

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT,
IN AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

CASE NO.: 07-43672 CA 09

Plaintiff,

v.

BERMAN MORTGAGE CORPORATION , a Florida
corporation, M.A.M.C. INCORPORATED, a Florida
corporation, DANA J. BERMAN, as Owner and
Managing Member,

Defendant.

and,

DB ATLANTA, LLC, a Florida Limited Liability
Company, et al.

Relief Defendants.

**RECEIVER'S AMENDED MOTION FOR AN ORDER
APPROVING THE RECEIVER'S EXECUTION OF ALL
FUTURE SALES CONTRACTS FOR CONDOMINIUM UNITS
OWNED BY RELIEF DEFENDANT, OCEANSIDE ACQUISITIONS, LLC**

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al, including Oceanside Acquisitions, LLC., (the "Receiver") files this Amended Motion for an Order Approving the Receiver's Execution of All Future Sales Contracts for Additional Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC, (the "Motion") and for authorization to close on all future sales without additional Court approval and states:

BACKGROUND

1. On December 11, 2007, this Court appointed Michael Goldberg as Receiver for the Defendants and the Relief Defendants. Pursuant to this Court's Authority, the Receiver is

vested with the usual powers and duties of equity Receivers with respect to the property of the Defendants and Relief Defendants. *See* Temporary Injunction and Agreed Order Appointing Receiver (“Receivership Order”) previously filed with this Court, at ¶ 13.

2. Oceanside Acquisitions, LLC (“Oceanside”) is an entity formed by Dana Berman and Keith Novak. Oceanside purchased condominium units at Gulf Island Beach and Tennis Club I (“Gulf Island Beach and Tennis Club”) in Pasco County, Florida (the “Oceanside Units”). In order to finance this purchase, Oceanside borrowed \$1,655,000 from approximately 42 individual lenders (the “Lenders”) assembled through Receivership Defendant, Berman Mortgage Corporation, which loans were serviced by Receivership Defendant, M.A.M.C. Incorporated. Oceanside defaulted on its loans. Oceanside and the Condominium Units owned by Oceanside are Receivership Property.

3. This Court has previously granted the authority of the Receiver to sell two Oceanside Units. (*See* [1] Order Granting the Receiver’s Motion to Sell the Property of Oceanside Acquisitions, LLC Free and Clear of Liens, Claims, and Encumbrances dated September 1, 2009; and [2] Order Granting the Receiver’s Motion for an Order Approving the Receiver’s Execution of the Sales Contracts for the Sale of Two Condominium Units Owned by Relief Defendant, Oceanside, dated July 30, 2010 and attached as **Exhibits A and B respectively**). Alex Bistricher, the loan objector to the prior sale motion, sought to stay the sales pending an appeal. This court denied the requested stay relief as did the appellate court. (The Receiver attaches hereto as **Exhibits C and D** the previously filed motion and supplemental motion regarding the sale of units at Oceanside, which are incorporated by reference).

4. In conjunction with the July 15, 2009 and July 2, 2010 evidentiary hearings, this Court found that the Oceanside Units were in a state of disrepair requiring substantial improvement, that substantial condominium assessments and taxes were due on the Units and that Oceanside and the Receivership have limited assets and limited ability to pay condominium

fees and taxes for the Units. Accordingly, the Receiver believes - and the Court has agreed through its Orders approving same - that the sales of all remaining Oceanside Units are in the best interest of the Receivership Estate and the Lenders.

5. The Receiver has attempted to market the Oceanside Units in the best interests of the MAMC Lenders, which group the Receivership was designed to protect. The Receiver has complied with the Court's Order allowing the Receiver to sell the Oceanside units, including by undertaking an evaluation of the units and obtaining pricing recommendations. After considerable effort, the Receiver obtained three contracts from a prospective buyer - Sunwest Investments, LLC - for three units at Gulf Island Beach and Tennis Club Condominium. The contracts are subject to this Court's approval and are the subject of the *Receiver's Motion for an Order Approving the Receiver's Execution of Sales Contracts for the Sale of Additional Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC* dated November 22, 2010 (the "November 22 Motion").

6. Despite the Court's September 9, 2009 and July 30, 2010 Orders allowing the Receiver to sell the Oceanside Units, counsel for Oceanside insists on having an evidentiary hearing on the November 22 Motion, wherein, it can be expected that counsel will use the same witnesses, testimony and evidence to make the same arguments against allowing the Receiver to enter into the sales contracts.

7. As there are approximately 15 unsold Oceanside Units remaining (including the three units which are the subject of the November 22 Motion), it can be assumed that Oceanside is going to seek an evidentiary hearing each time the Receiver seeks Court approval of additional sales contracts. Thus, the Receiver seeks to expand the scope of the November 22 Motion to cover all remaining units so as to avoid the need of coming before the Court for each individual future contract.

AUTHORITY

8. The Court's Order dated September 1, 2009 granted the Receiver the "exclusive authority to negotiate the sale of the [Oceanside condominium] Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court. See **Exhibit A** at ¶ 21.

9. The Receiver's authority to enter into and close on contracts for the purchase and sale of the Units is also bestowed by this Court's Receivership Order authorizing the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants. The Court's Receivership Order provides that:

[t]he Receiver is further authorized to... execute, deliver, file and record such contracts, instruments, releases, indentures, certificates, and other agreements and documents, and to take such action as he deems advisable or proper for the marshalling, maintenance or preservation of the Receivership Assets. From and after the date of the entry of this Order, the Receiver shall have the authority to conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, at ¶17. (emphasis added).

10. The Committee of Lenders regarding the Oceanside project has approved the proposed sale of all remaining Units.

11. Pursuant to the notice procedures established by this Court, the Receiver will post this Motion and Notice of Hearing on the Receivership website and notify the Lenders of the posting via the e-mail distribution procedures established for the purposes of the Receivership.

12. Upon the closing of all future transaction(s), the Receiver will utilize the net proceeds of the sale of the units to pay all taxes, tax certificates and maintenance on the units

being sold and all remaining funds shall be held in escrow in accordance with this Court's orders attached as **Exhibits A and B**.

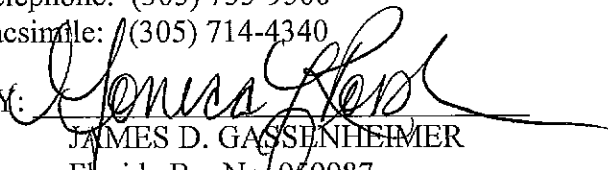
WHEREFORE, the Receiver respectfully requests that this Court enter an Order (a) finding that the notice and established procedures of posting to the Receivership website and e-mail distribution to the Lenders constitute adequate notice of the instant motion and hearing thereon; (b) approving the sale of all future Oceanside Units and the Receiver's execution of future sales contracts; (c) authorizing the Receiver to perform all acts and execute all documents necessary to effectuate the terms of future sales contracts and close on the sale of the Oceanside Units pursuant to future sales contracts; and awarding such other and further relief this Court deems just and proper.

Respectfully submitted,

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Attorneys for Receiver Michael Goldberg
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BY:


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MONICA F. ROSSBACH

Florida Bar No. 13641

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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 16th day of December, 2010, a true and correct copy of the foregoing was furnished via U.S. Mail to the parties on the attached Service List.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg

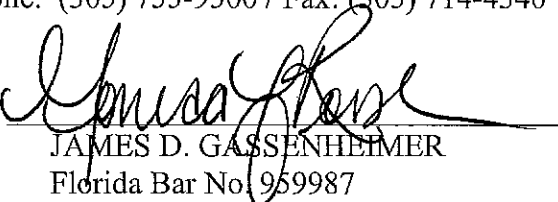
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By:



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SERVICE LIST

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cc: The Honorable Jerald Bagley (*via U.S. Mail*)
Michael Goldberg, Esq., as Receiver (*via e-mail*)
The Investor(s)/Lender(s) Group (*via e-mail*)
Posted to the Berman Mortgage Website

3275952-1

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
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Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
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INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

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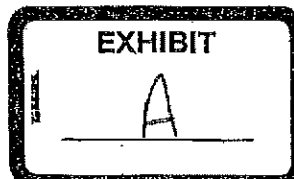
DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

ORDER GRANTING RECEIVER, MICHAEL I. GOLDBERG'S MOTION TO SELL
THE PROPERTY OF OCEANSIDE ACQUISITIONS, LLC FREE AND CLEAR OF
LIENS, CLAIMS, AND ENCUMBRANCES

THIS CAUSE came before the Court on Wednesday, July 15, 2009 at 1:30 p.m. for an evidentiary hearing upon the Motion of Michael I. Goldberg, as State Court Appointed Receiver over Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside") to sell the Property of Oceanside Free and Clear of Liens, Claims, and Encumbrances, and the Court, having heard and considered the evidence presented by the parties through witness testimony and hearing exhibits,

FINDS as follows:



1. On December 11, 2007, this Court appointed Michael Goldberg as the Receiver (the "Receiver") over the Defendants and Relief Defendants in these Receivership proceedings.

2. One of the Relief Defendants, Oceanside, is an entity formed by Dana Berman and Keith Novak, which entity purchased condominium units at Gulf Island Resort in Pasco County, Florida (the "Units"). Two of the Units were sold prior to the establishment of the Receivership; a total of 17 units¹ remain unsold.

3. The Units were once owned by Gulf Island Resort, L.P. Gulf Island Resort, L.P. transferred the Units to Gulf of Mexico Enterprises, Inc. ("GME"). Later, Oceanside purchased the Units from GME, the record title owner. To complete its purchase of the Units, Oceanside borrowed \$1,700,000 from approximately 42 individuals (the "Lenders") through loans serviced by Defendant, M.A.M.C. Incorporated and secured as first and second position mortgages by the Units.

4. In 2003, Gulf Island Resort, L.P. and Alex Bistricev ("collectively, Bistricev") commenced a quiet title action in Pasco County Circuit Court styled *Alex Bistricev, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Sixth Judicial Circuit Case No. 51-2003- CA- 942 ES (the "Quiet Title Action"). On May 9, 2007, the trial Court in the Quiet Title Action quieted title to the Units in Oceanside. The May 9, 2007 Partial Final Judgment was presented to this Court and the Court has taken judicial notice of same.

5. On June 13, 2008, this Court entered its *Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*. The Pasco

¹ Four of the seventeen units were transferred to Keith Novak by Chief Restructuring Officer, Alan Goldberg. The Receiver contests the validity of the transfers and contends that he still holds equitable title to these units.

County Court also entered its order granting the Receiver's motion to transfer the cases to this Court. Accordingly, the Quiet Title Action is before this Court as Eleventh Judicial Circuit Case No. 08-79169 CA (09).

6. At the hearing on the Receiver's instant motion, Bistricher, through counsel, argued that the time to appeal the Partial Final Judgment in the Quiet Title Action had not run and thus, that this Court did not have the authority to order the sale of the Units free and clear of liens. The Court finds, based on the Partial Final Judgment Quieting Title and applicable case law, that Oceanside holds legal title to the Units at issue in the Quiet Title Action and which are the subject of the Receiver's instant motion to sell the property free and clear of liens. The Court has also considered the case law presented by the parties regarding the circumstances in which a court may properly order the sale of property free and clear of liens and finds that the Court is authorized to order the sale of the Units based on the evidence presented and factual findings contained herein for the reasons stated on the record.

7. Based on the testimony of the representative of the Executive Committee of Lenders in relation to the Oceanside project, Gail Corenblum, who has observed the condition of the Units and has personal knowledge of same, the Court finds that the Units are in a state of disrepair requiring a substantial investment to repair, improve or otherwise rehabilitate the Units. Approximately a year ago, Ms. Corenblum observed that some of the Units had mold infiltration, substantial ceiling damage, and pigeon droppings had accumulated on the balconies. Ms. Corenblum testified that most of the Units have been stripped of cabinetry, wiring, plumbing fixtures, and other fixtures and that all Units were without electric power. Ms. Corenblum also testified that several of the Units had been cited for fire code violations in relation to the windows and that some Units are missing locks on the sliding glass doors.

8. Based on the testimony of Ms. Corenblum regarding Oceanside's attempts to raise money from the Lender group, the Court finds that the individual Lenders are unwilling or unable to contribute monies to repair, improve, or otherwise rehabilitate the Units.

9. Based on testimony of E. Harold Gassenheimer, who is employed by the Receiver as Chief Operating Officer of M.A.M.C. Incorporated, regarding the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does have the funds to repair, improve, or otherwise rehabilitate the Units.

10. Based on Ms. Corenblum and Mr. Gassenheimer's testimony relating to the Receiver's past efforts to market the Units for sale, the Court finds that pending litigation, including the Quiet Title Action, renders the Units unmarketable due to an inability of a prospective purchaser to obtain title insurance.

11. Intervenor, Gulf Island Beach and Tennis Club Condominium Association (the "Association") has moved to intervene in this Receivership case to seek payment of past due condominium assessments on the Units from the Receivership, which assessments are estimated by the Association at over \$150,000.00 and confirmed by the testimony of Ms. Corenblum.

12. Based on Ms. Corenblum and Mr. Gassenheimer's testimony, the Court finds that ad valorem property taxes on the Units also remain unpaid for the years 2006, 2007, and 2008, which taxes total approximately \$200,000.00.

13. Based on the testimony of Mr. Gassenheimer relating to the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does not have the ability to pay to condominium fees and taxes for the Units, which condition places the Units in peril of loss to all interested parties by reason of foreclosure.

14. The Court finds that the circumstances render a sale of the Units necessary for the adequate protection of the rights of the parties. Under these circumstances, a sale of the units would preserve the real interests of the parties by transferring any claims and liens to the proceeds of sale.

15. The ultimate purpose of the Receivership is to provide a vehicle to marshal and preserve assets and maximize return to the lienholders. Allowing the Units to be sold would further the goals of the Receivership and all interested parties because monetizing the Units would prevent waste of the property while the Court adjudicates the different parties' right, title, and interest to the proceeds. It will also allow the Receivership to avoid liability for expenses associated with the Units such as the unpaid taxes and condominium association fees which continue to accrue and necessarily diminish the return for the Receivership, the Lenders and other interested parties. In this instance, the sale of the Units by the Receiver is expedient and proper.

16. This Court has the authority to order that title conveyed to any prospective purchasers be free and clear of any liens, claims, and encumbrances and that said claims, liens, and encumbrances be transferred to the proceeds of the sale of the Units.

17. Florida law requires the Court to monitor the sales of the Units by the Receiver carefully and to disapprove of any proposed sale for less than the property should reasonably be expected to sell.

Accordingly, it is ORDERED AND ADJUDGED that:

18. The Receiver is hereby authorized to market and sell the Units, including those units currently titled in the name of Oceanside and the four units transferred by Oceanside to

Keith Novak (which transfers the Receiver contests) should the latter become re-titled in the name of Oceanside.

19. The Receiver shall undertake an evaluation of the units, consult with and obtain pricing recommendations from no less than three licensed real estate brokers, and price the units in accordance with the average of the three estimates.

20. The Receiver is hereby authorized to contract with a real estate broker for the marketing and sale of the Units, subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court.

21. The Receiver shall have exclusive authority to negotiate the sale of Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contracts by motion and notice to all interested parties in the manner previously approved by the Court.

22. Upon approval by the Court of the proposed sale of any unit(s), the prospective purchaser(s) shall receive title to the subject unit(s) free and clear of any and all liens, claims, and encumbrances including, but not limited to, those liens, claims, and encumbrances, if any, held by the parties in the Quiet Title Action, any actions to foreclose liens for condominium assessments including those of Intervenor, Gulf Island Beach and Tennis Club Condominium Association, the mortgages held by M.A.M.C. Lenders, and any actions by contract purchasers of the Units, which actions were transferred to the Receivership Court from Pasco County Circuit Court.² The prospective purchaser(s) of the unit(s) shall receive clear title irrespective of

² The Pasco County cases ordered transferred to the Receivership Court are: a. *Deborah R. Abajian v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-07-CA-2370-WS; b. *Cyril Latona v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA3925-WS; c. *James R. Patterson and Eileen M. Patterson v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-3925-WS; d. *Cunningham*

any filings in the public records, including but not limited to, the filings of Gulf Island Resort, L.P. or Bistrice.

23. The Receiver shall deposit the net proceeds from the sale of the Units, after payment of outstanding condominium fees and taxes, into the Court's Registry until further motion and order of this Court, which proceeds shall be subject to all liens, claims, and encumbrances, if any, claimed by any and all interested parties in the Units for future adjudication by the Court.

DONE AND ORDERED in Chambers this ____ day of August, 2009.

Formed Copy

01 2009

THOMAS S. WILSON, JR.
CIRCUIT COURT JUDGE

Copies furnished to:

Counsel of Record
Receivership Website

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and *Elias v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4792-WS; and *Tina Hinton v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4238-WS.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI -DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF
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Plaintiff,

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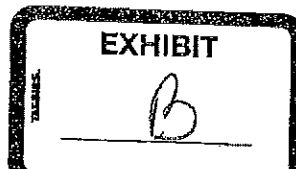
and,

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

Relief Defendants.

**ORDER GRANTING THE RECEIVER'S MOTION FOR AN ORDER APPROVING
THE RECEIVER'S EXECUTION OF SALES CONTRACTS FOR THE SALE
OF TWO CONDOMINIUM UNITS OWNED BY RELIEF
DEFENDANT, OCEANSIDE ACQUISITIONS, LLC**

THIS MATTER comes before the Court on the Motion of the Receiver for a Court Order Approving the Receiver's Execution of Sales Contracts for the Sale of Two Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC, pursuant to this Court's Order Granting Receiver, Michael I. Goldberg's Motion to Sell the Property of Oceanside Acquisitions, LLC (the "Motion"), for an evidentiary hearing on Friday, July 2, 2010 at 8:30 am followed by a hearing to issue ruling on July 12, 2010 at 8:30 am, and the Court having considered the



pleadings filed with the Court, the documents received in evidence and the testimony of the witnesses, it is:

ORDERED AND ADJUDGED as follows:

1. For the reasons stated in open Court on July 12, 2010, the Motion is GRANTED. As a result of the Court denying the Motion of Alex Bistricher as limited partner of Gulf Island Resort LP for stay pending appeal of this Court's Order of September 1, 2009, in case no. 08-79619 CA (09), this ruling is without prejudice for Gulf Island Resort, L.P. ("GIR") to seek a stay of this Court's Order granting the Motion from the Third District Court of Appeal.

2. GIR shall have the right to seek a stay of this Court's Order granting the Motion from the Third District Court of Appeal on or before August 6, 2010. If a timely motion for stay is filed with the Third District Court of Appeal, the sale which is the subject of the Motion shall be stayed pending a ruling from the Third District Court of Appeal. If the request for a stay is denied by the Third District Court of Appeal, the sale which is the subject of the Motion may proceed without further order of this Court.

DONE AND ORDERED in Chambers at Miami, Miami-Dade County, Florida,
on this _____ day of July, 2010.

Conformed Copy

JUL 30 2010

Jerald Bagley
THE HONORABLE JERALD BAGLEY
Circuit Court Judge
CIRCUIT COURT JUDGE

Copies furnished to:

Counsel of Record
Michael Goldberg, as Court Appointed Receiver
Posted to Receivership Website
E-Mail Distribution to Lenders/Investors

2941391-1

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF FINANCIAL
REGULATION,

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corporation, DANA J. BERMAN, as Owner and
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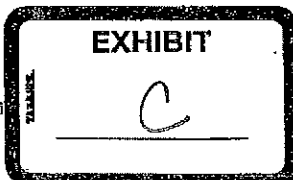
RECEIVER'S MOTION FOR AN ORDER APPROVING THE RECEIVER'S
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UNITS OWNED BY RELIEF DEFENDANT, OCEANSIDE ACQUISITIONS, LLC

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., files this Motion for an Order Approving the Receiver's Execution of Sales Contracts for the Sale of Two Condominium Units Owned by Relief Defendant, Oceanside Acquisitions, LLC, and states:

1. On December 11, 2007, this Court appointed Michael Goldberg as Receiver for the Defendants and the Relief Defendants. Pursuant to this Court's Authority, the Receiver is vested with the usual powers and duties of equity Receivers with respect to the property of the Defendants and Relief Defendants. *See* Receivership Order, at ¶ 13.

BERGER SINGERMAN
attorneys at law

200 South Biscayne Boulevard Suite 1000 Miami



Orlando Miami Tallahassee

Phone 305-786-9500 Facs(fml) 306-714-4340

2. Oceanside Acquisitions, LLC ("Oceanside") is an entity formed by Dana Berman and the Keith Novak. Oceanside purchased condominium units at Gulf Island Beach and Tennis Club I ("Gulf Island Beach and Tennis Club") in Pasco County, Florida. In order to finance this purchase, Oceanside borrowed \$1,655,000 from approximately 42 individual lenders (the "Lenders") assembled through Receivership Defendant, Berman Mortgage Corporation, which loans were serviced by Receivership Defendant, M.A.M.C. Incorporated. Oceanside defaulted on its loans. Oceanside and the Condominium Units owned by Oceanside are Receivership Property.

3. After an evidentiary hearing, this Court granted the Receiver's Motion to Sell the Property of Oceanside Free and Clear Liens, Claims, and Encumbrances. A copy of the Court's September 1, 2009 Order Granting the Receiver's Motion to Sell the Property of Oceanside Acquisitions, LLC Free and Clear of Liens, Claims, and Encumbrances is attached hereto as **Exhibit A**.

4. The Court's Order granted the Receiver the "exclusive authority to negotiate the sale of the [Oceanside condominium] Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court. *See* Exhibit A at ¶ 21.

5. The Receiver's authority to enter into and close on contracts for the purchase and sale of the Units is also bestowed by this Court's Receivership Order authorizing the Receiver to execute contracts, instruments, and other agreements on behalf of the Receivership Defendants and the entities controlled by the Receivership Defendants. The Court's Receivership Order provides that:

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conduct the business operations of the Receivership Defendants and any entity it controls[.]

Receivership Order, at ¶17. (emphasis added)

6. The Receiver has attempted to market the Oceanside Units in the best interests of the MAMC Lenders, which group the Receivership was designed to protect. The Receiver has complied with the Court's Order allowing the Receiver to sell the Oceanside units, including by undertaking an evaluation of the units and obtaining pricing recommendations. After considerable effort, the Receiver has obtained two contracts from prospective buyer, Sunwest Investments, LLC for Units 601 and 706 at Gulf Island Beach and Tennis Club Condominium, which contracts are subject to this Court's approval and are the subjects of the instant motion. A copy of the "As Is" Contract for Sale and Purchase for Unit 601 is attached hereto as **Exhibit B** ("Sales Contract"). A copy of the sales contract for Unit 706, in substantially the same form and terms as Exhibit B, will be filed with a Notice of Filing in anticipation of the hearing on this Motion ("collectively, "Sales Contracts").

7. The Sales Contracts provide for the sale of two of the Oceanside Units (Units 601 and 706) for a cash purchase price of \$120,000.00 each with closing to occur on or about April 30, 2010.

8. This Court found that the Oceanside Units were in a state of disrepair requiring substantial improvement, that substantial condominium assessments and taxes were due on the Units and that Oceanside and the Receivership have limited assets and limited ability to pay condominium fees and taxes for the Units. Accordingly, the Receiver believes that the sales of the Units contemplated in the Sales Contracts are in the best interests of the Receivership Estate and the Lenders.

9. The Committee of Lenders regarding the Oceanside project have approved the proposed sale of the Units pursuant to the Sales Contracts.

10. Pursuant to the notice procedures established by this Court, the Receiver will post this Motion including the Sales Contracts, and Notice of Hearing on the Receivership website and notify the Lenders of the posting via the e-mail distribution procedures established for the purposes of the Receivership.

11. Upon the closing of the transaction, the Receiver shall deposit the net proceeds of the sale of the Units in the Court's Registry for distribution pursuant to further motion and order of the Court.

WHEREFORE, the Receiver respectfully requests that this Court enter an Order:

- a. finding that the notice and established procedures of posting to the Receivership website and e-mail distribution to the Lenders constitute adequate notice of the instant motion and hearing thereon;
- b. approving the sale of the two Oceanside Units pursuant to the Sales Contracts and the Receiver's execution of the Sales Contracts;
- c. authorizing the Receiver to perform all acts and execute all documents necessary to effectuate the terms of the Sales Contracts and close on the sale of the Units pursuant to the Sales Contracts; and
- d. awarding such other and further relief this Court deems just and proper.

Respectfully submitted,

BERGER SINGERMAN

Attorneys for Receiver, Michael Goldberg
200 South Biscayne Boulevard, Suite 1000
Miami, FL 33131

Telephone: (305) 755-9500

Facsimile: (305) 714-4340

E-Mail: jgassenheimer@bergersingerman.com

By: 

JAMES D. GASSENHEIMER

Florida Bar No. 959987

ARIADNA HERNANDEZ

Florida Bar No. 020953


BERGER SINGERMAN
attorneys at law

⁴
Noca Ruston Fort Lauderdale Miami Tallahassee

200 South Biscayne Boulevard Suite 1000 Miami, Florida 33131-5308 Telephone 305-755-9500 Facsimile 305-714-4340

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 11th day of March, 2010, to the attached Service List.

By: 
ARIADNA HERNANDEZ
Florida Bar No. 020953
E-Mail: ahernandez@bergersingerman.com

SERVICE LIST

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Miami, FL 33131

cc: The Honorable Jerald Bagley *(via U.S. Mail)*
Michael Goldberg, Esq., as Receiver *(via e-mail)*
The Investor(s)/Lender(s) Group *(via e-mail)*
Posted to the Berman Mortgage Website

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OARC

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICIAL CIRCUIT, IN
AND FOR MIAMI-DADE COUNTY,
FLORIDA

CASE NO.: 07-43672 CA 09

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and,

DB ATLANTA, LLC, a Florida limited liability
company, et al.,

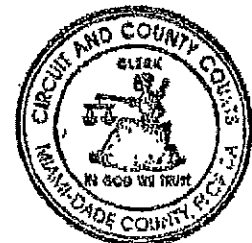
Relief Defendants.

ORDER GRANTING RECEIVER, MICHAEL I. GOLDBERG'S MOTION TO SELL
THE PROPERTY OF OCEANSIDE ACQUISITIONS, LLC FREE AND CLEAR OF
LIENS, CLAIMS, AND ENCUMBRANCES

THIS CAUSE came before the Court on Wednesday, July 15, 2009 at 1:30 p.m. for an evidentiary hearing upon the Motion of Michael I. Goldberg, as State Court Appointed Receiver over Relief Defendant, Oceanside Acquisitions, LLC ("Oceanside") to sell the Property of Oceanside Free and Clear of Liens, Claims, and Encumbrances, and the Court, having heard and considered the evidence presented by the parties through witness testimony and hearing exhibits,

FINDS as follows:

EXHIBIT "A"



1. On December 11, 2007, this Court appointed Michael Goldberg as the Receiver (the "Receiver") over the Defendants and Relief Defendants in these Receivership proceedings.

2. One of the Relief Defendants, Oceanside, is an entity formed by Dana Berman and Keith Novak, which entity purchased condominium units at Gulf Island Resort in Pasco County, Florida (the "Units"). Two of the Units were sold prior to the establishment of the Receivership; a total of 17 units¹ remain unsold.

3. The Units were once owned by Gulf Island Resort, L.P. Gulf Island Resort, L.P. transferred the Units to Gulf of Mexico Enterprises, Inc. ("GME"). Later, Oceanside purchased the Units from GME, the record title owner. To complete its purchase of the Units, Oceanside borrowed \$1,700,000 from approximately 42 individuals (the "Lenders") through loans serviced by Defendant, M.A.M.C. Incorporated and secured as first and second position mortgages by the Units.

4. In 2003, Gulf Island Resort, L.P. and Alex Bistricher ("collectively, Bistricher") commenced a quiet title action in Pasco County Circuit Court styled *Alex Bistricher, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P. v. Coastal Real Estate Associates, et al.*, Sixth Judicial Circuit Case No. 51-2003- CA- 942 ES (the "Quiet Title Action"). On May 9, 2007, the trial Court in the Quiet Title Action quieted title to the Units in Oceanside. The May 9, 2007 Partial Final Judgment was presented to this Court and the Court has taken judicial notice of same.

5. On June 13, 2008, this Court entered its *Order Granting Receiver's Motion to Approve the Assignment of the Pasco County Matters to the Receivership Court*. The Pasco

¹ Four of the seventeen units were transferred to Keith Novak by Chief Restructuring Officer, Alan Goldberg. The Receiver contests the validity of the transfers and contends that he still holds equitable title to these units.

County Court also entered its order granting the Receiver's motion to transfer the cases to this Court. Accordingly, the Quiet Title Action is before this Court as Eleventh Judicial Circuit Case No. 08-79169 CA (09).

6. At the hearing on the Receiver's instant motion, Bistrice, through counsel, argued that the time to appeal the Partial Final Judgment in the Quiet Title Action had not run and thus, that this Court did not have the authority to order the sale of the Units free and clear of liens. The Court finds, based on the Partial Final Judgment Quietening Title and applicable case law, that Oceanside holds legal title to the Units at issue in the Quiet Title Action and which are the subject of the Receiver's instant motion to sell the property free and clear of liens. The Court has also considered the case law presented by the parties regarding the circumstances in which a court may properly order the sale of property free and clear of liens and finds that the Court is authorized to order the sale of the Units based on the evidence presented and factual findings contained herein for the reasons stated on the record.

7. Based on the testimony of the representative of the Executive Committee of Lenders in relation to the Oceanside project, Gail Corenblum, who has observed the condition of the Units and has personal knowledge of same, the Court finds that the Units are in a state of disrepair requiring a substantial investment to repair, improve or otherwise rehabilitate the Units. Approximately a year ago, Ms. Corenblum observed that some of the Units had mold infiltration, substantial ceiling damage, and pigeon droppings had accumulated on the balconies. Ms. Corenblum testified that most of the Units have been stripped of cabinetry, wiring, plumbing fixtures, and other fixtures and that all Units were without electric power. Ms. Corenblum also testified that several of the Units had been cited for fire code violations in relation to the windows and that some Units are missing locks on the sliding glass doors.

8. Based on the testimony of Ms. Corenblum regarding Oceanside's attempts to raise money from the Lender group, the Court finds that the individual Lenders are unwilling or unable to contribute monies to repair, improve, or otherwise rehabilitate the Units.

9. Based on testimony of E. Harold Gassenheimer, who is employed by the Receiver as Chief Operating Officer of M.A.M.C. Incorporated, regarding the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does have the funds to repair, improve, or otherwise rehabilitate the Units.

10. Based on Ms. Corenblum and Mr. Gassenheimer's testimony relating to the Receiver's past efforts to market the Units for sale, the Court finds that pending litigation, including the Quiet Title Action, renders the Units unmarketable due to an inability of a prospective purchaser to obtain title insurance.

11. Intervenor, Gulf Island Beach and Tennis Club Condominium Association (the "Association") has moved to intervene in this Receivership case to seek payment of past due condominium assessments on the Units from the Receivership, which assessments are estimated by the Association at over \$150,000.00 and confirmed by the testimony of Ms. Corenblum.

12. Based on Ms. Corenblum and Mr. Gassenheimer's testimony, the Court finds that ad valorem property taxes on the Units also remain unpaid for the years 2006, 2007, and 2008, which taxes total approximately \$200,000.00.

13. Based on the testimony of Mr. Gassenheimer relating to the assets and cash position of Oceanside, the Court finds that the Receivership has limited assets and does not have the ability to pay to condominium fees and taxes for the Units, which condition places the Units in peril of loss to all interested parties by reason of foreclosure.

14. The Court finds that the circumstances render a sale of the Units necessary for the adequate protection of the rights of the parties. Under these circumstances, a sale of the units would preserve the real interests of the parties by transferring any claims and liens to the proceeds of sale.

15. The ultimate purpose of the Receivership is to provide a vehicle to marshal and preserve assets and maximize return to the lienholders. Allowing the Units to be sold would further the goals of the Receivership and all interested parties because monetizing the Units would prevent waste of the property while the Court adjudicates the different parties' right, title, and interest to the proceeds. It will also allow the Receivership to avoid liability for expenses associated with the Units such as the unpaid taxes and condominium association fees which continue to accrue and necessarily diminish the return for the Receivership, the Lenders and other interested parties. In this instance, the sale of the Units by the Receiver is expedient and proper.

16. This Court has the authority to order that title conveyed to any prospective purchasers be free and clear of any liens, claims, and encumbrances and that said claims, liens, and encumbrances be transferred to the proceeds of the sale of the Units.

17. Florida law requires the Court to monitor the sales of the Units by the Receiver carefully and to disapprove of any proposed sale for less than the property should reasonably be expected to sell.

Accordingly, it is ORDERED AND ADJUDGED that:

18. The Receiver is hereby authorized to market and sell the Units, including those units currently titled in the name of Oceanside and the four units transferred by Oceanside to

Keith Novak (which transfers the Receiver contests) should the latter become re-titled in the name of Oceanside.

19. The Receiver shall undertake an evaluation of the units, consult with and obtain pricing recommendations from no less than three licensed real estate brokers, and price the units in accordance with the average of the three estimates.

20. The Receiver is hereby authorized to contract with a real estate broker for the marketing and sale of the Units, subject to this Court's approval of the contract by motion and notice to all interested parties in the manner previously approved by the Court.

21. The Receiver shall have exclusive authority to negotiate the sale of Units and execute purchase and sale contracts for the Units with prospective purchasers subject to this Court's approval of the contracts by motion and notice to all interested parties in the manner previously approved by the Court.


22. Upon approval by the Court of the proposed sale of any unit(s), the prospective purchaser(s) shall receive title to the subject unit(s) free and clear of any and all liens, claims, and encumbrances including, but not limited to, those liens, claims, and encumbrances, if any, held by the parties in the Quiet Title Action, any actions to foreclose liens for condominium assessments including those of Intervenor, Gulf Island Beach and Tennis Club Condominium Association, the mortgages held by M.A.M.C. Lenders, and any actions by contract purchasers of the Units, which actions were transferred to the Receivership Court from Pasco County Circuit Court.² The prospective purchaser(s) of the unit(s) shall receive clear title irrespective of

² The Pasco County cases ordered transferred to the Receivership Court are: a. *Deborah R. Abajtar v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-07-CA-2370-WS; b. *Cyril Latana v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-3925-WS; c. *James R. Patterson and Eileen M. Patterson v. Oceanside Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-3925-WS; d. *Cunningham*

any filings in the public records, including but not limited to, the filings of Gulf Island Resort, L.P. or Bistricher.

23. The Receiver shall deposit the net proceeds from the sale of the Units, after payment of outstanding condominium fees and taxes, into the Court's Registry until further motion and order of this Court, which proceeds shall be subject to all liens, claims, and encumbrances, if any, claimed by any and all interested parties in the Units for future adjudication by the Court.

DONE AND ORDERED in Chambers this 1st day of Sept, 2009.


THOMAS S. WILSON, JR.
CIRCUIT COURT JUDGE

Copies furnished to:

Counsel of Record
Receivership Website

2237173-1

and *Elias v. OceanSide Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4792-WS; and *Tina Hinton v. OceanSide Acquisitions, LLC*, Sixth Judicial Circuit Case No. 51-2007-CA-4238-WS.

7

STATE OF FLORIDA COUNTY OF DADE
I HEREBY CERTIFY that the foregoing is a true and correct copy of the
original on file in this office. 03/03 AD 20 10
HARVEY RUVIN, CLERK, of Circuit and County Courts
Deputy Clerk [Signature] # 7325



THIS FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR

"As Is" Contract For Sale And Purchase**"As Is"**

- 1 PARTIES: Quanside Acquisitions, LLC ("Seller"),
 2 and Simway Investments LLC ("Buyer"),
 3 hereby agree that Seller shall sell and Buyer shall buy the following described Real Property and Personal Property (collectively "Property")
 4 pursuant to the terms and conditions of this Contract for Sale and Purchase and any riders and addenda ("Contract"):
- 5 I. DESCRIPTION:
 6 (a) Legal description of the Real Property located in Pasco County, Florida:
 7 See Paragraph XV.
 8 (b) Street address, city, zip, of the Property: 6038 Sea Ranch Drive, Unit 601 Hudson 34667-2526
 9 (c) Personal Property includes existing range(s), refrigerator(s), dishwasher(s), ceiling fan(s), light fixture(s), and window treatment(s) unless
 10 specifically excluded below.
 11 Other items included are: Best slip #14, parking space #85.
 12
 13 Items of Personal Property (and leased items, if any) excluded are: _____
 14
- 15 II. PURCHASE PRICE (U.S. currency): \$ 72,129.00
 16 PAYMENT: 130,000.00
 17 (a) Deposit held in escrow by Raymond Tiele ("Escrow Agent") in the amount of (checks subject to clearance) \$ 1,000.00.
 18 Escrow Agent's address: _____ Phone: _____
 19 (b) Additional escrow deposit to be made to Escrow Agent within 2 days after Effective Date in the amount of \$ 12,000.00
 20 (c) Financing in the amount of ("Loan Amount") see Paragraph IV below \$ _____
 21 (d) Other \$ _____
 22 (e) Balance to close by cash, wire transfer or LOCALLY DRAWN cashiers or official bank check(s), subject
 23 to adjustments or prorations \$ 72,129.00
 24 III. TIME FOR ACCEPTANCE OF OFFER AND COUNTEROFFERS; EFFECTIVE DATE:
 25 (a) If this offer is not executed by and delivered to all parties OR FACT OF EXECUTION communicated in writing between the parties on or
 26 before March 15, 2010, the deposit(s) will, at Buyer's option, be returned and this offer withdrawn. Unless other-
 27 wise stated, the time for acceptance of any counteroffers shall be 2 days from the date the counteroffer is delivered.
 28 (b) The date of Contract ("Effective Date") will be the date when the last one of the Buyer and Seller has signed or initialed this offer or the
 29 final counteroffer. If such date is not otherwise set forth in this Contract, then the "Effective Date" shall be the date determined above for
 30 acceptance of this offer or, if applicable, the final counteroffer.
 31 IV. FINANCING:
 32 ☒ (a) This is a cash transaction with no contingencies for financing;
 33 ☐ (b) This Contract is contingent on Buyer obtaining written loan commitment which confirms underwriting loan approval for a loan to purchase
 34 the Property ("Loan Approval") within _____ days (if blank, then 30 days) after Effective Date ("Loan Approval Date") for (CHECK ONLY
 35 ONE): ☐ a fixed; ☐ an adjustable; or ☐ a fixed or adjustable rate loan, in the Loan Amount (See Paragraph II(c)) at an initial interest rate not to
 36 exceed _____%, and for a term of _____ years. Buyer will make application within _____ days (if blank, then 5 days) after Effective Date.
 37 BUYER: Buyer shall use reasonable diligence to obtain Loan Approval; notify Seller in writing of receipt of Loan Approval by Loan Approval
 38 Date; satisfy terms of the Loan Approval; and close the loan. Loan Approval which requires a condition related to the sale of other property shall
 39 not be deemed Loan Approval for purposes of this subparagraph. Buyer shall pay all loan expenses. Buyer authorizes the mortgage broker(s) and
 40 lender(s) to disclose information regarding the conditions, status, and progress of loan application and Loan Approval to Seller, Seller's attorney,
 41 real estate licensee(s), and Closing Agent.
 42 SELLER: If Buyer does not deliver to Seller written notice of Loan Approval by Loan Approval Date, Seller may thereafter cancel this Contract by
 43 delivering written notice ("Seller's Cancellation Notice") to Buyer, but not later than seven (7) days prior to Closing. Seller's Cancellation Notice shall
 44 notify Buyer that Buyer has three (3) days to deliver to Seller written notice waiving this financing contingency, or the Contract shall be cancelled.
 45 DEPOSIT(S) (for purposes of this Financing Paragraph IV(b) only): If Buyer has used reasonable diligence but does not obtain Loan Approval
 46 by Loan Approval Date, and thereafter either party elects to cancel this Contract, the deposit(s) shall be returned to Buyer. If Buyer obtains Loan
 47 Approval or waives this financing contingency, and thereafter the Contract does not close, then the deposit(s) shall be paid to Seller, provided how-
 48 ever if the failure to close is due to: (i) Seller's failure or refusal to close or Seller otherwise fails to meet the terms of the Contract; or (ii) Buyer's lender
 49 fails to receive and approve an appraisal of the Property in an amount sufficient to meet the terms of the Loan Approval, then the deposit(s) shall be
 50 returned to Buyer.
 51 ☐ (a) Assumption of existing mortgage (see rider for terms); or
 52 ☐ (d) Purchase money note and mortgage to Seller (see "As Is" Standards B and K and riders; addenda; or special clauses for terms).
 53 V. TITLE EVIDENCE: At least 3 days (if blank, then 5 days) before Closing a title insurance commitment with legible copies of instruments listed as
 54 exceptions attached thereto ("Title Commitment") and, after Closing, an owners policy of title insurance (see Standard A for terms) shall be obtained by
 55 (CHECK ONLY ONE): ☒ (1) Seller, at Seller's expense and delivered to Buyer or Buyer's attorney; or
 56 ☐ (2) Buyer at Buyer's expense.
 57 (CHECK HERE): ☐ If an abstract of title is to be furnished instead of title insurance, and attach rider for terms.
 58 VI. CLOSING DATE: This transaction shall be closed and the closing documents delivered on April 30, 2010 ("Closing"), unless
 59 modified by other provisions of this Contract, in the event of extreme weather or other conditions or events constituting "force majeure", Closing will be
 60 extended a reasonable time until: (i) restoration of utilities and other services essential to Closing, and (ii) availability of Hazard, Wind, Flood, or Homeowners'
 61 insurance. If such conditions continue more than _____ days (if blank, then 14 days) beyond Closing Date, then either party may cancel this Contract.

VII. RESTRICTIONS; EASEMENTS; LIMITATIONS: Seller shall convey marketable title subject to: comprehensive land use plans, zoning, restrictions, prohibitions and other requirements imposed by governmental authority; restrictions and matters appearing on the plat or otherwise common to the subdivision; outstanding oil, gas and mineral rights of record without right of entry; unplatted public utility easements of record located contiguous to real property lines and not more than 10 feet in width as to the rear or front lines and 7 1/2 feet in width as to the side lines; taxes for year of Closing and subsequent years; and assumed mortgages and purchase money mortgages, if any (if additional items, see addendum); provided, that these covenants of Closing do not prevent use of the Property for _____ residential _____ purpose(s).

VIII. OCCUPANCY: Seller shall deliver occupancy of Property to Buyer at time of Closing unless otherwise stated herein. If Property is intended to be rented or occupied beyond Closing, the fact and terms thereof and the tenant(s) or occupants shall be disclosed pursuant to "AS IS" standard. If occupancy is to be delivered before Closing, Buyer assumes all risks of loss to Property from date of occupancy; shall be responsible and liable for maintenance from that date, and shall be deemed to have accepted Property in its existing condition as of time of taking occupancy.

IX. TYPEWRITTEN OR HANDWRITTEN PROVISIONS: Typewritten or handwritten provisions, riders and addenda shall control all printed provisions of this Contract in conflict with them.

X. ASSIGNABILITY: (CHECK ONLY ONE): Buyer ☐ may assign and thereby be released from any further liability under this Contract; ☒ may assign but not be released from liability under this Contract; or ☐ may not assign this Contract.

XI. DISCLOSURES:

(a) The Property may be subject to unpaid special assessment lien(s) imposed by a public body ("public body" does not include a Condominium or Homeowners' Association). Such lien(s), if any, whether certified, confirmed and ratified, pending, or payable in installments, as of Closing, shall be paid as follows: ☒ by Seller at closing ☐ by Buyer (if left blank, then Seller at Closing). If the amount of any assessment to be paid by Seller has not been finally determined as of Closing, Seller shall be charged at Closing an amount equal to the last estimate or assessment for the improvement by the public body.

(b) Radon is a naturally occurring radioactive gas that when accumulated in a building in sufficient quantities may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon or radon testing may be obtained from your County Public Health unit.

(c) Mold is naturally occurring and may cause health risks or damage to property. If Buyer is concerned or desires additional information regarding mold, Buyer should contact an appropriate professional.

(d) Buyer acknowledges receipt of the Florida Energy Efficiency Rating Information Brochure required by Section 669.896, F.S.

(e) If the Real Property includes pre-1978 residential housing, then a lead-based paint rider is mandatory.

(f) If Seller is a "foreign person" as defined by the Foreign Investment in Real Property Tax Act, the parties shall comply with that Act.

(g) BUYER SHOULD NOT EXECUTE THIS CONTRACT UNTIL BUYER HAS RECEIVED AND READ THE HOMEOWNERS' ASSOCIATION/COMMUNITY DISCLOSURE.

(h) PROPERTY TAX DISCLOSURE SUMMARY: BUYER SHOULD NOT RELY ON THE SELLER'S CURRENT PROPERTY TAXES AS THE AMOUNT OF PROPERTY TAXES THAT THE BUYER MAY BE OBLIGATED TO PAY IN THE YEAR SUBSEQUENT TO PURCHASE. A CHANGE OF OWNERSHIP OR PROPERTY IMPROVEMENTS TRIGGERS REASSESSMENTS OF THE PROPERTY THAT COULD RESULT IN HIGHER PROPERTY TAXES. IF YOU HAVE ANY QUESTIONS CONCERNING VALUATION, CONTACT THE COUNTY PROPERTY APPRAISER'S OFFICE FOR INFORMATION.

XII. MAXIMUM REPAIR COSTS: DELETED

XIII. HOME WARRANTY: ☐ Seller ☐ Buyer ☒ N/A will pay for a home warranty plan issued by _____ at a cost not to exceed \$ _____.

XIV. INSPECTION PERIOD AND RIGHT TO CANCEL: (a) Buyer shall have 10 days from Effective Date ("Inspection Period") within which to have such inspections of the Property performed as Buyer shall desire and utilities service shall be made available by the Seller during the Inspection Period; (b) Buyer shall be responsible for prompt payment for such inspections and repair of damage to and restoration of the Property resulting from such inspections and this provision (b) shall survive termination of this Contract; and (c) if Buyer determines, in Buyer's sole discretion, that the Property is not acceptable to Buyer, Buyer may cancel this Contract by delivering facsimile or written notice of such election to Seller prior to the expiration of the Inspection Period. If Buyer timely cancels this Contract, the deposit(s) paid shall be immediately returned to Buyer; thereupon, Buyer and Seller shall be released of all further obligations under this Contract, except as provided in this Paragraph XIV. Unless Buyer exercises the right to cancel granted herein, Buyer accepts the Property in its present physical condition, subject to any violation of governmental, building, environmental, and safety codes, restrictions or requirements and shall be responsible for any and all repairs and improvements required by Buyer's lender.

XV. RIDERS; ADDENDA; SPECIAL CLAUSES: CHECK those riders which are applicable AND are attached to and made part of this Contract:

☒ CONDOMINIUM ☐ VA/FHA ☐ HOMEOWNERS' ASSN. ☐ LEAD-BASED PAINT ☐ COASTAL CONSTRUCTION CONTROL LINE ☐ INSULATION ☐ EVIDENCE OF TITLE (SOUTH FLORIDA CONTRACTS) ☐ Other Comprehensive Rider Provisions ☒ Addenda Special Clause(s):

Legal description of Property - Gulf Island Beach & Tennis Club I a Condominium Per OR 1381 Pg 932 & OR 3300 Pg 202 & Common Elements Building 1 Unit 601 OR 4774 Pg 1842 - 33-24-16-0360-00000-6010.

XVI. "AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS: "AS IS" Standards: Buyer and Seller acknowledge receipt of a copy of "AS IS" Standards A through Z on the reverse side or attached, which are incorporated as part of this Contract.

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129

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT, IF NOT FULLY UNDERSTOOD,
SEEK THE ADVICE OF AN ATTORNEY PRIOR TO SIGNING.

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131
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THIS "AS IS" FORM HAS BEEN APPROVED BY THE FLORIDA ASSOCIATION OF REALTORS® AND THE FLORIDA BAR.
Approval does not constitute an opinion that any of the terms and conditions in this Contract should be accepted by the parties in a
particular transaction. Terms and conditions should be negotiated based upon the respective interests, objectives and bargaining
positions of all interested persons.

AN ASTERISK (*) FOLLOWING A LINE NUMBER IN THE MARGIN INDICATES THE LINE CONTAINS A BLANK TO BE COMPLETED

135*

(BUYER)

Sunset Investments, LLC

(DATE)

2-16-10

(SELLER)

Queenside Acquisitions LLC

(DATE)

137*

(BUYER)

(DATE)

(SELLER)

(DATE)

139*

Buyers' address for purposes of notice

Sellers' address for purposes of notice

140*

141*

Phone

Phone

142

BROKERS: The brokers (including cooperating brokers, if any) named below are the only brokers entitled to compensation in connection with
this Contract:

143

144

Name:

Coastal Real Estate Associates, Inc.

1 of 2

145

Cooperating Brokers, if any

Listing Broker

"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS

146

147 **A. TITLE INSURANCE:** The Title Commitment shall be issued by a Florida licensed title insurer agreeing to issue Buyer upon recording of the deed to Buyer,
 148 an owner's policy of title insurance in the amount of the purchase price, insuring Buyer's marketable title to the Real Property, subject only to matters mentioned
 149 in Paragraph VII and those to be discharged by Seller at or before Closing. Marketable title shall be determined according to applicable title standards set up
 150 ed by authority of The Florida Bar and in accordance with law. Buyer shall have 5 days from date of receiving the Title Commitment to examine it, and if it is
 151 found defective, notify Seller in writing specifying defect(s) which render title unmarketable. Seller shall have 30 days from receipt of notice to remove the
 152 defects, failing which Buyer shall, within 5 days after expiration of the 30 day period, deliver written notice to Seller either: (1) extending the time for a second
 153 close period not to exceed 120 days within which Seller shall use diligent effort to remove the defects; or (2) requesting a refund of deposit(s) paid which shall
 154 be returned to Buyer. If Buyer fails to so notify Seller, Buyer shall be deemed to have accepted the title as it then is. Seller shall, if this is found unmarketable
 155 use diligent effort to correct defect(s) within the time provided. If, after diligent effort, Seller is unable to timely remove the defects, Buyer shall either waive the
 156 defects, or receive a refund of deposit(s), thereby releasing Buyer and Seller from all further obligations under this Contract. If Seller is to provide the Title
 157 Commitment and it is delivered to Buyer less than 10 days prior to Closing, Buyer may extend Closing so that Buyer shall have up to 5 days from date of receipt
 158 to examine same in accordance with this "AS IS" Standard.

159 **B. PURCHASE MONEY MORTGAGE: SECURITY AGREEMENT TO SELLER:** A purchase money mortgage and mortgage note to Seller shall provide for a
 160 30 day grace period in the event of default if a first mortgage and a 15 day grace period if a second or lesser mortgage; shall provide for right of prepayment
 161 in whole or in part without penalty; shall permit acceleration in event of transfer of the Real Property; shall require all prior liens and encumbrances to be kept
 162 in good standing; shall forbid modifications of, or future advances under, prior mortgages; shall require Buyer to maintain policies of insurance covering a
 163 standard mortgage clause covering all improvements located on the Real Property against fire and all perils included within the term "extended coverage
 164 endorsements" and such other risks and perils as Seller may reasonably require, in an amount equal to their highest insurable value; and the mortgage, note
 165 and security agreement shall be otherwise in form and content required by Seller, but Seller may only require clauses and coverage customarily found in mort-
 166 gage, mortgage notes and security agreements generally utilized by lenders and loan institutions or state or national banks located in the county wherein the
 167 Real Property is located. All Personal Property and fixtures being conveyed or assigned will, at Seller's option, be subject to the lien of a security agreement ad-
 168 dendum by recorded or filed financing statement or certificates of title, if a lien on mortgage, the final payment will exceed the purchase price plus interest thereon.

169 **C. SURVEY:** Buyer, at Buyer's expense, within time allowed to deliver evidence of title and to examine same, may have the Real Property surveyed and certi-
 170 fied by a registered Florida surveyor. If the survey discloses encroachments on the Real Property or that improvements located thereon encroach on adjacent
 171 lines, easements, lands of others or violate any restrictions, Contract covenants or applicable governmental regulations, the entire shall constitute a title defect.

172 **D. WOOD DESTROYING ORGANISMS: DELETED**

173 **E. INGRESS AND EGRESS:** Seller warrants and represents that there is ingress and egress to the Real Property sufficient for its intended uses as described
 174 in Paragraph VII hereof and this to the Real Property is insurable in accordance with "AS IS" Standard A without exception for lack of legal right of access.

175 **F. LEASES:** Seller shall at least 10 days before Closing, furnish to Buyer copies of all written leases and assignment letters from each tenant surveying the nature
 176 and duration of the tenant's occupancy, rental rates, advance payment and security deposits paid by tenant. If Seller is unable to obtain such letter from each ten-
 177 ant, the same information shall be furnished by Seller to Buyer within the time period in the form of a Seller's affidavit, and Buyer may thereafter contact the
 178 ant to confirm such information. If the terms of the leases differ materially from Seller's representations, Buyer may terminate this Contract by delivering written
 179 notice to Seller at least 5 days prior to Closing. Seller shall, at Closing, deliver and assign all original leases to Buyer.

180 **G. LIENS:** Seller shall furnish to Buyer at time of Closing an affidavit attesting to the absence, unless otherwise provided for herein, of any financial instrument,
 181 claims of lien or potential claims known to Seller and further attesting that there have been no improvements or repairs to the Real Property for 90 days prior
 182 directly preceding date of Closing. If the Real Property has been improved or repaired within that time, Seller shall deliver releases or waivers of construction
 183 liens executed by all general contractors, subcontractors, suppliers and materialmen in addition to Seller's affidavit setting forth the names of all such gen-
 184 eral contractors, subcontractors, suppliers and materialmen, further affirming that all charges for improvements or repairs which could serve as a basis for a
 185 construction lien or a claim for damages have been paid or will be paid at the Closing of this Contract.

186 **H. PLACE OF CLOSING:** Closing shall be held in the county wherein the Real Property is located at the office of the attorney or other closing agent ("Closing
 187 Agent") designated by the party paying (or title insurance, or if no title insurance, designated by Seller).

188 **I. TIME:** Calendar days shall be used in computing time periods except periods of less than six (6) days, in which event Saturdays, Sundays and state or nation-
 189 al legal holidays shall be excluded. Any time periods provided for herein which shall end on a Saturday, Sunday, or a legal holiday shall extend to the next
 190 next business day. Time is of the essence in this Contract.

191 **J. CLOSING DOCUMENTS:** Seller shall furnish the deed, bill of sale, certificate of title, construction lien affidavit, owner's possession affidavit, assignments of lease
 192 s, tenant and mortgage assignment letters and corrective instruments. Buyer shall furnish mortgage, mortgage note, security agreement and financing statement.

193 **K. EXPENSES:** Documentary stamps on the deed and recording of corrective instruments shall be paid by Seller. All costs of Buyer's loan (whether obtained
 194 from Seller or third party), including, but not limited to, documentary stamps and intangible tax on the purchase money mortgage and any mortgage assumed,
 195 mortgage title insurance commitment with related fees, and recording of purchase money mortgage, deed and financing statements shall be paid by Buyer.
 196 Unless otherwise provided by law or order to this Contract, charges for related closing services, title search, and closing fees (including preparation of closing
 197 statement), shall be paid by the party responsible for furnishing the title evidence in accordance with Paragraph V.

198 **L. PROVISIONS; CREDITS:** Taxes, assessments, rent, interest, insurance and other expenses of the Property shall be prorated through the day before Closing.
 199 Buyer shall have the option of taking over existing policies of insurance, if assumable, in which event premiums shall be prorated. Cash at Closing shall be
 200 increased or decreased as may be required by provisions to be made through day prior to Closing, or occupancy occurs before Closing. Advance
 201 rent and security deposits will be credited to Buyer. Escrow deposits held by mortgagee will be credited to Seller. Taxes shall be prorated based on the current
 202 year's tax with due allowance made for maximum allowable discount, homestead and other exemptions. If Closing occurs at a date which the current year's mil-
 203 age is not fixed and current year's assessment is available, taxes will be prorated based upon such assessment and prior year's millage. If current year's assess-
 204 ment is not available, then taxes will be prorated on prior year's tax. If there are completed improvements on the Real Property by January 1st of year of Closing,
 205 which improvements were not in existence on January 1st of prior year, then taxes shall be prorated based upon prior year's millage and an equitable assess-
 206 ment to be agreed upon between the parties; failing which, request shall be made to the County Property Appraiser for an informal assessment taking into
 207 account available exemptions. A tax proration based on an estimate shall, at request of either party, be readjusted upon receipt of current year's tax bill.

208 **M. (RESERVED - purpose left blank)**

209 **N. INSPECTION AND REPAIR: DELETED**

210 **O. RISK OF LOSS:** If, after the Effective Date, the Property is damaged by fire or other casualty ("Casualty Loss") before Closing and cost of restoration (which
 211 shall include the cost of pruning or removing damaged trees) does not exceed 1.5% of the Purchase Price, cost of restoration shall be an obligation of Seller and
 212 Closing shall proceed pursuant to the terms of this Contract, and if restoration is not completed as of Closing, restoration costs will be allowed at Closing. If
 213 the cost of restoration exceeds 1.5% of the Purchase Price, Buyer shall either take the Property as is, together with the 1.5% or receive a refund of deposit(s)
 214 thereby releasing Buyer and Seller from all further obligations under this Contract. Seller's sole obligation with respect to fire damage by casualty or other natu-
 215 ral occurrence shall be the cost of pruning or removal.

216 **P. CLOSING PROCEDURE:** The deed shall be recorded upon clearance of funds. If the title agent insured adverse matters pursuant to Section 627.7841,
 217 F.S., as amended, the escrow and closing procedure required by the "AS IS" Standard shall be waived. Unless waived as set forth above the following

718

"AS IS" STANDARDS FOR REAL ESTATE TRANSACTIONS (CONTINUED)

719 closing procedures shall apply: (1) all closing procedures shall be held in escrow by the Closing Agent for a period of not more than 5 days after Closing; (2)
 720 if Seller's title is rendered unmarketable, through no fault of Buyer, Buyer shall, within the 5 day period, notify Seller in writing of the defect and Seller shall
 721 have 30 days from date of receipt of such notification to cure the defect; (3) if Seller fails to timely cure the defect, all deposits and closing funds shall, upon
 722 written demand by Buyer and within 5 days after demand, be returned to Buyer and, simultaneously with such repayment, Buyer shall return the Personal
 723 Property, vacate the Real Property and reconvey the Property to Seller by special warranty deed and bill of sale; and (4) if Buyer fails to make timely demand
 724 for refund, Buyer shall take title as is, waiving all rights against Seller as to any intervening defect except as may be available to Buyer by virtue of war-
 725 rantees contained in the deed or bill of sale.

726 **Q. ESCROW:** Any Closing Agent or escrow agent (collectively "Agent") receiving funds or equivalent is authorized and agrees by acceptance of them to deposit
 727 them promptly, hold same in escrow and, subject to instructions, disburse them in accordance with terms and conditions of this Contract. Failure of funds to
 728 clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions of this Contract, Agent may, at Agent's option, con-
 729 sult with the subject matter of the escrow and the parties herein agree to its disbursement or until a judgment of a court of competent jurisdiction shall
 730 determine the rights of the parties. or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. An attorney who represents
 731 a party and who acts as Agent may represent such party in such action. Upon notifying all parties concerned of such action, all liability on the part of Agent
 732 shall fully terminate, except to the extent of accounting for any moneys previously delivered out of escrow. If a licensed real estate broker, Agent will comply with
 733 provisions of Chapter 475, F.S., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in
 734 any suit wherein Agent interpleads the subject matter of the escrow, Agent shall recover reasonable attorney's fees and costs incurred with these amounts to
 735 be paid from and out of the escrowed funds or equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable
 736 to any party or person for malfeasance to Buyer or Seller of items subject to the escrow, unless such malfeasance is due to willful breach of the provisions of the
 737 Contract or gross negligence of Agent.

738 **R. ATTORNEY'S FEES; COSTS:** In any litigation, including breach, enforcement or interpretation, arising out of this Contract, the prevailing party in such lit-
 739 igation, which, for purposes of this "AS IS" Standard, shall include Seller, Buyer and any brokers acting in agency or nonagency relationships authorized by
 740 Chapter 475, F.S., as amended, shall be entitled to recover from the non-prevailing party reasonable attorney's fees, costs and expenses.

741 **S. FAILURE OF PERFORMANCE:** If Buyer fails to perform this Contract within the time specified, including payment of all deposits, the deposit(s) paid by
 742 Buyer and deposit(s) agreed to be paid, may be recovered and retained by and for the account of Seller as agreed upon liquidated damages, consideration for
 743 the execution of this Contract and in full settlement of any claims; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract or Seller,
 744 at Seller's option, may proceed in equity to enforce Seller's rights under this Contract. If for any reason other than failure of Seller to make Seller's title mar-
 745 ketable after diligent effort, Seller fails, neglects or refuses to perform this Contract, Buyer may seek specific performance or elect to rescind the return of Buyer's
 746 deposit(s) without thereby waiving any action or damages resulting from Seller's breach.

747 **T. CONTRACT NOT RECORDABLE; PERSONS BOUND; NOTICE; COPIES:** Neither this Contract nor any notice of it shall be recorded in any public records.
 748 This Contract shall bind and inure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and
 749 one gender shall include all. Notice and delivery given by or to the attorney or broker representing any party shall be as effective as if given by or to that party.
 750 All notices must be in writing and may be made by mail, personal delivery or electronic media. A legible facsimile or electronic (including "pdf") copy of this
 751 Contract and any signatures hereon shall be considered for all purposes as an original.

752 **U. CONVEYANCE:** Seller shall convey marketable title to the Real Property by statutory warranty, trustee's, personal representative's, or guardian's deed, as
 753 appropriate to the status of Seller, subject only to matters contained in Paragraph V and those otherwise accepted by Buyer. Personal Property shall, at the
 754 request of Buyer, be transferred by an absolute bill of sale with warranty of title, subject only to such matters as may be otherwise provided for herein.

755 **V. OTHER AGREEMENTS:** No prior or present agreements or representations shall be binding upon Buyer or Seller unless included in this Contract. No mod-
 756 ification to or change in this Contract shall be valid or binding upon the parties unless in writing and executed by the parties intended to be bound by it.

757 **W. SELLER DISCLOSURE:** (1) There are no facts known to Seller materially affecting the value of the Property which are not readily observable by Buyer or
 758 which have not been disclosed to Buyer; (2) Seller extends and interdicts no warranty and makes no representation of any type, either express or implied,
 759 as to the physical condition or history of the Property; (3) Seller has received no written or verbal notice from any governmental entity or agency as
 760 to a currently uncorrected building, environmental or safety code violation; (4) Seller has no knowledge of any repairs or improvements made to the
 761 Property without compliance with governmental regulation which have not been disclosed to Buyer.

762 **X. PROPERTY MAINTENANCE; PROPERTY ACCESS; ASSIGNMENT OF CONTRACTS AND WARRANTIES:** Seller shall maintain the Property, including,
 763 but not limited to lawn, shrubbery, and pool in the condition existing as of Effective Date, ordinary wear and tear and Casualty Loss excepted. Seller shall, upon
 764 reasonable notice, provide utility service and access to the Property for appraisal and inspections, including a walk-through prior to Closing, to confirm that
 765 all items of Personal Property are on the Real Property and that the Property has been maintained as required by this "AS IS" Standard. Seller will assign all
 766 assignable repair and treatment contracts and warranties to Buyer at Closing.

767 **Y. 1031 EXCHANGE:** If either Seller or Buyer wish to enter into a like-kind exchange (either simultaneous with Closing or deferred) with respect to the Property
 768 under Section 1031 of the Internal Revenue Code ("Exchange"), the other party shall cooperate in all reasonable respects to effectuate the Exchange, includ-
 769 ing the execution of documents, provided (1) the cooperating party shall incur no liability or expenses related to the Exchange and (2) the Closing shall not be
 770 contingent upon, nor extended or delayed by, such Exchange.

771 **Z. BUYER WAIVER OF CLAIMS:** Buyer waives any claims against Seller and, to the extent permitted by law, against any real estate licensee involved
 772 in the negotiation of this Contract, for any defects or other damage that may exist at Closing of the Contract and be subsequently discovered by the
 773 Buyer or anyone claiming by, through, under or against the Buyer.

Addendum to Contract FLORIDA ASSOCIATION OF REALTORS®

Addendum No. 1 to the Contract dated February 11th 2010 between
Oceanside Acquisitions, LLC (Seller)
and Sunwest Investments LLC (Buyer)

concerning the property described as:

6015 Sea Ranch Drive, Unit 501 Hudson FL 34667-1326

(the "Contract"). Buyer and Seller make the following terms and conditions part of the Contract:

The Property is owned by Oceanside Acquisitions, LLC, a company that is in Receivership. Michael Goldberg is the Court Appointed Receiver. The Property is subject to a quiet title action styled Alex Bistricec, as limited partner of Gulf Island Resort, L.P. and Gulf Island Resort, L.P., v. Coastal Real Estate Associates, et al., Sixth Judicial Circuit Case No. 11-2001-CA-94286. The case was subsequently moved to the Eleventh Judicial Circuit for Miami-Dade County Case No. 04-79169-CA-09. The Court entered a judgment quieting title to the Property to Oceanside Acquisitions, LLC, the Seller. The Court also granted Receiver Michael Goldberg's motion to sell the Property free and clear of liens, claims, and encumbrances Case No. 07-43672-CA-09. Alex Bistricec has filed a lis pendens stating his intention to appeal these orders and judgments. Consequently, the availability of title insurance on the Property is not certain, and Alex Bistricec's actions subsequent to a sale are unknown as is the outcome of the appeals. The Receiver recommends that Buyer or his counsel review the pleadings in these cases and make an independent evaluation of the issues and potential outcome of any appeal.

Seller has not inhabited the Property and makes no claims or warranties regarding the condition of the property. The Property has been uninhabited for several years and may have issues with mold and animal droppings. The electrical, plumbing, heating and air conditioning systems have not been operated recently, and Seller makes no warranties or claims regarding such systems. The Property may have fire rated windows with cracks. Such windows must be replaced or repaired at Buyer's expense. Seller and Coastal Real Estate Associates, Inc. recommend that Buyer employ licensed inspectors to inspect the Property.

Gulf Island Condominium Owners Association XI (representing buildings 2 and 3) has made claims regarding the ability of owners in Gulf Island Association I to own boat slips even though several owners in building 1 presently own boat slips and the developers sold boat slips to condominium owners in building 1.

Buyer agrees to hold Coastal Real Estate Associates, Inc., its agents and employees, and Oceanside Acquisitions, LLC, its agents and employees and Michael Goldberg and his counsel harmless from any claims made due to the condition of the Property, from any claims made by Alex Bistricec or Gulf Island Resort, L.P., from any claims made by Association II, and otherwise from any and all claims made with respect of the Property and agrees that Buyer is taking the Property as is where is and subject to the disclosures made herein.

The Contract for Sale and its addenda are subject to court approval by the Receivership Court, and the terms of any court approval are incorporated herein by reference.

Date: 2-16-10 Buyer: [Signature]
Date: _____ Buyer: _____
Date: _____ Seller: _____
Date: _____ Seller: _____

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Addendum to Contract
FLORIDA ASSOCIATION OF REALTORS®

Addendum No. 2 to the Contract dated _____ between
Oceanside Acquisitions LLC (Seller)
 and _____ (Buyer)

concerning the property described as:

6035 Sea Ranch Dr. Unit

Hudson FL 34667

(the "Contract"). Buyer and Seller make the following terms and conditions part of the Contract:

Buyer shall deposit \$1,000.00 as a refundable earnest money deposit upon submitting the offer. Buyer shall deposit an additional refundable deposit amount equal to 10% of the purchase price less the \$1,000.00 previously deposited within 3 days of receipt in writing that the following conditions have been met:

1. Seller, Receiver, and the Receivership Court have approved and agreed to this Contract, and
2. Buyer has obtained a title commitment from a reputable, nationally recognized title insurance company.

Upon occurrence of items 1 and 2 above, the Contract shall become binding, and the above referenced deposits shall become non-refundable. Buyer and Seller agree to close this transaction within 14 days of the occurrence of items 1 and 2 above.

If the above conditions can not be resolved within 120 days of the date of this Contract, this Contract shall be null and void, and any and all deposits made under this Contract shall be returned to Buyer. Notwithstanding any of the above conditions, the Contract and closing date may be extended with written approval signed by both Buyer and Seller; however, each extension shall expire after thirty (30) days unless another time period is specified in the extension agreement.

Date: 2-16-10

Buyer: [Signature]

Date: _____

Buyer: _____

Date: _____

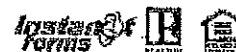
Seller: _____

Date: _____

Seller: _____

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Ariadna Hernandez

From: Gail and Stuart Corenblum [gailstu@bellsouth.net]

Sent: Wednesday, March 10, 2010 5:16 PM

To: Ariadna Hernandez; 'Hal Gassenheimer'

Subject: Oceanside offer

Ari,

If you can write the motion as one sales contract – same buyer, price \$120,000 per unit – unit 601 and unit 706.

Thanks very much,

Gail

Gail Corenblum

(305) 891-1066 Home

(305) 799-1956 Cell

3/11/2010

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI - DADE COUNTY, FLORIDA

STATE OF FLORIDA, OFFICE OF
FINANCIAL REGULATION,

GENERAL JURISDICTION DIVISION
CASE NO.: 07-43672 CA 09

Plaintiff,

vs.

BERMAN MORTGAGE CORPORATION,
a Florida corporation, M.A.M.C.
INCORPORATED, a Florida corporation,
DANA J. BERMAN, as Owner and Managing
Member,

Defendants,

and

DB ATLANTA, LLC, a Florida Limited Liability
Company, et al.,

Relief Defendants.

SUPPLEMENTAL MEMORANDUM IN SUPPORT OF RECEIVER MICHAEL I.
GOLDBERG'S MOTION TO SELL THE PROPERTY OF OCEANSIDE
ACQUISITIONS LLC FREE AND CLEAR OF LIENS,
CLAIMS AND ENCUMBRANCES

Michael I. Goldberg, as Court Appointed Receiver over Defendants Berman Mortgage Corporation, M.A.M.C. Incorporated, et al., and Relief Defendants DB Atlanta LLC, et al., by and through its undersigned counsel, hereby files this Supplemental Memorandum which sets forth the applicable case-law and statute in support of this Court's jurisdiction and authority to



enforce the Order Granting Receiver Michael I. Goldberg's Motion to Sell the Property of Oceanside Acquisitions LLC Free and Clear of Liens, Claims and Encumbrances (the "Order") despite the pendency of an appeal.

ANALYSIS OF THE LAW

This Court has jurisdiction to enforce the Order during the pendency of an appeal regarding the Order because there has been no motion to stay filed and no bond that has been posted. As Fla. R. App. P. 9.310, in pertinent part, states:

(a) Application. Except as provided by general law and in subdivision (b) of this rule, a party seeking to stay a final or non-final order pending review **shall** file a motion in the lower tribunal, which shall have continuing jurisdiction, **in its discretion**, to grant, modify, or deny such relief. A stay pending review may be conditioned on the posting of a good and sufficient bond, other conditions, or both.

(b) Exceptions. (1) *Money Judgments*. If the order is a judgment **solely** for the payment of money,¹ a party may obtain an automatic stay of execution pending review, without the necessity of a motion or order, by posting a good and sufficient bond equal to the principal amount of the judgment plus twice the statutory rate of interest on judgments on the total amount on which the party has an obligation to pay interest.

(emphasis supplied). Thus, by the terms of Fla. R. App. P. 9.310(a), a lower court has discretion to set the conditions under which an order may, or may not, be stayed pending appellate review. *See Cerrito v. Kovitch*, 406 So.2d 125 (Fla. 4th DCA 1981); *Mariner Health Care of Nashville*,

¹ The Order is not "solely" for the payment of money. For example, a judgment for recovery of money otherwise secured, as by a mortgage on real property, calls into play the general rule set out in Fla. R. App. P. 9.310 (a) rather than the exception contained in (b) for money judgments. *See Cerrito v. Kovitch*, 406 So. 2d 125, 126 (Fla. 4th DCA, 1981) (finding that a final judgment in foreclosure is not an order "solely for the payment of money").

Inc. v. Baker, 739 So. 2d 608, 609 (Fla. 1st DCA 1999). The rationale for this broad discretion is that based on its knowledge of the facts and circumstances regarding a judgment or order, the trial court is in the superior position to determine whether a bond or other conditions should be required before a judgment or order is stayed and, if so, the amount of the bond or the nature of the conditions. See *MSQ Properties v. Florida Dept. of Health & Rehabilitative Services*, 626 So. 2d 292, 293 (Fla. 1st DCA 1993).

A party seeking to stay enforcement of a non-monetary order must file a motion for stay in the lower tribunal. See Fla. R. App. P. 9.310(a); *FMS Mgmt. Sys., Inc. v. IDS Mortg. Corp.*, 402 So. 2d 474, 475 (Fla. 4th DCA 1981). The filing of a notice of appeal alone does not divest the trial court of jurisdiction to enforce a final order. See *Parsons v. Whitaker Plumbing of Boca Raton*, 730 So. 2d 839 (Fla. 4th DCA 1999) (explaining “the well settled principle that absent a stay or bond, the filing of a notice of appeal does not divest the trial court of jurisdiction to enforce a final order”).

Therefore, in the absence of a stay pending appeal, this Court retains the power to enforce the Order that has been appealed. See e.g. *Mann-Stack v. Homeside Lending, Inc.*, 982 So. 2d 72, 74 (Fla. 2d DCA 2008) (finding that because appellant had posted no bond and there was no stay pending appeal at the time the order of disbursement was entered, the trial court was within its authority to enter appropriate orders enforcing the previous judgment despite the fact that the foreclosure judgment was on appeal); *FMS Mgmt. Sys., Inc.*, 402 So. 2d at 475 (holding that, in the absence of a bond or stay, the lower tribunal may proceed in the cause, even as to the subject matter of the appeal). In fact, absent a motion to stay a non-monetary judgment, this Court lacks any authority to institute a stay or even to require the posting of a bond. See *Starkey v. Linn*, 727 So. 2d 386, 388 (Fla. 5th DCA. 1999) (court had jurisdiction to enforce the order being appealed,

absent a motion to stay or the posting of a bond, but the trial court did not have the authority to order party appealing the order to post the bond as a condition of the court not enforcing its final judgment because that party never sought to stay the order).

Even if a motion to stay was, or will be, filed pending the appeal, this Court nonetheless has broad discretion to deny such a motion to stay. *See* Fla. R.App. P. 9.310(a); *Open MRI of Okeechobee, LLC v. Aldana*, 969 So. 2d 589, 590 (Fla. 4th DCA 2007); *Eicoff v. Denson*, 896 So. 2d 795, 799 (Fla. 5th DCA 2005) (finding that trial court did not abuse its discretion in denying motion for stay pending appeal because trial court has broad discretion to grant or deny a motion to stay); *Cerrito*, 406 So. 2d at 126 (“The trial court is ...given considerable latitude in controlling the circumstances under which the proceedings may be stayed pending review”). Furthermore, this Court’s enforcement of the Order during the pendency of an appeal is appropriate because such enforcement would not moot issues of the appeal. *See Rafel Indus. Group Ltd. v. Gough*, 556 So. 2d 1174, 1175 (Fla. 4th DCA 1990) (appellant’s rights are not abolished merely because the underlying property on which an appeal is based has been disbursed before the reviewing court renders its judgment regarding entitlement to the res).

CONCLUSION

For all of the foregoing reasons, this Court has the jurisdiction and authority to enforce the Order during the pendency of an appeal. No motion to stay has been filed. Additionally, this Court has broad discretion to deny any request for a stay or, alternatively, to fashion conditions upon which any stay, if requested, may be granted.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail on this 19th day of March, 2010, to the attached service list.

Respectfully submitted,

BERGER SINGERMAN
Attorneys for Receiver, Michael Goldberg
1000 Wachovia Financial Center
200 South Biscayne Boulevard
Miami, Florida 33131
Phone: (305) 755-9500 / Fax: (305) 714-4340

By: _____

JAMES D. GASSENHEIMER
Florida Bar No. 959987
E-Mail: jgassenheimer@bergersingerman.com
ARIADNA HERNANDEZ
Florida Bar No. 020953
E-Mail: ahernandez@bergersingerman.com

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cc: The Honorable Jerald Bagley (*via Hand Delivery*)
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Posted to the Berman Mortgage Website

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