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2024-1007396

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**TITLE OF DOCUMENT**

(DO NOT Abbreviate)

**ORDER APPROVING SALE OF REAL PROPERTY  
FREE AND CLEAR OF LIENS, CLAIMS AND  
ENCUMBRANCES (certified copy)**

Document Title on cover page must appear EXACTLY as the first page of the document  
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Harris Law Practice LLC  
850 E. Patriot Blvd., Suite F  
Reno, NV 89511**

**MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)**

Name **New Peak Tahoe LLC**

Address **6030 Seabluff Drive**

City/State/Zip **Playa Vista, CA 90094**

This page provides additional information required by NRS 111.312 Sections 1-2.

To print this document properly, do not use page scaling.

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*Hilary L Barnes*

Honorable Hilary L. Barnes  
United States Bankruptcy Judge



Entered on Docket  
January 04, 2024

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STEPHEN R. HARRIS, ESQ. NVB 1463  
Email: [steve@harrislawreno.com](mailto:steve@harrislawreno.com)  
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HARRIS LAW PRACTICE LLC  
850 E. Patriot Blvd., Suite F  
Reno, NV 89511  
Telephone: (775) 786-7600  
Attorneys for Debtor

I CERTIFY THAT THIS IS A TRUE COPY;  
DATED: March 12, 2024  
ATTEST: *Melinda Mall* Digitally signed by Melinda Mall  
Date: 2024.03.12 10:30:34 -0700  
Deputy Clerk



UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEVADA

\* \* \* \* \*

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IN RE:  
  
PEAK TAHOE LLC,  
  
Debtor.

Case No.: BK-23-50483-hlb  
(Chapter 11)

**ORDER APPROVING: (1) SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL CLOSING COSTS AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE, STATELINE, NEVADA 89449]**

Hearing Date: December 21, 2023  
Hearing Time: 10:00 a.m.

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The MOTION FOR ORDER APPROVING: (1) SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL CLOSING COSTS AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE, STATELINE, NEVADA 89449] [ECF No. 79] ("Motion"), filed by Debtor PEAK TAHOE LLC ("Debtor"), by and through its counsel

1 STEPHEN R. HARRIS, ESQ. and NORMA GUARIGLIA, ESQ., of HARRIS LAW PRACTICE  
2 LLC, came before the Court for hearing on Court ordered shortened time on December 21, 2023,  
3 at 10:00 a.m., after having been duly noticed to all creditors and parties in interest; with  
4 STEPHEN R. HARRIS, ESQ., of HARRIS LAW PRACTICE LLC, appearing telephonically on  
5 behalf of the Debtor; with LEE B. HART, ESQ., of NELSON MULLINS RILEY &  
6 SCARBOROUGH LLP and NATHAN KANUTE, ESQ. of SNELL & WILMER L.L.P.,  
7 appearing telephonically on behalf of BSP OF FINANCE, LLC (“BSP”); with ELIZABETH  
8 FLETCHER, ESQ. of FLETCHER & LEE, appearing telephonically on behalf of SMC  
9 CONSTRUCTION CO. and SMC CONTRACTING, INC.; with JAMIE P. DREHER, ESQ., of  
10 DOWNEY BRAND LLP, appearing telephonically on behalf of SIERRA PACIFIC WINDOWS;  
11 with the Court having considered all of the papers and pleadings on file herein, including the  
12 MOTION and FIRST AMENDMENT TO MOTION FOR ORDER APPROVING: (1) SALE OF  
13 REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES  
14 PURSUANT TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL  
15 CLOSING COSTS AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE,  
16 STATELINE, NEVADA 89449] [ECF No. 90] (“First Amendment”) filed by the Debtor; the  
17 LIMITED OPPOSITION TO MOTION FOR ORDER APPROVING: (1) SALE OF REAL  
18 PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT  
19 TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL CLOSING COSTS  
20 AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE, STATELINE, NEVADA  
21 89449] [ECF No. 96] filed by Sierra Pacific Windows (“SPW”); the SMC’S AMENDED  
22 OPPOSITION TO DEBTOR’S MOTION FOR ORDER APPROVING: (1) SALE OF REAL  
23 PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT  
24 TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL CLOSING COSTS  
25 AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE, STATELINE, NEVADA  
26 89449] [ECF No. 98], DECLARATION OF EBRAHIM K. NAKHJAVANI IN SUPPORT OF  
27 SMC’S OPPOSITION TO DEBTOR’S MOTION FOR ORDER APPROVING: (1) SALE OF  
28 REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES

1 PURSUANT TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL  
2 CLOSING COSTS AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE,  
3 STATELINE, NEVADA 89449] [ECF No. 99] and the SUPPLEMENT TO SMC'S AMENDED  
4 OPPOSITION TO DEBTOR'S MOTION FOR ORDER APPROVING: (1) SALE OF REAL  
5 PROPERTY FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT  
6 TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2) PAYMENT OF NORMAL CLOSING COSTS  
7 AND REAL ESTATE COMMISSIONS [323 TRAMWAY DRIVE, STATELINE, NEVADA  
8 89449] [ECF No. 101] filed by SMC Construction, Co. and SMC Contracting, Inc. (collectively  
9 "SMC"); and the OMNIBUS REPLY TO OPPOSITIONS TO MOTION FOR ORDER  
10 APPROVING: (1) SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS, CLAIMS  
11 AND ENCUMBRANCES PURSUANT TO 11 U.S.C. §§ 363(b), (f) AND (m); AND (2)  
12 PAYMENT OF NORMAL CLOSING COSTS AND REAL ESTATE COMMISSIONS [323  
13 TRAMWAY DRIVE, STATELINE, NEVADA 89449] [ECF No. 100] filed by the Debtor, and  
14 the Court incorporating its oral findings of fact and conclusions of law pursuant to Fed. R. Bankr.  
15 P. 7052; and good cause appearing:

16 **IT IS HEREBY ORDERED** that the Motion is granted, and that the Debtor is authorized  
17 to sell the real property located at 323 Tramway Drive, Stateline, Nevada 89449, identified as  
18 APNs: 1319-30-544-000 thru 1319-30-544-054 ("Property"), free and clear of all liens, claims  
19 and encumbrances, pursuant to 11 U.S.C. §363(b) and (f), according to the terms and conditions  
20 set forth in the Motion and the Purchase and Sale Agreement ("PSA") attached to the Motion,  
21 and as modified pursuant to the First Amendment, to New Peak Tahoe LLC, a Delaware limited  
22 liability company ("Buyer"), in the amount of Thirty-One Million Dollars (\$31,000,000.00) (the  
23 "Purchase Price").

24 **IT IS FURTHER ORDERED** that Closing shall occur on or before May 24, 2024, and  
25 that Buyer shall have until February 3, 2024, to conduct its due diligence and inspection of the  
26 Property and provide proof of funds to close the transaction as required by the PSA, and the  
27 following are conditions precedent to closing: 1) As additional "Good Faith Funding" based on  
28 Seller's Chapter 11 filing, Buyer shall fund the following carrying costs for Seller, which payment

1 of carrying costs for Seller shall be credits against the Purchase Price: (i) Senior debt Contract  
2 and Default interest payments due to BSP of \$170,367.77 paid monthly from December 15, 2023,  
3 through May 24, 2024, with the total interest to be paid estimated at \$1,022,206.62. Each interest  
4 payment shall be paid by Buyer according to the following schedule: January 15, 2024:  
5 \$170,367.77; February 15, 2024: \$170,367.77; March 15, 2024: \$170,367.77; April 15, 2024:  
6 \$170,367.77; May 15, 2024: \$170,367.77; and May 24, 2024: \$170,367.77; (ii) Buyer shall pay  
7 for the re-winterization of the building estimated at \$86,000, performed as soon as possible; (iii)  
8 Buyer shall timely pay for the extension of the Debtor's insurance coverage through at least the  
9 closing or termination of the PSA, which is evidenced by the Certificate of Property Insurance  
10 Number CP2381604966, naming BSP as the Certificate Holder, with premiums, estimated to be  
11 \$340,000, due on or before December 31, 2023, and a monthly payment of \$15,833 per month  
12 until close of escrow or termination of the PSA, provided, however, that Buyer may in its  
13 discretion elect to finance this premium, in which case Buyer shall pay as required under such  
14 premium financing arrangement, and Buyer and Debtor shall name BSP as the loss payee and/or  
15 certificate holder on the renewed insurance certificate, and Buyer and Debtor shall promptly  
16 respond to any requests reasonably made by BSP or SMC to determine the scope of coverage;  
17 and (iv) Buyer shall fund the water permit fees estimated at \$9,333 per month until close of escrow  
18 or termination of the PSA;

19 **IT IS FURTHER ORDERED** that the first trust deed obligation owing BSP shall be paid  
20 as follows:

- 21 1. Interest from January 2024 through May 2024, paid by wire to BSP directly pursuant  
22 to wire instructions provided by BSP to the Debtor, due on the 15<sup>th</sup> day of each month,  
23 commencing on January 15, 2024, in the amount of \$170,367.77, including contract  
24 and default interest, with a final payment of \$170,367.77 due to BSP on or before May  
25 24, 2024, if the PSA does not close prior to May 15, 2024;
- 26 2. Attorneys' fees and foreclosure fees and costs incurred by BSP in the amount of  
27 \$200,000.00;
- 28 3. BSP shall be paid the full amount of its Proof of Claim, as updated through the closing,

1 at the closing of the PSA pursuant to a closing statement approved by BSP, without  
2 further order of this Court; and

3 4. BSP's first priority secured claim shall be allowed in the amount of \$15,849,873.74,  
4 calculated as of December 14, 2023, with interest, costs and expenses to continuing to  
5 accrue thereunder in accordance with the documents governing BSP's loan to the  
6 Debtor. In exchange for BSP's consent hereto, the Debtor and its estate hereby release  
7 and covenant not to sue BSP, and its affiliates, members, managers, officers,  
8 employees, successors and assigns, of, from and against any and all claims, costs,  
9 causes of action and liabilities, whether existing or believed to exist, at any time arising  
10 through and including the date of the entry of this Order, incurred in connection with,  
11 relating to or arising from BSP's loan to the Debtor, BSP's exercise of rights or  
12 remedies relating to such loan, and this Bankruptcy Case.

13 **IT IS FURTHER ORDERED** that if Buyer or Debtor breaches the PSA, as modified by  
14 the First Amendment, breaches any provision of this Order, or misses a monthly interest payment  
15 due BSP, then the §362 automatic stay shall terminate immediately without further Court order;

16 **IT IS FURTHER ORDERED** that SPW's filed Proof of Claim (Claim 2-1) in the amount  
17 of \$123,096.37 is deemed allowed in its entirety, with SPW's Claim to be paid in full at the time  
18 of escrow closing;

19 **IT IS FURTHER ORDERED** that the mechanics' lien holders/subcontractors listed in  
20 the Settlement Agreement attached to the Debtor's Reply as Exhibit "A", shall be paid the allowed  
21 amount of their claim as listed in the Settlement Agreement, plus accruing interest and attorney's  
22 fees, at the close of escrow, and if the allowed amount cannot be determined at the time of close  
23 of escrow, then monies being asserted by that particular claimant shall be held in escrow until the  
24 claim is resolved;

25 **IT IS FURTHER ORDERED** that any real estate commission to be paid to Peak Tahoe  
26 Realty LLC/ Robert Leach is subject to further Court approval, pending Court approval of the  
27 Debtor's Ex Parte Application to Employ Real Estate Broker [Peak Tahoe Realty] [ECF No. 55]  
28 ("Application"), currently scheduled for hearing on January 10, 2024, at 2:00 p.m. If the Court

1 approves the Application, the proposed real estate commission in the sum of \$400,000 owing to  
2 Peak Tahoe Realty LLC/ Robert Leach, shall be paid by Buyer, which payment Buyer may defer  
3 until after the new construction of the Property has been completed with a certificate of occupancy  
4 from Douglas County, and in any event shall be paid after BSP's allowed claim is paid in full;  
5 and

6 **IT IS FURTHER ORDERED** that, if there are insufficient proceeds at closing of the  
7 PSA to pay all allowed claims against the Debtor's estate in full, then **Sheba Development, LLC**,  
8 the holder of the Debtor's prepetition equity and its insider, shall fund sufficient proceeds into  
9 closing escrow to pay all such allowed claims in full; and

10 **IT IS FINALLY ORDERED** that Buyer New Peak Tahoe LLC is a purchaser in good  
11 faith and shall be entitled to the safe harbor provisions of 11 U.S.C. §363(m), and that the fourteen  
12 (14) day stay provision of Fed. R. Bankr. P. 6004(h) is hereby waived, so that the parties may  
13 close forthwith.

14 Submitted by:  
15 STEPHEN R. HARRIS, ESQ.  
16 HARRIS LAW PRACTICE LLC

17 */s/ Stephen R. Harris*

18 \_\_\_\_\_  
Attorneys for Debtor

19 Approved this 29<sup>th</sup> day of December, 2023.  
20 LEE B. HART, ESQ.  
21 NELSON MULLINS RILEY &  
SCARBOROUGH LLP

22 */s/ Lee B. Hart*

23 \_\_\_\_\_  
Attorneys for BSP of Finance, LLC

24 Approved this 27<sup>th</sup> day of December, 2023.  
25 ELIZABETH FLETCHER, ESQ.  
26 FLETCHER & LEE

27 */s/ Elizabeth Fletcher*

28 \_\_\_\_\_  
Attorneys for SMC Construction Co. and  
SMC Contracting Inc.

1 Approved this 27<sup>th</sup> day of December, 2023.  
2 JAMIE P. DREHER, ESQ.  
3 DOWNEY BRAND LLP

4 */s/ Jamie P. Dreher*

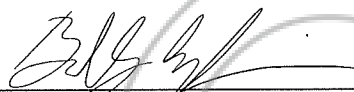
5 \_\_\_\_\_  
6 Attorneys for Sierra Pacific Windows

7 **AGREED AND ACCEPTED BY SELLER:**

8 */s/ Jonathan Z. Mougharbel*

9 \_\_\_\_\_  
10 Jonathan Z. Mougharbel, as Trustee, Managing Member  
11 of Sheba Development, LLC, Member of  
12 The Peak Tahoe, L.L.C., a Delaware limited liability company,  
13 Managing Member for Peak Tahoe LLC

14 **AGREED AND ACCEPTED BY BUYER:**

15   
16 \_\_\_\_\_  
17 Robert Laughlin, CEO of  
18 New Peak Tahoe LLC,  
19 a Delaware limited liability company



**CERTIFICATION RE: RULE 9021**

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In accordance with Local Rule 9021, counsel submitting this document certifies that the order accurately reflects the court’s ruling and that (check one):

The court has waived the requirement of approval under LR 9021.

No party appeared at the hearing or filed an objection to the motion.

I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document].

Lee B. Hart, Esq. Approved  
Attorneys for BSP of Finance, LLC

Elizabeth Fletcher, Esq. Approved  
Attorneys for SMC Construction Co. and  
SMC Contracting Co.

Jamie Dreher, Esq. Approved  
Attorneys for Sierra Pacific Windows

I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR9014(g), and that no party has objected to the form or content of the order.

Dated this 29<sup>th</sup> day of December, 2023.

HARRIS LAW PRACTICE LLC

*/s/ Stephen R. Harris*

\_\_\_\_\_  
STEPHEN R. HARRIS, ESQ.  
Attorneys for Debtor

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