

UNITED STATES OF AMERICA
BEFORE THE
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING
File No. 2013-CFPB-0002

IN THE MATTER OF

3D RESORT-BLUEGRASS, L.L.C

RESPONDENT'S ANSWER TO THE NOTICE OF CHARGES
SEEKING RESCISSION, RESTITUTION, CIVIL MONEY PENALTIES,
AND OTHER LEGAL AND EQUITABLE RELIEF

To: The clerk of the Office of Administrative Adjudication and all parties of record:

3D Resort-Bluegrass, L.L.C. (the "Respondent") files these Responses to the Notice of Charges Seeking Rescission, Restitution, Civil Money Penalties, and Other Legal and Equitable Relief filed by the Consumer Financial Protection Bureau (the "CFPB") in the above styled action (the "Notice of Charges").

The Respondent is the "Debtor" in a Chapter 11 Bankruptcy Case currently pending before the United States Bankruptcy Court for the Western District of Kentucky, Case Number 11-41599, (the "Bankruptcy Case"), in which CFPB has filed a proof of claim for similar relief as prayed for herein.

As Thomas Duddy, the court-appointed Trustee (the "Trustee"), is the sole representative of the bankruptcy estate, pursuant to the provisions of 11 USC § 323 of the United States Bankruptcy

Code, this response is filed by the Respondent as the entity named and not in abrogation of the Trustee's responsibilities in the Bankruptcy Case nor as the holder of any asset of Respondent, all of which are understood by Respondent to be under the sole control and management of the Trustee. This Response is further made herein subject to any ruling or order which may be issued in the Bankruptcy Case relating to the above-styled action and is secondary to the Responses of the Trustee.

Responses

1. Respondent admits the allegations contained in paragraph 1 of the Notice of Charges.
2. Respondent lacks sufficient information to admit or deny the allegations of paragraph 2 of the Notice of Charges.
3. Respondent admits the allegations contained in paragraph 3 of the Notice of Charges.
4. Respondent admits that it acquired the "Resort Property" on December 28, 2008 and that Respondent currently owns the Resort Property; provided, however, that since November 16, 2011, the Resort Property has been an asset of the bankruptcy estate and has been held, controlled and maintained by the Trustee. Respondent admits that it was the operator of the Resort Property from December 28, 2008 until September, 2010. Respondent denies it has been the operator of the Resort Property since September, 2010.
5. Respondent admits the allegations contained in paragraph 5 of the Notice of Charges.
6. Respondent admits the allegations contained in paragraph 6 of the Notice of Charges.
7. Respondent admits the allegations contained in paragraph 7 of the Notice of Charges.
8. Respondent admits the allegations contained in paragraph 8 of the Notice of Charges.

9. Respondent denies it marketed or sold lots in the Resort Property before February 26, 2009 or after mid September, 2010. Respondent denies that lots were marketed for building “vacation homes” though Respondent admits that would have been a right of ownership. Respondent admits the remaining allegations contained in paragraph 9 of the Notice of Charges.
10. Respondent admits it owner-financed lot sales which were not paid in full but purchased under a deferred-payment plan secured by mortgages. Respondent denies that it, directly and through its agents, serviced any mortgages or collected any payments, whether current or past-due. Respondent assigned the notes and mortgages resulting from deferred-payment sales to Plains Capital Bank of Dallas (“PCB”), which serviced the mortgages and collected delinquent notes.
11. Respondent admits the allegations contained in paragraph 11 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.
12. Respondent admits the allegations contained in paragraph 12 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.
13. Respondent denies the allegations contained in paragraph 13 of the Notice of Charges.
14. Respondent admits the allegations contained in paragraph 14 of the Notice of Charges.
15. Respondent admits the allegations contained in paragraph 15 of the Notice of Charges, but only for the period between February 26, 2009 through January 13, 2010 when the January 13, 2010 Property Report was used. Respondent denies it distributed the February 26, 2009 Property Report any other time period.

16. Respondent denies the allegations contained in paragraph 16 of the Notice of Charges.
17. Respondent admits the allegation that electric lines in “ Unit 2” were listed along with “Unit 1,” as being covered by the Escrow Agreement attached as Exhibit 1710.209(f)(20 of the Initial Statement of Record filed on January 27, 2009. The attached Escrow Agreement escrowed funds for roads, water lines and other infrastructure in Unit 2 but not the electric lines. The Respondent denies the Scribner’s error was an intentional misrepresentation or a violation of applicable law.
18. Respondent denies the allegation contained in paragraph 18 of the Notice of Charges, and specifically cites the first paragraph on page 13 of Exhibit “A” attached to the Notice of Charges, under the heading “Sewer” and subheading “Individual Systems,” which states “The approximate cost to you for an individual septic system is approximately \$3,000.00, though unusual rock or soil conditions may result in higher costs.” Additional fees payable by a lot owner of \$115.00 and \$145.00 are also described in this paragraph.
19. Respondent admits the allegation contained in paragraph 19 of the Notice of Charges, except that the Consolidated Statement of Record with the proposed Property Report was submitted to the Office of Interstate Land Sales for approval on December 18, 2009, not January 2010.
20. Respondent admits the allegation contained in paragraph 20 of the Notice of Charges, but only for the period between January 13, 2010 and September 2010. Respondent denies it distributed the January 13, 2010 Property Report any other time period.
21. Respondent denies the allegation contained in paragraph 21 of the Notice of Charges.
22. The Respondent incorporates the response to paragraph 17 of the Notice of Charges hereto as if fully set forth herein.

23. Respondent admits the first sentence of the allegation contained in paragraph 23 of the Notice of Charges. Respondent denies the portion of the second sentence of the allegation contained in paragraph 23 of the Charges which states “In fact, construction was not ...reasonably expected to be undertaken or completed by the stated dates....” Respondent further states that the paragraphs and warning boxes under the heading “Sewer” contained on pages 13 and 14 of Exhibit “B” to the Notice of Charges speak for themselves and, in fact, evidence that no misrepresentations were made therein as alleged in the Notice of Charges.
24. Respondent admits the allegation contained in paragraph 24 of the Notice of Charges but denies such statement constitutes a violation of applicable law by Respondent.
25. Respondent admits the allegation that eight cabins were not available for use, but denies that the eight cabins were not substantially completed, that misrepresentations were intentionally made or that the allegations evidence a violation of applicable law.
26. Respondent objects to this allegation as being vague, ambiguous and fails to describe with any specificity what material changes were allegedly made. Respondent admits that 3 or 4 changes were made to the January 13, 2010 Property Report prior to March 22, 2010, but denies the changes were changes of “material fact” which required the filing of an amendment pursuant to the provisions of §1710.23 of the Interstate Land Sales Full Disclosure Act (the “ILSFDA”), now codified as 12 C.F.R. §1010.23.
27. Respondent denies the allegation contained in paragraph 27 of the Notice of Charges.
28. Respondent admits the allegation contained in paragraph 28 of the Notice of Charges but denies the existence of a “March 22, 2010” Property Report or that any misrepresentation exists as a result thereof.

29. Respondent denies the existence of a “March 22, 2010” Property Report and denies the portion of the second sentence of the allegation contained in paragraph 29 of the Notice of Charges which states “In fact, construction was not ...reasonably expected to be undertaken or completed by the stated dates...” Respondent further states that the paragraphs and warning boxes under the heading “Sewer” contained on pages 13 and 14 of Exhibit “B” to the Notice of Charges speak for themselves and further evidence that no misrepresentations were made therein. Respondent denies the allegations that the described actions are intentional misrepresentations or constitute violation of applicable law. Respondent admits the remainder of this paragraph.
30. Respondent admits the allegation contained in paragraph 30 of the Notice of Charges.
31. Respondent incorporates the response to paragraph 24 of the Notice of Charges hereto as if fully set forth herein.
32. Respondent denies the allegation that the “March 22, 2012” Property Report falsely and misleadingly stated the General Store was completed and available. There is no March 22, 2010 Property Report. The CFPB simply created this designation in paragraph 26 of the Notice of Charges and made up the date attributable thereto. Respondent’s Exhibit “C” of the Notice of Charges, which the CFPB refers to in paragraph 26 of the Notice of Charges is the January 13, 2010 Property Report. The general store was completed and available for use when the proposed Property Report was submitted to the U.S. Department of Housing and Urban Development (“HUD”) on December 18 2009 and when accepted by HUD on January 13, 2013. Respondent further denies the allegations of this paragraph evidences an intentional misrepresentations or constitutes a violation of applicable law.
33. Respondent denies the allegations contained in paragraph 33 of the Notice of Charges.

34. Respondent denies the allegations contained in paragraph 34 as follows:

- (i) The allegations contained in subparagraphs a, b, c of paragraph 34 of the Notice of Charges are denied and were proposed only and were described as such in the applicable Property Reports and Real Estate Sales Contracts executed by purchasers of lots in the Resort Property. Respondent further avers that all purchasers of lots in the Resort Property were required to initial the applicable response to the stated questions contained on the Property Owner Questionnaire, in form as attached as part of Exhibit “C” to the Notice of Charges. Each and every purchaser of a lot in the Resort Property executed the “No” column in response to the stated question which read “I understand that any amenities or recreational facilities not presently completed are proposed only and that the rules, regulations and fees for proposed facilities (if and when completed) are not presently established” all of which collectively refute the allegations of misrepresentations contained this paragraph.
- (ii) The allegations contained in subparagraph d of paragraph 34 of the Notice of Charges are denied and Respondent avers the water lines were complete on or before December 31, 2009 but admits that the Grayson County Water District failed to “accept” the completed water lines on or about September 14, 2010, notwithstanding the Districts almost daily inspections of the water lines through completion.
- (iii) The allegations contained in subparagraph e of paragraph 34 of the Notice of Charges are redundant and a duplication of the allegations contained in paragraph 25 of the Notice of Charges. The Respondent denies incorporates the response to paragraph 25 of the Notice of Charges hereto as if fully set forth herein.
- (iv) The allegations contained in subparagraph f of paragraph 34 of the Notice of Charges

are denied. Respondent further denies the existence of a “March 22, 2010 Property Report” as alleged herein. Respondent admits that no amendment was filed to amend the January 13, 2010 Property Report within 15 days from the date a fire destroyed the general store which occurred on or about February 6, 2010, but denies such constituted a misrepresentation. Respondent first was led to believe by Philadelphia Indemnity Insurance Company (“Philadelphia Indemnity”) that insurance proceeds were forthcoming. While waiting for the insurance proceeds, Respondent learned that Philadelphia Indemnity was denying coverage, resulting in litigation, currently assumed by the Trustee. Respondent did not have the commencement and completion dates of the restored general store 15 days after the fire and was therefore unable to provide a substantive amendment. The burned general store was overt and obvious to all prospective purchasers of lots in the Resort Property and Respondent denies any third party has been misrepresented with respect to the general store.

- (v) The vague, unspecific and unsupported allegations contained in subparagraphs f and g of paragraph 34 of the Notice of Charges are denied.
- (vi) Respondent lacks sufficient information to admit or deny the allegations contained in subparagraph i of paragraph 34 of the Notice of Charges 35 of the Notice of Charges as Respondent lost control of the management, sales and marketing activities of the Resort Property to National Resort Marketing Company in September, 2010 and was not allowed to participate in such activities nor consulted.

35. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 35 of the Notice of Charges as Respondent lost control of the management, sales and marketing activities of the Resort Property to National Resort Marketing Company in

September, 2010 and was not allowed to participate in such activities nor consulted.

36. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 36 of the Notice of Charges as Respondent had no control over NRMC nor any control of the management, sales and marketing activities of the Resort Property to National Resort Marketing Company in mid September, 2010 and was not allowed to participate in such activities nor consulted.
37. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 37 of the Notice of Charges as Respondent had no control over NRMC nor any control of the management, sales and marketing activities of the Resort Property to National Resort Marketing Company in mid September, 2010 and was not allowed to participate in such activities nor consulted.
38. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 38 of the Notice of Charges as Respondent had no control over NRMC nor any control of the management, sales and marketing activities of the Resort Property and was not allowed to participate in such activities nor consulted.
39. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 39 of the Notice of Charges as Respondent had no control over NRMC nor any control of the management, sales and marketing activities of the Resort Property and was not allowed to participate in such activities nor consulted with.
40. Respondent denies the allegations contained in paragraph 40 of the Notice of Charges.
41. Respondent denies it was required to file financial statements for the year 2009. The effective date of the Initial Statement of Record of the Resort Property as assigned by HUD was February 26, 2009. Section 1710.212(2)(d)(1) of the ILSFDA [12 C.F.R.

§1010.212(2)(d)(1)] states that “Each year *after the initial effective date* (emphasis added), the developer shall submit a copy of its latest financial statements” Section 1710.310(b) of the ILSFDA (12 C.F.R. §1010.310(b)], which also addresses the filing of Annual reports of Activity, states “The report shall be submitted within 30 days of the *annual anniversary of the effective date of the initial statement of record* (emphases added).” Accordingly no Annual Report was due for the year 2009 because the effective date of the registration of the Resort Property was February 26, 2009 and 30 days from its anniversary would be March 24, 2010.

Respondent further denies it was required to file financial statements for the year 2010. The effective date of the Consolidated Statement of Record of the Resort Property as assigned by HUD was January 13, 2010. Section 1710.212(2)(d)(2) of the ILSFDA [12 C.F.R. §1010.212(2)(d)(2)] states “If a developer has submitted its latest financial statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission a second *submission of the statements to comply with this section is not necessary* (emphases added).” Section 1710.310(a) of the ILSFDA [12 C.F.R. §1010.310(a)], which also addresses the filing of Annual Reports of Activity, states “As an integral part of the Statement of Record, the developer shall file with the Secretary an Annual Report of Activity on any initial or consolidated registration not under suspension. *For this purpose, only one Annual report of Activity will be expected for subdivisions on which developers have filed consolidations* (emphases added).” Accordingly no Annual Report was due for the year 2010 because the effective date of the Consolidated Statement of Record of the Resort Property was January 13, 2010. Respondent had submitted its latest financial statements as Exhibit 212(c)(2) of the First Consolidated Statement of Record and

the submission was within 120 days of the close of Respondents fiscal year, which was December 31, 2009.

Respondent lacks sufficient information to admit or deny the allegations concerning the failure to file an annual report and latest financial statements for the year 2011 contained in paragraph 41 of the Notice of Charges as Respondent had no control over NRMC nor any control of the management, sales and marketing activities of the Resort Property and was not allowed to participate in such activities nor consulted.

42. Respondent lacks sufficient information to admit or deny the allegations concerning the failure to file an amendment contained in paragraph 41 of the Notice of Charges as Respondent had no control over NRMC nor any control of the management, sales and marketing activities of the Resort Property and was not allowed to participate in such activities nor consulted. A Management Agreement was signed by Respondent naming National Resort Marketing Corp. ("NRMC") on October 29, 2010 (the "Management Agreement"), but the Management Agreement was not voluntarily entered into by Respondent but was instead forced upon Respondent. NRMC was not Respondent's agent as contemplated in the ordinary course of principal/agency law. Though the Management Agreement was dated October 29, 2010, control of the Resort Properties had, for all intents and purposes, been assumed by NRMC in September, 2010. In the interim, Respondent had revised the Management Agreement delivered to Respondent by NRMC, which counter offered terms were rejected and respondent was forced to accept the Management Agreement as submitted.
43. Respondent admits that no amendment was filed to amend the January 13, 2010 Property Report within 15 days from the date a fire destroyed the general store which occurred on or

about February 6, 2010, but denies such constituted a misrepresentation. The allegations contained in paragraph 43 of the Notice of Charges are redundant and a duplication of the allegations contained in paragraph 34 f. of the Notice of Charges since the “March 22, 2010” Property Report is actually the January 13, 2010 Property Report. The Respondent incorporates the response to paragraph 34 f. of the Notice of Charges hereto as if fully set forth herein.

44. This paragraph need not be admitted nor denied.

45. Respondent admits the allegations contained in paragraph 45 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

46. Respondent denies the allegations contained in paragraph 46 of the Notice of Charges.

47. The allegations contained in paragraph 17 of the Notice of Charges. The Respondent incorporates the response to paragraph 17 of the Notice of Charges hereto as if fully set forth herein.

48. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 18. The Respondent incorporates the response to paragraph 18 of the Notice of Charges hereto as if fully set forth herein.

49. Respondent denies the allegations contained in paragraph 49 of the Notice of Charges.

50. Respondent denies the allegation contained in paragraph 50 of the Notice of Charges that the February 26, 2009 Property Report was false and misleading. Respondent admits the allegation contained in paragraph 50 of the Notice of Charges that such Property Reports were furnished to purchasers and prospective purchasers.

51. Respondent denies the allegations contained in paragraph 51 of the Notice of Charges.

52. This paragraph need not be admitted nor denied.
53. Respondent admits the allegations contained in paragraph 53 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.
54. Respondent denies the allegations contained in paragraph 54 of the Notice of Charges.
55. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraphs 17 and 47 of the Notice of Charges. The Respondent incorporates the response to paragraph 17 of the Notice of Charges hereto as if fully set forth herein.
56. Respondent denies the allegations contained in paragraph 56 of the Notice of Charges and further alleges in response to the allegations that the CFSB has copies of substantially all the voluminous loan documentation between Respondent and PCB in its possession.
57. This paragraph is redundant of paragraph 18 of the Notice of Charges. The Respondent incorporates the response to paragraph 18 of the Notice of Charges hereto as if fully set forth herein.
58. Respondent denies the allegations contained in paragraph 58 of the Notice of Charges and further alleges in response to the allegations that the water lines were completed on or about December 30, 2009.
59. Respondent denies the portion of the allegation contained in paragraph 59 of the Notice of Charges which states “when in fact, were not...contemplated and were not reasonably intended to be completed by this date.” Respondent further states that the paragraphs and warning box under the heading “Water” contained on page 12 of Exhibit “B” to the Notice of Charges speak for themselves and further evidence that no misrepresentations were made

- therein. Respondent admits the remainder of this paragraph. Respondent any misrepresentation was made or that the allegations evidence any violation of applicable law.
60. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 25 of the Notice of Charges. The Respondent incorporates the response to paragraph 25 of the Notice of Charges hereto as if fully set forth herein.
61. Respondent denies the allegations contained in paragraph 61 of the Notice of Charges.
62. Respondent denies the allegation contained in paragraph 62 of the Notice of Charges that the January 13, 2010 Property Report was false and misleading, but admits the allegation therein that such Property Report was distributed to purchasers and prospective purchasers.
63. Respondent denies the allegations contained in paragraph 63 of the Notice of Charges.
64. This paragraph need not be admitted nor denied.
65. The allegations contained in this paragraph are redundant and a duplication of paragraph 45 of the Notice of Charges. The Respondent incorporates the response to paragraph 45 of the Notice of Charges hereto as if fully set forth herein.
66. Respondent admits non-material changes were made to the January 13, 2010 Property Report prior, however, to March 22, 2010, as alleged. Respondent denies the remainder of the allegation.
67. Respondent denies the allegations contained in paragraph 67 of the Notice of Charges.
68. This paragraph need not be admitted nor denied.
69. Respondent admits the allegations contained in paragraph 69 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

70. Respondent denies there is a March 22, 2010 Property Report and further denies the remaining allegations contained in paragraph 70 of the Notice of Charges.
71. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 28 of the Notice of Charges. The Respondent incorporates the response to paragraph 28 of the Notice of Charges hereto as if fully set forth herein.
72. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 34 d. of the Notice of Charges. The Respondent incorporates the response to paragraph 34 d. of the Notice of Charges hereto as if fully set forth herein.
73. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 59 of the Notice of Charges since the alleged “March 22, 2011 Property Report” is in fact the January 10, 2010 Property Report referred in paragraph 59. The Respondent incorporates the response to paragraph 59 of the Notice of Charges hereto as if fully set forth herein.
74. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraphs 34 e. and 60 (both relating to the January 13, 2010 Property Report) of the Notice of Charges. The Respondent incorporates the responses to paragraphs 34 e. and 60 of the Notice of Charges hereto as if fully set forth herein.
75. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 34 f of the Notice of Charges. The Respondent incorporates the response to paragraph 34 f of the Notice of Charges hereto as if fully set forth herein.

76. Respondent denies the allegations contained in paragraph 76 of the Notice of Charges.

77. Respondent denies the allegations contained in paragraph 77 of the Notice of Charges.

78. Respondent denies the allegations contained in paragraph 77 of the Notice of Charges.

79. This paragraph need not be admitted nor denied.

80. Respondent admits the allegations contained in paragraph 80 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

81. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 34 a. of the Notice of Charges. The Respondent incorporates the response to paragraph 34 a. of the Notice of Charges hereto as if fully set forth herein.

82. Respondent denies the allegations contained in paragraph 82 of the Notice of Charges.

83. Respondent denies the allegations contained in paragraph 83 of the Notice of Charges.

84. Respondent denies the allegations contained in paragraph 84 of the Notice of Charges.

85. This paragraph need not be admitted nor denied.

86. Respondent admits the allegations contained in paragraph 86 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

87. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 34 b. of the Notice of Charges. The Respondent incorporates the response to paragraph 34 b. of the Notice of Charges hereto as if fully set forth herein.

88. Respondent denies the allegations contained in paragraph 88 of the Notice of Charges.

89. Respondent denies the allegations contained in paragraph 89 of the Notice of Charges.

90. Respondent denies the allegations contained in paragraph 90 of the Notice of Charges.

91. This paragraph need not be admitted nor denied.

92. Respondent admits the allegations contained in paragraph 92 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

93. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in of paragraph 34 c. of the Notice of Charges. The Respondent incorporates the response to paragraph 34 c. of the Notice of Charges hereto as if fully set forth herein.

94. Respondent denies the allegations contained in paragraph 94 of the Notice of Charges.

95. Respondent denies the allegations contained in paragraph 95 of the Notice of Charges.

96. Respondent denies the allegations contained in paragraph 96 of the Notice of Charges.

97. This paragraph need not be admitted nor denied.

98. Respondent admits the allegations contained in paragraph 92 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

99. Respondent denies the multiple allegations contained in paragraph 96 of the Notice of Charges as follows:

(i) With respect the allegations relating to the water lines in Unit 2 in paragraph 96 of the Notice of Charges, the allegations are redundant and a duplication of the allegations contained in paragraphs 34 d. and 72 of the Notice of Charges. The Respondent

incorporates the responses to paragraphs 34 d. and 72 of the Notice of Charges hereto as if fully set forth herein.

(ii) With respect the allegations relating to the water lines in Unit 4 in paragraph 96 of the Notice of Charges, the allegation are redundant and a duplication of the allegations contained in paragraphs 59 and 73 of the Notice of Charges. The Respondent incorporates the responses to paragraphs 59 and 73 of the Notice of Charges hereto as if fully set forth herein.

100. Respondent denies the allegations contained in paragraph 100 of the Notice of Charges.

101. Respondent denies the allegations contained in paragraph 101 of the Notice of Charges.

102. Respondent denies the allegations contained in paragraph 101 of the Notice of Charges.

103. This paragraph need not be admitted nor denied.

104. Respondent admits the allegations contained in paragraph 101 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

105. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraphs 25, 34 e., 60 and 74 of the Notice of Charges. The Respondent incorporates the response to paragraph 34 c. of the Notice of Charges hereto as if fully set forth herein. The Respondent incorporates the responses to paragraphs 25, 34 e., 60 and 74 of the Notice of Charges hereto as if fully set forth herein.

106. Respondent denies the allegations contained in paragraph 106 of the Notice of Charges.

107. Respondent denies the allegations contained in paragraph 107 of the Notice of Charges.

108. Respondent denies the allegations contained in paragraph 108 of the Notice of Charges.

109. This paragraph need not be admitted nor denied.

110. Respondent admits the allegations contained in paragraph 110 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

111. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraphs 34 f. and 75 of the Notice of Charges. The Respondent incorporates the responses to paragraphs 34 f and 75 of the Notice of Charges hereto as if fully set forth herein.

112. Respondent denies the allegations contained in paragraph 112 of the Notice of Charges.

113. Respondent denies the allegations contained in paragraph 113 of the Notice of Charges.

114 Respondent denies the allegations contained in paragraph 114 of the Notice of Charges.

115. This paragraph need not be admitted nor denied.

116. Respondent denies the allegations contained in paragraph 116 of the Notice of Charges.

117. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 34 h. of the Notice of Charges. The Respondent incorporates the responses to paragraph 34 h of the Notice of Charges hereto as if fully set forth herein.

118. Respondent denies the allegations contained in paragraph 118 of the Notice of Charges.

119. Respondent denies the allegations contained in paragraph 119 of the Notice of Charges.

120. Respondent denies the allegations contained in paragraph 120 of the Notice of Charges.

121. This paragraph need not be admitted nor denied.

122. Respondent admits the allegations contained in paragraph 122 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

123. Respondent admits the allegation contained in paragraph 123 of the Notice of Charges to the extent it received a notice of Suspension for unknown acts alleged to have been committed by NRMC
124. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 124 of the Notice of Charges.
125. Respondent admits that 15 U.S. C. §1703 (a)(1)(A) speaks for itself. Respondent lacks sufficient information to admit or deny the remaining allegations contained in paragraph 125 of the Notice of Charges.
126. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 126 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property between the dates alleged therein.
127. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 127 of the Notice of Charges as it had no control over NRMC nor any control nor involvement with the marketing, sales or operations of the Resort Property between the dates alleged therein.
128. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 128 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property between the dates alleged therein.
129. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 129 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property between

the dates alleged therein.

130. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 123 of the Notice of Charges. The Respondent incorporates the response to paragraph 123 of the Notice of Charges hereto as if fully set forth herein.

131. This paragraph need not be admitted nor denied.

132. Respondent admits the allegations contained in paragraph 132 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

133. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 123. of the Notice of Charges. The Respondent incorporates the response to paragraph 123 of the Notice of Charges hereto as if fully set forth herein.

134. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 124 of the Notice of Charges. The Respondent incorporates the response to paragraph 124 of the Notice of Charges hereto as if fully set forth herein; provided further that Respondent denies that NRMC or Double Diamond Inc. are agents of Respondent.

135. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraph 125 of the Notice of Charges. The Respondent incorporates the response to paragraph 125 of the Notice of Charges hereto as if fully set forth herein.

136. Respondent lacks sufficient information to admit or deny the allegations contained

in paragraph 136 of the Notice of Charges as it had as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort; including, without limitation, the sale of lot 955 of the Resort Property.

137. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 137 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property after the alleged Suspension.

138. This paragraph need not be admitted nor denied.

139. Respondent admits the allegations contained in paragraph 139 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

140. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 136 of the Notice of Charges as it had no control over NRMC or any control or involvement with the marketing, sales or operations of the Resort Property; including, without limitation, the sale of lot 970 of the Resort Property.

141. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 141 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property after the alleged Suspension.

142. This paragraph need not be admitted nor denied.

143. Respondent admits the allegations contained in paragraph 143 of the Notice of Charges, but only for the period between February 26, 2009 and September 2010. Respondent denies it engaged in the alleged activities any other time period.

144. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 144 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property after the alleged Suspension.
145. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 145 of the Notice of Charges as it had no control over NRMC nor any or control or involvement with the marketing, sales or operations of the Resort Property after the alleged Suspension.
146. This paragraph need not be admitted nor denied.
147. Respondent denies the Initial Statement of Record was filed on February 26, 2009. Respondent admits that the Initial Statement of Record filed with HUD on January 27, 2009 was accepted by HUD on February 26, 2009 and an acceptance letter issued that day.
148. Respondent admits that 12 C.F.R. §1710.310 speaks for itself.
149. Respondent denies it was obligated to file an Annual Report of Activity in 2010. Section 1710.310(a) of the ILSFDA [12 C.F.R. §1010.310(a)] states “As an integral part of the Statement of Record, the developer shall file with the Secretary an Annual Report of Activity on any initial or consolidated registration not under suspension. *For this purpose, only one Annual report of Activity will be expected for subdivisions on which developers have filed consolidations* (emphases added).” Section 1710.212(2)(d)(2) of the ILSFDA [12 C.F.R. §1010.212(2)(d)(2)], which also addresses the filing of Annual reports of Activity, states “If a developer has submitted its latest financial statements with a consolidated filing since the close of its fiscal year and prior to the end of the 120 day period, a second submission a *second submission of the statements to comply with this*

section is not necessary (emphases added).” Accordingly no annual report was due for the year 2010 because the effective date of the Consolidated Statement of Record of the Resort Property was January 13, 2010. Respondent had submitted its latest financial statements as Exhibit 212(c)(2) of the First Consolidated Statement of Record and the submission was within 120 days of the close of Respondents fiscal year, which was December 31, 2009. The effective date of the Consolidated Statement of Record of the Resort Property as assigned by HUD was January 13, 2010.

Respondent lacks sufficient information to admit or deny the allegations concerning the failure to file an annual report and latest financial statements for the year 2011 contained in paragraph 148 of the Notice of Charges as Respondent lost control of the management, sales and marketing activities of the Resort Property to National Resort Marketing Company in September, 2010 and was not allowed to participate in such activities nor consulted.

150. Respondent denies the allegations contained in paragraph 150 of the Notice of Charges.

151. This paragraph need not be admitted nor denied.

152. Respondent denies the allegations contained in paragraph 152 of the Notice of Charges.

The Respondent incorporates the response to paragraph 149 of the Notice of Charges hereto as if fully set forth herein as 12 C.F.R. §1010.212 and 12 C.F.R. §1010.310 address both the filing of Annual Reports of Activity and the latest financial statements of a developer.

153. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraphs 41 and 152 of the Notice of Charges. The Respondent incorporates the responses to paragraphs 41 and 152, with respect to the filing of financial

statements for the years 2009, 2010, 2011 of the Notice of Charges hereto as if fully set forth herein. With respect to the filing of the financial statements for the year 2012, Respondent has been, since November 16, 2011, the Debtor in the Bankruptcy Case. The Trustee is the sole party entitled to act on behalf of the Respondent but is not the agent of the Respondent.

154. Respondent denies the allegations contained in paragraph 154 of the Notice of Charges.

155. This paragraph need not be admitted nor denied.

156. Respondent denies the allegations contained in paragraph 154 of the Notice of Charges.

157. The allegations contained in this paragraph are redundant and a duplication of the allegations contained in paragraphs 42 of the Notice of Charges. The Respondent incorporates the responses to paragraphs 42 of the Notice of Charges.

158. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 158 of the Notice of Charges as it had no control over NRMC nor any control or involvement with the marketing, sales or operations of the Resort Property on March 29, 2011.

159. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 158 of the Notice of Charges as it had no control over NRMC nor any nor any control or involvement with the marketing, sales or operations of the Resort Property during the time periods described.

160. This paragraph need not be admitted nor denied.

161. Respondent denies the allegations contained in paragraph 161 of the Notice of Charges.

162. Respondent admits the allegations contained in paragraph 162 of the Notice of

Charges.

163. Respondent admits that no amendment was filed to amend the January 13, 2010 Property Report within 15 days from the date a fire destroyed the general store which occurred on or about February 6, 2010, but denies such constituted a misrepresentation.
164. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 164 of the Notice of Charges as NRMC controlled the operations of the Resort Property between September 2010 and November 16, 2011 and the Trustee has controlled the operations of the Resort Property thereafter.
165. Respondent lacks sufficient information to admit or deny the allegations contained in paragraph 164 of the Notice of Charges as NRMC controlled the operations of the Resort Property between September 2010 and November 16, 2011 and the Trustee has controlled the operations of the Resort Property thereafter.

Affirmative Defenses

First Affirmative Defense. Respondent denies that the CFPB has subject matter jurisdiction to seek restitution of monies or rescission of contracts relating to property which is part of the bankruptcy estate in the Bankruptcy Case.

Second Affirmative Defense. The Notice of Charges violate 11 U.S. C. § 362 and are void.

Third Affirmative Defense. The CFPB claims are barred by the statute of limitations.

Fourth Affirmative Defense. The CFPB claims are barred by the doctrines of estoppel and laches.

Fifth Affirmative Defense. The CFPB has previously made its election of remedies by filing Claim Number 148 in the Bankruptcy Case on July 20, 2012. Permitting the CFPB to maintain its actions in both the Bankruptcy Case and in the above-styled administrative would result in the same issues adjudicated in two separate forums with the likelihood of conflicting rulings.

Prayer for Relief

Respondent prays that the CFSB be denied the relief requested in the Notice of Charges and that Respondent recover any and all relief it may be entitled to in equity or in law.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing Responses to the Notice of Charges Seeking Rescission, Restitution, Civil Money Penalties, and Other Legal and Equitable Relief were filed with the Office of Administrative Adjudication and served by electronic mail on July 1, 2011 to the parties listed below, all of whom have consented to electronic service:

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