

THE MAJORIE FIRM LTD.  
Francis B. Majorie  
Pro Hac Vice ('892 Case Docket No. 1915, ¶ 153)  
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Attorneys for Chapter 7 Trustee,  
William A. Leonard, Jr.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re	)	CASE NO. BK-S-09-32824-RCJ (Lead Case)
	)	
ASSET RESOLUTION, LLC,	)	Jointly Administered with Case Nos.:
	)	BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;
	)	BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;
Debtor.	)	BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;
	)	BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;
	)	BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;
	)	BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;
	)	BK-S-09-32880-RCJ; BK-S-09-32882-RCJ
	)	
	)	Chapter 7

Affects:

- ☐ All Debtors
- ☒ Asset Resolution, LLC, 09-32824
- ☐ Bundy 2.5 Million SPE, LLC, 09-32831
- ☐ Bundy Five Million SPE, LLC, 09-32839
- ☐ CFP Anchor B SPE, LLC, 09-32843
- ☐ CFP Cornman Toltec SPE, LLC, 09-32844
- ☐ CFP Gess SPE LLC, 09-32846
- ☐ CFP Gramercy SPE, LLC, 09-32849
- ☐ Fiesta Stoneridge, LLC, 09-32851
- ☐ Fox Hills SPE, LLC, 09-32853
- ☐ HFAH Monaco SPE, LLC, 09-32868
- ☐ Huntsville SPE, LLC, 09-32873
- ☐ Lake Helen Partners SPE, LLC, 09-32875
- ☐ Ocean Atlantic SPE, LLC, 09-32878
- ☐ Shamrock SPE, LLC, 09-32880
- ☐ 10-90 SPE, LLC, 09-32882

**NOTICE OF UPLOADING AGREED  
ORDER GRANTING  
SILAR ADVISORS LP'S  
MOTION FOR RELIEF  
CONCERNING OAK SHORES II PAL  
LOAN [Dkt. 3502]**

Ctrm: RCJ – Courtroom TBD  
Lloyd D. George Courthouse  
333 Las Vegas Blvd. South  
Las Vegas, NV 89101

Judge: Hon. Robert C. Jones

1  
2 **NOTICE IS HEREBY GIVEN** that the Agreed Order Granting Silar Advisors LP's Motion for  
3 Relief Concerning Oak Shores Ii Pal Loan [Dkt. 3502], a copy of which is attached hereto as  
4 **Exhibit 1**, with uploaded to the above-caption Court on September 17, 2020.

5  
6 Dated: September 18, 2020

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

7  
8  
9 By: /s/ Jonathan S. Dabbieri

James P. Hill

Jonathan S. Dabbieri

Elizabeth E. Stephens

Attorneys for Chapter 7 Trustee,

William A. Leonard, Jr.

**EXHIBIT “1”**

**THE MAJORIE FIRM LTD.**

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re

**ASSET RESOLUTION, LLC,**

Debtor.

CASE NO. BK-S-09-32824-RCJ (Lead Case)

Jointly Administered with Case Nos.:

BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;

BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;

BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;

BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;

BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;

BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;

BK-S-09-32880-RCJ; BK-S-09-32882-RCJ

Chapter 7

**AGREED ORDER GRANTING SILAR  
ADVISORS LP'S MOTION FOR RELIEF  
CONCERNING OAK SHORES II PAL  
LOAN [Dkt. 3502]**

Judge: Hon. Robert C. Jones

- ☐ All Debtors
- ☒ Asset Resolution, LLC, 09-32824
- ☐ Bundy 2.5 Million SPE, LLC, 09-32831
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- ☐ Shamrock SPE, LLC, 09-32880
- ☐ 10-90 SPE, LLC, 09-32882

1           1.       The Court has reviewed the motion filed by Silar Advisors LP (“Silar”) for Relief  
2 Concerning Defaulted Oak Shores II PAL Loan [Dkt. 3502] (the “Motion”) and the Declaration  
3 of Gordon Miller and its attachments submitted in support of the Motion [Dkt 3503 1-4] (the  
4 “Motion Papers”). Silar’s Motion seeks final relief with respect to what is generally known as  
5 the “Oak Shores II PAL.” The Oak Shores II PAL is an ear-marked, property-specific, Court-  
6 approved loan originated in 2013, which has been extended by agreement several times, has an  
7 outstanding balance of over \$ 1.3 million, and presently remains in default.

8           2.       No written opposition to the Motion was filed by any person or entity.

9           3.       At the April 13, 2020 hearing of the Motion, counsel for Silar announced that an  
10 agreement in principle had been reached with Donna Cangelosi (“Cangelosi”), the TDI  
11 Representative for the Oak Shores II direct lenders and for their entity, Oak Shores SPE, LLC, a  
12 Nevada limited liability company (“Oak Shores SPE”). Ms. Cangelosi confirmed the agreement  
13 in principle announced on the record. Jonathan Dabbieri on behalf of William A. Leonard, Jr.  
14 (“Trustee”), the trustee of the chapter 7 bankruptcy estate of Asset Resolution, LLC (the  
15 “Estate”) in the above-captioned cases (the “Bankruptcy Cases”), indicated that he was not  
16 advised in advance as to the agreement but would cooperate with Silar and the Direct Lenders to  
17 set forth the agreement in an agreed order. The Court thereupon directed that the parties submit  
18 an agreed order. This order (the “Order”) sets forth the terms of the parties’ agreement, and is  
19 binding as a stipulation whether or not entered by the Court.

20           4.       UPON CONSIDERATION OF THE PARTIES’ STPULATION, THE MOTION  
21 PAPERS, THE RECORD IN THIS BANKRUPTCY, AND THE LAW AND THE FACTS,  
22 THE COURT HAS DETERMINED THAT GOOD CAUSE EXISTS FOR GRANTING THE  
23 MOTION ON THE TERMS SET FORTH IN THIS ORDER. THE COURT THEREFORE  
24 GRANTS THE MOTION AS SET FORTH MORE FULLY BELOW AND MAKES THE  
25 FOLLOWING FINDINGS AND RULINGS:

I.

**JURISDICTION, VENUE, AND OTHER PREDICATES**

5. The Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334(a). The matter is a core proceeding under 28 U.S.C. (“Bankruptcy Code”) §§ 157(b)(2): subsection (A)(insofar as it pertains to administration of the Estate and the further implementation of the settlement approved by the Court in its Agreed Order Regarding Settlement And Related Relief entered on September 6, 2012 [AR Bk Doc. 1915] (the “Settlement Order”)); subsection (D)(insofar as it pertains to orders in respect to obtaining credit), (M) (insofar as it pertains to orders approving the use of property); and/or subsection (O) insofar as it is a proceeding affecting the liquidation of the assets of the Estate or the adjustment of the debtor-creditor or the equity security holder relationship). To the extent this matter is not a core matter, it is nonetheless properly before this Article III District Court under section 157.

6. The Court hereby exercises exclusive *in rem* jurisdiction over the Collateral Property to effectuate the relief provided in this Order.

7. Venue is proper in this District under 28 U.S.C. §§ 1408 and/or 1409.

8. The relief granted herein is authorized by, among other laws: 11 U.S.C. §§ 105, 362, 363, 364, 503, & 507; Bankruptcy Rules of Procedure (“BRP” or “Bankruptcy Rule”) 2002, 4001(c), 6004, and 9019; Nev. Rev. Stat. 645B.340 *et al.*; and Nevada common law.

9. Upon entry, this Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rule 6004(h) and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

10. The findings of fact and conclusions of law set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

11. To the extent any of the following findings of fact constitute conclusions of law, they are hereby adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are hereby adopted as such.

## II.

### **THE COURSE OF PROCEEDINGS AND THE OAK SHORES II LOAN**

#### **A. The USACM Bankruptcy and Sale of Assets**

12. On or about April 13, 2006, following a series of massive frauds on investors known as “direct lenders” or “DLs” and others, USA Commercial Mortgage Company and its affiliates (“USACM”) filed chapter 11 bankruptcy petitions in the United States Bankruptcy Court for the District of Nevada. The USACM bankruptcy court authorized a sale of various USACM assets (the “USACM Assets”) pursuant to, among other things, an approved Plan of Reorganization and section 363 of the Bankruptcy Code. The USACM Assets included the rights and powers to service 61 loans (the “USACM Loans”) under loan servicing agreements (the “LSAs”), the right to collect certain fees and service advances, and various fractionalized interests in certain loans and/or properties held by the USACM estates.

13. The USACM Assets were purchased by Compass Financial Partners, LLC (“Compass”). Compass’ acquisition of the USACM Assets was funded by Silar pursuant to a Master Repurchase Agreement (the “MRA”). This Court has ruled that Silar became the owner of the USACM Assets under the MRA, that Silar transferred all of its rights under the MRA to Asset Resolution (the lead Debtor in the Bankruptcy Cases), and that Asset Resolution in turn “foreclosed” Compass out of the MRA on or about September 26, 2008.

#### **B. The Asset Resolution Bankruptcies**

14. On October 14, 2009, voluntary bankruptcy petitions for Asset Resolution and each of the above-named debtors were filed in the United States Bankruptcy Court for the Southern District of New York under chapter 11 of the Bankruptcy Code, and orders for relief were entered in each case.

1           15.     Venue of the Bankruptcy Cases was subsequently transferred to the District of  
2 Nevada and, after the transfer, the Bankruptcy Cases were withdrawn in their entirety from the  
3 bankruptcy court to this Court.

4           16.     By this Court's order entered January 29, 2010 [Dkt. No. 356], the Bankruptcy  
5 Cases were converted to cases under chapter 7 of the bankruptcy code, *nunc pro tunc* as of  
6 January 19, 2010. Asset Resolution is the lead Debtor and the Bankruptcy Cases are jointly  
7 administered under Lead Case No. 09-32824-RCJ. The Trustee was also appointed on  
8 January 29, 2010.

9     **C.     The Settlement Order**

10           17.     On September 6, 2012, this Court entered the Agreed Order Regarding Settlement  
11 And Related Relief (the "Settlement Order") [892 Case Doc. 1915] in litigation styled *San*  
12 *Fernando Lenders LLC et al. v. Compass USA SPE LLC et al.*, Case No. 2:07-cv-00892-RCJ-  
13 GWF (the "892 Case"). The 892 Case was very complicated and extensive litigation involving  
14 the USACM Assets, servicing control over the USACM Loans, and other matters. The  
15 settlement approved in the Settlement Order was substantially consummated and closed shortly  
16 after that order was entered. Paragraph 43 of the Settlement Order also provided that the Court  
17 may enter one or more orders to further implement the settlement terms approved in the  
18 Settlement Order. In fact, the Court has entered a series of orders pursuant to paragraph 43 of  
19 the Settlement Order. [See, e.g., 892 Case Doc. 2308; 210 Case Docs. 173 & 174; AR Adv.  
20 1100 Doc. 69; AR Bk Docs. 1949, 1950, 1952, & 1988.] This Order is also entered in part in  
21 reliance on that that continuing jurisdiction.

22     **D.     The Oak Shores II Loan**

23           18.     One of the provisions of the global settlement involved the making of non-  
24 recourse loans for the benefit of the direct lenders as they attempted to make recoveries on their  
25 USACM Loans. To that end, paragraphs 163 through 168 of the Settlement Order provided for  
26 the advancement by Silar of \$3 million for one or more "Protective Advance Loans" to be  
27 requested and approved by the Court, as provided in more detail in those paragraphs.



1           19. The Court approved two Protective Advance Loans contemplated by the  
2 Settlement Order [see AR Bk Docs. 1779 & 1937], and those loans have been repaid. The  
3 present Motion and this Order involve the third Protective Advance Loan made by Silar pursuant  
4 to the Settlement Order: a \$772,500 loan—later increased with an additional \$128,332.00—for  
5 what is known as the “Oak Shores II” USACM Loan.

6           20. The Oak Shores II Loan was one of the USACM Loans which were the subject of  
7 the sale to Compass and the preliminary injunction entered as Doc. No. 199 in the 892 Case (the  
8 “Preliminary Injunction”).

9           21. The original borrowers of the Oak Shores II Loan were John E. King and his wife,  
10 Carol D. King (jointly and severally, “King”). The Oak Shores II Loan was originated in 2005  
11 by USACM and funded by over 160 “direct lender” or “DL” investors. The principal amount of  
12 the Oak Shores II Loan was increased numerous times and had an unpaid principal balance of  
13 \$12,150,000 by 2013. The Oak Shores II Loan bore a non-default interest rate of thirteen percent  
14 per annum.

15           22. The Asset Resolution Estate holds direct lender beneficial interests (“DL  
16 Interests”) in the Oak Shores II Loan equal to .04 percent of the principal balance of that loan (a  
17 \$4,849 original principal investment). Disposition and other matters relating to those direct  
18 lender interests are governed by paragraphs 51 through 53 of the Settlement Order. Direct  
19 lenders (“B&B DLs”) for whom the law firm of Bickel & Brewer filed a Proof of Claim (the  
20 “B&B Proof of Claim”) in the Bankruptcy Cases owned DL Interests in the Oak Shores II Loan  
21 equal to 62.49% of the principal balance of that loan (a \$7,593,064 original principal  
22 investment).

23 **E. Affirmation of the Fifty-One Percent Rule to Loan Governance**

24           23. In an order entered on January 29, 2010, this Court ruled that, as a result of the  
25 Court’s termination of the LSAs, the Trustee did not have authority to exercise any loan  
26 servicing rights purchased by Compass in the USACM bankruptcy and placed the Trustee in  
27 “nominal control” of the USACM Loans subject to Nevada law and further order of the Court.  
28 [AR Bk Doc. 356 at 2-3]. The January 29, 2010 order was later supplemented and clarified by

1 the Court's Nunc Pro Tunc Order on Chapter 7 Trustee's Continued Authority to Service Loan  
2 on an Interim Basis [AR Bk Doc. 1312].

3 24. On February 8, 2010, the Court directed that "any direct lender may conduct and  
4 supervise the voting process to determine how 51% or more of the direct lenders, calculated by  
5 dollar amount in a Loan, intend to proceed with the management and direction of that Loan."  
6 [AR Bk Doc. 387 at 2/lines 12-15.] The Court also ordered that the Trustee had the right and  
7 power to vote on behalf of the Estate as a direct lender.

8 **F. Approval of the Oak Shores II PAL and Appointment of Donna Cangelosi and**  
9 **Kevin Olsen as TDI Representatives**

10 25. By 2012, the Oak Shores II Loan was in default, the Collateral Property was still  
11 owned by King or an affiliate, and property taxes, penalties, and interest in an amount exceeding  
12 \$450,000 had accrued and remain unpaid.

13 26. However, due to the efforts of Ms. Cangelosi and others, the San Luis Obispo Tax  
14 Collector's Office agreed to accept \$268,192.40 in full satisfaction of all taxes, penalties, and  
15 interest through December 31, 2012—provided that the money was paid by December 31, 2012.  
16 There was therefore an immediate need to borrow money to take advantage of the reduction in  
17 cost and to preserve the Collateral Property.

18 27. There was also a need to foreclose on the Collateral Property, investigate claims  
19 against King and others relating to the Oak Shores II Loan, and incur certain expenses to attempt  
20 to sell the entire property or undertake a lot sales and marketing program.

21 28. Armed with the approval of the holders of more than 51% of the DL interests in  
22 the Oak Shores II loan, Ms. Cangelosi asked Silar and the Trustee to agree to make a PAL loan  
23 under the Settlement Order to assist the Estate and other Oak Shores II Loan DLs to maximize  
24 recovery of their investments by providing necessary funds.

25 29. Because of the urgency imposed by the need to pay the taxing authority by  
26 December 31, 2012, advances were made to immediately pay the taxes and to retain a marketing  
27 analysis firm. The parties then filed a joint motion for the Court's approval of a secured, non-  
28 recourse loan of up to \$772,500.00. This Court approved that loan in an Order Approving Post-

Petition Financing, Loan-Related Claim Resolution, And Related Matters (Oak Shores II) entered on April 19, 2013 (AR Bk Doc. 2047) (the “Oak Shores II PAL Order”).

30. The Oak Shores II PAL Order also affirmed the appointment of Ms. Cangelosi and Kevin Olsen as trust deed representatives (“TDI Representatives”) to assist their fellow direct lenders in the management of their Oak Shores II Loan, including without limitation, establishing, drawing funds from, and overseeing repayment of the Oak Shores II Protective Advance Loan, managing the foreclosure process, the lot sales and marketing program, and re-sale(s) of the Collateral Property in whole or in part through one or more transactions, investigating and pursuing if advisable claims against King, and retaining counsel and other professionals and vendors to assist in those matters.

**G. The Initial Oak Shores II PAL**

31. The Oak Shores II PAL Order authorized an ear-marked loan made to the Estate by Silar, its designee, and their assignees (collectively, the “Silar Lender”) to be advanced to protect the Direct Lender Interests of the Estate and its fellow Direct Lenders in the Oak Shores II Loan.

32. Silar Lender made the Oak Shores II PAL on a non-recourse basis as to the Oak Shores II DLs and any entity through which they directly or indirectly obtained title to the Collateral Property, with repayments to be made on a priority basis solely out of collections (“Collections”) under the Oak Shores II loan documents (including without limitation through the Collateral Property itself and cash and other proceeds generated by the Collateral Property). (AR Bk Doc. 2047 ¶¶ 66–67).

33. In order to secure indefeasible re-payment to Silar Lender of all sums due in connection with the Oak Shores II Protective Advance Loan, this Court directed that all Collections are and shall be earmarked for re-payment of the Oak Shores II PAL and, under no circumstances may any Collections or the proceeds thereof be used by or available in any way to the Estate, creditors of the Estate, or any other person or entity until there has been full re-payment of the sums due to Silar Lender for the Oak Shores II PAL. (AR Bk Doc. 2047 ¶ 68).

34. In order to further secure indefeasible re-payment to Silar Lender of all sums due in connection with the Oak Shores II PAL, this Court also declared that the Estate and Silar Lender were granted a first-lien security interest (the “Lien”) in, to, and against any and all of the following, whether now existing or acquired hereafter: any and all Collections; the rights of the Oak Shores II DLs in and under the Oak Shores II Loan Documents and/or to receive the Collections; the Collateral Property and/or any other collateral foreclosed on by or for the Oak Shores II DLs or their designees or exchanged or contributed to any holding entity, or otherwise changed, impaired, encumbered, altered or substituted in any way at any time or from time to time; any interests of the Oak Shores II DL in any such foreclosure or holding entity; any and all Seller Financing Loan Documents and all liens and rights thereunder; and any and all rights and/or proceeds directly or indirectly generated by, created by, derived from, or collected from any of the foregoing. (AR Bk Doc. 2047 ¶ 69).

35. The Court further ordered that the Lien was effective upon initial funding of the loan without the need for any further action, recording, or perfection and shall remain in place until all sums due to Silar Lender with respect to the Oak Shores II PAL are indefeasibly paid in full. The interests of the Estate in, to, or under the Lien shall be subordinate in all respects and at all times to the interests of Silar Lender. (AR Bk Doc. 2047 ¶ 70).

#### **H. The First Supplemental Oak Shores PAL Order**

36. Pursuant to paragraph 54 of the Oak Shores II PAL Order, the Oak Shores II PAL loan matured on June 30, 2016 (forty-two months from the date of Silar Lender’s advance of the Initial Earmarked Estate Funds, which occurred on December 31, 2012).

37. As of September 30, 2016, the current amount due to Silar Lender under the Oak Shores II PAL Order was \$934,045.39 (the “2016 Amount Due”). The 2016 Amount Due was calculated as follows: (a) \$750,000 (principal balance advanced); plus (b) \$184,045.39 (Current Unpaid Non-Default Interest).

38. Due to the maturity of the loan, Silar Lender are empowered to seek all remedies available to it at law, in equity, or otherwise, including, under paragraph 76 of the Oak Shores

1 PAL Order, the power obtain an order from the Court directing a sale of the underlying real  
2 estate Collateral through a Court-approved broker.

3 39. But, in keeping with its intent to assist the Direct Lenders in their efforts to  
4 recover losses from the USACM fraud, Silar agreed to extend the maturity date of the loan to  
5 June 30, 2017 and to advance an additional \$128,332.00 as part of the principal amount of the  
6 loan (making the outstanding principal balance of the loan, as of October 1 2016, to be  
7 \$1,062,377.39).

8 40. By making the \$128,332 advance, Silar fully complied with its obligations under  
9 the Settlement Order to advance \$3 million for protective advance loans.

10 41. As consideration for the maturity date extension, Silar Lender was provided the  
11 right to receive four percent (4%) of any and all gross Collections (the "Four Percent Amount")  
12 (in addition to being repaid the Outstanding Principal Balance and all accrued interest due on the  
13 loan) and the right to collect the Four Percent Amount was added to the Lien securing the PAL.

14 42. This Court approved the terms of this extension agreement in a second order, the  
15 Amended Agreed Order Supplementing This Court's April 19, 2013 Order entered on April 11,  
16 2017 (AR Bk Doc. 3223) (the "First Supplemental Order").

17 43. In the First Supplemental Order, this Court confirmed that there were no offsets,  
18 defenses, recoupments, claims, counterclaims, or Causes of Action which can be asserted against  
19 the Estate and/or the Silar Lender in connection with the Oak Shores II PAL Order or the Oak  
20 Shores II Loan and that, in any event, any such offsets, defenses, recoupments, claims,  
21 counterclaims, or Causes of Action were waived.

22 44. The First Supplemental Order also confirmed that all other terms of the Oak  
23 Shores II PAL Loan approved by the Oak Shores II PAL Order remained the same except for the  
24 extension of the maturity date, the additional \$128,332.00 advance, and the consideration  
25 provided therefor as recited in the First Supplemental Order.

26 **I. The DLs Take Control Over The Collateral Property Foreclosure Into An SPE**

27 45. Subsequent to entry of the Oak Shores II PAL, the TDI Representatives for the  
28 Oak Shores II DLs formed Oak Shores SPE to take title to the Collateral Property through

1 foreclosure under the Oak Shores Loan documents. Oak Shores SPE now owns the foreclosed  
2 real estate and other attendant rights, titles, and interest comprising the Collateral Property. The  
3 Oak Shores SPE is managed by Ms. Cangelosi, as TDI Representative for the Oak Shores II  
4 direct lenders.

5 46. Copies of the OAK Shores PAL Order and First Supplemental Order  
6 (concurrently, the “Two PAL Orders”) were duly recorded in the County land records of San  
7 Luis Obispo (Doc. No. 2014001247 filed 1/10/14 at 1:34pm) immediately following recordation  
8 of the trustee deed to Oak Shores SPE (Doc. No. 2014001246 filed 1/10/14 at 1:34 p.m.).

9 47. Pursuant to the Two PAL Orders, the non-recourse obligations of the Oak Shores  
10 II DLs and the Estate to repay Silar Lender out of the Collateral Property all accrued and  
11 accruing sums in connection with the Oak Shores II PAL Loan were automatically extended to  
12 and assumed by Oak Shores SPE the moment Oak Shores SPE received title to the real property  
13 and to any other rights, titles, or interests or assets comprising any part of the Collateral Property.

14 48. Similarly, the first-priority Lien granted to Silar Lender against the Collateral  
15 Property for repayment of all accrued and accruing sums in connection with the Oak Shores II  
16 PAL Loan attached to the foreclosed real estate and other rights, titles, and interests foreclosed  
17 upon by Oak Shores SPE effective the moment Oak Shores SPE received title to that real  
18 property and to any other rights, titles, or interests and assets comprising any part of the  
19 Collateral Property.

20 **J. The Oak Shores PAL Is Still Wholly Unpaid And Is In Default**

21 49. Despite the best efforts of the TDI Representatives, the Oak Shores DLs and their  
22 SPE were unable to undertake a sale or development of the Collateral Property over the past  
23 three years. One of the significant issues was addressing a local government requirement  
24 concerning physical phone lines at the site.

25 50. During that three year period, Silar entered into extension and forbearance  
26 agreements with TDI Representative Cangelosi, based on approval of the holders of more than  
27 51 percent of the beneficial “direct lender” interests in the loan. Through the agreements reached  
28

1 with Ms. Cangelosi after the June 2017 maturity date (which were also approved by the holders  
2 of more than 51% of the DL interests in the loan), Silar forbore from seeking the remedies  
3 available to it under the Court's orders and the law, and even agreed to reduce the amount it  
4 would accept as repayment if the direct lenders were able to achieve a liquidity transaction  
5 within the extended period.  
6

7 51. Ms. Cangelosi and others undertook substantial efforts to obtain the governmental  
8 and other approvals necessary to develop the Collateral Property as a means to repay the loan  
9 and, in the alternative, tried and sell the Collateral Property for a price sufficient to repay the  
10 loan. Silar kept in contact with Ms. Cangelosi during her efforts and was very supportive of her  
11 efforts.  
12

13 52. As part of its efforts to help the Direct Lenders save what they could from their  
14 investment with USACM, Silar and Ms. Cangelosi on her capacity as TDI Representative and on  
15 behalf of Oak Shores SPE negotiated and reached an agreement in the last quarter of 2018 which  
16 provided still more time to the Direct Lenders (the "December Agreement"). The December  
17 Agreement was brought to the Direct Lenders by Ms. Cangelosi and approved by the holders of  
18 more than 51% of the beneficial Direct Lender Interests in the Oak Shores loan.  
19

20 53. Under the December Agreement, Silar Lender agreed to continue to forbear from  
21 exercising its remedies as long as certain milestone occurred in 2019, including obtaining certain  
22 government approvals in October 2019 and making some funded lot sales and payments in  
23 December 2019. At Ms. Cangelosi's request, Silar Lender refrained from making a public filing  
24 about the extension and its terms while she attempted to negotiate a sale of the Collateral  
25 Property to the adjacent landowner (whose property shares certain infrastructure improvements  
26 with the Collateral Property). Unfortunately, despite their efforts, the Direct Lenders were unable  
27  
28

1 to meet the 2019 milestones set forth in the December Agreement, and the Oak Shores II PAL  
2 remained—and still remains—in default.

3 54. The Two PAL Orders and the December Agreement are in default. The Two PAL  
4 Orders allow Silar to exercise any and all rights and remedies available to it under the law, which  
5 include pursuing state law foreclosure of the Collateral Property. The December Agreement  
6 further provides Silar the right to receive a deed-in-lieu of foreclosure for the Collateral Property  
7 from Oak Shores SPE or to receive 100% ownership of the Oak Shores SPE which holds title to  
8 the Collateral Property. To the extent it might have applied to any such remedies, the automatic  
9 stay has already been lifted by the Two PAL Orders.

10 55. In short, Silar Lender made the Oak Shores PAL loan seven years ago and has not  
11 received any payments. The maturity date of the loan was voluntarily extended by Silar Lender  
12 in good faith, when it was not required to do so by the Settlement Order, the Two PAL Orders,  
13 the equities, or the law. The balance of the loan now exceeds \$1.5 million and continues to  
14 accrue interest at the default rate. Because the loan is non-recourse, Silar Lender's only source  
15 of repayment is the Collateral Property itself or proceeds from that real estate.

16 56. Silar Lender has informed the Court that Silar would have much preferred that the  
17 Direct Lenders obtained a liquidity event and repaid the loan (a statement which the Court finds  
18 credible and true). However, despite what this Court finds to be the best efforts of the TDI  
19 Representatives and Oak Shores SPE, the Direct Lenders have not been able to obtain any  
20 liquidity events or even reach any agreements with third parties which would reasonably lead to  
21 a liquidity event. Silar Lender has stated that, under these circumstances, it has brought the  
22 Motion with a "reluctant resolve" to be able to receive title to the Collateral Property and close  
23 out the PAL "chapter" of the global settlement.  
24

25 57. Finding good cause to exist for granting the Motion, the Court hereby GRANTS  
26 the Motion and renders relief under the terms set forth in Section III below.  
27  
28



1 **III.**

2 **THE MOTION IS GRANTED AND THE COLLATERAL PROPERTY**  
3 **SHALL BE SOLD BY AUCTION ON SEPTEMBER 21, 2020**  
4 **UNLESS SILAR IS PAID THE BUY-OUT AMOUNT BY SEPTEMBER 1, 2020**

5 58. As of June 30, 2020, the following amounts were due and/or continued to accrue  
6 on the Oak Shores PAL loan: (a) \$1,062,377.39 of principal; (b) \$532,154.38 of accrued interest  
7 (with interest continuing to accrue at the default rate); (c) the Four Percent Amount; and (d)  
8 \$50,000 of reasonable attorney's fees and costs (which continue to accrue). These amounts (with  
9 accruals) are referred to herein as the "Total Due."

10 59. The Lien granted in the Oak Shores II PAL Order shall extend to all sums  
11 constituting the Total Due and such sums shall be included in the phrase "all sums due in  
12 connection with the Protective Advance Loan" for all purposes whenever such phrase appears in  
13 either of the Two PAL Orders. All other terms of the Oak Shores II PAL Loan approved by the  
14 Oak Shores II PAL Order and First Supplemental Order remain the same, except as set forth in  
15 this Order.  
16

17 60. If Silar Lender were to exercise the remedies it is fully entitled to exercise under  
18 the parties' December Agreement and/or this Court's Two PAL Orders—including obtaining an  
19 order from this Court directing the Oak Shores SPE to deliver to Silar a deed for the Collateral  
20 Property—the interests of the Direct Lenders in their Oak Shores loan investments would be  
21 totally lost.  
22

23 61. However, Silar Lender has agreed to refrain from exercising its remedies in order  
24 to provide the Direct Lenders still more time to attempt to save their investments, as set forth  
25 throughout this Order, including without limitation this Section III (the "Agreed Terms"). Ms.  
26 Cangelosi has reviewed and approved the terms of this Order as TDI Representative on behalf of  
27  
28

1 the Direct Lenders and Oak Shores SPE. The terms of this Order have also been reviewed and  
2 agreed to by the Trustee, through his counsel.

3 62. In exchange for Silar Lender's agreement to forbear from exercising its rights and  
4 remedies at this time, TDI Representative (on behalf of the Oak Shores DL's and Oak Shores  
5 SPE) and the Trustee (on behalf of the Estate) agree—and this Court orders—the following:

6  
7 A. The Collateral Property shall be sold in an auction under section 363 of the  
8 Bankruptcy Code to be held on September 21, 2020 at 10:00a.m. At Reno (the  
9 “Sale Hearing Date”).

10 B. The auction sale shall be consistent with the terms of this Order and shall be  
11 conducted under at least the following terms:

12 (i) The sale shall be made “as is, where is,” free and clear of all liens and  
13 encumbrances (except property taxes). The sale shall include title to the  
14 Collateral Property and all development and other rights, title, and  
15 interests relating thereto. The Lien in favor of Silar Lender against the  
16 Collateral Property shall be terminated upon a sale of the Collateral  
17 Property, but shall remain in effect against the gross sale proceeds and the  
18 Total Sum Due at the time of the sale shall be paid out of such proceeds  
19 (without any set-offs or deductions);

20  
21 (ii) Unless the successful bidder is a credit bid by Silar Lender or its designee,  
22 the sale price must be paid in full, in immediately-available funds to the

23  
24 Trustee in trust for Silar Lender and the DLs no later than twenty-  
25 four hours from the date and time the auction is concluded. Such funds  
26 shall not constitute property of the Estate and shall be earmarked as Oak  
27 Shores PAL loan collections (and subject to the Silar Lender Lien). Within  
28

1 twenty-four hours of receipt, the Trustee shall deliver by check or  
2 otherwise such funds as follows: (1) first, up to the then Total Amount  
3 Due to Silar Lender, until paid in full; and (2) then the balance to the TDI  
4 Representatives on behalf of Oak Shores SPE and the Direct Lenders;

5 (iii) Silar Lender or its designee may credit bid up to the Total Amount Due  
6 (calculated as of the day before the auction) and need not be pre-qualified  
7 by the Trustee as a bidder;

8 (iv) All potential bidders other than Silar Lender or its designee shall be pre-  
9 qualified by the Trustee as *bona fide* bidders with the demonstrated  
10 financial capability to pay a successful bid of at least \$1,600,000 in cash  
11 on the day of the auction;

12 (v) All otherwise qualified bidders (other than Silar Lender or its designee)  
13 shall make a cash deposit of \$160,000 in escrow to the Trustee (which  
14 shall be returned in the event the bidder is not the winning bidder and, if  
15 the bidder is the winning bidder, either applied to the purchase price if the  
16 bidder closes on the purchase or held as liquidated damages in the event  
17 the winning bidder does not close by paying the full sale price within 24  
18 hours of the auction). In the event the Trustee receives liquidated  
19 damages from a bidder, such funds shall be immediately paid one-third  
20 each to the Estate, to the TDI Representative for the benefit of the DLs,  
21 and to Silar Lender as liquidated damages.

22 (vi) In the event Silar Lender or its designee is the successful bidder: (a) they  
23 shall pay the Estate's reasonable legal fees for the 363 motion and  
24 procedure (in an amount to be approved by the Court); and (b) they may  
25  
26  
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28

1 retain one or more Direct Lenders (including without limitation one or  
2 more of the present TDI Representatives) as consultants or otherwise  
3 with respect to the Collateral Property.

- 4 (vii) The sale of the Collateral Property shall, at the option of the purchaser,  
5 include without limitation all rights, titles, and interests and applications:  
6 (a) to develop the Collateral Property; (b) in and to public improvement  
7 plans for subdivision(s) of or for the Collateral Property; (c) in and to all  
8 plans, drawings, special or general conditions, specifications, addenda and  
9 modifications relating directly or indirectly to the Collateral Property; (d)  
10 in and to on-site improvements on the Collateral Property; (e) in and to all  
11 leases, rents, and other proceeds applicable to the Collateral Property; (f)  
12 in and to all rights for reimbursement of expenses and/or performance  
13 bonds and proceeds (including without limitation bonds issued by  
14 International Fidelity Insurance Company as surety and generally known  
15 as “Marina Bond,” “Lakeview Bond,” and “Access Bond”) and all rights  
16 under any agreements with the County of San Luis Obispo, State of  
17 California; and (g) in and to all tangible and intangible rights and property  
18 received by the SPE through the Trustee Deed and operation of law when  
19 it foreclosed on the Collateral Property. To the extent any of the foregoing  
20 rights, title, or interests are opted to be accepted by Purchaser but are not  
21 directly assignable, the SPE, its managers and members, and the TDI  
22 Representatives are hereby directed to cooperate with and assist Purchaser  
23 and/or Purchaser’s assignee and to act as Purchaser’s agent (or the agent  
24 of Purchaser’s assignee) so that Purchaser or its assignee receives the full  
25  
26  
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benefit of the rights, titles, and interests which are the subject of the sale under this Order. Notwithstanding anything to the contrary in this Order, neither Purchaser nor its assignee shall be deemed to have assumed or be obligated to assume any liability or obligation relating to the Collateral Property which is not expressly assumed in writing by the Purchaser or its assignee.

C. Within ten days from the execution of this Order by the parties or their counsel, TDI Representative Cangelosi shall wire to Silar Lender or its designee all cash being held from the funding of the PAL loan for improvements of the Collateral Property after accounting for expenses (the "Set Aside Funds"). When received the Set Aside Funds shall be applied to reduce the Total Amount Due.

D. Oak Shores TDI Representatives and Oak Shores SPE acknowledge and this Court confirms that they have not relied upon Francis B. Majorie or the Majorie Firm Ltd. for any advice concerning the transactions governed by this Order or the terms or provisions of this Order, that Majorie solely represents Silar Lender, and they have consulted their own legal counsel in connection herewith.

E. There are no offsets, defenses, recoupments, claims, counterclaims, or Causes of Action (as defined in the Two PAL Orders) which can be asserted against the Estate and/or the Silar Lender in connection with the Two PAL Orders or the Oak Shores II Loan and, in any event, any such offsets, defenses, recoupments, claims, counterclaims, or Causes of Action are waived.

63. The Court has independently reviewed the Agreed Terms.

64. The Court finds that the Agreed Terms are the result of arms-length negotiating and not collusion, are proposed in good faith, and have not been reached as a result of any duress or coercion by Silar Lender.

1           65.     The Court further finds that Silar Lender is extending credit in good faith and is  
2 therefore entitled to and is hereby granted all of the protection provided to an entity that extends  
3 credit in good faith under Section 364(e) of the Bankruptcy Code, including without limitation  
4 that the Silar Lender's rights and protections provided by this Order will not be affected by any  
5 subsequent reversal, modification, or amendment of this Order, or by any other order, and shall  
6 remain subject to the protections afforded under Section 364(e) of the Bankruptcy Code.

7           66.     The Court further finds that Silar Lender is not an insider or affiliate of either Oak  
8 Shores SPE, the Estate, or any of the Oak Shores DLs and the terms of this Order will not render  
9 Silar Lender to be an insider or affiliate.

10          67.     The Court also rules that, pursuant to Nev. Rev. Stat. 645B.015(6) and 645B.016  
11 and other applicable law and to the fullest extent necessary or appropriate to effect the  
12 transactions approved in this Order, Silar Lender, the Trustee, any Oak Shores II DL, and any  
13 appointed TDI Representative acting under such 51% vote, and their respective successor and  
14 assigns are, from and after the date hereof, exempt from and shall not: (a) be required to obtain  
15 separate written powers of attorney from each or any of the Oak Shores II DLs with respect to  
16 implementation of any terms of this Order; (b) be deemed to be "mortgage brokers," "mortgage  
17 agents," "mortgage bankers," "escrow agents," or "loan servicers" under Nevada law with  
18 respect to the Oak Shores II Loan or the implementation of any terms of this Order; and/or (c) be  
19 required to be licensed by the State of Nevada, or required to hold powers of attorney under  
20 Nevada law with respect to the Oak Shores II Loan or the Transaction or the implementation of  
21 any terms of this Order.

22          68.     The Court finds that the Agreed Terms are fair and reasonable under all of the  
23 circumstances, provide the DLs more than reasonably equivalent value in light of the  
24 circumstances, and represent new value to the DLs.

25          69.     The Court further finds that the terms and conditions of this Order provide the  
26 Oak Shores DLs a prospect for recovery which they would not otherwise have under the  
27 conditions in which the Oak Shores SPE, the Estate and the direct lenders presently find  
28 themselves. Without a forbearance, they would likely lose the property due to an inability to

1 repay the defaulted Oak Shores PAL Loan or would be unable to sell the property for sufficient  
2 proceeds to pay off the debt and still receive a dividend (owing in large measure to the state of  
3 affairs concerning telephone line requirements and the need to obtain other approvals for  
4 subdividing and selling or developing the property). None of these circumstances were created  
5 or caused by Silar Lender. To the contrary, with the original PAL Loan and two extensions of  
6 time in the First Supplemental Order and this Order, the direct lenders have been given an  
7 extended opportunity to attempt to address the development hurdles of the property. The original  
8 Oak Shores II PAL Loan was for a term of forty-two months; it has now been outstanding for  
9 sixty-five months; and, if all of the forbearance extensions are applied, it will have remained  
10 outstanding for eighty months (*i.e., nine years and eight months*). The exchange of consideration  
11 set forth in the terms of this Order therefore represents new value to the Oak Shores SPE and  
12 direct lenders and a reasonably equivalent exchange of value (in fact, a lopsided exchange of  
13 value in favor of the Oak Shores SPE, Estate, and DLs). Silar Lender therefore shall not be  
14 compelled to surrender any payments or proceeds received pursuant to the terms of the Two PAL  
15 Orders and this Order as a preference, a fraudulent transfer, a recoupment or setoff, or for any  
16 other reason in any proceeding.

17 70. Silar Lender shall have the absolute right to transfer any or all of its rights and  
18 remedies in whole or in part under the Two PAL Orders or this Order to any entity it chooses  
19 (provided such entity agrees in writing to abide by the terms of the Two PAL Orders and this  
20 Order and such assignment shall relieve Silar Lender of any obligations thereunder with respect  
21 to the matters being assigned.

22 71. In addition, this Order confirms, under section 105 of the Bankruptcy Code and  
23 other applicable law, that the TDI Representatives are authorized to execute any such filings  
24 contemplated by the Two PAL Orders or this Order, jointly and severally on behalf of Oak  
25 Shores SPE and/or on behalf of any and all Oak Shores II DLs as non-recourse grantors and/or  
26 debtors of the Lien and Oak Shores PAL Loan.

IV.

**RETENTION OF CONTINUING EXCLUSIVE JURISDICTION**

72. This Court hereby declares that it hereby asserts and maintains exclusive and continuing jurisdiction: (a) to apply and/or interpret the Two PAL Orders or this Order and any matter which arises under or relate to this Order; or (b) to implement or determine the effect of any or all of the transactions, payments, and transfers governed by this Order (“Order-Related Matters”).

73. The Court hereby specifically orders and declares that, in the event any proceeding is filed in a state court or federal district or bankruptcy court which requires interpretation or application of this Order or involves any other Order-Related Matters, such action or other proceeding (including a bankruptcy proceeding) shall be commenced in this Court or transferred to this Court as: (a) a related to proceeding with respect to the above-referenced Asset Resolution and related bankruptcy cases; and/or (b) as a federal question case or controversy to interpret and enforce this Court’s orders and to protect this Court’s jurisdiction.

**IT IS SO ORDERED.**

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

DATED: \_\_\_\_\_

###

*[Agreement as to Form and Substance Signatures on the Following Page]*



1 AGREED AS TO FORM AND SUBSTANCE:

2 Dated: September 17, 2020

**DONNA CANGELOSI,  
TDI REPRESENTATIVE**

3  
4 By: /s/ Donna Cangelosi  
5 Donna Cangelosi

6 Solely In Her Capacity As TDI Representative Of  
7 All The Direct Lenders In The Oak Shores II Loan  
(Except The Estate) And Not Individually

8 Dated: September 17, 2020

**OAK SHORES SPE, LLC,  
A Nevada Limited Liability Company**

9  
10 By: /s/ Donna Cangelosi  
11 Donna Cangelosi,

12 Solely In Her Capacity As Manager of Oak Shores  
13 SPE, LLC And Not Individually

**WILLIAM A. LEONARD, Trustee**

14  
15 Dated: September 17, 2020

By: /s/ William A. Leonard

16 AGREED AS TO FORM:

17 Dated: September 17, 2020

**SULLIVAN HILL REZ &ENGEL  
A Professional Law Corporation**

18  
19 By: /s/ Jonathan S. Dabbieri  
Jonathan S. Dabbieri  
20 Attorneys for Chapter 7 Trustee,  
21 WILLIAM A. LEONARD, JR.

22 Dated: September 17, 2020

**THE MAJORIE FIRM LTD.**

23 By: /s/ Francis B. Majorie  
24 Francis B. Majorie  
25 Attorneys for SILAR LENDER

26 ###  
27  
28

**LOCAL RULE 9021 DECLARATION**

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the Court's ruling and that:

☐ 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 [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☒ 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.

Dated this 17th day of September 2020.

SULLIVAN HILL REZ & ENGEL  
A Professional Law Corporation

By: /s/ Jonathan S. Dabbieri  
James P. Hill  
Jonathan S. Dabbieri  
Elizabeth E. Stephens  
Attorneys for Chapter 7 Trustee,  
William A. Leonard, Jr.

###

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

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re ) CASE NO. BK-S-09-32824-RCJ (Lead Case)  
 )  
 ASSET RESOLUTION, LLC, ) Jointly Administered with Case Nos.:  
 ) BK-S-09-32831-RCJ; BK-S-09-32839-RCJ;  
 Debtor. ) BK-S-09-32843-RCJ; BK-S-09-32844-RCJ;  
 ) BK-S-09-32846-RCJ; BK-S-09-32849-RCJ;  
 ) BK-S-09-32851-RCJ; BK-S-09-32853-RCJ;  
 ) BK-S-09-32868-RCJ; BK-S-09-32873-RCJ;  
 ) BK-S-09-32875-RCJ; BK-S-09-32878-RCJ;  
 ) BK-S-09-32880-RCJ; BK-S-09-32882-RCJ  
 )  
 ) Chapter 7

Affects:

- ☐ All Debtors  
☒ Asset Resolution, LLC, 09-32824  
☐ Bundy 2.5 Million SPE, LLC, 09-32831  
☐ Bundy Five Million SPE, LLC, 09-32839  
☐ CFP Anchor B SPE, LLC, 09-32843  
☐ CFP Cornman Toltec SPE, LLC, 09-32844  
☐ CFP Gess SPE LLC, 09-32846  
☐ CFP Gramercy SPE, LLC, 09-32849  
☐ Fiesta Stoneridge, LLC, 09-32851  
☐ Fox Hills SPE, LLC, 09-32853  
☐ HFAH Monaco SPE LLC, 09-32868  
☐ Huntsville SPE LLC, 09-32873  
☐ Lake Helen Partners SPE LLC, 09-32875  
☐ Ocean Atlantic SPE LLC, 09-32878  
☐ Shamrock SPE LLC, 09-32880  
☐ 10-90 SPE, LLC, 09-32882  
☐ Bundy Canyon Land Development, LLC, 13-13491

**CERTIFICATE OF SERVICE**

Judge: Hon. Robert C. Jones

I am employed in San Diego County. I am over the age of 18 and not a party to this action. My business address is 600 B Street, Suite 1700, San Diego, California 92101. On September 18, 2020, I served the foregoing document(s), described as:

• **NOTICE OF UPLOADING AGREED ORDER GRANTING SILAR ADVISORS LP'S MOTION FOR RELIEF CONCERNING OAK SHORES II PAL LOAN [Dkt. 3502]**

☒ by placing ☐ the original ☒ a true copy thereof, by the following means to the persons as listed below:

☒ **ECF SYSTEM** On September 18, 2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive ECF transmission at the email address(es) indicated below:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on  
September 18, 2020 at San Diego, California.

/s/ Linda Gubba-Reiner

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