10 THE COURT: Because that drew -- isn't this is a case
11 in which I had the Office of the U.S. Trustee objected?

12 MS. LEE: Yes. Yes.

13 THE COURT: Yeah. And -- all right. I thought it
14 was broader than that, but if not, that's fine.

15 MS. LEE: It was not, Your Honor. It was
16 transactional only, and I think that --

17 THE COURT: Because I thought the hearing on the 14th
18 was for the holding company.

19 MS. LEE: No. It is -- the intention of it was to --

20 THE COURT: Because there's one company, and then
21 they have different offices.

22 MS. LEE: Different offices, basically, yes. But I
23 think that based on the meeting that we have next week, Your
24 Honor, that will resolve what is ultimately going to happen
25 with Dickson Realty and whether or not the parties are going to

1 continue with Dickson or do something completely different.

2 MS. SHARP: Your Honor, if I can suggest something,
3 Then, maybe with respect to the hearing on the 14th to employ
4 Dickson, as it appears that either there may be a change, there
5 may not, but most likely, there's going to be a change in the
6 terms of employment of Dickson that were proposed to this
7 Court, I would suggest that maybe at the hearing on the 14th,
8 we just have a status conference on that motion --

9 MS. LEE: That's fine.

10 MS. SHARP: -- so we can update Your Honor on the
11 progress.

12 THE COURT: Fine. That's where I was thinking, too.

13 MS. LEE: Yeah, that's fine.

14 THE COURT: That hearing will now be a status
15 conference.

16 MS. LEE: That's fine. I think that makes sense.
17 Yes, thank you.

18 THE COURT: That's a good suggestion. Thank you.

19 MS. LEE: Yeah, that makes sense, Your Honor.

20 With respect to SABT and BTM, Your Honor, as you
21 know, SABT and BTM bought ten units out of homeowners'
22 foreclosure. The parties have agreed that they would share the
23 cost of those ten units and the proceeds of sale of those units
24 on a 20 percent BTM, 80 percent SABT basis, and that they will
25 either apply that formula to those actual units or they will

1 account for them in the final analysis. The point with respect
2 to that is that in the event one of these units -- someone
3 wants to buy them, we don't want to turn down a sale, but we
4 would then just simply do some type of an accounting so that at
5 the end of the day, we could make the allocation of costs and
6 proceeds appropriate.

7 In other respects, paragraph 19(b) of the letter
8 agreement controls the remainder of the sales. Mr. Zaikaski
9 has stated he will not be part of management going forward.
10 The parties will enter into a settlement agreement in which
11 there will be standard releases and such terms as are typically
12 in a settlement agreement, and the parties have agreed that in
13 conjunction with this settlement, that it will resolve their
14 proofs of claim and any objections to the plan and that they
15 will, in fact, vote for the plan, which we will present to Your
16 Honor on the next party application to approve the disclosure
17 statement, which will obviously have to be changed, and --

18 THE COURT: Conditional approval.

19 MS. LEE: Conditional approval on an ex parte basis.
20 And then, we will ask the Court to set the confirmation hearing
21 for March 23rd. To the extent that that will require some
22 shortening of the notice period, we will ask the Court to do
23 that, too.

24 THE COURT: Mrs. Duffy.

25 THE CLERK: That's fine, Your Honor. It's a

1 Thursday.

2 THE COURT: Well, that's Thursday, the 23rd?

3 THE CLERK: Yes, sir.

4 THE COURT: What do I have the 24th?

5 THE CLERK: There's nothing at this point.

6 THE COURT: What's on the 22nd?

7 THE CLERK: Nothing, Your Honor.

8 THE COURT: Okay. Wait a minute, when am I going --
9 is the NCAA the week before that?

10 THE CLERK: Yes, sir.

11 THE COURT: Okay.

12 THE CLERK: Yes, sir.

13 MR. HARTMAN: You have to keep your priorities
14 straight.

15 THE COURT: Nothing interferes with my trip to the
16 NCAA.

17 MS. LEE: I understand, Your Honor. I understand.
18 We're hoping a certain team maybe gets it that far this year.

19 THE COURT: Not the way they played last night.

20 MS. LEE: Not the way they played last night. I
21 understand.

22 THE COURT: Yeah, because I don't have much time
23 after that. I'm out of the country.

24 MS. LEE: Yeah, we understand that, Your Honor.

25 Obviously, this will -- we will be incorporating the settlement

1 agreement into the plan, and I will be treating claims and
2 claimants in accordance with this agreement under the plan. So
3 there definitely will be some changes. My anticipation is that
4 in addition to a settlement agreement, we will do the 9019
5 motion and plan confirmation at the same time.

6 THE COURT: Okay. All right. Is that it?

7 MS. LEE: Your Honor, that's it.

8 THE COURT: Ms. Sharp, any comments, suggestions,
9 changes?

10 MS. SHARP: I don't believe so, Your Honor.

11 THE COURT: Mr. Hartman?

12 MR. HARTMAN: No, Your Honor.

13 THE COURT: Thank you. I'm going to start with Mr.
14 Smith.

15 Mr. Smith, can you hear me?

16 MR. SMITH: I'm here. I can hear you. Yes, thank
17 you.

18 THE COURT: Did you hear the terms of the agreement
19 that were placed on the record by Ms. Lee, your lawyer?

20 MR. SMITH: I did, yes.

21 THE COURT: Did you -- do you understand the terms
22 that were placed on the record?

23 MR. SMITH: I do. With regard to the 80/20
24 computation, I presume that there will be a chance to review
25 that and make that -- make sure that it syncs with what I

1 understand in my mind when we get to the point of actually
2 putting it on paper in some form.

3 THE COURT: You'll have a chance to review the
4 memorialization. Yes, sir.

5 MR. SMITH: Yes, then I'm fine. Thank you.

6 THE COURT: So you heard it, you understood it, and
7 on behalf of Secured Assets Belvedere Tower, LLC, do you agree
8 to those terms?

9 MR. SMITH: Yes, I heard it, understood it, and agree
10 to those terms on behalf of SABL.

11 THE COURT: Thank you.

12 Mr. Zalkaski, you heard -- would you go to the
13 podium, please, so we can record this. As the representative
14 of BTM, you've heard the terms of the agreement that were
15 placed on the record by Ms. Lee. Is that correct?

16 MR. ZALKASKI: Yes, Your Honor.

17 THE COURT: And you have participated in these
18 negotiations for the last day and a half?

19 MR. ZALKASKI: Yes, I have.

20 THE COURT: And did you understand the terms as they
21 were placed on the record?

22 MR. ZALKASKI: Yes, I do.

23 THE COURT: Do you have any questions about them?

24 MR. ZALKASKI: No.

25 THE COURT: On behalf -- and you have authority --

1 we've already, I think, established that you have authority to
2 act on behalf of BTM, correct?

3 MR. ZALKASKI: Yes, Your Honor.

4 THE COURT: And on behalf of BTM, do you agree to be
5 bound by the terms of the settlement agreement that was just
6 placed on the record?

7 MR. ZALKASKI: I agree on behalf of BTM, Your Honor.

8 THE COURT: Thank you very much.

9 And Mr. Kendall?

10 MR. KENDALL: Yes.

11 THE COURT: We've already established that you have
12 authority to act on behalf of Belvedere Debt Holdings, LLC.
13 And you were present yesterday during these negotiations here
14 in Reno. Is that correct?

15 MR. KENDALL: Yes.

16 THE COURT: And you were able to communicate with
17 your counsel this morning telephonically, even though you're
18 not here personally. Is that correct?

19 MR. KENDALL: Yes.

20 THE COURT: And you heard the terms of the settlement
21 agreement that were placed on the record by Ms. Lee, did you
22 not?

23 MR. KENDALL: I did.

24 THE COURT: And did you understand those terms?

25 MR. KENDALL: I have two clarifying questions.

1 THE COURT: I'm sorry?

2 MR. KENDALL: I have two questions that I have to ask
3 for some clarification.

4 THE COURT: Please.

5 MR. KENDALL: So first, when we were discussing the
6 rolling quarterly paydown of the loan, Ms. Lee said that
7 there'd be quarterly interest payments. I want to clarify that
8 they would be quarterly principal plus interest payments.

9 MS. LEE: No, that is not our understanding.

10 THE COURT: I thought they were interest, and that's
11 what was placed on the record.

12 Ms. Sharp.

13 MS. SHARP: Your Honor, I think that the payment has
14 to at least be equivalent to the monthly interest payment, but
15 since he's getting all the net proceeds from sale, it was
16 anticipated that the debtor would also have to start paying
17 down on the principal so that he would be paid off. But I
18 think because he's getting the net proceeds from all the sales
19 that that's really all the income that's being generated. So
20 unless we want to, you know -- I think that the benchmark is
21 meeting that -- at least meeting that monthly interest payment,
22 but we all recognize that if sales don't reach a certain level,
23 the loan just won't get paid off.

24 THE COURT: Right. Does that answer your question,
25 Mr. Kendall?

1 MR. KENDALL: Well, yes and no. I mean, I want to be
2 clear on the record that making a monthly interest payment,
3 interest only, since you're selling off the asset won't result
4 in a loan paydown.

5 THE COURT: As I -- go ahead.

6 MR. KENDALL: And so the nature of the asset is one
7 such that one simply has to erode away at the collateral in
8 order to pay off the principal and interest, and so I certainly
9 understand that, but what that means is then that when one
10 figures out how to clarify that the, you know, loan is
11 performing, that needs to be taken into account.

12 MS. SHARP: Your Honor --

13 MR. KENDALL: And again, I don't -- to the room, I
14 don't see this -- when we go to paper this up, I don't see this
15 being a problem, but I just want to be clear that there needs
16 to be some thought here.

17 MS. SHARP: I think that, Your Honor, there's a way
18 to solve this and that that monthly interest minimum, the
19 three-month rolling average monthly interest minimum, that has
20 to be the minimum and that maybe we can work to -- we need to
21 set up -- we need to run some numbers, quite frankly, and set
22 up a calculation now based on the settlement numbers that will
23 indicate what type of benchmark this debtor needs to make with
24 BTM on this three-month average to make a P&I payment so that
25 the loan can get paid down.

1 MS. LEE: You know, this is completely new from what
2 we've ever talked about before, Your Honor. The whole point of
3 this was that the minimum interest would be paid. It would be
4 calculated over a three-month period so that we weren't -- you
5 know, what if we sell five units in month two, but none in
6 month one, we can still make that minimum payment. But the
7 terms of the deal are that the secured creditor is getting all
8 net proceeds.

9 THE COURT: Right.

10 MS. LEE: And those are going to be applied in
11 accordance with the terms of the loan. So clearly, the intent
12 of this is that --

13 THE COURT: Well, that's -- I think this is getting
14 confusing. Let me tell you how I look at it, is that if there
15 were insufficient sales in a particular month, what would be
16 paid is the minimum interest --

17 MS. LEE: Uh-huh.

18 THE COURT: -- that could -- but there are also
19 benchmarks.

20 MS. SHARP: Correct.

21 THE COURT: And if those benchmarks aren't made, then
22 the loan is in default. That the sales will generate income
23 that will pay more than the interest.

24 MS. SHARP: Correct.

25 THE COURT: That's the whole point.

1 MS. SHARP: Correct.

2 THE COURT: That's the only way that BDH gets paid in
3 full by November 2019.

4 MS. SHARP: Correct.

5 THE COURT: So, in fact, there are payments of
6 principal and interest. It's just that the minimum payments
7 are interest only. The payments from the sale of the units
8 will apply first to interest, then to principal. So that -- I
9 actually think it's baked into here.

10 MS. LEE: It is somewhat inherent in it. And the
11 thing that we are seeking to avoid, Your Honor, is being in the
12 position of a default because in a particular month, we didn't
13 sell four units.

14 THE COURT: Well, that's the whole point.

15 MS. SHARP: Right.

16 MR. KENDALL: And --

17 MS. SHARP: And that's not the intent.

18 THE COURT: Go ahead, Mr. Kendall.

19 MR. KENDALL: Yeah, that's not the intent. The
20 intent is -- I'll just be clear as to what my intent -- my
21 intent is I just don't want it to -- I don't want it to be --
22 whatever -- you know, again, whatever that monthly interest
23 payment is -- let's just say for the sake of round numbers, it
24 comes out to 100,000 a month -- at this 100,000 a month and
25 you're selling one unit a month, you know, that can pay off the

1 interest, but that is unsustainable over time. And if that --

2 THE COURT: Sure. And that's what --

3 MR. KENDALL: -- happens for -- again, we'll have to
4 talk about what the time period -- what the exact principal
5 paydown needs to be. If that happens for six months in a row
6 -- again, just making a number up so we -- you know what I'm
7 talking about -- then that becomes -- it becomes clear that the
8 project is not working.

9 THE COURT: Well, but you've already built in -- as
10 part of the settlement, you've built in benchmarks for sales.

11 MR. KENDALL: Right. That -- so all I'm saying is
12 there has to be sales benchmarks. That's actually all I'm
13 saying.

14 THE COURT: Yeah. I think it's --

15 MR. KENDALL: So if we all agree that --

16 THE COURT: I actually think it's addressed, but you
17 folks are going to have to talk about that.

18 MR. KENDALL: Then, I'm good.

19 MS. SHARP: About the benchmarks -- the monthly sale
20 benchmarks?

21 THE COURT: Yeah. I mean, his concern is that if you
22 only get interest and the principal isn't paid down, but the
23 assets are sold --

24 MS. SHARP: Correct.

25 THE COURT: -- then there's nothing at the end. But,

1 of course, I don't see that as a potentiality because as you
2 sell the units, the whole -- the proceeds go to BDH.

3 MS. SHARP: Correct.

4 THE COURT: The only problem that could exist is if
5 there are insufficient sales. That's why you build the
6 benchmarks in, and if the program doesn't work, then BDH can
7 foreclose.

8 MS. SHARP: Okay. So we will come to a consensus on
9 the sales benchmarks.

10 THE COURT: Yeah. You either have a program that's
11 sustainable or you don't.

12 Isn't that correct, Mr. Smith?

13 MR. SMITH: Yes.

14 THE COURT: Thank you.

15 All right. Any other questions, Mr. Kendall?

16 MR. KENDALL: Okay. And -- yeah, and one other
17 question I just wanted to clarify, which was that Mike Zalkaski
18 would have no part of management, and I just wanted to
19 understand what that meant. I assume that means he would have
20 no part of the, you know, top-level, top-down management, but
21 he can continue to manage BTM. I just want to clarify that.
22 Or if that's not the case, then clarify that. I just want to
23 understand what that term was meant to mean.

24 THE COURT: Mr. Zalkaski --

25 MS. SHARP: From my --

1 THE COURT: Mr. Zalkaski is not going to be involved
2 in the management of the sales program. It is my understanding
3 that that sales program includes all the units. Am I
4 incorrect?

5 MS. SHARP: No, you're correct, Your Honor. The
6 sales -- it must be jointly sold and marketed as one project.

7 THE COURT: So that means he will not be involved in
8 those that are owned by BTM.

9 Isn't that correct, Mr. Zalkaski?

10 MR. ZALKASKI: That is correct.

11 THE COURT: So he's not involved at all, Mr. Kendall.

12 MS. SHARP: And I think the inverse is true, as well,
13 is that Mr. Smith and Mr. Cooper are not going to be involved
14 in that.

15 THE COURT: That's right. In other words, the
16 parties that are before me today are not going to be involved
17 in the sales or management of these units.

18 MR. KENDALL: Okay. So then again, just to clarify,
19 there will be one person who is -- nobody who is either in the
20 room or on the phone who will be in charge of the sales program
21 for all units and --

22 MS. SHARP: You've got it.

23 MR. KENDALL: -- that person will operate with
24 independence.

25 MS. SHARP: That's correct.

1 MR. HARTMAN: I would add, Your Honor --

2 MR. KENDALL: Okay.

3 MR. HARTMAN: -- that it's my understanding that
4 between now and, let's say, April 1st, the marketing program
5 begins, all the parties have input on who the --

6 MS. LEE: Uh-huh.

7 MR. HARTMAN: -- third-party independent manager will
8 be.

9 MS. LEE: Uh-huh.

10 MS. SHARP: Correct.

11 THE COURT: Correct.

12 MR. HARTMAN: Just want to make that clear.

13 MS. LEE: Uh-huh.

14 THE COURT: Yes.

15 MS. LEE: And our intention, Your Honor, is to begin
16 that process early next week by scheduling a meeting with the
17 folks at Dickson.

18 THE COURT: The key is here find somebody that you
19 can agree on, whether it's Dickson or somebody else, I don't
20 care, get it in place, get the sales program going, because
21 that's the only way of monetizing these assets for the benefit
22 of the creditors of this estate. It's that simple.

23 MS. LEE: Agreed.

24 MS. SHARP: Correct.

25 MS. LEE: Agreed.

1 MR. KENDALL: And then, one more clarification on
2 that. Insofar as SABT needs to, you know, file its taxes, Greg
3 Smith and Jed Cooper will figure out how to do that. And
4 insofar as BTM needs to do the same, Mike Zalkaski can continue
5 to do that, I assume. Insofar as it doesn't touch -- insofar
6 as they're not touching each other, they can do their own
7 taxes. Is that correct?

8 MS. SHARP: I think what he's trying to clarify is
9 that notwithstanding the day-to-day operation of the project
10 at the Belvedere, the managers of BTM, LLC and SABT, LLC,
11 respectively, will continue in their managerial capacities for
12 those entities.

13 THE COURT: For those entities, absolutely. This
14 doesn't affect that.

15 MS. SHARP: Correct.

16 MR. KENDALL: Okay. I just wanted to clarify. So
17 then, with those clarifications --

18 THE COURT: Correct -- hold on. Correct,
19 Mr. Hartman?

20 MR. HARTMAN: That is correct, Your Honor.

21 THE COURT: Okay. You're about two questions past
22 your two questions. Do you have anything else, though,
23 Mr. Kendall?

24 MR. KENDALL: No, that's it. Thank you.

25 THE COURT: I don't want to cut you off. I was just

1 being --

2 MR. KENDALL: No, no, no, those were my two
3 questions, which apparently required followup questions.

4 THE COURT: All right. Now, you've heard the terms.
5 You've had your questions answered. Do you understand the
6 terms of the agreement?

7 MR. KENDALL: I do.

8 THE COURT: And do you agree, on behalf of Belvedere
9 Debt Holdings, LLC, it shall be bound by those terms?

10 MR. KENDALL: I do.

11 THE COURT: Thank you. I now have everybody on the
12 record agreeing that they -- to the terms. Counsel has
13 indicated that the terms as recited are accurate, there
14 obviously being a little bit of clarification.

15 I do not want anybody to think that this agreement
16 can be modified or amended in any material fashion after today.
17 You're here. You've agreed to the terms. You agreed that you
18 have authority to bind the various entities, and they are
19 bound, and I consider them bound. And whether or not they're
20 finally approved on March 23rd or any other time, as far as the
21 parties go, no buyer remorse. This is your deal that you're
22 going to ask the Court to approve after providing an
23 opportunity for any other party in interest to object, and I
24 will resolve any objections that are filed in the normal
25 course.

1 Is that clear to you, Mr. Smith?

2 MR. SMITH: Yes, it is.

3 THE COURT: Mr. Kendall?

4 MR. KENDALL: Yes.

5 THE COURT: Mr. Zalkaski?

6 MR. ZALKASKI: Yes, it is.

7 THE COURT: Then, I congratulate you all on arriving
8 at this resolution, and I hope that it all works out for
9 everybody. Thank you all very much.

10 MS. SHARP: Thank you, Your Honor.

11 MS. LEE: Thank you, Your Honor.

12 MR. HARTMAN: Thank you for your help, Your Honor.

13 MR. KENDALL: Thank you.

14 THE COURT: You're welcome.

15 (Proceedings concluded at 12:14 p.m.)

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C E R T I F I C A T I O N

I, Alicia Jarrett, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

Alicia J. Jarrett

ALICIA JARRETT, AAERT NO. 428
ACCESS TRANSCRIPTS, LLC

DATE: February 24, 2017

