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*Electronically Filed On: September 30, 2015*

5 *Counsel for Victoria L. Nelson, Chapter 7 Trustee*

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

10 In re:  
11 AMERI-DREAM REALTY, LLC,  
12 Debtor.

Case No. BK-S-15-10110-LED  
Chapter 7

**MOTION FOR (1) TURNOVER OF  
SECURITY DEPOSITS HELD IN TRUST  
ACCOUNT OF MCDONALD CARANO  
WILSON PURSUANT TO 11 U.S.C. § 542  
AND (2) AUTHORITY TO ADMINISTER  
SECURITY DEPOSITS THROUGH THE  
DEBTOR'S BANKRUPTCY ESTATE  
PURSUANT TO 11 U.S.C. § 105(a)**

Date of Hearing: November 3, 2015  
Time of Hearing: 11:00 a.m.  
Place: Courtroom No. 3, Third Floor  
Foley Federal Building  
300 Las Vegas Blvd., S.  
Las Vegas, NV 89101

Judge: Honorable Laurel E. Davis<sup>1</sup>

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21 Victoria L. Nelson, the duly appointed Chapter 7 Trustee in above-captioned bankruptcy  
22 case (the "Trustee"), hereby files this *Motion For (1) Turnover of Security Deposits Held In Trust*  
23 *Account of McDonald Carano Wilson Pursuant to 11 U.S.C. § 542 and (2) Authority to*

24  
25  
26 <sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11  
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
28 Federal Rules of Civil Procedure will be referred to as "FRCP" and the Federal Rules of  
Bankruptcy Procedure will be referred to as "FRBP." The Local Rules of Practice for the United  
States Bankruptcy Court for the District of Nevada shall be referred to as the "Local Rules."

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1 *Administer Security Deposits Through the Debtor’s Bankruptcy Estate Pursuant to 11 U.S.C. §*  
2 *105(a) (the “Motion”).*

3 The Motion is based upon the following memorandum of points and authorities, the  
4 *Declaration of Victoria L. Nelson In Support of Motion For (1) Turnover of Security Deposits*  
5 *Held In Trust Account of McDonald Carano Wilson Pursuant to 11 U.S.C. § 542 and (2)*  
6 *Authority to Administer Security Deposits Through the Debtor’s Bankruptcy Estate Pursuant to*  
7 *11 U.S.C. § 105(a) (the “Nelson Declaration”), the Declaration of Ryan R. Works, Esq. In*  
8 *Support of Motion For (1) Turnover of Security Deposits Held In Trust Account of McDonald*  
9 *Carano Wilson Pursuant to 11 U.S.C. § 542 and (2) Authority to Administer Security Deposits*  
10 *Through the Debtor’s Bankruptcy Estate Pursuant to 11 U.S.C. § 105(a) (the “Works*  
11 *Declaration”), the Declaration of Marcia Uhrig In Support of Motion For (1) Turnover of*  
12 *Security Deposits Held In Trust Account of McDonald Carano Wilson Pursuant to 11 U.S.C. §*  
13 *542 and (2) Authority to Administer Security Deposits Through the Debtor’s Bankruptcy Estate*  
14 *Pursuant to 11 U.S.C. § 105(a) (the “Uhrig Declaration”), the Declaration of Barbara Desjardins*  
15 *In Support of Motion For (1) Turnover of Security Deposits Held In Trust Account of McDonald*  
16 *Carano Wilson Pursuant to 11 U.S.C. §542 and (2) Authority to Administer Security Deposits*  
17 *Through the Debtor’s Bankruptcy Estate Pursuant to 11 U.S.C. § 105(a) (the “Desjardins*  
18 *Declaration”), and the Declaration of Joseph D. Decker In Support of Motion For (1) Turnover of*  
19 *Security Deposits Held In Trust Account of McDonald Carano Wilson Pursuant to 11 U.S.C. §*  
20 *542 and (2) Authority to Administer Security Deposits Through the Debtor’s Bankruptcy Estate*  
21 *Pursuant to 11 U.S.C. § 105(a) (the “Decker Declaration”), all of which are filed separately and*  
22 *concurrently with this Motion pursuant to Rule 9014(c)(2) of the Local Rules of Bankruptcy*  
23 *Procedure for the United States Bankruptcy Court for the District of Nevada (the “Local Rules”).*

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1 Attached hereto and marked as **Exhibit “1”** is a copy of the proposed Order granting the  
2 Motion. The Motion is also based upon the pleadings and records on file herein.<sup>2</sup>

3 Dated this 30th day of September, 2015.

4 **NELSON & HOUMAND, P.C.**

5 */s/ Jacob L. Houmand*

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12 *Trustee*

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27 <sup>2</sup> Trustee also requests that the Court take judicial notice of all pleadings filed in the above-  
28 captioned bankruptcy case pursuant Rule of Evidence 201, incorporated by reference by FRBP  
9017.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Ameri-Dream Realty, LLC (the “Debtor”) is a real estate brokerage firm that represented clients in the purchase and sale of real property throughout Las Vegas, Nevada. The Debtor also had a property management division that managed several thousand real properties located throughout the valley in Las Vegas, Nevada. As part of its property management division, the Debtor has executed real property management agreements (collectively, the “Property Management Agreements”) with landowners whereby the Debtor agreed to perform the following services: (a) the monthly collection of rents from tenants, (b) payment of Homeowner Association (“HOA”) fees, (c) the general repair and maintenance of the properties at issue, and (d) the segregation of security deposits (the “Security Deposits”) pursuant to Nevada Revised Statute (“N.R.S.”) Chapter 645. Despite the fact that the Debtor was required to maintain the Security Deposits in a segregated trust account for the benefit of the various landowners and tenants, Elsie Peladas-Brown (“E. Brown”), the spouse of the Debtor’s principal, embezzled approximately \$1,174,373.63 of the Security Deposits. This alleged embezzlement has resulted in a significant deficiency in the Debtor’s Security Deposit trust accounts to satisfy the full amount of the Security Deposits that were negotiated under the Property Management Agreements. The alleged embezzlement has also rendered any attempts to trace the remaining Security Deposits to any particular landowner or tenant impossible, as security deposits from new tenants were used to pay security deposits owed to outgoing tenants.

Prior to the Petition Date, the remaining Security Deposit balance of approximately \$707,567.29 was transferred to the IOLTA Account of McDonald Carano Wilson (the “MCW Trust Account”), the Debtor’s bankruptcy counsel. The creditor body in the Debtor’s bankruptcy case as of the filing of this Motion is approximately \$3,213,221.<sup>3</sup> The vast majority of the claims that have been filed in the Debtor’s bankruptcy case are from either landowners or tenants that are

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<sup>3</sup> A matrix of the Debtor’s creditor body can be accessed on the dedicated website that was created for the above-captioned bankruptcy case at the following hyperlink: <http://nelsonhoumand.com/ameri-dream-realty-llc/>

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1 seeking the return of the security deposits that they provided the Debtor. The Trustee has also  
 2 been in communication with the State of Nevada Real Estate Division (“NRED”), the  
 3 governmental entity charged with regulating real estate brokers, and has been informed that they  
 4 have no intention of administering the Security Deposits held in the MCW Trust Account. Since  
 5 the Security Deposits in the MCW Trust Account cannot be traced to a particular landowner or  
 6 tenant, the vast majority of the proof of claims filed in the Debtor’s bankruptcy case relate to  
 7 unpaid security deposits, and the NRED has no intention of administering the funds for  
 8 landowners and tenants, the Debtor’s bankruptcy case is the only logical forum for the  
 9 administration and distribution of the remaining Security Deposits. Accordingly, the Trustee now  
 10 seeks authority to have the Security Deposits in the MCW Trust Account transferred to the  
 11 Debtor’s bankruptcy estate so that they can be administered for the benefit of the Debtor’s  
 12 creditors.

## 13 **II. STATEMENT OF FACTS**

### 14 **THE DEBTOR’S BANKRUPTCY FILING AND THE ALLEGED EMBEZZLEMENT OF SECURITY** 15 **DEPOSITS**

16 1. On January 9, 2015 (the “Petition Date”), the Debtor filed a voluntary bankruptcy  
 17 pursuant to Chapter 7 of Title 11 of the United States Code [ECF No. 1]<sup>4</sup>. *See* Nelson  
 18 Declaration.

19 2. On January 9, 2015, Victoria L. Nelson was appointed as the Chapter 7 Trustee in  
 20 the Debtor’s bankruptcy case [ECF No. 4]. *See* Nelson Declaration.

21 3. On January 9, 2015, the Court scheduled May 14, 2015, as the deadline to file  
 22 proof of claims [ECF No. 4]. *See* Nelson Declaration.

23 4. The Debtor was a real estate brokerage firm that represented clients in the purchase  
 24 and sale of real property throughout Las Vegas, Nevada. *See* Nelson Declaration.

25 5. The Debtor also had a property management division that managed thousands of  
 26 rental properties for various landowners and tenants throughout Las Vegas, Nevada. As part of its

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 28 <sup>4</sup> All references to “ECF No.” are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the clerk of the court.

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1 property management division, the Debtor has executed property management agreements with  
2 landowners whereby the Debtor agreed to perform the following services: (a) the monthly  
3 collection of rents from tenants, (b) payment of Homeowner Association (“HOA”) fees, (c) the  
4 general repair and maintenance of the properties at issue, and (d) the segregation of security  
5 deposits pursuant to Nevada Revised Statute (“N.R.S.”) Chapter 645. *See* Nelson Declaration.

6 6. At the time of the Debtor’s bankruptcy filing it was a party to several hundred  
7 property management agreements. *See* Nelson Declaration.

8 7. After the filing of the Debtor’s bankruptcy case, the Trustee was informed that the  
9 spouse of the Debtor’s principal improperly transferred approximately \$1,174,373.63 from the  
10 Security Deposits to the Philippines. These actions have resulted in a significant deficiency in the  
11 amount of Security Deposits that the Debtor was required to hold in trust pursuant to the various  
12 property management agreements and N.R.S. Chapter 645. *See* Nelson Declaration.

13 8. Prior to the Petition Date, the remaining balance of the Security Deposits of  
14 approximately \$707,567.29 were transferred to the IOLTA Trust Account of MCW. *See* Works  
15 Declaration.

16 9. As of the filing of this Motion, there is approximately \$707,567.29 remaining in  
17 the IOLTA Trust Account of MCW. *See* Works Declaration.

18 **THE DEBTOR’S EMPLOYMENT OF DICKINSON DESJARDINS, CPAs TO ANALYZE THE**  
19 **DISPOSITION OF SECURITY DEPOSITS**

20 10. In or about March 2014, the accounting firm of Dickinson Desjardins, CPAs (the  
21 “Accounting Firm”) was employed by the Debtor to review and reconcile certain transactions in  
22 trust accounts established by the Debtor to maintain security deposits as part of its responsibilities  
23 as a property manager under Nevada law. *See* Desjardins Declaration.

24 11. The employment of the Accounting Firm was precipitated by allegations that E.  
25 Brown had embezzled significant sums of money from trust accounts that were required to be  
26 maintained by the Debtor as part of its responsibilities as a property manager under Nevada law.  
27 *See* Desjardins Declaration.

28 . . .

1           12.     Following the Accounting Firm’s employment, the Accounting Firm reviewed and  
2 analyzed the transactions in the following trust accounts established by the Debtor for the purpose  
3 of administering security deposits: (1) J.P. Morgan Chase Bank, N.A. Account Number 8936; (2)  
4 J.P. Morgan Chase Bank, N.A. Account Number 0795; (3) J.P. Morgan Chase Bank, N.A.  
5 Account Number 0803; (4) Bank of Nevada Account Number 2556; (5) J.P. Morgan Chase Bank,  
6 N.A. Account Number 5725; (6) J.P. Morgan Chase Bank, N.A. Account Number 9331; and (7)  
7 J.P. Morgan Chase Bank, N.A. Account Number 1088 (collectively, the “Trust Accounts”). *See*  
8 *Desjardins Declaration*.

9           13.     Through its review and analysis of the Trust Accounts, the Accounting Firm  
10 determined that E. Brown embezzled approximately \$1,174,373.63 in security deposits from the  
11 Trust Accounts during the period January 2013 through February 2014. *See Desjardins*  
12 *Declaration*.

13           14.     The Accounting Firm has informed the Trustee that the embezzlement of  
14 approximately \$1,174,373.63 by E. Brown from the Trust Accounts has also made it impossible  
15 to directly trace the remaining balance of the security deposits to any of the tenants or landlords of  
16 the real properties that were managed by the Debtor on the date of its bankruptcy filing. *See*  
17 *Desjardins Declaration*.

18 **THE APPOINTMENT OF GARDEN CITY GROUP AS CLAIMS AND NOTICING AGENT AND THE**  
19 **DEADLINE TO FILE PROOF OF CLAIMS**

20           15.     On February 9, 2015, the Trustee filed an *Application for Order Authorizing the*  
21 *Employment of the Garden City Group, LLC As Claims and Noticing Agent* [ECF No. 88] (the  
22 “Application to Employ GCG”). The Application to Employ GCG sought authority to employ  
23 GCG as claims and noticing agent in the Debtor’s bankruptcy case. *See Nelson Declaration; see*  
24 *also Uhrig Declaration*.

25           16.     On February 27, 2015, the Court entered an *Order Authorizing Employment of the*  
26 *Garden City Group, LLC As Claims and Noticing Agent* [ECF No. 128]. *See Nelson Declaration;*  
27 *see also Uhrig Declaration*.

28 . . .

1 17. Since its employment, GCG has been collecting proof of claims that have been  
2 filed in the Debtor's bankruptcy case. *See* Uhrig Declaration.

3 18. As of the filing of this Motion, the total number of proof of claims filed in the  
4 Debtor's bankruptcy case is 950 and the total monetary amount claimed is \$3,213,221. A true  
5 and correct copy of an alphabetical chart of the proof of claims filed in the Debtor's bankruptcy  
6 case is attached to the Uhrig Declaration as **Exhibit "1"**.

7 19. Of the total number of proof of claims filed in the Debtor's bankruptcy estate,  
8 approximately 871, or ninety-one percent (91%), relate to unpaid Security Deposits. *See* Nelson  
9 Declaration.

10 20. Of the total monetary amount of proof of claims filed in the Debtor's bankruptcy  
11 estate, approximately \$2,788,226.97 or eighty-six percent (86%), relate to unpaid Security  
12 Deposits.<sup>5</sup> *See* Nelson Declaration.

13 **THE COMMENCEMENT OF THE ADVERSARY PROCEEDING AGAINST E. BROWN**

14 21. On May 21, 2015, the Trustee commenced the adversary proceeding titled *Nelson*  
15 *v. Brown* (Case Number BK-S-15-01087-LED) by filing a complaint against E. Brown alleging  
16 the following claims for relief: (1) Breach of Fiduciary Duty; (2) Misrepresentation; and (3)  
17 Negligent Misrepresentation (the "Brown Adversary Proceeding"). *See* Nelson Declaration.

18 22. The claims for relief in the Brown Adversary Proceeding are directly related to the  
19 alleged embezzlement of a significant portion of the Security Deposits by E. Brown. *See* Nelson  
20 Declaration.

21 23. On August 28, 2015, the Trustee filed a Motion for Summary Judgment  
22 [Adversary Proceeding ECF No. 11] that seeks the entry of a final judgment on all of the claims  
23 for relief alleged in the Brown Adversary Proceeding. The hearing date on the Motion for  
24 Summary Judgment is currently scheduled for October 26, 2015, at 1:30 p.m. *See* Nelson

25 \_\_\_\_\_  
26 <sup>5</sup> The total amount of proof of claims filed in the Debtor's bankruptcy case relating to unpaid  
27 Security Deposits is significantly larger than the amount allegedly embezzled by E. Brown and  
28 the amount remaining in the MCW Trust Account because in many cases duplicate proof of  
claims were filed by both the landlord and tenant. The Trustee has begun the process of  
reviewing the proof of claims that have been filed in the Debtor's bankruptcy case and anticipates  
filing a number of objections.

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1 Declaration.

2 **THE TRUSTEE’S COORDINATION AND COMMUNICATION WITH THE STATE OF NEVADA REAL**  
3 **ESTATE DIVISION**

4 24. Since the commencement of the Debtor’s bankruptcy case, the Trustee has been in  
5 communication with the NRED regarding the disposition of the Security Deposits. *See* Nelson  
6 Declaration; *see also* Decker Declaration.

7 25. The Trustee has been informed that the NRED has no intention of administering  
8 the remaining Security Deposits. The NRED has also informed the Trustee that they believe the  
9 administration of the remaining Security Deposits in the Debtor’s bankruptcy estate is consistent  
10 with Nevada law governing real estate brokers including, but not limited to, the provisions of  
11 Chapter 645 of the Nevada Revised Statutes and the Nevada Administrative Code. *See* Nelson  
12 Declaration; *see also* Decker Declaration.

13 26. The NRED has indicated that they have no opposition to the relief requested in the  
14 instant Motion. *See* Decker Declaration.

15 **III. LEGAL ARGUMENT**

16 **A. Standard for Motion for Turnover**

17 Section 542(a) states in relevant part, “[A]n entity . . . in possession, custody, or control,  
18 during the case, of [property of the estate, or exempt property], shall deliver to the trustee, and  
19 account for, such property or the value of such property, unless such property is of  
20 inconsequential value or benefit to the estate.”<sup>6</sup> 11 U.S.C. § 542(a). To prevail in a turnover  
21 action under Section 542, the party seeking turnover must established (1) that the property is or  
22 was in the possession, custody or control of an entity during the pendency of the case, (2) that the  
23 property may be used by the trustee in accordance with Section 363 or exempted by the debtor  
24 under Section 522, and (3) that the property has more than inconsequential value or benefit to the

25 <sup>6</sup> The relief requested in this Motion does not require the initiation of an adversary proceeding  
26 under FRBP 7001(1) because the Security Deposits are currently being held in the IOLTA Trust  
27 Account of MCW, counsel for the Debtor. *See* FED. R. BANKR. P. 7001(1) (providing that an  
28 adversary proceeding is required for “a proceeding to recover money or property, other than a  
proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b)  
or § 725 of the Code, Rule 2017, or Rule 6002.”).

1 estate. *See Alofs Mfg. Co. v. Toyota Mfg., Ky., Inc. (In re Alofs Mfg. Co.)*, 209 B.R. 83, 91  
2 (Bankr. W.D. Mich. 1997); *see also Kerney v. Capital One Fin. Corp. (In re Sims)*, 278 B.R. 457,  
3 475 (Bankr. E.D. Tenn. 2002) (to be recoverable under Section 542(a), property must be  
4 “exemptible by the debtor or usable, sellable, or leasable by the trustee under Section 363”). The  
5 Chapter 7 Trustee has the burden of establishing that the elements of a motion for turnover have  
6 been established by a preponderance of the evidence. *Id.*

7 **B. The Court Should Permit the Turnover of the Security Deposits Held in the MCW**  
8 **Trust Account So That They Can Be Administered for the Benefit of the Debtor’s**  
9 **Creditors**

10 The Court should allow the Trustee to administer the remaining Security Deposits through  
11 the Debtor’s bankruptcy estate because (1) the vast majority of the proof of claims that have been  
12 filed with GCG concern unpaid security deposits, (2) the remaining balance of the Security  
13 Deposits cannot be traced to any landowner or tenant, and (3) the NRED does not oppose the  
14 Trustee administering the Security Deposits for the benefit of creditors. The United States  
15 Bankruptcy Court for the District of Nevada addressed a similar situation in *In re Lemons &*  
16 *Associates, Inc.*, 67 B.R. 198 (Bankr. D. Nev. 1986), when it permitted funds that were required  
17 to be held in trust to be administered on a pro rata basis if the trust funds could be traceable to a  
18 single creditor.

19 In *Lemons*, the debtor represented and advertised itself as a mortgage broker engaged in  
20 brokering real estate loans and in buying and selling promissory notes secured by deeds of trust  
21 encumbering real estate located in Nevada and Arizona. The debtor informed investors that they  
22 were purchasing interests in promissory notes and that their investments would be secured by an  
23 assignment to them of a *pro rata* share in the deed of trust which had been executed in connection  
24 with the particular promissory note. *Id.* at 201. As part of the debtor’s purported investment  
25 system, it also informed investors that it offered an Individual Retirement Plan (“IRA”) that could  
26 be used to purchase interests in notes and deeds of trusts through the debtor. In order to facilitate  
27 the IRA, the debtor represented that it maintained a money market account into which investor  
28 funds could be deposited. *Id.* at 202. The debtor maintained separate trust accounts, which

1 included monies received by the debtor from investors, periodic principal and interest payments  
2 from borrowers, loan payoffs from borrowers, and fees for foreclosure costs and down-payments  
3 on properties sold by the debtor. *Id.* at 204. It was the debtor's policy to pay investors the  
4 agreed-upon interest rate from the date that the investor deposited his money with the debtor.  
5 This system of guaranteed payments continued regardless of whether an investor had received an  
6 assignment in a particular deed of trust or the debtor had received a payment from the borrower  
7 on the investor's deed of trust. These interest payments were also made from the designated trust  
8 accounts, rather than from the debtor's general operating account, resulting in a significant  
9 decrease in the trust accounts. The debtor continued to accept new investors despite increasing  
10 borrower defaults and the inability to assign performing loans to investors. *Id.* The lack of  
11 performing loans also resulted in the debtor executing trust deed assignments to investors in  
12 percentages greatly exceeding one hundred percent (100%). The net effect of the debtor's actions  
13 was to operate a Ponzi scheme that was dependent on the debtor receiving new investor funds. *Id.*  
14 at 205.

15 On the date that the debtor filed for bankruptcy, it was administering a loan portfolio of  
16 \$57,100,000, which included \$36,100,000 in performing loans and \$21,000,000 in non-  
17 performing loans. *Id.* at 206. An analysis of the trust accounts indicated that a significant portion  
18 of the investor funds deposited to the trust accounts were used for improper purposes, such as  
19 interest payments and payoffs to other investors. *Id.* at 207. Following the debtor's bankruptcy  
20 filing, a number of investors filed adversary proceedings seeking, among other things, declaratory  
21 and affirmative relief concerning their rights to the promissory notes and deeds of trusts under  
22 Section 541(d). The Bankruptcy Court for the District of Nevada held that since funds placed  
23 with the debtor by investors could not be traced to a particular investor or promissory note, the  
24 promissory notes and deeds of trust should be administered by the Trustee with the investors  
25 receiving a *pro rata* distribution. *Id.* at 216-217. The bankruptcy court reasoned that the  
26 promissory notes and deeds of trusts assigned to particular investors were subject to the  
27 competing equitable claims of other investors. *Id.* at 213. The bankruptcy court further reasoned  
28

1 that “[d]ue to the commingling and fraud in the [debtor’s] trust accounts, no investor can trace his  
2 investment to any specific note or other asset of the estate.” *Id.*

3 The facts of the instant bankruptcy case are similar to those in *Lemon*. Beginning in late  
4 March 2014, the Debtor discovered that significant funds were missing from the bank accounts  
5 designated to hold tenant security deposits. It is the belief of the principal of the Debtor and the  
6 Trustee that E. Brown misappropriated the Security Deposits by transferring the same to the  
7 Philippines. Following the alleged embezzlement by E. Brown, the trust accounts utilized to  
8 maintain the Security Deposits were forced into a severe out-of-trust status. Namely, security  
9 deposits received by the Debtor under new property management agreements were utilized to pay  
10 security deposits under existing property management agreements. This business practice has not  
11 only resulted in a significant deficiency in the Debtor’s trust accounts, but also the inability of any  
12 one landlord or tenant to directly trace their security deposit. As a result, the most efficient  
13 method to administer the remaining Security Deposits is to allow creditors to have the Security  
14 Deposits transferred to the Debtor’s bankruptcy estate so that there can be a *pro rata* distribution  
15 to unsecured creditors. This result is consistent with the principles articulated in *Lemons* and the  
16 general policy of equal distribution to similarly situated parties. *See Lemons*, 67 B.R. at 213.  
17 Moreover, the Trustee has been informed that neither the Debtor nor the NRED has any  
18 opposition to the Security Deposits being administered through the Debtor’s bankruptcy case.  
19 Accordingly, the Court should grant the Motion and allow the Trustee to administer the remaining  
20 security deposits for the benefit of the Debtor’s creditors.

21 **C. The Turnover of the Security Deposits Is Consistent With Nevada Law Regulating**  
22 **Real Estate Brokers**

23 N.R.S. Chapter 645 governs the maintenance of security deposits by real estate brokers.  
24 *See* N.R.S. § 645.005 *et seq.* Specifically, N.R.S. § 645.310 requires a real estate broker to  
25 maintain security deposits received in connection with a property management agreement in a  
26 segregated account. N.R.S. § 645.310(7) permits the NRED to appoint a trustee to administer the  
27 security deposits held in trust upon the death or incapacity of a real estate broker:

28 . . .

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1                   If a real estate broker who has money in a trust account dies or  
2                   becomes mentally disabled, the Division, upon application to the  
3                   district court, may have a trustee appointed to administer and  
4                   distribute the money in the account with the approval of the court.  
5                   The trustee may serve without posting a bond.

6 N.R.S. § 645.310(7).

7                   The Nevada Administrative Code (“NAC”) provides that “[a] real estate broker who files  
8                   for relief under the bankruptcy laws of the United States shall immediately terminate each trust  
9                   account established pursuant to N.R.S. § 645.310 and deposit all money from each trust account  
10                  into escrow with executed instructions to the escrow agent or officer to disburse the money  
11                  pursuant to the agreement under which it was originally deposited.” *See* NAC § 645.655(7).<sup>7</sup>

12                  Although provisions of N.R.S. and the NAC permit the appointment of a trustee to  
13                  administer security deposits upon the death or incapacity of a real estate broker, there is not a  
14                  specific section that addresses alleged embezzlement of trust funds. That being said, the  
15                  principles underlying Nevada state law support the Trustee administering the remaining portion of  
16                  the Security Deposits that are held in trust. This is because N.R.S. § 645.310(7) contemplate the  
17                  appointment of a trustee in the event that a real estate broker dies or is rendered incapacitated.  
18                  While an alleged embezzlement of security deposits and subsequent bankruptcy filing is not  
19                  expressly referenced, such a situation would further support the appointment of a trustee to  
20                  administer remaining trust funds. Most importantly, the NRED has stated that they have no  
21                  intention of administering the Security Deposits and that the administration of the Security  
22                  Deposits through the Debtor’s bankruptcy case is consistent with Nevada law. *See* Decker  
23                  Declaration. The administration of the Security Deposits through the Debtor’s bankruptcy estate  
24                  is further supported by the fact that the vast majority of the proof of claims filed in the Debtor’s  
25                  bankruptcy case concern the disposition of security deposits on behalf of tenants and landlords

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26 <sup>7</sup> The Manual for Trust Fund Accounting and Record Keeping for Nevada Brokers further  
27 explains that a real estate broker is required to terminate each trust account upon the filing for  
28 bankruptcy and provide an escrow agent with written instructions for the disposition of the trust  
funds. An electronic copy of the Manual for Trust Fund Accounting and Record Keeping for  
Nevada Brokers can be accessed at the following hyperlink:  
[http://red.nv.gov/uploadedFiles/rednv.gov/Content/Publications/References/trust\\_edition4.pdf](http://red.nv.gov/uploadedFiles/rednv.gov/Content/Publications/References/trust_edition4.pdf)

1 whose rental properties were managed by the Debtor. The Trustee has also commenced the  
2 Brown Adversary Proceeding against the former spouse of the Debtor's principal, which is  
3 intended to recover insurance proceeds to compensate landlords and tenants for the alleged  
4 embezzlement of security deposits. Given this interplay between the Security Deposits and the  
5 Debtor's bankruptcy filing, the Trustee is the individual in the best position to administer the  
6 Security Deposits for the Debtor's creditors.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Trustee respectfully requests an order requiring Debtor's  
9 counsel to turnover the Security Deposits and allowing the Trustee to administer the Security  
10 Deposits on the terms set forth in this Application.

11 Dated this 30th day of September, 2015.

12 **NELSON & HOUMAND, P.C.**

13 */s/ Jacob L. Houmand*

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