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**UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA**

In re:

Chapter 11

LAKE AT LAS VEGAS JOINT VENTURE, LLC

☒ Affects this Debtor

Case No. 08-17814-LBR

LLV-1, LLC

☒ Affects this Debtor

Case No. 08-17815-LBR

LLV HOLDCO, LLC

☒ Affects this Debtor

Case No. 08-17817-LBR

LAKE LAS VEGAS PROPERTIES, L.L.C.

☒ Affects this Debtor

Case No. 08-17820-LBR

LLV FOUR CORNERS, LLC

☒ Affects this Debtor

Case No. 08-17822-LBR

NORTHSHORE GOLF CLUB, L.L.C.

☒ Affects this Debtor

Case No. 08-17825-LBR

P-3 AT MONTELAGO VILLAGE, LLC

☒ Affects this Debtor

Case No. 08-17827-LBR

THE GOLF CLUB AT LAKE LAS VEGAS, LLC

☒ Affects this Debtor

Case No. 08-17830-LBR

MARINA INVESTORS, L.L.C.

☒ Affects this Debtor

Case No. 08-17832-LBR

THE VINEYARD AT LAKE LAS VEGAS, L.L.C.

☒ Affects this Debtor

Case No. 08-17835-LBR

LLV VHI, L.L.C.

☒ Affects this Debtor

Case No. 08-17837-LBR

TCH DEVELOPMENT, L.L.C.

☒ Affects this Debtor

Case No. 08-17841-LBR

TC TECHNOLOGIES, L.L.C.

☒ Affects this Debtor

Case No. 08-17842-LBR

SOUTHSHORE GOLF CLUB, L.L.C.

☒ Affects this Debtor

Case No. 08-17844-LBR

NEVA HOLDINGS, L.L.C.

☒ Affects this Debtor

Case No. 08-17845-LBR

☒ AFFECTS ALL DEBTORS

Debtors.

Jointly Administered Under Case No. BK-S-08-17814-LBR

**LAKE AT LAS VEGAS JOINT VENTURE, LLC AND ITS
 JOINTLY-ADMINISTERED CHAPTER 11 AFFILIATES'
 OPPOSITION TO TRANSCONTINENTAL CORPORATION
 AND TRANSCONTINENTAL PROPERTIES, INC.'S
 MOTION TO DISMISS BANKRUPTCY CASES**

(AFFECTS ALL DEBTORS)

Hearing Date: October 2, 2009

Hearing Time: 11:00 a.m.

1 Lake at Las Vegas Joint Venture, LLC and its jointly-administered chapter 11 affiliates,
 2 debtors and debtors in possession in the above-captioned chapter 11 cases (the “Debtors”), hereby
 3 file this opposition to Transcontinental Corporation and Transcontinental Properties, Inc.’s *Motion to*
 4 *Dismiss Bankruptcy Cases* [Docket No. 1469] (the “Motion”).¹

5 This Opposition is supported by these moving papers, the concurrently-filed *Declaration of*
 6 *Frederick E. Chin in Opposition to Transcontinental Corporation and Transcontinental Properties,*
 7 *Inc.’s Motion to Dismiss Bankruptcy Cases* (the “Chin Declaration”), the concurrently-filed
 8 *Declaration of David M. Guess in Opposition to Transcontinental Corporation and Transcontinental*
 9 *Properties, Inc.’s Motion to Dismiss Bankruptcy Cases* (the “Guess Declaration”), the arguments
 10 and representations of counsel, and any oral or documentary evidence submitted at or prior to the
 11 time of the hearing on this Motion.

12 **A. Preliminary Statement.**

13 Transcontinental Corporation and Transcontinental Properties, Inc. (collectively,
 14 “Transcontinental”) assert that the Debtors’ bankruptcy cases (the “Cases”) should be dismissed for
 15 two reasons: (i) because the Cases were allegedly filed in bad faith, *see* Motion, at 8-16; and
 16 (ii) because there is purportedly no reasonable likelihood of a reorganization, *see id.* at 16-17.
 17 The Motion was filed without any supporting admissible evidence, as required by LR 9014(c), and
 18 accordingly is subject to being stricken under that rule. Putting this defect aside, Transcontinental’s
 19 arguments fail to withstand scrutiny, particularly given that the Debtors and the Official Committee
 20 of Creditors Holding Unsecured Claims (the “Creditors’ Committee”) have now filed a joint
 21 chapter 11 plan of reorganization. *See Chapter 11 Plan of Reorganization Proposed by Lake at Las*
 22 *Vegas Joint Venture, LLC and its Jointly-Administered Chapter 11 Affiliates and the Official*
 23

24
 25 ¹ The Motion contains numerous unsubstantiated factual statements which the Debtors dispute.
 26 Rather than address point-by-point each of these factual statements, the Debtors herein address
 27 only those statements that appear relevant to the legal standards applicable to motions to dismiss
 28 bankruptcy cases, and reserve all their rights to challenge, at a later date and in an appropriate
 context, the other statements within the Motion. Any failure of the Debtors to respond to each of
 these statements in this pleading should not be deemed to constitute an admission of any kind.

1 *Committee of Creditors Holding Unsecured Claims (Dated September 4, 2009)* [Docket No. 1510]
 2 (the “Plan”). The confirmation hearing on the Plan has been scheduled for December 15, 2009.

3 Transcontinental comes to this Court seeking dismissal of the Cases not in its capacity as an
 4 alleged general unsecured creditor.² Rather, Transcontinental comes to this Court as, or on behalf
 5 of, the defendant in *Lake at Las Vegas Joint Venture, LLC, et al. v. LID Acquisition, LLC (In re Lake*
 6 *at Las Vegas Joint Venture, LLC, et al.)*, Case No. ADV-S-09-01031-LBR (the “LID Acquisition
 7 Litigation”), and the likely defendants in certain anticipated post-confirmation litigation against the
 8 Debtors’ former insiders, including litigation to recover over \$400 million in transfers from the
 9 Debtors to the Debtors’ former equity holders. This can be seen from the timing of the Motion.
 10 Instead of bringing the Motion in the first few months of the Cases, Transcontinental brought the
 11 Motion more than thirteen months after the commencement of the Cases, and only after being
 12 advised that the Debtors would be bringing a motion for summary judgment in the LID Acquisition
 13 Litigation and would be proposing a plan of reorganization that preserves the Debtors’ causes of
 14 action against Transcontinental and the Debtors’ other former equity holders and insiders.

15 Transcontinental’s goal in bringing the Motion is not to make it easier for general unsecured
 16 creditors to obtain payment from the Debtors. General unsecured creditors stand to receive
 17 absolutely nothing if the Cases are dismissed. *See* Disclosure Statement, Exhibit 8. Rather,
 18 Transcontinental’s goal is obstructionist. Transcontinental seeks to make it as difficult for the
 19

20 ² Transcontinental filed proofs of claim in the Cases asserting a \$1,442,563.54 general unsecured
 21 claim against Lake at Las Vegas Joint Venture, LLC (“LLVJV”) based upon an “Administrative
 22 Service Agreement” that Transcontinental Properties, Inc. entered into with Lake at Las Vegas
 23 Joint Venture, a Nevada general partnership (a predecessor-in-interest to LLVJV). Attached as
 24 Exhibits 1 & 2 to the Guess Declaration are true and correct copies of Transcontinental’s proofs
 25 of claim. The bulk of Transcontinental’s claims are based on an allegedly unpaid \$1,285,201.51
 26 “management fee.” Transcontinental’s claims are subject to challenge for a number of reasons.
 27 Among other things, Transcontinental received approximately \$2.75 million in transfers from the
 28 Debtors during the preference period. *See Exhibit 6b to Disclosure Statement Describing*
Chapter 11 Plan of Reorganization Proposed by Lake at Las Vegas Joint Venture, LLC and its
Jointly-Administered Chapter 11 Affiliates and the Official Committee of Creditors Holding
Unsecured Claims (Dated September 4, 2009) [Docket No. 1512] (the “Disclosure Statement”).
 These transfers could serve as a basis for both Transcontinental’s claims to be disallowed under
 11 U.S.C. § 502(d), and for an affirmative recovery from Transcontinental.

Debtors as possible to bring causes of action against Transcontinental and the Debtors' other former equity holders and insiders. Transcontinental's real goal in seeking the dismissal of the Cases is to force the Debtors into a freefall liquidation, where the Debtors will lack the ability to cover the costs of pursuing litigation and where the Debtors will lose potential witnesses and documents that would otherwise be used in that litigation. In addition, Transcontinental seeks to ensure that LID Acquisition, LLC ("LID Acquisition"), an entity controlled by the Debtors' former equity holders and insiders, retains its security interests and liens on the Debtors' right to payment for completed local-improvement-district ("LID") construction projects despite the fact that LID Acquisition's security interests and liens are arguably junior to those of Credit Suisse, Cayman Island Branch ("Credit Suisse"), thereby creating an obstacle to the completion of any future LID construction projects. Transcontinental hopes that this will provide LID Acquisition and, by extension, Transcontinental and the Debtors' other former equity holders and insiders who are behind LID Acquisition, with continued hold-up value over the Debtors, with which they hope to secure a release of the Debtors' and their estates' claims against them.

Irrespective of Transcontinental's motives, however, the Motion is without merit and should be denied outright. The Cases were filed in good faith, Chin Declaration, ¶¶ 8-9, and there is more than a reasonable likelihood that a plan will be confirmed. If, however, the Court is not inclined to deny the Motion outright, the Debtors request that the October 2, 2009 hearing be treated as a status conference and that a further evidentiary hearing on the Motion be set no earlier than December 15, 2009 at 10:00 a.m., the date and time currently reserved for a hearing on confirmation of the Plan. Although it has submitted no evidence in support of the Motion itself, Transcontinental has so far propounded extensive discovery on the Motion, including requests for production, interrogatories, and deposition notices on the Debtors and others. Much of this discovery goes to the confirmation requirement that the Plan be proposed in good faith, *see* 11 U.S.C. § 1129(a)(3), and otherwise overlaps substantially with discovery the Debtors anticipate Transcontinental and others will seek in connection with confirmation of the Plan. To prevent the parties in the Cases from being distracted by a sideshow and spending considerable sums on attorneys' fees and costs, in the event the Motion

1 is not denied, the Debtors further request that the Court order that discovery on the Motion and
2 discovery on the Plan be suspended until after the conclusion of the hearing on the approval of the
3 Disclosure Statement scheduled for October 15, 2009, and thereafter be coordinated with
4 Transcontinental's and others parties-in-interests' discovery relating to the Plan.

5 **B. Plan Summary.**

6 The merits of the Motion should be assessed in light of recent developments in the Cases.
7 At the August 7, 2009 omnibus hearing, the Debtors announced that they anticipated that a plan of
8 reorganization would be filed on or before August 31, 2009. Following an additional month of
9 intensive negotiations, on or about September 1, 2009, the Debtors, the Creditors' Committee, and
10 Credit Suisse, in its capacity as the administrative agent and collateral agent under the Debtors'
11 principal debtor-in-possession financing facility (the "DIP Agent") and in its capacity as the
12 administrative agent and collateral agent under the Debtors' principal pre-petition senior financing
13 facility (the "Pre-Petition Agent"), entered into a term sheet describing the principal terms of a
14 consensual chapter 11 plan of reorganization. Chin Declaration, ¶ 9. Thereafter, on September 4,
15 2009, the Debtors and the Creditors' Committee jointly filed their Plan and Disclosure Statement.
16 Hearings on approval of the Disclosure Statement and confirmation of the Plan are currently set for
17 October 15, 2009 and December 15, 2009, respectively.

18 The Plan is the product of hundreds of hours of negotiation among the Debtors, the Creditors'
19 Committee, the Debtors' lenders and various other key constituents. Chin Declaration, ¶ 10.
20 It provides all creditors with the most that they can reasonably obtain under the circumstances. *Id.*

21 The Plan provides for significant changes in the Debtors' ownership. Under the Plan, the
22 lenders under the Debtors' \$127 million debtor-in-possession financing facility will receive over
23 95% of the equity in the reorganized Debtors in full and final satisfaction of their claims. Portions of
24 the debtor-in-possession financing facility that were not expended during the Cases (projected to be
25 approximately \$14 million as of December 31, 2009) will be contributed to the reorganized Debtors
26 and used to fund post-confirmation operations. *See* Disclosure Statement, Exhibit 7.

1 The lenders under the Debtors' principal pre-petition senior financing facility will receive no
 2 more than 5% of the equity in the Reorganized Debtors and a share of certain litigation to be brought
 3 under the Plan on account of their approximately \$600 million pre-petition claim.

4 The Plan establishes two separate trusts to provide for the payment of creditors. The first
 5 trust is called the T-16 LID Trust. It is established to provide payments to holders of claims for the
 6 provision of goods and services to, or for the benefit of, one or more of the Debtors prior to July 17,
 7 2008 to the extent such goods and services were for the purpose of a construction project within the
 8 T-16 LID (the "T-16 LID Vendors"). Specifically, T-16 LID Vendors will receive from the T-16
 9 LID Trust payments of (i) 40% of the amounts owed to them on account of goods or services
 10 provided pre-petition to the Debtors with respect to the T-16 LID with respect to which the T-16
 11 LID Trust is entitled to payments from the City of Henderson and actually receives payment, and
 12 (ii) 10% of the amounts owed to them on account of goods or services provided pre-petition to the
 13 Debtors with respect to the T-16 LID with respect to which the T-16 LID Trust is not entitled to
 14 receive payments from the City of Henderson. The ultimate source of these payments is funds
 15 previously raised by the City of Henderson through a bond offering. As and when T-16 LID projects
 16 are completed, the City of Henderson acquires such projects, lien free, and pays for such projects.³

17 To complete additional T-16 LID projects and free up money to pay T-16 LID Vendors, the
 18 reorganized Debtors will provide the T-16 LID Trust with a \$5 million term loan. This loan is
 19 effectively seed money designed to "prime the pump." When a specific T-16 LID project is

20
 21 ³ Specifically, pursuant to a LID, the City of Henderson raised money through a bond offering for
 22 a specific set of improvement projects, such as roads, water and sewer utilities, drainage
 23 facilities, and other infrastructure. *See* Section VIII.D.1.b.(3) to the Disclosure Statement. The
 24 developer constructs the specified improvements in accordance with the project specifications of
 25 the LID. *Id.* When the project improvement is completed, the developer conveys the
 26 improvement to the City of Henderson, and the City of Henderson pays the developer the
 27 approved acquisition price for the improvement from the proceeds of the bond offering. *Id.*
 28 In general, the acquisition price equals the budgeted cost of constructing the improvement, less
 certain expenses that are not reimbursed. *Id.* Interest payments to bondholders and the principal
 reduction of the bonds are paid through an assessment levied against properties that lie within the
 boundaries of the LID and benefit from the improvement. *Id.* The City of Henderson does not
 pay the Debtors for an improvement until after the improvement has been completed, approved,
 and conveyed, lien free, to the City of Henderson. *Id.*

1 completed, a portion of the payment from the City of Henderson will be used to pay T-16 LID
2 Vendors, but the bulk of the payment will provide the T-16 LID Trust with the funds necessary to
3 complete additional T-16 LID projects. As more T-16 LID projects are completed, more and more
4 money will become available to complete additional projects. At the end of the day, it is anticipated
5 that the T-16 LID Trust will fund the construction of approximately \$30 million of works of
6 improvement in Phase II of the Project.

7 In order to ensure that the T-16 LID Trust, and not LID Acquisition, receives payment when
8 T-16 LID projects are completed and the City of Henderson acquires and pays for such projects from
9 the proceeds of already-issued LID bonds, the Plan provides for a mechanism under which the
10 Pre-Petition Agent and the lenders under the Debtors' principal pre-petition senior financing facility
11 will effectively contribute the benefit of their secured claims related to the T-16 LID for the benefit
12 of the T-16 LID Vendors. For this reason, Transcontinental's accusations in the Motion, at 6-7
13 & 15, that the LID Acquisition Litigation, which seeks to establish that Credit Suisse's security
14 interest in these payments is senior to LID Acquisition's, is for the benefit of Credit Suisse, are false.

15 The second trust to be established under the Plan is called the Creditor Trust. It will receive
16 \$1 million to be disbursed to general unsecured creditors, excluding T-16 LID Vendors and certain
17 landowners within Phase II (the "Phase II Landowners") of Lake Las Vegas Resort (the "Project").
18 The Creditor Trust will also hold avoidance actions and certain claims against Transcontinental and
19 the Debtors' other former equity holders and insiders that will be transferred to it by the Debtors,
20 along with adequate seed money to prosecute those actions against Transcontinental and others.
21 Certain of the net proceeds of these causes of action will be allocated to general unsecured creditors
22 and the lenders under the Debtors' principal pre-petition senior financing facility. In addition,
23 a portion of certain of the net proceeds of these causes of action will also be allocated, in exchange
24 for, among other things, claim and lien releases, to Phase II Landowners and T-16 LID Vendors.
25 These claim and lien releases are designed to enable the Debtors to convey title to LID construction
26 projects free and clear of liens, claims and encumbrances to the City of Henderson in exchange for
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1 payment for those projects. If the liens on the projects are not removed, the Debtors will be unable
2 to obtain payment and, consequently, will be unable to pay vendors to work on the T-16 LID.

3 Mechanics' lien holders who do not elect to be treated as T-16 LID Vendors under the Plan
4 and who establish that they hold valid, perfected and enforceable liens that are senior to the
5 DIP Agent's liens will either receive a note to be paid over three years, or other treatment, at the
6 election of the Debtors, that does not impair their rights. Additionally, with little exception, other
7 secured creditors also will receive treatment that does not impair their rights.

8 Finally, and in addition to the foregoing, the Plan contemplates that the Phase II Landowners
9 will enter into a settlement agreement with the Debtors under which those Landowners will no
10 longer assert their secured and unsecured claims against the Debtors' estates (which, as currently
11 asserted, exceed \$200 million). Instead, and in lieu of payment on their claims, Phase II Landowners
12 will receive, among other things, the benefits of certain minor conveyances and exchanges of land
13 and project remapping that will lead to the recordation of an amended parent final map for Phase II.
14 The Phase II Landowners will also benefit from the completion of the T-16 LID improvements.

15 The interests of the ultimate existing equity owners of the Debtors are being cancelled.

16 The only significant development work anticipated during the two years following
17 confirmation is expected to be related to the T-16 LID. There, the reorganized Debtors will be
18 extending a \$5 million term loan to the T-16 LID Trust, which will take over the responsibility for
19 completing projects in the T-16 LID. Completing projects in T-16 LID has several benefits. First, it
20 provides vital infrastructure to the Project and enhances its overall value. Second, it takes advantage
21 of the funds that were previously raised through a bond offering to both pay for the work, as and
22 when projects within the T-16 LID are completed, and to provide a fund that can partially repay the
23 T-16 LID Vendors who performed work on the T-16 LID pre-petition and who remain unpaid.

24 By its terms, the Plan relies on a series of interlocking settlements that are designed to fairly
25 allocate the value of the Project, provide a stable financial basis for the Project to move forward
26 following confirmation and, where possible, allow development to continue.

C. **The Debtors Are Proceeding with the Cases in Good Faith.**

A motion to dismiss a bankruptcy case for lack of good faith should be granted only where the movant submits evidence establishing the existence of a genuine issue concerning the debtor's lack of good faith. LR 9014(c); *In re Real Homes, LLC*, 352 B.R. 221, 228 n.13 (Bankr. D. Idaho 2005); *In re Setzer*, 47 B.R. 340, 345 (Bankr. E.D.N.Y. 1985); *In re Yukon Enters., Inc.*, 39 B.R. 919, 921-22 (Bankr. C.D. Cal. 1984). Even if the movant has made that *prima facie* showing, however, its motion to dismiss the bankruptcy case should still not be granted so long as the debtor meets its burden of proving good faith by a preponderance of the evidence. *Id.* "The existence of good faith depends on an amalgam of factors and not upon a specific fact." *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "The test is whether a debtor is attempting to unreasonably deter and harass creditors or attempting to effect a speedy, efficient reorganization on a feasible basis." *Marsch v. Marsch (In re Marsch)*, 36 F.3d 825, 828 (9th Cir. 1994) (citation omitted). Here, Transcontinental has adduced **no** evidence, so the Motion should be summarily denied.

Even had Transcontinental established the existence of a genuine issue concerning the debtor's lack of good faith (it has not), it is clear that the Debtors are not unreasonably deterring and harassing their creditors rather than attempting to effect a speedy, efficient reorganization on a feasible basis. The fact that it has taken some time to come to an agreement on the terms of the Plan reflects the complexity of the Cases. Transcontinental and the Debtors' other former equity holders and insiders left the Project with significant unpaid bills, considerable pending litigation and many unresolved and seemingly insoluble problems. Chin Declaration, ¶ 8. Among other things, multiple contractors had filed mechanics' liens on property within the Project, work on projects within the T-16 LID had come to a halt because contractors and vendors were unpaid, and property line issues with several landowners were unresolved. *Id.* Resolving these inter-related issues required communication, coordination and negotiation by and among the Pre-Petition Agent, the lenders under the Debtors' principal pre-petition senior financing facility, mechanics' lienholders, T-16 LID Vendors, the City of Henderson, Phase II Landowners and others. *Id.* By commencing the Cases,

1 the Debtors were able to bring these constituents together into a single forum in order to work
2 through exactly how to resolve the issues among them on a coordinated basis. *Id.*

3 Transcontinental offers not a shred of evidence to show that the Debtors' attempt to resolve
4 these problems (which arose during the period of Transcontinental's management) in the manner set
5 forth in the Plan somehow amounts to an attempt to deter and harass their creditors. As noted above,
6 if the Cases are dismissed, general unsecured creditors will receive absolutely nothing, a fact that
7 Transcontinental seems to concede. *See* Motion, at 13. The fact that the Cases remain pending and
8 administrative expenses continue to accrue arguably harms only the lenders under the Debtors'
9 \$127 million debtor-in-possession financing facility and the lenders under the Debtors' principal
10 pre-petition senior financing facility. Those lender groups — and the Official Creditors' Committee
11 that was appointed to represent the interests of unsecured creditors — remain fully supportive of the
12 Debtors' efforts to resolve the Cases and to confirm the Plan.

13 Attempting to squeeze a square peg into a round hole in order to obtain a finding that the
14 Cases were filed in bad faith, Transcontinental asserts that the factors for measuring lack of good
15 faith set forth in *In re Stolrow's, Inc.*, 84 B.R. 167, 171 (B.A.P. 9th Cir. 1988), apply in the Cases.
16 In reality, however, as was the case in *Stolrow's*, "[t]his case on its facts does not coincide with the
17 foregoing factors." *Id.* If anything, these factors exemplify that the Cases were filed in good faith.

18 **1. The Debtors Do Not Have Only One Asset.**

19 Without any evidence or making any clearer what it means, Transcontinental asserts that
20 "[a]lthough the Project consists of numerous pieces, it is, at the end of the day, only one asset."
21 Motion, at 9. In the sense used by Transcontinental, the same could be said with respect to virtually
22 any business. Yet whether the Debtors' operate a single business is clearly not the standard.

23 In any event, the reality is that the Debtors have interests in many different assets, including,
24 but not limited to, (i) approximately 76, 38 and 492 net developable acres of land in Phases I, II and
25 III of the Project, respectively, consisting of over 100 separately assessed properties, (ii) interests in
26 approximately a dozen non-debtor subsidiaries, including in an entity that owns 22 acres of prime
27 commercial property within the Project, (iii) certain rights to proceeds of LID projects sold to the
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City of Henderson; (iv) a golf course driving range, (v) the Yacht & Beach Club, (vi) utility deposit refunds, (vii) open space and easements, (viii) various fixed assets, such as computer equipment, furniture and fixtures, leasehold improvements, vehicles, and miscellaneous trade fixtures, and (ix) interests in improvements that serve as the information and marketing center for the entire community. Chin Declaration, ¶ 12. In addition, LLVJV has rights as the declarant under the Master Property Owners' Association (the "MPOA") and significant rights to water as a signatory to the original 1991 raw water distribution agreement with the City of Henderson. *Id.*

Because the Debtors do not have only one asset, the second *Stolrow's* factor — whether the secured creditor's lien encumbers that single asset — similarly does not apply. While it is true that the Pre-Petition Agent's lien encumbers virtually all of the Debtors' assets (a common feature of modern commercial finance), that fact does not make those assets into a single asset.

2. There Are Employees Other than the Debtors' Principals.

Transcontinental does not even bother to make the case that the Debtors' only remaining employees are the Debtors' principals. That is in any event not true. At present, the Debtors have approximately 41 remaining full-time employees, only two of whom are holders of equity interests in the Debtors. Chin Declaration, ¶ 13.

3. There Are Available Sources of Income to Sustain the Plan.

Next, Transcontinental's statement that the Debtors lack "available sources of income," Motion, at 10, is false. As discussed above, the Debtors have a variety of assets. Following confirmation of the Plan, the reorganized Debtors will, among other things, continue their land sales activities, with a focus on selling the available land in Phases I and II of the Project. *See* Section VIII.D.17 and Exhibit 7 to the Disclosure Statement. Much of the remaining Phase I residential properties have prime lakefront location with utilities already in place at the property line, making them more easily saleable. *Id.* The Debtors expect that over the first 24 months after confirmation, sales of their Phase I and Phase II land holdings will yield over \$23 million. *Id.* In addition, the Debtors anticipate future revenues from the Yacht & Beach Club. *Id.*

4. The Debtors Have Significant Unsecured Creditors.

Transcontinental falsely asserts that the Debtors only face approximately \$15 million in general unsecured claims. Motion, at 10. Even the most cursory review of the Debtors' claims register, however, dispels this notion. *See* Section VIII.D.14 to the Disclosure Statement. Phase II Landowners alone have asserted approximately \$200 million in general unsecured claims against the Debtors. *See id.*; *see also* Sections VIII.D.1.b.(1) and D.2 to the Disclosure Statement. The Pre-Petition Agent asserts over \$600 million in general unsecured claims against The Vineyard at Lake Las Vegas, L.L.C. and LLV Four Corners, LLC (and may assert large unsecured deficiency claims against the other Debtors as well). *See* Section VIII.D.14 to the Disclosure Statement. On top of this are potentially millions of dollars of claims of mechanics' lienors and other secured creditors whose security interests and liens may be junior in priority to those of the DIP Agent. *Id.* While it is true that the claims of the DIP Agent and the Pre-Petition Agent are also large, that in no way makes the amount of unsecured claims against the Debtors any less significant.

5. There Are No Allegations of Wrongdoing by the Debtors.

There are no allegations of wrongdoing by the Debtors or their current equity holders. Transcontinental does not even bother to identify any such alleged wrongdoing.⁴ Motion, at 10.

6. Insolvent Property Was Not Isolated.

The Debtors are not afflicted with the "new debtor syndrome," in which a one-asset entity has been created or revitalized on the eve of foreclosure to isolate the insolvent property and its

⁴ Elsewhere in the Motion, Transcontinental suggests (again, without a shred of evidence) that Frederick E. Chin, now the President and CEO of the Debtors, "directed work that resulted in additional vendor debt," Motion, at 2, and "directed the Debtors to continue with the development with the promise that Credit Suisse would pay the trade vendors," Motion, at 5, while acting as the Debtors' restructuring officer prior to the commencement of the Cases. The Debtors vigorously dispute these allegations. Chin Declaration, ¶ 5. Commencing January 2008, the Debtors' current management closed and sold unprofitable businesses, reduced staff by almost 140 full-time employees, reduced insurance costs, collected past due receivables, reduced the Debtors' MPOA subsidy amounts, and otherwise reduced general administrative expenses and other operating costs. *Id.*, ¶ 7. In addition, current management protested and appealed certain real estate tax valuations, resulting in reduced tax liability. *Id.* In total, these steps by current management reduced annual overhead and cost by over \$15 million. *Id.*

creditors.⁵ The transfer of the Debtors' equity interests to the Pre-Petition Agent's designee prior to the commencement of the Cases was not designed to shelter property from any creditor. Nor was it designed to facilitate the filing of serial bankruptcy cases to forestall a foreclosure. Rather, it was to remove the Debtors' former management from ownership and control of the Debtors. The Debtors' bankruptcy estates would have consisted of the same assets whether or not the Debtors' equity interests were transferred to the Pre-Petition Agent's designee. The difference is in the management; the pre-petition transfer of the Debtors' equity was for the purpose of bringing in a responsible management team with extensive experience in real estate development and management.

For the same reason that this *Stolrow's* factor is inapplicable, so is the next factor — that bankruptcy offers the only possibility of forestalling loss of the property. These Cases were not filed to forestall the Pre-Petition Agent's foreclosure on its collateral, but rather to resolve, on a cooperative and collective basis, the many issues ailing the Debtors, other stakeholders, and the Project.

7. The Debtors Have an Ongoing Business to Reorganize.

Next, as Transcontinental concedes, Motion, at 13 ("Transcontinental does not contend there is no business here to reorganize."), the Debtors have an ongoing business to reorganize. It consists of, *inter alia*, selling land in the Project, running the Yacht & Beach Club, and, in the case of LLVJV, fulfilling its duties as declarant under the MPOA. Chin Declaration, ¶ 11.

8. These Cases Do Not Constitute Two-Party Disputes.

Finally, Transcontinental's insupportable assertion that the Cases are no more than two-party disputes between different levels of lenders providing financing to the Debtors, Motion, at 14-16 & n.8, severely misapprehends the nature of the Cases. The Cases are hardly single-creditor bankruptcy cases. As noted above, the purpose of the Cases is to solve the various interrelated problems facing the Debtors, such as finding a way to facilitate, among other things, the release of mechanics' liens on the Project, the completion of the T-16 LID, obtaining payments from the City

⁵ The term "one-asset equity" in *Stolrow's* is a typographical error. Compare *Stolrow's*, 84 B.R. at 171 (using the term "one-asset equity") (citing *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072-73 (5th Cir. 1986)), with *Little Creek*, 779 F.2d at 1073 (using the term "one-asset entity").

of Henderson for completed T-16 LID projects, and the remapping of Phase II of the Project. The Debtors have attempted thus far to resolve these issues unilaterally as best they can outside of the plan confirmation context, such as by developing mediation procedures with respect to mechanics' lien claims (pursuant to which mediations are currently ongoing), and by prosecuting the LID Acquisition Litigation. That said, it has become abundantly clear that the only real way to attempt to resolve these problems is to engage in multilateral negotiations by and among the Pre-Petition Agent, the lenders under the Debtors' principal pre-petition senior financing facility, mechanics' lienholders, T-16 LID Vendors, the City of Henderson, Phase II Landowners and others. This Court provides a central forum for these negotiations and the bankruptcy laws provide the legal structure to make the restructuring of the Debtors a reality. The fact that the Cases do not constitute two-party disputes is perhaps best exemplified by the terms of the Plan, which demonstrate that the Cases are all about resolving complex, multilateral disputes. Pursuant to the Plan, the Debtors, who are now burdened with over \$750 million in secured debt, will emerge with as little as \$10 million in secured debt. Moreover, the Plan provides, among other things, for a means of removing mechanics' liens from the Project, for restarting construction on the T-16 LID, for obtaining payments from the City of Henderson for completed T-16 LID Projects, and for remapping Phase II.

D. There Is a Reasonable Likelihood a Plan Will Be Confirmed in the Near Future.

As noted above, the Plan was filed on September 4, 2009. The Plan represents a compromise among the Debtors, the Creditors' Committee, the DIP Agent, the Pre-Petition Agent, and various creditor constituencies over how the Debtors should resolve their disputes with creditors and how their capital structure should be modified. The Plan complies with all of the applicable confirmation requirements. A hearing on the confirmation of the Plan has been set for December 15, 2009 at 10:00 a.m. There is a reasonable likelihood that a plan of reorganization will be confirmed in the near future, and there is no cause to dismiss the Cases at this time.

1 **E. Conclusion.**

2 The Motion should be stricken for lack of evidentiary support pursuant to LR 9014(c) or
3 denied outright. In the alternative, the October 2, 2009 hearing on the Motion should be treated as a
4 status conference, at which a further evidentiary hearing on the Motion should be set no earlier than
5 December 15, 2009. Discovery on the Motion should be suspended until after the conclusion of the
6 hearing on the Disclosure Statement and thereafter coordinated with Transcontinental's and other
7 parties-in-interests' discovery relating to the Plan.

8
9 DATED: September 18, 2009

/s/ David M. Guess

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