

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

In re:)	
)	
PROSPECT HOMES OF RICHMOND, INC.)	Case No. 09-33528-KRH
)	Chapter 11
Debtor.)	
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**PROPOSAL OF DEBTOR PURSUANT TO SECTION 554(a) AND
BANKRUPTCY RULE 6007 TO ABANDON CERTAIN PROPERTY OF
THE ESTATE TO PARTIES HOLDING A SECURED INTEREST THEREIN**

Prospect Homes of Richmond, Inc., the Debtor and Debtor-in-Possession in the above-captioned case (the “Debtor”), by counsel, hereby proposes to abandon certain property of the estate pursuant to 11 U.S.C. § 554(a) and Federal Rule of Bankruptcy Procedure 6007 (the “Proposal”). In support of the Proposal, the Debtor respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction to consider this Proposal under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of this case and the Proposal in this district is proper under 28 U.S.C. §§ 1408 and 1409.
2. The legal predicates for the relief requested herein are § 554(a) and Bankruptcy Rule 6007.

Background

3. On June 2, 2009 (the “Petition Date”), the Debtor filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to manage and operate its business as debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy

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Code.

4. On June 18, 2009, the United States Trustee appointed an Official Committee of Unsecured Creditors (the “Creditors’ Committee”).

5. As of the Petition Date, the Debtor owned over 250 parcels of real property including unimproved lots, partially completed homes, and completed properties. The Debtor has reached court approve settlements with four secured lenders with respect to parcels upon which they have secured claims. The Debtor has sold, or is in the process of selling, some parcels pursuant to order of this Court or in the ordinary course of its business. With respect to the remaining parcels, the secured lender has been granted, or has filed a motion seeking, relief from the automatic stay with respect to its specific collateral.

Relief Requested

6. By this Motion, the Debtor proposes to abandon all property of the estate subject to the secured claims of Regions Bank, Wachovia Bank, N.A., and Franklin Federal Savings Bank to the applicable bank holding the secured, possessory interest in the property.

Proposal to Abandon

I. Regions Bank Properties

7. On August 25, 2009, the Court entered its Consent Order Granting Relief from Stay, granting Regions Bank relief from the automatic stay with respect to the parcels of real property set forth in Schedule A below and more fully described in Exhibit A attached hereto (collectively, the “Regions Properties”). The security documents between the Debtor and Regions Bank contain a cross-collateralization provision, resulting in no equity in any single parcel of property. In addition to a general property description, Schedule A sets forth the approximate value of each parcel to the best of the Debtor’s knowledge and belief and an

approximation of the principal debt owed on each parcel, not including any accrued unpaid interest, fees and expenses owed to Regions.

SCHEDULE A		
Property Description	Approximate Value	Principal Debt
Avington, Lot 1, Block D	\$61,000	\$146,000
Avington, Lot 2, Block D	\$62,000	\$146,000
Avington, Lot 3, Block D	\$62,000	\$146,000
Avington, Lot 4, Block D	\$62,000	\$146,000
Avington, Lot 5, Block D	\$62,000	\$146,000
Avington, Lot 1, Block K	\$63,000	\$125,000
Avington, Lot 2, Block K	\$62,000	\$125,000
Avington, Lot 3, Block K	\$62,000	\$125,000
Avington, Lot 4, Block K	\$62,000	\$125,000
Greenbriar Woods, Section 3, Lot 22	\$202,000	\$193,000
Greenbriar Woods, Section 3, Lot 33	\$47,000	\$75,000
Greenbriar Woods, Section 3, Lot 45	\$257,000	\$310,000
Lakeridge Green, Lot 1, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 2, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 3, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 4, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 5, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 6, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 7, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 8, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 9, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 10, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 11, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 12, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 13, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 14, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 15, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 16, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 17, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 18, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 19, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 1, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 2, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 3, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 4, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 5, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 6, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 7, Block D	\$37,000	\$65,000
Lakeridge Green, Lot 8, Block D	\$37,000	\$65,000

Lakeridge Green, Lot 2, Block B	\$169,000	\$168,000
Lakeridge Green, Lot 3, Block B	\$171,000	\$164,000
Lakeridge Green, Lot 4, Block B	\$153,000	\$150,000
Lakeridge Green, Lot 6, Block B	\$157,000	\$138,000
Lakeridge Green, Lot 7, Block B	\$148,000	\$124,000
Pondview II, Lot 8	\$21,000	\$39,000
Pondview II, Lot 9	\$21,000	\$39,000
Pondview II, Lot 12	\$21,000	\$39,000

8. The Regions Properties include both unimproved lots, partially completed homes and completed homes. The Debtor incurs monthly costs from Regions Bank as well as additional costs to carry the Regions Properties including utilities, maintenance, insurance, taxes, and home owners' association fees. The Debtor has been unable to obtain financing to complete any of the incomplete Regions Properties and/or sell the Regions Properties in their current state.

9. Maintaining the Regions Properties is burdensome to the estate. In addition, for the majority (if not all due to cross-collateralization) of the Regions Properties there is no equity for the estate in excess of the valid and perfected lien of Regions Bank, and therefore the Regions Properties are of inconsequential value or benefit to the estate.

II. Wachovia Bank, N.A. Properties

10. On October 23, 2009, the Court entered its Order granting Wachovia Bank, N.A. ("Wachovia") relief from the automatic stay with respect to the parcels of real property set forth in Schedule B below and more fully described in Exhibit B attached hereto (collectively, the "Wachovia Properties"). The security documents between the Debtor and Wachovia contain a cross-collateralization provision, resulting in no equity in any single parcel of property. In addition to a general property description, Schedule B sets forth the approximate value of each parcel to the best of the Debtor's knowledge and belief and an approximation of the principal debt owed on each parcel, not including any accrued unpaid interest, fees and expenses owed to Wachovia.

SCHEDULE B		
Property Description	Approximate Value	Principal Debt
Zehler Estates, Lot 6	\$55,000	\$80,000
Summer Lake, Section 5, Lot 20	\$362,000	\$409,000
Summer Lake, Section 5, Lot 34	\$60,000	\$93,000
Summer Lake, Section 5, Lot 36	\$330,000	\$369,000
Lakeridge Green, Lot 20, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 21, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 22, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 23, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 24, Block A	\$37,000	\$65,000
Lakeridge Green, Lot 25, Block A	\$37,000	\$65,000
Harpers Mill, Section 1, Lot 1	\$459,000	\$465,000
Harpers Mill, Section 1, Lot 9	\$56,000	\$95,000
Harpers Mill, Section 1, Lot 15	\$51,000	\$95,000
Harpers Mill, Section 1, Lot 16	\$56,000	\$95,000
Harpers Mill, Section 1, Lot 17	\$56,000	\$95,000
Harpers Mill, Section 1, Lot 21	\$53,000	\$95,000
Harpers Mill, Section 1, Lot 22	\$56,000	\$95,000
Hillcrest Farms, Section 1, Lot 3A	\$277,000	\$360,000
Hillcrest Farms, Section 1, Lot 7B	\$47,000	\$70,000
Fox Creek, Section 1, Lot 9	\$54,000	\$88,000
Fox Creek, Section 1, Lot 10	\$54,000	\$88,000
Fox Creek, Section 1, Lot 11	\$54,000	\$88,000
Fox Creek, Section 1, Lot 23	\$54,000	\$88,000
Fox Creek, Section 1, Lot 24	\$54,000	\$88,000
Fox Creek, Section 1, Lot 25	\$54,000	\$88,000
Creekview, Lot 3, Section 1	\$28,000	\$42,000
Creekview, Lot 4, Section 1	\$28,000	\$42,000
Creekview, Lot 14, Section 2	\$28,000	\$42,000
Creekview, Lot 15, Section 2	\$28,000	\$42,000
Cedar Lea, Section 3, Lot 42	\$47,000	\$85,000
Cedar Lea, Section 3, Lot 82	\$46,000	\$85,000
Cedar Lea, Section 3, Lot 100	\$47,000	\$85,000
Cedar Lea, Section 3, Lot 113	\$47,000	\$80,000
Spring Creek, Section 2, Lot 47	\$30,000	\$60,000
Spring Creek, Section 2, Lot 48	\$33,000	\$60,000

11. The Wachovia Properties include both unimproved lots and completed homes. The Debtor incurs monthly costs from Wachovia as well as additional costs to carry the Wachovia Properties including utilities, maintenance, insurance, taxes, and home owners' association fees. The Debtor has been unable to obtain financing to complete any of the

incomplete Wachovia Properties and/or sell the Wachovia Properties in their current state.

12. Maintaining the Wachovia Properties is burdensome to the estate. In addition, for the majority (if not all due to cross-collateralization) of the Wachovia Properties there is no equity for the estate in excess of the valid and perfected lien of Wachovia, and therefore the Wachovia Properties are of inconsequential value or benefit to the estate.

III. Franklin Federal Savings Bank Properties

13. On December 23, 2009, Franklin Federal Savings Bank (“Franklin Federal”) filed its Motion for Relief from Stay of 11 U.S.C. § 362(a) and Memorandum in Support seeking relief from the automatic stay with respect to the parcels of real property set forth in Schedule C below and more fully described in Exhibit C attached hereto (collectively, the “Franklin Federal Properties,” collectively with the Regions Property and Wachovia Property, the “Properties”). The security documents between the Debtor and Franklin Federal contain a cross-collateralization provision, resulting in no equity in any single parcel of property. In addition to a general property description, Schedule C sets forth the approximate value of each parcel to the best of the Debtor’s knowledge and belief and an approximation of the principal debt owed on each parcel, not including any accrued unpaid interest, fees and expenses owed to Franklin Federal.

SCHEDULE C		
Property Description	Approximate Value	Principal Debt
Fox Creek, Section 1, Lot 20	\$54,000	\$101,000
Fox Creek, Section 1, Lot 21	\$54,000	\$101,000
Fox Creek, Section 1, Lot 22	\$52,000	\$99,000
Fox Creek, Section 1, Lot 26	\$54,000	\$99,000
Fox Creek, Section 1, Lot 31	\$54,000	\$99,000
Greenbriar Woods, Lot 27, Section 3	\$46,000	\$86,000
Greenbriar Woods, Lot 28, Section 3	\$46,000	\$86,000
Hillcrest Farms, Section 2, Lot 53C	\$47,000	\$75,000
Pondview II, Lot 4	\$21,000	\$36,000
Pondview II, Lot 5	\$21,000	\$36,000

Pondview II, Lot 6	\$21,000	\$36,000
Pondview II, Lot 7	\$21,000	\$36,000
Summer Lake, Section 5, Lot 40	\$324,000	\$350,000

14. The Franklin Federal Properties include both unimproved lots and completed homes. The Debtor incurs monthly costs from Franklin Federal as well as additional costs to carry the Franklin Federal Properties including utilities, maintenance, insurance, taxes, and home owners' association fees. The Debtor has been unable to obtain financing to complete any of the incomplete Franklin Federal Properties and/or sell the Franklin Federal Properties in their current state.

15. Maintaining the Franklin Federal Properties is burdensome to the estate. There is no equity in the Franklin Federal Properties for the estate in excess of the valid and perfected lien of Franklin Federal, and therefore the Franklin Federal Properties are of inconsequential value or benefit to the estate.

16. Pursuant to § 554(a), the Debtor proposes to abandon

- a) the Regions Properties to Regions Bank;
- b) the Wachovia Properties to Wachovia; and
- c) the Franklin Federal Properties to Franklin Federal.

17. **Pursuant to § 554(a) and Bankruptcy Rule 6007, if no objection to the proposed abandonment is filed with the court and served on the Debtor within fourteen (14) days from the date of this Proposals, the above described properties will be abandoned as set forth herein.** However, for avoidance of doubt, the Debtor requests that, in the event that no objections are timely filed, the Court enter an order confirming the abandonment of the properties to the parties set forth herein.

Basis for Relief

18. Section 554(a) of the Bankruptcy Code states:

- (a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

11 U.S.C. § 554(a). Section 554(a) is made applicable to debtors in possession pursuant to § 1107(a). Bankruptcy Rule 6007(a) sets forth the parties entitled to notice of a proposed abandonment of property. Pursuant to Rule 6007(a), upon notice of a proposed abandonment of property, a party in interest may file and serve an objection to such proposed abandonment within fourteen (14) days. FED. R. BANKR. P. 6007(a). If a timely objection is filed, then the court must set a hearing on the proposed abandonment, otherwise no hearing is necessary pursuant to § 102(a). Id.; 11 U.S.C. § 102(a).

19. Section 554(a) does not indicate to whom property abandoned by a trustee or debtor in possession is to be abandoned. Legislative history indicates that this was intentional, as “abandonment may be to any party with a possessory interest in the property abandoned.” In re A.J. Lane & Co., Inc., 133 B.R. 264, 268 (Bankr. D. Ma. 1991) (quoting H.R. Rep. N. 595, 95th Cong., 1st Sess. 377 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 92 (1978); 1978 U.S. Code Cong. & Admin. News 5787, 5963); see also 5 COLLIERS ON BANKRUPTCY ¶ 554.02[3], at 554-5-6 (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008) (hereinafter “COLLIERS”). A possessory interest is defined as a “right to exert control over specific land to the exclusion of others” or a “right to possess property.” A.J. Lane & Co., 133 B.R. at 268 (quoting Black’s Law Dictionary 1049 (5th ed. 1979)). Secured lenders in real property qualify as recipients for abandoned property by reason of their possessory interests created by deeds of trust. See id. at 269; COLLIERS at 554-6.

20. The standard in this jurisdiction for approving a request to abandoned encumbered property is whether the debtor in possession has exercised sound business judgment. See In re US Airways Group, Inc., 287 B.R. 643, 645 (Bankr. E.D. Va. 2002). “If the debt exceeds the value of the encumbered property, there would ordinarily be no benefit to the estate, and the court’s review would be limited to ensuring that the . . . debtor in possession was not short-changing the estate by disposing of property that actually had some value.” Id. at 645-56. Alternatively, even if the debt does not exceed the value, abandonment is property if the property is burdensome to the estate and the debtor in possession has its sound business judgment.

21. An order lifting the automatic stay does not, by itself, release the estate’s interest and related financial and other obligations in property. See Catalano v. Comm’r, 279 F.3d 682, 687 (9th Cir. 2002). Therefore, the estate’s burdens related to such property are not alleviated until the procedures specified in § 554 are satisfied. See id.

22. Regions Bank, Wachovia and Franklin Federal (collectively, the “Banks”) have all been granted, or are seeking (which the Debtor will not contest), relief from the automatic stay with respect to their secured claims in the Properties. Despite grants of relief from the automatic stay, no foreclosure sales or other process whereby the Banks would alleviate the estate’s burdens related to the Properties have been scheduled. Each of the Properties is burdensome to the estate and, after application of the cross-collateralization provisions of the applicable security documents, of inconsequential value and benefit to the estate. Therefore, the Debtor proposes to abandon each of the Properties to the applicable Bank.

Notice

23. Notice of this Motion will be provided to those parties entitled to notice under this Court’s Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and

9001, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Amended Notice, Case Management, and Administrative Procedures (Docket No. 227), including counsel for Regions Bank, Wachovia, and Franklin Federal. The Debtor submits that, under the circumstances, no other or further notice need be given.

No Prior Request

24. No previous request for the relief sought in this Motion has been made to this Court or any other Court.

WHEREFORE, the Debtor respectfully proposes to abandon certain property of the estate as set forth herein and respectfully requests that if no objections to such abandonment are timely filed the court enter an order confirming the abandonment of such properties and granting such other and further relief as its just or proper..

Dated: December 31, 2009

DURRETTEBRADSHAW PLC

/s/ Elizabeth L. Gunn

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Counsel for Prospect Homes of Richmond, Inc.

Certificate of Service

I hereby certify that on this 31st day of December, 2009, the foregoing Proposal was served pursuant to this Court's Order Pursuant to Bankruptcy Code Sections 102 and 105, Bankruptcy Rules 2002 and 9001, and Local Bankruptcy Rules 2002-1 and 9013-1 Establishing Certain Amended Notice, Case Management, and Administrative Procedures (Docket No. 227) via the Court's CM/ECF notification service and/or electronic mail, including counsel for Regions Bank, Wachovia Bank N.A., and Franklin Federal Savings Bank.

/s/ Elizabeth L. Gunn