



(561) 477-7774

REPLY TO:

Boca Raton

August 27, 2019

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

**VIA EMAIL (hnrincl@gmail.com)
AND U.S. MAIL**

Harry Dorvilier, Manager
Florida Holding 4800 LLC
88-25 163rd Street
Jamaica, NY 11432

RE: Lauderhill Lending, LLC v. Florida Holding 4800, LLC, et al.
Case No. CACE-16-012986
Florida Holding 4800 LLC v. Property Consulting Group, Inc.,
Case No. CACE
Florida Holding 4800 LLC v. Carleen Home Health School, et al.,
Case No. CACE 17-4916 (05)

Dear Harry:

You and I need to make decisions as to each of the above three pending matters. The need to make the decisions is time critical.

As to the Lauderhill Mall matter, trial is scheduled to occur sometime during the three week period commencing February 3, 2020. I wrote a comprehensive letter to you on July 24, 2019 setting forth the difficulties in prevailing in that litigation. I explained to you why Florida Holding 4800 needs to drop Counts II through V and allegations in the Amended Third Party Complaint related to the Lauderhill Ordinance. You and I first discussed the content of my July 24, 2019 letter on Friday, July 26, 2019. You indicated during the phone call that you would get back to me with your decision as to those counts and the content of my July 24, 2019 letter after you obtained a second opinion. My letter of July 24, 2019 is attached hereto for your convenience as well as my July 26, 2019 follow-up email to you as Exhibits "A" and "B" to this letter.

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AMTRUST BANK BUILDING, SUITE 410
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TOLL FREE 1-800-3LAWYER

Harry Dorvilier

August 27, 2019

Page 2

Rob Hauser then provided you with his opinion by email on August 14, 2019. (Exhibit "C" hereto). Rob agrees with my analysis that Florida Holding 4800 needs to drop the claims that relate to the Lauderhill Ordinance. I followed-up on Rob's analysis with an email on Friday, August 16, 2019 asking you to provide me with authority to drop the claims related to the Lauderhill Ordinance. (Exhibit "D" hereto). I also indicated in that email a need to discuss both the Property Consulting Group and the Carleen matters. You and I then spoke on Monday, August 19, 2019 about dropping the claims related to the Lauderhill Ordinance. You asked that I send to you both the operative Ordinance and the July 2009 City Council Meeting Minutes which approve the Ordinance, albeit then for an effective date of December 31, 2014. A copy of my August 21, 2019 email to you and its attachments are attached hereto as Exhibit "E". I then called you on Thursday, August 22, 2019 to discuss these issues. I left a voicemail.

As to the Lauderhill Mall matter, on Friday, August 23, 2019, Lauderhill Mall filed a Motion for Final Summary Judgment which I emailed to you that same day. See Exhibits "F" and "G" hereto. As a consequence of that Motion and as explained in my July 24, 2019 letter, Florida Holding 4800 needs to: (1) drop all of the claims and allegations regarding the Lauderhill Ordinance; and (2) as to the remaining claims and despite the difficulty with those claims which Rob and I have explained to you and which are further presented in the Motion with respect to the "as-is" clause in the contract, we need to schedule mediation. That means you are going to have to come here to Florida sometime in October or November for mediation. Right now mediation is tentatively set for October 8, 2019, but I understand you are not available on that date.

On Monday, August 26, 2019, you called me and authorized me to drop Counts II, III, IV and V of the Amended Third Party Complaint as well as all allegations regarding the Lauderhill ordinance. As to the remaining counts and allegations, you directed that I proceed to trial and mandatory mediation. You advised that you are not available for mediation on October 8, 2019. My assistant, Jennifer Mannon, will coordinate mediation dates with you for November 2019.

As to the Property Consulting Group matter, I have repeatedly informed you (including again on August 26, 2019) that the contract with Property Consulting Group has a limitation of liability clause which is most likely enforceable and will limit Florida Holdings' damages to \$4,000.00. I emailed Property Consulting Group's most recent settlement offer to you on Thursday, August 1, 2019. I recommended during our telephone call on August 26, 2019 that you give me the authority to settle that matter for \$30,000.00 or any amount in between the \$30,000.00 and \$10,000.00. You declined to give me that

Harry Dorvilier
August 27, 2019
Page 3

authority and, against my recommendation, directed that the matter proceed to trial. This case does not contain good claims and again even if you win, the damages are most likely limited to \$4,000.00. Please see my email of August 1, 2019 attached as Exhibit "H".

Also, as you know I have scheduled Yoram Izhak's deposition in the Property Consulting Group case. However, Izhak's lawyer has filed a Motion to Quash the Subpoena and for Protective Order to keep that deposition from proceeding forward. A copy of the Motion is attached hereto as Exhibit "I" and my response is attached as Exhibit "J." As we discussed on August 26, 2019, Florida Holding wants to proceed with the Izhak deposition and to contest the Motion.

As to the Carleen matter, the agreed upon stay of the proceedings expired on July 5, 2019. You had asked me to obtain that stay so as to not have to expend attorneys' fees in pursuing the claim. On August 26, 2019, you requested that I evaluate the damages in that case and advise you whether Florida Holding should proceed with its claim. I will do that.

Harry, thank you for calling me today to discuss these matters.

Very truly yours,



Charles J. Bennardini



(561) 477-7774

REPLY TO:

Boca Raton

July 24, 2019

ATTORNEY/CLIENT PRIVILEGED COMMUNICATION

VIA EMAIL (hnrincl@gmail.com)

Harry Dorvilier, Manager
Florida Holding 4800 LLC
88-25 163rd Street
Jamaica, NY 11432

RE: Lauderhill Lending, LLC v. Florida Holding 4800, LLC, et al.
Case No. CACE-16-012986

Dear Harry:

Trial of this lawsuit is scheduled sometime during the three week period commencing February 3, 2020. One of the requirements in the trial order is that I, as Plaintiff's counsel, coordinate the scheduling of pre-trial mediation. On Friday July 19, 2019, I contacted Glenn Widom ("Widom"), counsel for Lauderhill Mall, to discuss who we should use as a mediator and the mediation date. Widom advised me that Lauderhill Mall would not agree to a mediation date until after the appellate court issues a mandate to the trial court instructing the trial court how to proceed as a result of the recent appellate decision. In his response email, Widom also raised an issue for the first time which issue has an adverse effect on four of Florida Holdings' claims. Widom stated that he just discovered a "mistake" in Florida Holdings' pleadings involving the allegations related to the City of Lauderhill ordinance. I bring this mistake to your attention now so that you and I can make informed decisions as to how to move forward.

The mistake involves the Lauderhill ordinance which made use of the Sheriff's spaces in the Ideal Building non-conforming uses. When Scott Weires drafted the initial third party complaint, he relied upon the July 13, 2009 minutes of the Regular Meeting of the Commission of the City of Lauderhill, Florida in support of the fact that as of December 31, 2014, the Sheriff's office no longer could use its leased spaces as correctional and judicial

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facilities. Although the meeting minutes identify December 31, 2014 as the date through which the non-conforming use may continue, at some point after the July 13, 2009 meeting the City of Lauderhill changed the date through which non-conforming uses could continue until August 31, 2015. See Ordinance No. 090-07-133 attached hereto. This is the exact same date which the Sheriff's Offices leases in the Ideal Building terminated.

This change of dates by the City of Lauderhill is fatal to four counts of the Amended Third Party Complaint. Counts II (breach of contract as to the BSO leases), III (breach of the implied covenant of good faith and fair dealing as to the BSO leases), IV (breach of implied covenant as to the BSO leases), and V (fraud as to the BSO leases) are no longer viable claims. These four counts incorrectly rely on December 31, 2014 as the date when the Sheriff's Office could no longer use its spaces for judicial and correctional purposes. Because the non-conforming use was actually extended by the ordinance to coincide with the actual date of the termination of the Sheriff's leases, there is no breach of contract or fraud because the Sheriff did not have to leave early due to the ordinance. Although the Sheriff's Executive Director of the Department of Community Programs, David Scharf, testified that but for the ordinance the Sheriff would have renewed the leases, I do not find that testimony strong enough to continue with the claims.

I recommend that Florida Holding voluntarily dismiss these four counts. It is particularly important that Florida Holding dismiss Count II because the Contract of Purchase and Sale has a prevailing party contract provision. This means that if Florida Holding loses this Count, Florida Holding would have to pay Lauderhill Mall's attorneys' fees. By voluntarily dismissing these counts now, Florida Holding avoids liability for attorneys' fees. Lauderhill Mall has spent little (if any) money defending Count II and has not yet raised the date issue in its responsive pleadings or by motion. We need to act before it does.

There is another complication which is well known to you. You signed a Contract of Purchase and Sale with an "as is" clause. Paragraph 13 of the contract states that Florida Holding purchased the property "in its As Is condition and based on Buyer's own inspection, investigation and evaluation." Based on this clause and during litigation by Scott Weires of the summary judgment which foreclosed on the mortgage, the Court already hinted that summary judgment in Lauderhill Mall's favor is likely as to Counts VI (fraud in the inducement as to the material condition of the property), VII (negligent misrepresentation as to the material condition of the property) and VIII (negligence as to the material condition of the property). Because there is no attorneys' fees issue as to these common law claims and I am not aware of any proposals for settlement being served by Lauderhill Mall, we can continue to litigate these claims, although likely unsuccessfully.

Harry Dorvilier
July 24, 2019
Page 3

My recommendation is that Florida Holding voluntarily dismiss Counts II through V of the Amended Third Party Complaint and allegations in Counts VI through VIII regarding the City ordinance. You and I need to have a telephone call to discuss these issues.

Very truly yours,

Charlie
Charles J. Bennardini

ORDINANCE NO. 090-07-133

AN ORDINANCE OF THE CITY COMMISSION OF LAUDERHILL, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS PERTAINING TO CORRECTIONAL AND JUDICIAL FACILITIES; AMENDING SCHEDULE A., LAND USE CLASSIFICATIONS BY ADDING A LAND USE CLASSIFICATION AND DEFINITION FOR CORRECTIONAL AND JUDICIAL FACILITY; AMENDING SCHEDULE B., PERMITTED AND SPECIAL EXCEPTION USES, BY ADDING CORRECTIONAL AND JUDICIAL FACILITIES AS A LAND USE CATEGORY AND BY ADDING AN ASTERISK IN THE COMMUNITY COMMERCIAL, GENERAL COMMERCIAL AND COMMUNITY FACILITY ZONING DISTRICTS; AMENDING ARTICLE III., ZONING DISTRICTS, PART 5.0., SPECIAL REGULATIONS FOR SPECIFIC LAND USE CLASSIFICATIONS, BY CREATING SECTION 5.13, CORRECTIONAL AND JUDICIAL FACILITIES; ADDING SUBSECTION 5.13.1., PROHIBITED USE; AMORTIZATION AND ALLOWING EXISTING CORRECTIONAL AND JUDICIAL FACILITY USES IN THE COMMUNITY COMMERCIAL, GENERAL COMMERCIAL ZONING AND COMMUNITY FACILITY DISTRICTS TO CONTINUE AS A LEGAL NONCONFORMING USE UNTIL AUGUST 31, 2015; PROVIDING FINDINGS AND CONCLUSIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE (REQUESTED BY COMMISSIONER DALE V.C. HOLNESS)

WHEREAS, the City Commission has adopted a Comprehensive Plan as is required by the Local Government Comprehensive Planning and Land Development Regulation Act (Act), which Comprehensive Plan was subsequently determined to be in-compliance with said Act; and

WHEREAS, Section 163.3202, Florida Statutes, requires each municipality to adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan; and

WHEREAS, on June 11th, 1990, the City Commission implement its adopted Comprehensive Plan as is required by Section 163.3202,



Florida Statutes, by adopting the City of Lauderhill Land Development Regulations (LDR); and

WHEREAS, Paragraph 163.3202(2)(b), Florida Statutes, requires the land development regulations contain specific and detailed provisions necessary to regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open spaces; and

WHEREAS, the City Commission finds that the Land Development Regulations do not contain a land use classification or definition for a correctional and judicial facility uses and finds that the Planning and Zoning Department has concluded such facilities are a prohibited use; and

WHEREAS, the City Commission finds that the Planning and Zoning Department has concluded that any correctional and judicial facility operating within the City is an illegal nonconforming use; and

WHEREAS, the City Commission finds that the Broward Sheriff's Office has been operating within the Community Commercial zoning district a correctional facility; and

WHEREAS, the City Commission desires to work cooperatively with the Broward Sheriff's office to allow such use to continue to operate for an additional period of time so that they can appropriately plan for the relocation of the facility; and

WHEREAS, the City Commission concludes that the Land Development Regulations should be amended to allow within the Community Commercial, General Commercial and Community Facility zoning districts the existing correctional and judicial facility to continue operating until December 31st, 2014; and

WHEREAS, at their duly noticed meeting and public hearing of June 30th, 2009, the City's Planning and Zoning Board, sitting as the Local Planning Agency (LPA) entered the Development Review Report on the proposed Ordinance into the record, adopted the findings and conclusions supporting the Ordinance's adoption, and recommended the City Commission adopt the Ordinance and incorporate it into the LDR; and

WHEREAS, at their duly noticed meeting and public hearing of July 13th, 2009, the City Commission considered the record, adopted findings and conclusions, and approved the proposed Ordinance on first reading; and

WHEREAS, at their duly noticed meeting and public hearing of August 31st, 2009, the City Commission on second reading adopted the Ordinance incorporating revisions to the LDR.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAUDERHILL, FLORIDA:

SECTION 1. Correctional and judicial facilities defined. Land Development Regulations Schedule A, Land Use Classifications, is hereby amended add a classification, as set forth below.

CORRECTIONAL AND JUDICIAL FACILITIES: A community facility use operated or sponsored or supervised or funded, in whole or in part, by a federal, state or county agency responsible for correctional or judicial services, such as but not limited to, the U.S. Department of Justice, the Florida Department of Corrections, the Florida Department of Juvenile Justice, the Florida Department of Law Enforcement, the Florida Parole Commission, the Florida Judicial Branch, and the Broward County Sheriff. This includes, but is not limited to correctional facilities, detention facilities, probation and parole offices, administrative offices, and courthouses, but does not include the City Police Station.

SECTION 2. Schedule B amended. Land Development Regulations Schedule B., Permitted and Special Exception Uses, is hereby amended to add correctional and judicial facilities and asterisk as a land use category allowable in the Community Commercial, General Commercial and Community Facility zoning districts as set forth in Exhibit 1.

SECTION 3. Special regulations. Land Development Regulations Article III, Zoning Districts, Part 5.0., Special Regulations for Specific Land Use Classifications, is hereby amended by adding Section 5.13., Correctional and judicial facilities, as set forth below.

Sec. 5.13. Correctional and judicial facilities.

SECTION 4. Allowable use. Land Development Regulations Article III, Zoning Districts, Part 5.0., Special Regulations for Specific Land Use Classifications, Section 5.13., Correctional and judicial facilities, is hereby amended by adding Subsection 5.13.1., as set forth below.

1. **Prohibited use; amortization.** A correctional and judicial facility shall be a prohibited use; however, any existing correctional or judicial facility within the Community Commercial, General Commercial or Community Facility zoning districts may continue to operate as a legal non-conforming use until August 31, 2015. Thereafter, the land use shall cease and be abandoned.

SECTION 5. Findings and Conclusions. The Development Review Report prepared by City staff is attached hereto, incorporated herein, and is hereby adopted as the findings of fact and conclusions of law to support the Ordinance amending the Land Development Regulations.

SECTION 6. Conflict. All ordinances or parts of ordinances, all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed as to the extent of such conflict.

SECTION 7. Codification. The provisions of this Ordinance shall become and be made a part of the City of Lauderhill, Florida Land Development Regulations; sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and the word "ordinance" may be changed to "article," "part," "section," or other appropriate word.

SECTION 8. Effective Date. This Ordinance shall take effect immediately upon its adoption.

DATED this 31st day of August, 2009.

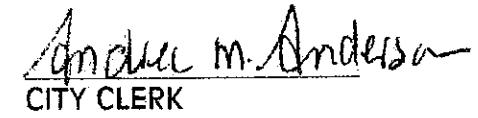
PASSED on first reading this 13th day of July, 2009.

PASSED AND ADOPTED on second reading this 31st day of August, 2009.



PRESIDING OFFICER

ATTEST:



Andrea M. Anderson
CITY CLERK

FIRST READING**MOTION**
SECONDHolness
Bates**M. BATES**
H. BENSON
H. BERGER
D. HOLNESS
R. KAPLANYes
Yes
Yes
Yes
Yes**SECOND READING**Holness
BatesYes
Yes
Yes
Yes
Yes

EX. BIT 1
 LAND DEVELOPMENT REGULATIONS

Schedule B. Permitted and Special Exception Uses

2. Uses Permitted in Non-residential Districts

Land Use Category	CO-1	CC	CG	CW	IL	CR	S-1	CF	UT	CN
Communication Facilities	P	P	P	P	P	P	P	P	P	
Community Care Facilities (Special Residential Facilities, Category 3)			SE							
Convenience Food Stores	SE	SE								
Correctional and judicial facilities	*	*	-				*	-		
Data Processing and Computer Centers	P	P	P							

Footnotes:

SE = Special exception

P = Permitted use

A = Accessory use

* See Article III, Zoning Districts, Part 5.0., Special Requirements for Specific Land Use Classifications and Structures for additional requirements.

(Ord. No. 93-144, §§ 2, 3, 6-14-93; Ord. No. 93-160, § 2, 1-31-94; Ord. No. 94-124, § 2, 6-27-94; Ord. No. 94-177, § 1, 11-28-94; Ord. No. 94-158, § 2, 2-13-95; Ord. No. 95-115, § 5, 3-27-95; Ord. No. 95-127, § 3, 6-12-95; Ord. No. 95O-155, § 2, 9-26-95; Ord. No. 95O-157, § 1, 9-26-95; Ord. No. 96O-102, § 2, 2-26-96; Ord. No. 96O-118, § 1, 5-28-96; Ord. No. 96O-134, § 1, 8-26-96; Ord. No. 96O-155, § 1, 11-12-96; Ord. No. 97O-133, § 1, 9-8-97; Ord. No. 97O-9-144, § 1, 9-29-97; Ord. No. 97O-9-152, § 1, 11-10-97; Ord. No. 98O-5-122, § 1, 5-27-98; Ord. No. 99O-1-104, § 1, 1-25-99; Ord. No. 99O-4-126, § 1, 5-10-99; Ord. No. 99O-4-125, § 1, 3-8-99; Ord. No. 99O-2-111, § 1, 1-25-99; Ord. No. 99O-4-123, § 1, 1-25-99; Ord. No. 99O-4-126, § 1, 4-26-99)

Jennifer Mannon

From: Charlie Bennardini
Sent: Friday, July 26, 2019 12:43 PM
To: Harry Dorvilier
Cc: Jennifer Mannon; Robert J. Hauser
Subject: FW: Lauderhill Lending, LLC v. Florida Holding 4800, LLC
Attachments: letter to Harry Dorvilier 7-24-19.pdf

Good afternoon, Harry. Thank you for calling me. You and I discussed the content of my July 24, 2019 letter and you stated that you would get back to me with your decision after you get a second opinion. I look forward to hearing back from you.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax
Email: cjb@kwblaw.com

From: Jennifer Mannon
Sent: Friday, July 26, 2019 9:52 AM
To: Harry Dorvilier <hnrinc@gmail.com>
Cc: Charlie Bennardini <cjb@kwblaw.com>
Subject: FW: Lauderhill Lending, LLC v. Florida Holding 4800, LLC

Good morning Mr. Dorvilier,

Mr. Bennardini tried to reach you the past two days by telephone and left you two voicemails and an email. He has not received a call back from you. Please call him back today with respect to the attached letter. If you try calling him prior to 11:00 a.m., please call him on his cell phone number which is (561) 289-8399.

Thank you.

Jennifer A. Mannon, Legal Assistant to
Charles J. Bennardini, Esquire
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax



Email: jam@kwblaw.com

From: Jennifer Mannon
Sent: Wednesday, July 24, 2019 4:15 PM
To: Harry Dorvilier <hnrrinc@gmail.com>
Cc: Charlie Bennardini <cjb@kwblaw.com>; Steven Katzman <smk@kwblaw.com>; Michelle Mize <mrm@kwblaw.com>
Subject: Lauderhill Lending, LLC v. Florida Holding 4800, LLC

Good afternoon. Please review the attached and let us know if you have any questions.

Jennifer A. Mannon, Legal Assistant to
Charles J. Bennardini, Esquire
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax
Email: jam@kwblaw.com

Charlie Bennardini

From: Robert J. Hauser <hauser@phflorida.com>
Sent: Wednesday, August 14, 2019 10:41 AM
To: Harry Dorvilier
Cc: Charlie Bennardini
Subject: Personal and Confidential - Lauderhill City Ordinance
Attachments: letter to Harry Dorvilier 7-24-19.pdf

Confidential / Work Product / Privileged

Dear Harry,

I have reviewed the city Ordinance that Charlie pulled from the City of Lauderhill. The important language is here:

1. **Prohibited use; amortization. A correctional and judicial facility shall be a prohibited use; however, any existing correctional or judicial facility within the Community Commercial, General Commercial or Community Facility zoning districts may continue to operate as a legal non-conforming use until August 31, 2015. Thereafter, the land use shall cease and be abandoned.**

It is clear to Charlie, and now to me, that the city ordinance did not require the Sheriff to pull out of your building in 2014.

According to Charlie, the leases ended on August 15, 2015, and that is the date that the same use was already permitted by the City from 2009 forward.

So if the Sheriff pulled out of your building, it wasn't directly or immediately because of the ordinance. The Ordinance prevented the Sheriff from renewing in 2015, but that is a different issue.

The Sheriff got into a dispute with you and was never going to renew the lease in 2015.

Under the Florida Rules of Professional Responsibility, Charlie is not permitted to pursue a claim that he now knows is based on incorrect information.

We now know that the City ordinance would have permitted the Sheriff to remain as late as August 31, 2015, and your attorney ethically cannot present contrary information to the trial court.

Accordingly, Charlie needs to amend the complaint or drop the claims that relate to the Ordinance, even if those claims have fee-shifting consequences.

Charlie says the purchase-and-sale contract had a fee-shifting contract, so the ultimate winner of this LMI lawsuit will end up with a fee and cost judgment against the loser.

Whether you continue to pursue some other claim relating to the condition of the building is up to you; it is a strategy decision only you can make.

Both Charlie and I feel that your previous claims relating to the roof and HVAC are weak and vulnerable to another summary judgment, because of the 'as is' clause in the purchase-and-sale agreement.

Judge Singhal didn't like those claims in 2018 and he will probably rule against them readily in 2019 on summary judgment.

My personal view is that 4800 needs to talk to a bankruptcy attorney about (1) what deficiency, if any, has resulted or will result from the foreclosure; and (2) how, if it is possible at all, to protect 4800's interest in the other building at University Drive.



Best regards,

Rob

Robert J. Hauser
Shareholder
Board Certified by The Florida Bar in Appellate Practice
Evaluated for Professionalism and Tested for Expertise

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Charlie Bennardini

From: Charlie Bennardini
Sent: Friday, August 16, 2019 12:42 PM
To: 'Harry Dorvilier'
Cc: 'Robert J. Hauser'
Subject: FW: Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC
Attachments: notice of dropping counts.pdf; Amended Third Party Complaint.pdf

Good afternoon, Harry. There is a typo in my email below. It should state that Rob Hauser's analysis is correct, not incorrect.

Charles J. Bennardini, Esq.
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7900 Glades Road, Suite 140
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561 477-7774
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Email: cjb@kwblaw.com

From: Charlie Bennardini
Sent: Friday, August 16, 2019 12:30 PM
To: 'Harry Dorvilier' <chnrinc@gmail.com>
Cc: 'Robert J. Hauser' <hauser@phflorida.com>; Jennifer Mannon <jam@kwblaw.com>
Subject: FW: Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC

Good afternoon, Harry. I trust you read Rob Hauser's analysis in his email to you of August 14, 2019. Rob's analysis is incorrect. I have a legal and ethical duty to file the notice of dropping claims attached hereto. Please advise that you agree that I may do so. If you disagree, we need to talk. Of course, we can talk either way, but if you do not agree I will be unable to continue in this case. I also attached the Amended Third Party Complaint for your reference.

We also need to discuss the PCG and Carleen matters.

I am in court this afternoon, but am available all week next week.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
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561 477-7447 fax
Email: cjb@kwblaw.com

From: Jennifer Mannon
Sent: Friday, August 16, 2019 12:24 PM
To: Charlie Bennardini <cjb@kwblaw.com>
Subject: Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC



Jennifer A. Mannon, Legal Assistant to
Charles J. Bennardini, Esquire
Katzman Wasserman Bennardini & Rubinstein, P.A.
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Boca Raton, FL 33434
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Email: jam@kwblaw.com

Charlie Bennardini

From: Charlie Bennardini
Sent: Wednesday, August 21, 2019 2:16 PM
To: 'Harry Dorvilier'
Cc: 'Robert J. Hauser'; Jennifer Mannon
Subject: FW: Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC
Attachments: notice of dropping counts.pdf; Amended Third Party Complaint.pdf

Good afternoon, Harry. Please advise ASAP whether you agree to the notice of dropping parties. We spoke about it on Monday and I emailed to you another copy of the Lauderhill ordinance and the July 2009 City Council meeting minutes. We need to drop the counts before LMI's and Yoram's lawyer files a motion for summary judgment as to these claims and could result in Florida Holding being liable for LMI's attorneys' fees and costs in preparing the motion for summary judgment. Thanks.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
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Boca Raton, FL 33434
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Email: cjb@kwblaw.com

From: Charlie Bennardini
Sent: Friday, August 16, 2019 12:30 PM
To: 'Harry Dorvilier' <hnrrinc@gmail.com>
Cc: 'Robert J. Hauser' <hauser@phflorida.com>; Jennifer Mannon <jam@kwblaw.com>
Subject: FW: Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC

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We also need to discuss the PCG and Carleen matters.

I am in court this afternoon, but am available all week next week.

Charles J. Bennardini, Esq.
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From: Jennifer Mannon
Sent: Friday, August 16, 2019 12:24 PM



To: Charlie Bennardini <cjb@kwblaw.com>
Subject: Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC

Jennifer A. Mannon, Legal Assistant to
Charles J. Bennardini, Esquire
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DRAFT

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

LAUDERHILL LENDING, LLC,
A Florida Limited Liability Company,

CASE NO. CACE-16-012986

Plaintiff,

v.

FLORIDA HOLDING 4800 LLC, a Florida limited liability company; SOUTH FLORIDA REGIONAL PLANNING COUNCIL, a Florida body corporate and politic; and UNKNOWN TENANT(S) IN POSSESSION;

Defendants.

FLORIDA HOLDING 4800, LLC, a Florida Limited Liability Company,

Third Party Plaintiff,

v.

LAUDERHILL MALL INVESTMENT, LLC,
a Florida Limited Liability Company,

Third Party Defendant.

NOTICE OF DROPPING CLAIMS RELATING TO CITY ORDINANCE

Third Party Plaintiff Florida Holding 4800 (“FH 4800”) gives notice of dropping claims and allegations relating to the City of Lauderhill, Florida Ordinance and states:

1. FH 4800 drops Counts II, III, IV and V of the Amended Third Party Complaint.
2. FH 4800 also drops the allegations in paragraphs 74 through 76 of Count VI, paragraph 83 of Count VII, and paragraphs 5 through 19 of the General Allegations.

DRAFT

Florida Holding 4800, LLC v. Lauderhill Mall Investment, LLC
Case No. CACE-16-012986
Notice of Dropping Claims

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served using the Florida Courts e-Filing Portal on Glenn L. Widom, Esq., Glenn L. Widom, P.A., 696 N.E. 125th Street, North Miami, FL 33161, gwidom@gwidomlaw.com, and Robert J. Hauser, Esq., Pankauski Hauser PLLC, 415 South Olive Avenue, West Palm Beach, FL 33401, courtfilings@phflorida.com; hauser@phflorida.com; kerry@phflorida.com on this _____ day of August, 2019.

KATZMAN, WASSERMAN,
BENNARDINI & RUBINSTEIN, P.A.
Co-Counsel for Defendant/Third Party Plaintiff
Florida Holding 4800 LLC
Suite 140/Boca Corporate Plaza
7900 Glades Road
Boca Raton, FL 33434
Phone: (561) 477-7774
Fax: (561) 477-7447

DRAFT

By: _____

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
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Plaintiff,

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body corporate and politic; and UNKNOWN
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Defendants.

FLORIDA HOLDING 4800, LLC, a Florida
Limited Liability Company,

Third Party Plaintiff,

v.

LAUDERHILL MALL INVESTMENT, LLC,
a Florida Limited Liability Company,

Third Party Defendant.

/

AMENDED THIRD-PARTY COMPLAINT

Third Party Plaintiff FLORIDA HOLDING 4800, LLC sues Third Party Defendant
LAUDERHILL MALL INVESTMENT, LLC and alleges:

JURISDICTION, PARTIES AND VENUE

1. This is an action for damages in excess of \$15,000 exclusive of interest, attorney's fees, and costs and is within the subject matter jurisdiction of this Court.

2. Third Party Plaintiff FLORIDA HOLDING 4800, LLC ("FH 4800") is a limited liability company organized and authorized to conduct business within the state of Florida. FH 4800 was the owner of commercial real property located at 4200 NW 16th Street, Lauderhill, Broward County, Florida (referred to herein as the "Property") which is the subject of the instant dispute.

3. Third Party Defendant LAUDERHILL MALL INVESTMENT, LLC ("LMI") is a limited liability company organized and authorized to conduct business within the state of Florida. LMI is the seller of the Property. The Property is the subject matter of a Contract of Purchase and Sale between LMI as seller and FH 4800 as buyer (the "Contract"). A copy of the Contract is attached hereto as Exhibit "A."

4. Venue is proper in this Court because the Property is located in Broward County, Florida.

GENERAL ALLEGATIONS

A. The BSO Leases

5. On or about July 12, 2007, non-party LM Ideal, LLC ("LM Ideal") purchased the Property.

6. At the time of the purchase by LM Ideal, the Property already had several long-term leases in place with the Broward County Sheriffs Office (the "BSO Tenant"). As with any commercial property, much of the value of ownership of the Property derived from

the future income stream associated with the rental payments that would be received from the leases with the BSO Tenant (the "BSO Leases").

7. Beginning in or about March 2010, LM Ideal executed amendments to the BSO Leases which extended the lease terms through August 31, 2015.

8. On or about March 20, 2012, LM Ideal sold the Property to LMI. As a result of the sale, LMI thereafter became the beneficiary of the income stream from the BSO Leases.

9. On or about March 26, 2013, LMI entered into the Contract to sell the Property to FH 4800 for \$4,800,000.

10. As representations and warranties in §17F of the Contract, LMI stated to FH 4800 that "the Leases delivered to Buyer are true and correct and have not been modified." This specifically included, without limitation, the BSO Leases and their term.

11. LMI even delivered a copy of the BSO Leases to FH 4800.

12. On June 7, 2013, and in reliance upon the representations and warranties made by LMI with regard to the BSO Leases, FH 4800 closed the transaction and purchased the Property (the "Closing").

13. After the Closing, FH 4800 began to receive the income stream derived from the BSO Leases in an amount exceeding \$30,000 per month.

14. Thereafter, FH 4800 received notice from the BSO Tenant that it intended to vacate the Property no later than December 31, 2014 pursuant to an ordinance passed by the City of Lauderhill in 2009.

15. Pursuant to Ordinance No. 090-07-133 (the "Ordinance"), the City of Lauderhill had down-zoned the Property such that the use associated with the BSO Tenant Leases became a prohibited use that could only continue as a legal, nonconforming use through December 31, 2014.

16. The notice about the BSO Leases was the first time that FH 4800 learned about the Ordinance and its impact on the BSO Leases.

17. Prior to December 31, 2014, the tenant of the BSO Leases did indeed vacate the Property at least eight months early.

18. FH 4800 has been damaged by LMI with respect to the BSO Leases because it has lost lease revenue of approximately \$1,259,422.09.

19. LMI had direct knowledge of the Ordinances and actively concealed that information from FH 4800 notwithstanding its contractual representations and warranties.

C. Misrepresentations and Active Concealment of the Condition of the Property

20. Prior to entering into the Contract, FH 4800 entered into negotiations with LMI to purchase the Property.

21. During the negotiations and in an effort to expeditiously sell the Property to FH 4800, LMI engaged in a scheme of various affirmative misrepresentations and active concealment about the condition of the Property.

22. Contemporaneous with active concealment of defects in the roof, LMI affirmatively represented to FH 4800 that the roof had always been well maintained, had no history of active leaks, and was recently replaced.

23. LMI also affirmatively represented that the HVAC system never had any problems, was fully serviceable and without issue.

24. On or about March 21, 2013, and as a consequence of the affirmative misrepresentations and active concealment, FH 4800 entered into the Contract.

25. After the Closing, the true condition of the Property revealed itself when tenants began to complain about roof leaks, HVAC failures, and significant mold growth.

26. As related to the roof, various leaks developed at the Property which caused FH 4800 to make repairs.

27. During the course of making the roof repairs, FH 4800 discovered that LMI had undertaken efforts to actively conceal an old, decaying, damaged, and actively leaking roof by covering the damaged areas of the roof to hide the leaking condition and to make the roof look like it had been well maintained.

28. FH 4800 also discovered that the roof was not recently replaced as affirmatively represented by LMI.

29. As related to the HVAC system, the chillers that support the air conditioning units within the Property began to fail which caused FH 4800 to make repairs.

30. During the course of making the HVAC system repairs, FH 4800 discovered that the HVAC system had not operated properly for many months prior to the purchase of the Property by FH 4800, was not serviceable and without issues as affirmatively misrepresented by LMI. Instead the HVAC system was the cause of a significant mold condition prior to the Closing which condition was actively concealed by LMI.

31. FH 4800 was damaged by LMI with respect to the HVAC system because new chillers had to be installed at the Property and the resulting mold condition required remediation.

32. As a result of a scheme of active concealment and affirmative misrepresentations relating to the roof, the HVAC system and related mold condition, and BSO Leases, FH 4800 was damaged.

33. All conditions precedent to the filing of this action have occurred, been waived, or otherwise performed.

34. FH 4800 has retained the undersigned law firm to pursue this third party complaint and has agreed to pay reasonable attorneys' fees and costs.

COUNT I
RESCISSON

35. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

36. This is an action for rescission.

37. FH 4800 entered into the Contract with LMI.

38. The Contract purported to convey ownership of the Property representing that the BSO Leases were "true and correct," a fact which materially affected the value of the Property, in exchange for the payment of money.

39. FH 4800 made the required payments to LMI but did not receive the Property as represented.

40. Specifically, LMI conveyed the Property without the full benefit of the BSO Leases as represented and agreed upon, which LMI knew or should have known about but kept purposely hidden from FH 4800 in an effort to expeditiously sell the Property for maximum profit.

41. As alleged in ¶¶ 20 through 32, LMI also engaged in misrepresentations, active concealment and an overall scheme creating a false impression as to the Property. Such facts support rescission.

42. LMI either mistakenly understood the Property and the BSO Leases to be as represented or knowingly induced Third-Party Plaintiff to purchase the Property so that it could perpetrate a fraud.

43. As a result, as to the BSO Leases, either a mutual mistake occurred because both parties were unaware of the defective condition of the Property, or LMI undertook to perpetrate a fraud.

44. Nonetheless, either ground is the proper basis for rescission of the Contract.

45. Prior to the foreclosure sale of the Property, FH 4800 remained ready, willing and able to restore LMI to the status quo by returning the Property in exchange for a return of the purchase price paid. FL 4800 rescinded the Contract and notified LMI of its intention to return the Property in exchange for a full refund of the purchase price.

WHEREFORE, Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for rescission against Third-Party Defendant Lauderhill Mall Investment, LLC, for costs together with such other and further relief as is just and proper.

COUNT II
BREACH OF CONTRACT

46. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 19, 33, and 34 as though fully set forth herein.

47. This is an action for breach of contract.

48. LMI and FH 4800 entered into the Contract.

49. LMI breached §17F of the Contract by delivering BSO leases which were not true and correct and by failing to disclose the effect of the Ordinance on the BSO Leases.

50. As a result of the breach, FH 4800 was damaged.

WHEREFORE Third-Party Plaintiff Florida Holding4800, LLC demands judgment for damages against Third-Party Defendant Lauderhill Mall Investment, LLC including pre-judgment interest, attorney's fees pursuant to the Contract, costs and for such other relief as may be just and proper.

COUNT III
BREACH OF IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING

51. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

52. FH 4800 and LMI entered into the Contract.

53. Included within all Florida contracts is an implied covenant of good faith and fair dealing that neither party will do anything to unfairly interfere with rights of the other party to the contract to receive the contract's benefits.

54. FH 4800 performed its obligations under the Contract by paying the purchase price.

55. LMI breached the implied covenant of good faith and fair dealing in various ways including, without limitation, affirmatively concealing and affirmatively misrepresenting matters of substantial and material importance to FH 4800 resulting in the purchase of the Property for an amount far exceeding the true market value of the same.

56. As a result of the foregoing breaches of the implied covenant of good faith and fair dealing, FH 4800 has been damaged.

WHEREFORE Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for damages against Third-Party Defendant Lauderhill Mall Investment, LLC including pre-judgment interest, attorney's fees pursuant to the Contract, costs and for such other relief as may be just and proper.

COUNT IV
BREACH OF IMPLIED CONTRACT

57. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

58. This is an action for breach of implied contract against LMI. LMI entered into the Contract with FH 4800 for the sale and purchase of the Property.

59. Implied within the Contract is a representation that LMI was truthful about the circumstances relating to the Property and was not aware of any specific information that materially affected the value of the Property that contradicted its affirmative representations.

60. LMI breached the implied term of the Contract by failing to disclose to FH 4800 the BSO Leases were not as represented, which was a material defect that materially affected the value of the Property.

61. As a result of the foregoing, FH 4800 has suffered damages including, without limitation, the monies paid pursuant to the closing of the transaction and purchase price of the Property, the loss of the income stream associated with the BSO Leases, loss of the value of its money, loss of the value of the Property, loss of monies paid for insurance, taxes, loss of the resale value of the Property, loss of the use of the Property, lost time, and loss of all other monies paid for or on behalf of said Property.

WHEREFORE, Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for damages against Third-Party Defendant Lauderhill Mall Investment, LLC, including pre-judgment interest, attorney's fees pursuant to the Contract, costs and for such other relief as may be just and proper.

COUNT V
FRAUD

62. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

63. This is an action for fraud.

64. Subsequent to the sale of the Property to Florida 4800, affirmative material misrepresentations and active concealment of material facts were discovered by FH 4800 relating to the BSO Leases.

65. The misrepresentations and concealment constituted a defect in the Property and was known to LMI and was purposely hidden from FH 4800 in an effort to expeditiously sell the Property for maximum profit.

66. The failure of LMI to disclose accurate information to the FH 3800 was the result of fraud and/or misrepresentation.

67. Said fraud and/or misrepresentation was perpetrated in an effort to ensure closing of the transaction and to dispose of commercial real property at an inflated price.

68. Upon information and belief, LMI concealed the CDW condition from the Third-Party Plaintiff.

69. Third-Party Plaintiff relied on the misrepresentations to its detriment.

70. Had FH 4800 been aware of the true nature of the BSO Leases that was not disclosed, it would not have purchased the Property.

71. As a direct and proximate result of the foregoing, FH 4800 has suffered damages, including, but not limited to, diminution in the value of the Property, loss of rental income, loss of monies paid for insurance and taxes, loss of use of the Property, and loss of all other monies paid for or on behalf of said Property.

WHEREFORE, Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for damages against Third-Party Defendant Lauderhill Mall Investment LLC, including pre-judgment interest, costs, together with such other and further relief as is just and proper.

COUNT VI
FRAUD IN THE INDUCEMENT

72. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 9, 20 through 34 as though fully set forth herein.

73. This is an action for fraud in the inducement.

74. Prior to closing, LMI actively concealed material facts concerning the BSO Leases by intentionally omitting any information regarding the fact that the BSO Leases would terminate on December 31, 2014, well before the stated termination dates of August 31, 2015.

75. LMI knew or should have known the active concealment.

76. LMI intended that the active concealment would induce FH 4800 to rely upon the absence of knowledge about the BSO Leases and purchase the Property.

77. LMI also engaged in misrepresentations, active concealment and a scheme of creating false impressions as alleged in paragraphs 20 through 34 above.

78. LMI knew or should have known the falsity of the misrepresentations, omissions, and active concealment.

79. FL 4800 relied upon the above misrepresentations and/or omissions and/or active concealment and purchased the Property.

80. As a direct and proximate result of the foregoing, FH 4800 has been damaged.

WHEREFORE, Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for damages against Third-Party Defendant Lauderhill Mall Investment for damages including pre-judgment interest, costs and such other and further relief as is just and proper.

COUNT VII
NEGLIGENT MISREPRESENTATION

81. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 9, 20 through 34 as though fully set forth herein.

82. This is an action for negligent misrepresentation.

83. LMI misrepresented material facts to FH 4800 concerning the BSO Leases as related to the Property which material facts LMI believed to be true but which were in fact false.

84. LMI also misrepresented material facts to FH 4800 concerning the condition of the Property which material facts LMI believed to be true but which were in fact false.

85. LMI should have known through the exercise of reasonable care that said representations were false.

86. LMI intended to induce FH 4800 into signing the Contract by relying on the misrepresentations.

87. FH 4800 justifiably relied on LMI's misrepresentations.

88. As a direct and proximate result of the foregoing, FH 4800 has been damaged.

WHEREFORE, Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for damages against Third-Party Defendant Lauderhill Mall Investment, including pre-judgment interest, costs and for such other and further relief as is just and proper.

COUNT VIII
NEGLIGENCE AGAINST LMI

89. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

90. This is an action for negligence against LMI.

91. LMI owed FH 4800 a duty of care to provide proper and full disclosure to FH 4800 concerning all facts that might materially affect the value of the Property.

92. LMI breached that duty of care by failing to disclose to FH 4800 all facts that controverted the disclosures and representations that materially affect the value of the Property.

93. As a direct and proximate result of the foregoing, FH 4800 has been damaged.

WHEREFORE, Third Party Plaintiff Florida Holding 4800, LLC demands judgment for damages against Third Party Defendant Lauderhill Mall Investment, LLC including pre-judgment interest, costs and such other and further relief as is just and proper.

COUNT IX
UNJUST ENRICHMENT AGAINST LMI

94. FH 4800 re-alleges and incorporates by reference paragraphs 1 through 34 as though fully set forth herein.

95. This is an action for unjust enrichment.

96. FH 4800 conferred a benefit upon LMI, of which LMI had knowledge of the same.

97. LMI voluntarily accepted and retained the benefit conferred upon it by FH 4800.

98. LMI failed to deliver to FH 4800 anything of value sufficient for the benefit conferred.

99. As a result, it would be inequitable for Third-Party Defendant LMI to retain the benefit without paying the value thereof to FH 4800.

WHEREFORE, Third-Party Plaintiff Florida Holding 4800, LLC demands judgment for unjust enrichment against Third-Party Defendant Lauderhill Mall Investment, plus pre-judgment interest and costs, together with such other and further relief as is just and proper.

Lauderdale Lending, LLC v. Florida Holding 4800, LLC, et al.
Case No. CACE-16-012986
Amended Third Party Complaint

JURY DEMAND

Third-Party Plaintiff Florida Holding 4800, LLC demands a trial by jury for all issues so triable as of right.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail to: Glenn L. Widom, Esq., Glenn L. Widom, P.A., 696 N.E. 125th Street, North Miami, FL 33161, gwidom@gwidomlaw.com, and Robert J. Hauser, Esq., Pankauski Hauser PLLC, 415 South Olive Avenue, West Palm Beach, FL 33401, courtfilings@phflorida.com; hauser@phflorida.com; kerry@phflorida.com, this 15 day of October, 2018.

KATZMAN, WASSERMAN,
BENNARDINI & RUBINSTEIN, P.A.
Co-Counsel for Defendant/Third Party Plaintiff
Florida Holding 4800 LLC
Suite 140/Boca Corporate Plaza
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Phone: (561) 477-7774
Fax: (561) 477-7447

By: _____


STEVEN M. KATZMAN, ESQ.

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CONTRACT OF PURCHASE AND SALE

THIS CONTRACT OF PURCHASE AND SALE, is made and entered into between Leaderhill Mall Investment, LLC, (hereinafter "Seller") and Florida Holding 4800, LLC (hereinafter "Buyer").

1. **SALE OF PROPERTY:** Seller agrees to sell, transfer and convey and Buyer agrees to buy, upon the terms and conditions which follow, the real property located at 4200 NW 16 Street, Lauderdale, Broward County, Florida, under tax folio number 49-41-26-29-0010, legally described within Exhibit A, attached hereto (the "Property").

2. **PERSONAL PROPERTY:** All personal property located within the Property owned by Seller is included in the sale at no additional charge or cost.

3. **PURCHASE PRICE AND PAYMENT TERMS:** The purchase price for the Property shall be the total sum of \$ 4,800,000 which shall be payable by U.S. cash, locally drawn cashiers' or official bank check(s) or wire transfer, subject to adjustments or pro-rations. *AD*

4. **DEPOSITS:** Buyer shall place a good faith deposit in the amount of \$25,000.00 upon execution of this Contract and an additional deposit in the amount of \$220,000.00 at the expiration of the Inspection Period. All deposits shall be held by Robert Brandt Esq. as escrow agent.

5. **CLOSING DATE:** Closing shall take place in the county in which the Property is located at a place designated by Seller, 30 days from the expiration of the Due Diligence Period. Buyer shall have the right to extend the Closing for up to 14 days if needed to facilitate financing.

6. **CLOSING DOCUMENTS:** Seller shall deliver to Buyer at or prior to closing the following:

- A. Special Warranty Deed, but subject only to matters contained in Paragraph 7 following.
- B. Bill of Sale conveying any personal property.
- C. Affidavit attesting to the absence of liens or potential liens known to Seller; gap affidavit and IRS form 1099 B or such other forms as may be required by the Federal Government from time to time and that there have been no improvements to the Property prior to closing, the cost of which have not been paid.
- D. F.R.P.T.A. Affidavits or Exemption Certificates as may be required to exempt seller or any agent from the income tax withholding requirements.
- E. Assignment of Leases.
- F. All keys used in connection with the Property, in possession of Seller.
- G. Such other additional documents and instruments as are reasonably necessary to convey, assign and transfer all of Seller's right, title and interest in the Property to Buyer and such other documents reasonably required to consummate the transaction and to satisfy any title insurer.

7. **RESTRICTION AND EASEMENTS:** Buyer shall take title subject only to (a) zoning restrictions imposed by governmental authority; (b) restrictions and matter appearing on the plats or otherwise common to the subdivision; (c) public utility easements of record, provided said easements are located on the side or rear lines of the property; and (d) taxes for the year of closing.

EXHIBIT

A

8. EVIDENCE OF TITLE: Seller's shall provide Buyer with a copy of its prior owner's title insurance policy ("Title Evidence"). Buyer shall choose the title agent and may order a title insurance commitment from a title company licensed in the State of Florida, to be in accordance with the standards adopted from time to time by the Florida Bar subject only to liens, encumbrances, exceptions or qualifications set forth in this contract and those which will be discharged by Seller at or before closing. The cost of obtaining such title evidence and the cost of the owner's title insurance policy shall be paid by Buyer. Buyer shall have 15 days from the date the Title Evidence is delivered to Buyer to examine the same and if title is found to be defective, Buyer shall notify Seller in writing specifying the defects within such 15 day period, otherwise Buyer waives any objections and shall accept title "as is". If said defects render the title unmarketable, the Seller shall have 7 days from receipt of such notice to cure the defects and if after said Seller shall not have cured the defects, Buyer shall have the option of either: (a) accepting the title "as is"; or (b) demanding refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released of all further obligations to each other under the contract however, Seller agrees that he will, if title is found to be unmarketable, use diligent effort to correct the defects in the title within the time limit provided the above, but shall not be required to bring any suit.

9. SURVEY: Buyer may have the subject property surveyed at its expense during the title review period set forth in Paragraph 8. If the survey shows any defect or encumbrance on said property or that the improvements presumed to be located on the subject property in fact stand upon the lands of others, the same shall be treated as a title defect.

10. EXPENSES: State documentary stamps on the deed shall be paid by Seller. Recording of the deed shall be paid by Buyer. Recording of any corrective instrument shall be paid by Seller. Costs and expenses incident to any mortgage shall be paid by Buyer.

11. "AS IS" SALE: Subject only to the warranties and representations in the Deed, if any, the Property shall be conveyed in "AS IS" condition with all faults. Seller makes absolutely no warranties, representations or covenants to Buyer whatsoever regarding the Property or the condition or quality thereof, or the fitness thereof for the purposes intended by Buyer or for any other purpose or purpose whatsoever; (ii) Buyer acknowledges that Seller has not investigated and does not warrant or represent to Buyer that the Property is fit for the purpose intended by Buyer or for any other purpose or purpose whatsoever; (iii) Buyer represents that it is purchasing the Property in its "As Is" condition and based solely on Buyer's own inspection, investigation and evaluation; (iv) neither Seller nor any agent of Seller has made any representation or warranty, express or implied, oral or written, concerning the Property or which have induced Buyer to execute this Contract; and (v) any other representations and warranties are expressly disclaimed by Seller.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION,

UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAW, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MARK OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMSOEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEY'S FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL OR ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT AT THE STATED PURCHASE PRICE BUT FOR PURCHASER'S UNQUALIFIED AND UNCONDITIONAL AGREEMENT TO THE PROVISIONS OF THIS SECTION.

12. PRORATIONS: Taxes, assessments, rent, interest, insurance and other expenses and income of the property shall be prorated through the day of closing. Cash at closing shall be increased or decreased as may be required by prorations. All expenses incident to the property, including but not limited to, utilities, water, waste, salaries, and maintenance, which are not prorated and which are accrued or incurred through the date of closing shall be paid for by Seller. Buyer shall receive a credit for any security deposits and pre-paid rent.

13. RISK OF LOSS: If the improvements are damaged by fire or other casualty before the Closing Date or delivery of the deed and can be restored to substantially the same condition as now existing within a period of sixty days (60) days thereafter, Seller may restore the improvements and the closing date and date of delivery of

possession hereinafter provided shall be extended accordingly. If Seller fails to do so, Buyer shall have the option of (1) taking the property "as is" together with the insurance proceeds, if any, and a credit for any deductible; or (2) canceling the contract and both parties will be released of any further obligations hereunder.

14. MAINTENANCE: Between the date of the contract and date of closing, the Property and all personal property thereon shall be maintained by Seller in the condition as it exists as of the date of this contract, ordinary wear and tear excepted and all expenses in connection with said maintenance through the day before the Closing Date shall be paid by Seller.

15. FINANCING: THIS CONTRACT IS NOT SUBJECT TO FINANCING. Buyer agrees to use Buyer's best efforts, at Buyer's expense, to obtain a new first loan in the amount of 80% of the purchase price. If Buyer notifies Seller in writing that Buyer has failed to obtain such a loan within 21 calendar days of the effective date, Seller agrees to provide Buyer the following Seller's financing:

- 1) 70% mortgage loan equal to 97% of the sales price.
- 2) Monthly principal and interest payments based on a 20-year amortization schedule.
- 3) balloon payment in year 3 on last closing (Maturity Date).
- 4) 5% interest rate
- 5) No Prepayment Penalty
- 6) Loan shall be personally guaranteed by principal of the company (H. J. Darriller)
- 7) 1% loan origination fee.

HP
3/20/02
WJ

16. INSPECTION: Buyer may inspect the property as to heating, roof, structure, appliances, personal property, plumbing, electrical systems, mold, fire, environmental, matters, mold, fire, and any other matters the Buyer deems appropriate. In the event such inspections of the property are not satisfactory to Buyer in its sole discretion, Buyer may cancel this contract and each party shall be relieved of any further obligations hereof. Buyer to complete such inspection within 21 days from the Effective Date, (the "Inspection Period"). In the event Buyer does not cancel this contract prior to the end of the Inspection Period, then, subject to the terms and conditions of this contract, the Buyer shall accept the Property at closing in "As Is" condition. In the event Buyer does timely cancel this contract as provided herein, then Buyer's initial deposit shall be refunded to Buyer. All inspections shall be at the sole cost and risk of the Buyer. Any entry upon the Property shall be made or performed only after obtaining permission from the Seller, during normal business hours, and shall not unreasonably interfere with the activities of any tenant. In no event shall the Seller or Buyer's representatives, without the prior written consent of Seller, make any intrusive physical testing (environmental, structural or otherwise) of the Property (such as: soil borings, water samplings or the like). Buyer shall indemnify and hold Seller harmless from any liability, claim or demand, including attorney's fees, arising out of the acts or negligence of Buyer or its agents, contractors, employees or other parties conducting activities on the Property on behalf of Buyer. Any entry by Buyer onto the Property shall be subject to, and conducted in accordance with, all applicable governmental laws, rules and regulations. Buyer shall promptly restore the Property to the condition that existed prior to Buyer's having made such inspections, repairs, or tests. All inspections shall be carried out by duly licensed and insured professionals. Buyer will also seek a pre-approval within the 21 day Inspection Period. In the event that the appraisal is lower than the purchase price and provided Buyer cancels this contract on or before the end of the inspection period, all deposits held in escrow shall be refunded to Buyer.

In the event loan is in default and continues to be in default for a period of 30 days, then the property shall go through the traditional foreclosure process. The mortgage is not to be

Approved for and approved by Seller.
There shall be no secondary financing without prior approval.



17. REPRESENTATIONS AND WARRANTIES: Seller represents and warrants, and such representations and warranties shall be true and correct at time of closing, that:

- A. Seller has the power and authority to own the property, enter into this contract, and convey the Property.
- B. The personal property has been lawfully acquired and is full / paid for or is subject only to the mortgages encumbering the property as of the date of this contract.
- C. Seller has not received written notice of any condemnation, nor pending or threatened condemnation affecting the Property.
- D. Seller is not a "foreign person" (as defined in Section 1445 of the Internal Revenue Code and regulations thereunder).
- E. That the Property is not subject to any assessments except for current real estate taxes for the year 2012.
- F. The Leases delivered to Buyer are true and correct and have not been modified.

18. BROKERAGE: Each party represents and warrants that no other person, or entity brought about this sale and that there are no brokerage fees or commissions payable with respect to this transaction, except Marcus and Milligan who will be paid at closing by Seller. Each party hereto will indemnify and hold harmless the other against any other claim for brokerage and/or other commission relative to his Contract or to the transactions contemplated hereby or as to any assigned leases hereby, based in any way on agreements, arrangement or understandings claimed to have been made by such party with any third party.

19. ASSIGNMENT: This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, in accordance with the terms hereof.

20. ATTORNEYS FEES: In the event of litigation between the parties for any matters arising out of this Agreement, the prevailing party of such litigation shall be entitled to recover from the other party reasonable attorneys fees and court costs at all levels.

21. OTHER EXPENSES: Except as may be provided herein, Buyer and Seller shall pay their own expenses associated with the performance of and the compliance with this Agreement unless otherwise provided herein.

22. ENTIRE AND SOLE AGREEMENT: This Agreement, the exhibits and documents to be delivered at the time of closing constitute the entire and sole Agreement between the parties hereto and supersede all prior agreements and understandings. This Agreement may not be amended or modified except by an instrument of equal dignity.

23. GOVERNING LAW: This Agreement shall be governed and construed according to the laws of the State of Florida.

24. WAIVER: The failure or delay of Seller or Buyer to exercise or enforce any rights, hereunder, shall not operate a waiver of such rights.

25. CAPTIONS: Captions of the various sections of this Agreement are intended to be used solely for

convenience and are not intended and shall not be deemed to modify or affect the construction of any of the provisions of this Agreement.

26. EFFECTIVE DATE/TIME COMPUTATION: The Effective Date of this Agreement shall be the date when the last one of the Buyer and Seller has signed this agreement. All time periods expressed as days will be computed in calendar days. In the event (i) any day for performance is on a Saturday or Sunday or on any nationally recognized holiday or (ii) any time period expires on a Saturday or Sunday or on any nationally recognized holiday, such time period shall be extended to the next following business day. All time periods will end at 5:00 p.m. local time where the Property is located.

27. 1031 EXCHANGE: Seller and Buyer agree to cooperate, at no additional expense to the cooperating party, to facilitate a 1031 exchange if so requested by either party.

28. TIME FOR ACCEPTANCE OF OFFER: If this offer is not executed by both parties on or before March 29, 2013, this offer shall be deemed withdrawn.

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

30. RADON: 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.

31. ESCROW: Any escrow agent ("Agent") receiving funds or equivalent is authorized to hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to 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, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the court having jurisdiction of the dispute. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously deducted out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 473, F.L., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in 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 be paid from and out of the escrowed funds equivalent and charged and awarded as court costs in favor of the prevailing party. The Agent shall not be liable to any party or person for misdelivery to Buyer or Seller of the items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent. Escrow Agent may resign upon 30 days' written notice to Seller and Buyer. If a successor escrow agent is not appointed jointly by Seller and Buyer within the 30-day period, Escrow Agent may petition a court of competent jurisdiction to name a successor.

32. PERSONS BOUND; NOTICE: This Contract shall bind and benefit the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include

all. Notice given by or to the attorney for any party shall be as effective as if given by or to that party.

33. COUNTERPARTS/FACSIMILE SIGNATURES. This Agreement may be executed in several counterparts, all of which taken together shall constitute the entire agreement between the Parties hereto. Facsimile signatures shall have the same effect as original signatures.

34. FAILURE OF PERFORMANCE. If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for the execution of this Contract and in full settlement of any claim; whereupon, Buyer and Seller shall be relieved of all obligations under this Contract. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this contract, any condition precedent herein, or otherwise defaults, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) hereby, saving all actions for damages resulting from Seller's breach.

35. INSURANCE COVERAGE. Should Buyer be unable to obtain Building, Wind or Flood insurance at a reasonable rate due to storm or extreme weather conditions that prohibit the issuance of such insurance, Buyer may delay the Closing for up to 3 days after such coverage becomes available.

36. CONDITION TO CLOSING. The obligation of Seller hereunder and to take those actions required of it at closing shall be subject to Seller's lender approving this sale and agreeing to release the Property from the lien of its current mortgage.

37. DOCUMENTS TO BE DELIVERED PRIOR TO CLOSING. Seller shall deliver, within 1 day from the Effective Date, to Buyer the following documents to the extent they exist and are in the possession of Seller:

- a. Certified current and accumulated rents.
- b. The most recent title policy and survey of the property.
- c. Copies of all tenant leases relating to the property, and all documents affecting tenancy.
- d. Copies of actual financial income and expenses.
- e. Copies of the most recent tax bills.
- f. Copies of the most recent utility bills.
- g. Insurance declaration and statements.
- h. Copies of all service contracts.
- i. Copies of Certificates of Occupancy and other documents indicating compliance with all applicable governmental requirements, as available.
- j. Compliance with all applicable governmental requirements.
- k. A list of staff, payroll and payroll benefits.
- l. Seller shall provide final environmental and engineering reports. It is understood that Seller makes no representations in connection therewith.
- m. Copies of financial statements, tax returns, leases, clearing the title and repair bills.

IN WITNESS WHEREOF, the parties have set their hands and seals to this instrument on the dates so written below.

Buyer:

Seller:

By: Florida Holding 4800, LLC
By: Harry Dorville, Manager

Date: 3/21/2013

By: Lauderhill Hall Investments, LLC
By: Yossef Isak, Manager

Date: 3-26-2013

EXHIBIT A

Tract A, of L.O.B. Plat, according to the plat thereof, as recorded in Plat Book 75, Page 24, Public Records
of Broward County, Florida.

Charlie Bennardini

From: Charlie Bennardini
Sent: Friday, August 23, 2019 8:19 AM
To: 'Harry Dorvilier'
Cc: 'Robert J. Hauser'; Jennifer Mannon; Steven Katzman
Subject: FW: SERVICE OF COURT DOCUMENT CASE NUMBER 062016CA012986AXXXCE LAUDERHILL LENDING, LLC VS SOUTH FLORIDA REGIONAL PLANNIN
Attachments: Motion For Summary Final Judgment.pdf; Notice.pdf

Good morning, Harry. Attached please find LMI's motion for summary judgment. Please read it. This Motion is the reason that I strongly recommended that Florida Holding drop all counts and claims related to the Lauderhill Ordinance. We need to drop these claims as soon as possible to avoid further attorneys' fees to which LMI may be entitled as the prevailing party. We need to drop the claims well before a hearing on the Motion. For reference of our prior communications on this subject, please see:

1. My letter to you of 7/24/2019;
2. My email to you of July 26, 2019;
3. Rob Hauser's email to you of August 14, 2019;
4. My emails to you on August 16, 2019; and
5. My email to you on August 21, 2019.

You and I discussed these issues by telephone as recently as Monday, August 19, 2019. I left you a voicemail yesterday. Please call me today.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax
Email: cjb@kwblaw.com

From: eservice@myflcourtaccess.com [mailto:eservice@myflcourtaccess.com]
Sent: Thursday, August 22, 2019 4:11 PM
Subject: SERVICE OF COURT DOCUMENT CASE NUMBER 062016CA012986AXXXCE LAUDERHILL LENDING, LLC VS SOUTH FLORIDA REGIONAL PLANNIN

Notice of Service of Court Documents

Filing Information

Filing #: 94631610
Filing Time: 08/22/2019 04:10:29 PM ET
Filer: Glenn L. Widom 305-663-8870



Court: Seventeenth Judicial Circuit in and for Broward County, Florida
Case #: 062016CA012986AXXXCE
Court Case #: CACE-16-012986
Case Style: LAUDERHILL LENDING, LLC VS SOUTH FLORIDA REGIONAL PLANNIN

Documents

Title	File
Motion For Summary Final Judgment	2019_08_22 LMI's Motion for Summary Final
Notice	2019_08_22 LMI's Notice Pursuant to Chapter

E-service recipients selected for service:

Name	Email Address
Brian J Sherman	kezrol@cityatty.com
	bsherman@cityatty.com
	mclyman@cityatty.com
Charles Bennardini	cjb@kwblaw.com
	jam@kwblaw.com
Steven M. Katzman	smk@kwblaw.com
	mrm@kwblaw.com
Glenn L. Widom	gwidom@gwidomlaw.com
	eservice@gwidomlaw.com
Robert A Brandt	robert@attorneybrandt.com
	yillian@attorneybrandt.com
Robert J Hauser	courtfilings@phflorida.com
	hauser@phflorida.com
	kerry@phflorida.com
Scott A Weires	sweires@murdochweires.com
	jliotta@murdochweires.com
N/A	mclyman@cityatty.com

E-service recipients not selected for service:

Name	Email Address
No Matching Entries	

This is an automatic email message generated by the Florida Courts E-Filing Portal. This email address does not receive email.

Thank you,
The Florida Courts E-Filing Portal

request_id#:94631610;Audit#:318289586;UCN#:062016CA012986AXXXCE;

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

LAUDERHILL LENDING, LLC,
a Florida Limited Liability Company;

CASE NO.: CACE-16-012986

Plaintiff,

vs.

FLORIDA HOLDING 4800 LLC., a Florida limited liability company; SOUTH FLORIDA REGIONAL PLANNING COUNCIL, a Florida body corporate and politic; and UNKNOWN TENANT(S) IN POSSESSION;

Defendants.

vs.

LAUDERHILL MALL INVESTMENTS, LLC

Third-Party Defendant.

/

THIRD-PARTY DEFENDANT LMI'S MOTION FOR SUMMARY FINAL JUDGMENT

Third Party Defendant LAUDERHILL MALL INVESTMENTS, LLC, a Florida limited liability company ("LMI"), by and through its undersigned counsel and pursuant to Rule 1.510, Fla. R. Civ. P., hereby moves this Court for the entry of Final Summary Judgment against Third-Party Plaintiff FLORIDA HOLDING 4800 LLC., a Florida limited liability company ("FH4800"), as there are no genuine issues of material fact in this cause and that Seller is entitled to a judgment as a matter of law, and as grounds states:

Background

On May 1, 2018, this Court rendered a Summary Final Judgment of Foreclosure, which was affirmed on appeal. On August 16, 2019, the 4th DCA issued its Mandate. The only remaining issues are FH4800's Amended Third-Party Complaint (hereinafter

GLENN L. WIDOM, P.A.
A PROFESSIONAL ASSOCIATION



“ATPC”) that alleges claims for Rescission (Count I), Breach of Contract (Count II), Breach of Implied Covenant of Good Faith and Fair Dealing (Count III), Breach of Implied Contract (Count IV), Fraud (Count V), Fraud in the Inducement (Count VI), Negligent Misrepresentation (Count VII), Negligence (Count VIII), and Unjust Enrichment (Count IX). All of these claims are based upon the allegations that: (a) the existence of a 2009 Ordinance amended, by operation of law, certain leases between LMI and the Broward Sheriff’s Office (“BSO Leases”), thereby violating the warranties contained in the Parties’ Purchase and Sale Agreement (“PSA”); and/or (b) LMI failed to disclose (or actively concealed) certain alleged defects in the Property’s physical condition.

Neither of these conclusory allegations create a genuine issue of material fact preventing summary judgment because, FH4800’s claims regarding the Ordinance and BSO Leases have been conclusively rebutted, and FH4800 waived any claims regarding the Property’s physical condition as the PSA contains an unambiguous “AS IS” provision.

Undisputed Facts¹

1. On or about August 31, 2009, the City Commission of Lauderhill Florida passed Ordinance No. 09O-07-133 (“Ordinance”). See August 22, 2019 Notice pursuant to Chapter 90.201, et. sec.; see also Affidavit of Jorge De La Rosa attached hereto as Exhibit “A”.

2. Section 4 of the Ordinance confirms that “...any existing correctional or judicial facility within the Community Commercial, General Commercial or Community Facility zoning districts may continue to operate as a legal non-conforming use until August 31, 2015”. Ordinance ¶4 (Emphasis added).

¹ See Affidavit of Jorge De La Rosa filed in support of this Motion.

3. On or about March 20, 2012, LMI purchased the Property and, thereafter, became the owner of the BSO Leases and the beneficiary of their income stream. ATPC ¶8.

4. On or about March 26, 2013, LMI and FH4800 entered into the PSA, a true and correct copy of which is attached to FH4800's ATPC as Exhibit 'A'. ATPC ¶9.

5. On April 16, 2013, April 30, 2013 and May 15, 2013, LMI and FH4800 entered into the First, Second and Third Amendments to the PSA, respectively. De La Rosa Affidavit ¶8.

6. The Broward Sheriff's Office's ("BSO") executed an Estoppel Letter confirming its intention to continue its tenancy through the expiration of the BSO Leases on August 31, 2015. Affidavit of David Scharf ¶3 & 4.

7. The BSO intended to remain as a tenant at the Property through the expiration of the BSO Leases on August 31, 2015. Affidavit of David Scharf ¶8.

8. Paragraph 11 of the PSA contained an "AS IS" sale clause which provides:

11. "AS IS" SALE. Subject only to the warranties and representations made herein, if any, the Property shall be conveyed in "AS IS" condition with all faults. Seller makes absolutely no warranties, representations or covenants to Buyer whatsoever regarding the Property or the condition or quality thereof, or the fitness thereof for the purposes intended by Buyer or for any other purpose or purposes whatsoever; (ii) Buyer acknowledges that Seller has not investigated and does not warrant or represent to Buyer that the Property is fit for the purpose intended by Buyer or for any other purpose or purposes whatsoever; (iii) Buyer represents that it is purchasing the Property in its "As Is" condition and based solely on Buyer's own inspection, investigation and evaluation; (v) neither Seller nor any agent of Seller has made any representation or warranty, express or implied, oral or written, concerning the Property or which have induced Buyer to execute this Contract; and (vi) any other representations and warranties are expressly disclaimed by Seller.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION,

UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL OR ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT AT THE STATED PURCHASE PRICE BUT FOR PURCHASER'S UNQUALIFIED AND UNCONDITIONAL AGREEMENT TO THE PROVISIONS OF THIS SECTION.

9. FH4800 accomplished its own inspections and due diligence of the Property, prior to closing.

STANDARD FOR SUMMARY JUDGMENT

The summary judgment procedure is intended to improve the administration of justice, and its function is to avoid expensive delay when the material facts are admitted or when a party will not be able to dispute a factual contention by competent evidence.

Baskin v. Griffith, 127 So. 2d 467 (Fla. 1st DCA 1961). Pursuant to Florida Rule of Civil Procedure 1.510(c), the court shall grant summary judgment to the moving party if "the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

A motion for summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Volusia County v. Aberdeem at Ormond Beach, L.P., 760 So. 2d 126, 130 (Fla. 2000). A material fact is one essential to the result that is placed in controversy by the pleadings and affidavits. Wells v. Wilkerson, 391 So. 2d 266 (Fla. 4th DCA 1980). In the context of a Motion for Summary Judgment, the moving party "has the initial burden of demonstrating the nonexistence of any genuine issue of material fact," and once the moving party provides competent evidence to make that showing, the non-moving party "must come forward with counterevidence sufficient to reveal a genuine issue." Valder-rama v. Portfolio Recovery Assocs., LLC, 972 So. 2d 239, 239 (Fla. 3d DCA 2007); see also Dempsey v. Law Firm of Cauthen & Odham, P.A., 781 So. 2d 1141, 1143 (Fla 5th DCA 2001).

ARGUMENT

Summary Judgment is proper as to all of FH4800's causes of action as there exist no genuine issues of material fact to support FH4800's allegations that (a) the existence of a 2009 Ordinance amended, by operation of law, certain leases between LMI and the Broward Sheriff's Office ("BSO Leases"), thereby violating the warranties contained in the Parties' Purchase and Sale Agreement ("PSA"); and/or (b) LMI failed to disclose (or actively concealed) certain alleged defects in the Property's physical condition.

A. Contrary To FH4800's Claims, The Ordinance And Record Evidence Confirm That The BSO Intended To Remain As A Tenant Through August 31, 2015

Contrary to FH4800's claims, throughout this litigation, that the Ordinance terminated the BSO Leases on December 31, 2014, the Ordinance's clear and unambiguous terms actually confirm that it did not go into effect until August 31, 2015. FH4800 apparently was confused by the Commission's minutes (and the Ordinance's 9th "Whereas" clause), which articulates the Commission's conclusion that the Land Development Regulations "...**should be amended...**" to allow facilities to operate until December 31, 2014. However, Section 4 of the **ACTUAL** Ordinance, specifically establishes the deadline for "August 31, 2015". See Exhibit "A".

This August 31, 2015 deadline was identical to the BSO Leases' contractual termination dates. Notwithstanding the Ordinance, the undisputed facts in the record confirm that the BSO intended to remain as a tenant at the Property through the expiration of the BSO Leases on August 31, 2015. Affidavit of David Scharf ¶8.

B. FH4800 Waived Any Claims Regarding The Property's Physical Condition By Accepting The PSA's "AS IS" Clause

Like the Ordinance, there is no genuine issue of material fact regarding FH4800's conclusory allegations that LMI misrepresented and/or actively concealed the Property's physical condition. In Florida, the duty to examine and inspect the property is placed solely upon the buyer. *Transcapital Bank v. Shadowbrook at Vero, LLC*, 226 So. 3d 856 (Fla. 4th DCA 2017). The PSA, affidavits, deposition transcripts and the record confirm that the Parties' PSA contains an "AS IS" clause requiring FH4800 to undertake its own due diligence on the Property and, in fact, FH4800 actually accomplished its own inspections and due diligence on the Property's physical condition prior to closing.

In *Transcapital*, the 4th DCA confirmed that bare allegations of concealment or a fraudulent scheme are insufficient and found that a directed verdict was proper on the buyer's fraud claims. The Court held:

Even if any of the defendants had misrepresented the property's appraised value, such a misrepresentation would not be actionable under the doctrine of caveat emptor in the absence of evidence that the defendants resorted "to some fraudulent means in preventing a prospective purchaser from making an examination of the property under consideration." *Farnham v. Blount*, 152 Fla. 208, 11 So. 2d 785, 790 (Fla. 1942) (citation omitted). The plaintiffs presented no such evidence here.

Like the buyers in *Transcapital*, the PSA confirms that FH4800 had every opportunity to conduct its own examination of the Property; and FH4800 actually accomplished that examination. In paragraph 16 of the PSA, the Parties agreed that FH4800 would "...complete such inspections within 21 days from the Effective Date, (the "Inspection Period"); and that FH4800 would also secure an appraisal within 21 days of the March 26, 2013 signing (by April 16, 2013). (Exhibit "A"). Pursuant to the terms of the First and

Second Amendment, FH4800's Inspection Period was extended for two (2) additional weeks through April 30, 2019. Accordingly, FH4800 enjoyed an Inspection Period from the PSA's execution (Effective Date) of March 26, 2013 through April 30, 2013.

In fact, FH4800 is simultaneously suing Property Consulting Group, Inc., the engineers that FH4800 hired to inspect the Property.² Thus, having negotiated an Inspection Period, extended that Inspection Period, and taken advantage of its Inspection Period, FH4800's conclusory allegations of *active concealment* are not supported by any facts or evidence in the record to support an exception to *caveat emptor* doctrine. *Transcapital*. Accordingly, such allegations fail to raise any genuine issue of material fact that would prevent the entry of summary judgment for LMI.

CONCLUSION

The Amended Third-Party Complaint, Answer and Affirmative Defenses, Depositions, Affidavits, Chapter 90.201 Notices, discovery and other filings of record establish the non-existence of any genuine issue of material fact to support FH4800's causes of action. As a result, LMI is entitled to entry of Summary Judgment as a matter of law against FH4800.

WHEREFORE, Defendant, LAUDERHILL MALL INVESTMENTS, LLC, respectfully requests that the Court enter an Order granting its Motion for Summary Final Judgment, award Defendant, LAUDERHILL MALL INVESTMENTS, LLC its reasonable attorneys' fees and costs pursuant to the Parties' PSA, Promissory Note, Mortgage and other closing documents, along with such other relief this Court deems just and proper.

² *Florida Holding 4800, LLC v. Property Consulting Group, Inc.* – Case No. CACE 17-022936, in the 17th Judicial Circuit in and for Broward County, Florida.

Respectfully submitted,

GLENN L. WIDOM, P.A.
Counsel for Plaintiff
696 N.E. 125th Street
North Miami, FL 33161
Tel: (305) 663-8770
Fax: (786) 206-3820
gwidom@gwidomlaw.com

By: s/ Glenn L. Widom
GLENN L. WIDOM, ESQ.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed and served by e-service on this 22nd day August 2019 upon all counsel of record.

By: s/ Glenn L. Widom
GLENN L. WIDOM, ESQ.

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDALAUDERHILL LENDING, LLC,
a Florida Limited Liability Company;

CASE NO.: CACE-16-012986

Plaintiff,
vs.FLORIDA HOLDING 4800 LLC., a Florida
limited liability company; SOUTH FLORIDA
REGIONAL PLANNING COUNCIL, a Florida
body corporate and politic; and UNKNOWN
TENANT(S) IN POSSESSION;Defendants.
vs.

LAUDERHILL MALL INVESTMENTS, LLC,

Third-Party Defendant.

AFFIDAVIT OF JORGE DE LA ROSA IN SUPPORT OF LMI'S MOTION FOR
SUMMARY JUDGMENTSTATE OF FLORIDA)
) SS:
MIAMI-DADE COUNTY)

BEFORE ME, the undersigned authority, duly authorized to take oath and
acknowledgment in the County and State aforesaid, personally appeared JORGE DE LA
ROSA, who first being duly sworn deposes and states as follows:

1. My name is JORGE DE LA ROSA and I am over the age of 18. The following
Affidavit is based upon my own personal knowledge of the matters contained herein.
2. I am the Senior Property Manager of LAUDERHILL MALL INVESTMENT,
LLC ("LMI").
3. In 2013, LMI sold to FLORIDA HOLDING 4800 LLC ("FH4800") the
commercial office building located at 4200 NW 16th Street, Lauderhill, Florida ("Property"),
which is the subject of this action.
4. On or about August 31, 2009, the City Commission of Lauderhill Florida

passed Ordinance No. 090-07-133, a true and correct copy of which is attached hereto as Exhibit "1" ("Ordinance").

5. Section 4 of the Ordinance confirms that "...any existing correctional or judicial facility within the Community Commercial, General Commercial or Community Facility zoning districts may continue to operate as a legal non-conforming use until August 31, 2015". Ordinance ¶4 (Emphasis added).

6. On or about March 20, 2012, LMI purchased the Property and became the owner of the Property's leases with the Broward Sheriff's Office ("BSO Leases").

7. On or about March 26, 2013, LMI and FH4800 entered into a Purchase and Sale Agreement ("PSA"), a true and correct copy of which is attached to FH4800's Amended Third Party Complaint ("ATPC"), as Exhibit 'A'.

8. On April 16, 2013, April 30, 2013 and May 15, 2013, respectively, LMI and FH4800 entered into the First, Second and Third Amendments to the PSA. The PSA and Amendments are attached hereto as composite Exhibit "2"

9. Paragraph 11 of the PSA contained an "AS IS" sale clause which provides:

11. "AS IS" SALE. Subject only to the warranties and representations made herein, if any, the Property shall be conveyed in "AS IS" condition with all faults. Seller makes absolutely no warranties, representations or covenants to Buyer whatsoever regarding the Property or the condition or quality thereof, or the fitness thereof for the purposes intended by Buyer or for any other purpose or purposes whatsoever; (i) Buyer acknowledges that Seller has not investigated and does not warrant or represent to Buyer that the Property is fit for the purpose intended by Buyer or for any other purpose or purposes whatsoever, (ii) Buyer represents that it is purchasing the Property in its "As Is" condition and based solely on Buyer's own inspection, investigation and evaluation; (v) neither Seller nor any agent of Seller has made any representation or warranty, express or implied, oral or written, concerning the Property or which have induced Buyer to execute this Contract; and (vi) any other representations and warranties are expressly disclaimed by Seller.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION,

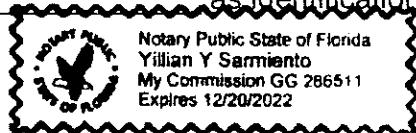
UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL OR ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT AT THE STATED PURCHASE PRICE BUT FOR PURCHASER'S UNQUALIFIED AND UNCONDITIONAL AGREEMENT TO THE PROVISIONS OF THIS SECTION.

FURTHER AFFIANT SAYETH NAUGHT.

JORGE DE LA ROSA

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Sworn to and subscribed before me on this 20 day of August 2019, by JORGE DE LA ROSA () who is personally known to me, or () has produced as identification.



Notary Public, State of Florida
My Commission Expires:

ORDINANCE NO. 090-07-133

AN ORDINANCE OF THE CITY COMMISSION OF LAUDERHILL, FLORIDA AMENDING THE LAND DEVELOPMENT REGULATIONS PERTAINING TO CORRECTIONAL AND JUDICIAL FACILITIES; AMENDING SCHEDULE A., LAND USE CLASSIFICATIONS BY ADDING A LAND USE CLASSIFICATION AND DEFINITION FOR CORRECTIONAL AND JUDICIAL FACILITY; AMENDING SCHEDULE B., PERMITTED AND SPECIAL EXCEPTION USES, BY ADDING CORRECTIONAL AND JUDICIAL FACILITIES AS A LAND USE CATEGORY AND BY ADDING AN ASTERISK IN THE COMMUNITY COMMERCIAL, GENERAL COMMERCIAL AND COMMUNITY FACILITY ZONING DISTRICTS; AMENDING ARTICLE III., ZONING DISTRICTS, PART 5.0., SPECIAL REGULATIONS FOR SPECIFIC LAND USE CLASSIFICATIONS, BY CREATING SECTION 5.13, CORRECTIONAL AND JUDICIAL FACILITIES; ADDING SUBSECTION 5.13.1., PROHIBITED USE; AMORTIZATION AND ALLOWING EXISTING CORRECTIONAL AND JUDICIAL FACILITY USES IN THE COMMUNITY COMMERCIAL, GENERAL COMMERCIAL ZONING AND COMMUNITY FACILITY DISTRICTS TO CONTINUE AS A LEGAL NONCONFORMING USE UNTIL AUGUST 31, 2015; PROVIDING FINDINGS AND CONCLUSIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE (REQUESTED BY COMMISSIONER DALE V.C. HOLNESS)

WHEREAS, the City Commission has adopted a Comprehensive Plan as is required by the Local Government Comprehensive Planning and Land Development Regulation Act (Act), which Comprehensive Plan was subsequently determined to be in-compliance with said Act; and

WHEREAS, Section 163.3202, Florida Statutes, requires each municipality to adopt or amend and enforce land development regulations that are consistent with and implement their adopted comprehensive plan; and

WHEREAS, on June 11th, 1990, the City Commission implement its adopted Comprehensive Plan as is required by Section 163.3202,



Florida Statutes, by adopting the City of Lauderhill Land Development Regulations (LDR); and

WHEREAS, Paragraph 163.3202(2)(b), Florida Statutes, requires the land development regulations contain specific and detailed provisions necessary to regulate the use of land and water for those land use categories included in the land use element and ensure the compatibility of adjacent uses and provide for open spaces; and

WHEREAS, the City Commission finds that the Land Development Regulations do not contain a land use classification or definition for a correctional and judicial facility uses and finds that the Planning and Zoning Department has concluded such facilities are a prohibited use; and

WHEREAS, the City Commission finds that the Planning and Zoning Department has concluded that any correctional and judicial facility operating within the City is an illegal nonconforming use; and

WHEREAS, the City Commission finds that the Broward Sheriff's Office has been operating within the Community Commercial zoning district a correctional facility; and

WHEREAS, the City Commission desires to work cooperatively with the Broward Sheriff's office to allow such use to continue to operate for an additional period of time so that they can appropriately plan for the relocation of the facility; and

WHEREAS, the City Commission concludes that the Land Development Regulations should be amended to allow within the Community Commercial, General Commercial and Community Facility zoning districts the existing correctional and judicial facility to continue operating until December 31st, 2014; and

WHEREAS, at their duly noticed meeting and public hearing of June 30th, 2009, the City's Planning and Zoning Board, sitting as the Local Planning Agency (LPA) entered the Development Review Report on the proposed Ordinance into the record, adopted the findings and conclusions supporting the Ordinance's adoption, and recommended the City Commission adopt the Ordinance and incorporate it into the LDR; and

WHEREAS, at their duly noticed meeting and public hearing of July 13th, 2009, the City Commission considered the record, adopted findings and conclusions, and approved the proposed Ordinance on first reading; and

WHEREAS, at their duly noticed meeting and public hearing of August 31st, 2009, the City Commission on second reading adopted the Ordinance incorporating revisions to the LDR.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF LAUDERHILL, FLORIDA:

SECTION 1. Correctional and judicial facilities defined. Land Development Regulations Schedule A, Land Use Classifications, is hereby amended add a classification, as set forth below.

CORRECTIONAL AND JUDICIAL FACILITIES: A community facility use operated or sponsored or supervised or funded, in whole or in part, by a federal, state or county agency responsible for correctional or judicial services, such as but not limited to, the U.S. Department of Justice, the Florida Department of Corrections, the Florida Department of Juvenile Justice, the Florida Department of Law Enforcement, the Florida Parole Commission, the Florida Judicial Branch, and the Broward County Sheriff. This includes, but is not limited to correctional facilities, detention facilities, probation and parole offices, administrative offices, and courthouses, but does not include the City Police Station.

SECTION 2. Schedule B amended. Land Development Regulations Schedule B., Permitted and Special Exception Uses, is hereby amended to add correctional and judicial facilities and asterisk as a land use category allowable in the Community Commercial, General Commercial and Community Facility zoning districts as set forth in Exhibit 1.

SECTION 3. Special regulations. Land Development Regulations Article III, Zoning Districts, Part 5.0., Special Regulations for Specific Land Use Classifications, is hereby amended by adding Section 5.13., Correctional and judicial facilities, as set forth below.

Sec. 5.13. Correctional and judicial facilities.

SECTION 4. Allowable use. Land Development Regulations Article III, Zoning Districts, Part 5.0., Special Regulations for Specific Land Use Classifications, Section 5.13., Correctional and judicial facilities, is hereby amended by adding Subsection 5.13.1., as set forth below.

1. **Prohibited use; amortization.** A correctional and judicial facility shall be a prohibited use; however, any existing correctional or judicial facility within the Community Commercial, General Commercial or Community Facility zoning districts may continue to operate as a legal non-conforming use until August 31, 2015. Thereafter, the land use shall cease and be abandoned.

SECTION 5. Findings and Conclusions. The Development Review Report prepared by City staff is attached hereto, incorporated herein, and is hereby adopted as the findings of fact and conclusions of law to support the Ordinance amending the Land Development Regulations.

SECTION 6. Conflict. All ordinances or parts of ordinances, all resolutions or parts of resolutions in conflict herewith be and the same are hereby repealed as to the extent of such conflict.

SECTION 7. Codification. The provisions of this Ordinance shall become and be made a part of the City of Lauderdale, Florida Land Development Regulations; sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; and the word "ordinance" may be changed to "article," "part," "section," or other appropriate word.

SECTION 8. Effective Date. This Ordinance shall take effect immediately upon its adoption.

DATED this 31st day of August, 2009.

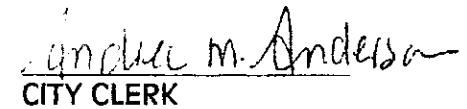
PASSED on first reading this 13th day of July, 2009.

PASSED AND ADOPTED on second reading this 31st day of August, 2009.



PRESIDING OFFICER

ATTEST:



Andrew M. Anderson
CITY CLERK

	FIRST READING	SECOND READING
MOTION	<u>Holness</u>	<u>Holness</u>
SECOND	<u>Bates</u>	<u>Bates</u>
M. BATES	<u>Yes</u>	<u>Yes</u>
H. BENSON	<u>Yes</u>	<u>Yes</u>
H. BERGER	<u>Yes</u>	<u>Yes</u>
D. HOLNESS	<u>Yes</u>	<u>Yes</u>
R. KAPLAN	<u>Yes</u>	<u>Yes</u>

EX-BIT 1
LAND DEVELOPMENT REGULATIONS

Schedule B. Permitted and Special Exception Uses

2. Uses Permitted in Non-residential Districts

Land Use Category	CO-1	CC	CG	CW	IL	CR	S-1	CF	UT	CN
Communication Facilities	P	P	P	P	P	P	P	P	P	
Community Care Facilities (Special Residential Facilities, Category 3)		SE								
Convenience Food Stores		SE	SE							
Correctional and judicial facilities		*	*	*			*	*		
Data Processing and Computer Centers	P	P	P							

Footnotes:

SE = Special exception
P = Permitted use
A = Accessory use

* See Article III., Zoning Districts, Part 5.0., Special Requirements for Specific Land Use Classifications and Structures for additional requirements.

(Ord. No. 93-144, §§ 2, 3, 6-14-93; Ord. No. 93-160, § 2, 1-31-94; Ord. No. 94-124, § 2, 6-27-94; Ord. No. 94-177, § 1, 11-28-94; Ord. No. 94-158, § 2, 2-13-95; Ord. No. 95-115, § 5, 3-27-95; Ord. No. 95-127, § 3, 6-12-95; Ord. No. 95O-155, § 2, 9-26-95; Ord. No. 96O-102, § 2, 2-26-96; Ord. No. 96O-118, § 1, 5-28-96; Ord. No. 96O-134, § 1, 8-26-96; Ord. No. 96O-155, § 1, 11-12-96; Ord. No. 97O-133, § 1, 9-8-97; Ord. No. 97O-9-144, § 1, 9-29-97; Ord. No. 97O-9-152, § 1, 11-10-97; Ord. No. 98O-5-122, § 1, 5-27-98; Ord. No. 99O-1-104, § 1, 1-25-99; Ord. No. 99O-1-105, § 1, 1-25-99; Ord. No. 99O-2-111, § 1, 3-8-99; Ord. No. 99O-4-125, § 1, 5-10-99; Ord. No. 99O-4-126, § 1, 4-26-99)

THIRD ADDENDUM TO CONTRACT FOR PURCHASE

Re: Seller(s): Lauderhill Mall Investments, LLC, a Florida limited liability company
Buyer(s): Florida Holding 4800, LLC
Property: 4200 NW 16th Street, Lauderhill, FL 33313

THIS THIRD ADDENDUM made and entered into as of this 15th day of May, 2013, by and between Lauderhill Mall Investments, LLC, a Florida limited liability company (hereinafter referred to as "Seller"), and Florida Holding 4800, LLC (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, the Seller and Buyer entered into a Contract of Purchase and Sale of the commercial real property located at 4200 NW 16th Street, Lauderhill, FL 33313 ("Ideal Office Building"), with an effective date of March 27, 2013, as previously amended (the "Contract");

WHEREAS, the Buyer and Seller desire to further amend the Contract in certain respects as more particularly set forth below.

NOW THEREFORE, in consideration of \$10.00 and other valuable consideration in hand paid by the Buyer onto the Seller, and in further consideration of mutual terms, covenants contained herein, the parties agree as follows:

1) The above recitals are good, true and correct in all respects and are incorporated herein by reference.

2) Paragraph 5 of the Contract is hereby amended and replaced as follows:

5. CLOSING DATE: Closing shall take place in the county in which the Property is located at a place designated by Seller on or before June 7, 2013.

Addendum supersedes contract: The provisions of this addendum are made a part of the subject Contract and shall supersede, govern and control all contract provisions in conflict therewith. A facsimile ("fax") copy of the Contract or this addendum and any signatures hereon shall be considered for all purposes as originals. This Contract and/or addendum may be executed in several counterparts, each of which shall be construed as an original, but all of which shall constitute one instrument. References herein to "Seller" and "Buyer" shall include singular or plural as context so requires or admits.

Buyer:
Florida Holding 4800, LLC, a Florida limited liability company

Date

5/16/2013

By: Harry Dorvilier, as Manager

Seller:
Lauderhill Mall Investment, LLC, a Florida limited liability company
By: Lauderhill Members, LLC

Date

Rv: Yoram Izhak, its Managing



ADDENDUM TO CONTRACT FOR PURCHASE

Re: Seller(s): **Lauderhill Mall Investments, LLC, a Florida limited liability company**
 Buyer(s): **Florida Holding 4800, LLC**
 Property: **4200 NW 16th Street, Lauderhill, FL 33313**

THIS ADDENDUM made and entered into this 30 day of April, 2013, by and between Lauderhill Mall Investments, LLC, a Florida limited liability company (hereinafter referred to as "Seller"), and Florida Holding 4800, LLC (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, the Seller and Buyer entered into a Contract of Purchase and Sale of the commercial real property located at 4200 NW 16th Street, Lauderhill, FL 33313 ("Ideal Office Building"), with an effective date of March 27, 2013 (the "Contract");

WHEREAS, the Buyer and Seller desire to amend the Contract in certain respects as more particularly set forth below.

NOW THEREFORE, in consideration of \$10,00 and other valuable consideration in hand paid by the Buyer onto the Seller, and in further consideration of mutual terms, covenants contained herein, the parties agree as follows:

1) The above recitals are good, true and correct in all respects and are incorporated herein by reference.

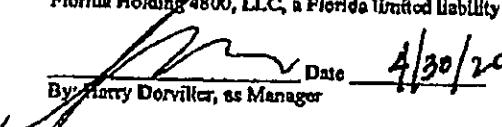
2) The Seller, as the record owner of title of the Shopping Center Parcel and the Ideal Parcel as such terms are defined under that certain Parking and Access Easement Agreement dated April 6, 2010, and recorded in Official Records Book 47008, at Page 259 of the Public Records of Broward County, Florida ("Parking and Easement Agreement"), hereby agrees to amend the Parking and Easement Agreement as follows:

- a. Paragraph 1.4 of the Parking and Easement Agreement shall be amended to reduce the maintenance and repair contribution for the parking areas of \$141,451.94 per year maintenance to \$12,000.00 per year, and payable in monthly installments.
- b. This Amendment shall be in recordable form, and shall be condition to close on the Ideal Office Property.

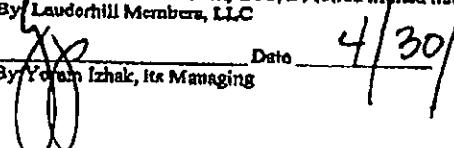
3) The Due Diligence Period, as defined in Paragraph 16 of the Contract, shall be deemed expired upon the execution of this Amendment. Within one (1) business day of the date of execution of this Amendment, Buyer shall pay to the Escrow Agent the Additional Deposit in the amount of \$230,000.00 via wire transfer. The Deposit paid by Buyer shall be nonrefundable except in the event of Seller's default under the Contract.

Addendum supersedes contract: The provisions of this addendum are made a part of the subject Contract and shall supersede, govern and control all contract provisions in conflict therewith. A facsimile ("fax") copy of the Contract or this addendum and any signature hereon shall be considered for all purposes as originals. This Contract and/or addendum may be executed in several counterparts, each of which shall be construed as an original, but all of which shall constitute one instrument. References herein to "Seller" and "Buyer" shall include singular or plural as context so requires or admits.

Buyer:
 Florida Holding 4800, LLC, a Florida limited liability company


 By: Harry Dorviller, as Manager Date 4/30/2013

Seller:
 Lauderhill Mall Investment, LLC, a Florida limited liability company
 By: Lauderhill Members, LLC


 By: Yonah Izak, its Managing Date 4/30/13

ADDENDUM TO CONTRACT FOR PURCHASE

Re: Seller(s): Lauderhill Mall Investments, LLC, a Florida limited liability company
Buyer(s): Florida Holding 4800, LLC
Property: 4200 NW 16th Street, Lauderhill, FL 33313

THIS ADDENDUM made and entered into this 16 day of April, 2013, by and between Lauderhill Mall Investments, LLC, a Florida limited liability company (hereinafter referred to as "Seller"), and Florida Holding 4800, LLC (hereinafter referred to as "Buyer").

WITNESSETH:

WHEREAS, the Seller and Buyer entered into a Contract of Purchase and Sale of the commercial real property located at 4200 NW 16th Street, Lauderhill, FL 33313 ("Ideal Office Building"), with an effective date of March 27, 2013 (the "Contract");

WHEREAS, the Buyer and Seller desire to amend the Contract in certain respects as more particularly set forth below.

NOW THEREFORE, in consideration of \$10.00 and other valuable consideration in hand paid by the Buyer onto the Seller, and in further consideration of mutual terms, covenants contained herein, the parties agree as follows:

1) The above recitals are good, true and correct in all respects and are incorporated herein by reference.

2) Paragraph 16. Inspection: The Buyer and Seller hereby agree to extend the Inspection Period through and including April 29, 2013.

3). Paragraph 15. Financing. This Addendum shall constitute notice to the Seller of the Buyer inability to timely obtain financing within 21 days from the Effective. Accordingly, the Seller hereby agrees to provide the Seller financing according to the terms and conditions set forth in the Contract.

Addendum supersedes contract: The provisions of this addendum are made a part of the subject Contract and shall supersede, govern and control all contract provisions in conflict therewith. A facsimile ("fax") copy of the Contract or this addendum and any signatures hereon shall be considered for all purposes as originals. This Contract and/or addendum may be executed in several counterparts, each of which shall be construed as an original, but all of which shall constitute one instrument. References herein to "Seller" and "Buyer" shall include singular or plural as context so requires or admits.

Buyer:
Florida Holding 4800, LLC, a Florida limited liability company

By: Harry Dorvilier, as Manager

Date

4/16/2013

Seller:
Lauderhill Mall Investment, LLC, a Florida limited liability company
By: Lauderhill Members, LLC

By: Yacem Izbak, its Managing

Date

4/16/2013



CONTRACT OF PURCHASE AND SALE

THIS CONTRACT OF PURCHASE AND SALE, is made and entered into between Lauderhill Mall Investment, LLC, (hereinafter "Seller") and Florida Holding 4800, LLC (hereinafter "Buyer").

1. **SALE OF PROPERTY:** Seller agrees to sell, transfer and convey and Buyer agrees to buy, upon the terms and conditions which follow, the real property located at 4200 NW 16 Street, Lauderhill, Broward County, Florida, under tax folio number 49-41-36-29-0010, legally described within Exhibit A, attached hereto (the "Property").

2. **PERSONAL PROPERTY:** All personal property located within the Property owned by Seller is included in the sale at no additional charge or cost.

3. **PURCHASE PRICE AND PAYMENT TERMS:** The purchase price for the Property shall be the total sum of \$4,250,000.00 which shall be payable by U.S. cash, locally drawn cashiers' or official bank check(s) or wire transfer, subject to adjustments or pro-rations.

AD

~~4,800,000~~ 4. **DEPOSIT:** Buyer shall place a good faith deposit in the amount of \$230,000.00 upon execution of this Contract and an additional deposit in the amount of \$230,000.00 at the expiration of the Inspection Period. All deposits shall be held by Robert Brandt Esq. as escrow agent.



5. **CLOSING DATE:** Closing shall take place in the county in which the Property is located at a place designated by Seller, 30 days from the expiration of the Due Diligence Period. Buyer shall have the right to extend the Closing for up to 14 days if needed to facilitate financing.

6. **CLOSING DOCUMENTS:** Seller shall deliver to Buyer at or prior to closing the following:

- A. Special Warranty Deed, but subject only to matters contained in Paragraph 7 following.
- B. Bill of Sale conveying any personal property.
- C. Affidavit attesting to the absence of liens or potential liens known to seller, gap affidavit, and IRS form 1099 B or such other forms as may be required by the Federal Government from time to time and that there have been no improvements to the Property prior to closing, the cost of which have not been paid.
- D. F.I.R.P.T.A. Affidavits or Exemption Certificates as may be required to exempt seller or any agent from the income tax withholding requirements
- E. Assignment of Leases.
- F. All keys used in connection with the Property, in possession of Seller.
- G. Such other additional documents and instruments as are reasonably necessary to convey, assign and transfer all of Seller's right, title and interest in the Property to Buyer and such other documents reasonably required to consummate the transaction and to satisfy any title insurer.

7. **RESTRICTION AND EASEMENTS:** Buyer shall take title subject only to: (a) zoning restrictions imposed by governmental authority; (b) restrictions and matter appearing on the plat or otherwise common to the subdivision; (c) public utility easements of record, provided said easements are located on the side or rear lines of the property; and (d) taxes for the year of closing.

8. **EVIDENCE OF TITLE:** Seller's shall provide Buyer with a copy of its prior owner's title insurance policy ("Title Evidence"). Buyer shall choose the title agent and may order a title insurance commitment from a title company licensed in the State of Florida, to be in accordance with the standards adopted from time to time by the Florida Bar subject only to liens, encumbrances, exceptions or qualifications set forth in this contract and those which will be discharged by Seller at or before closing. The cost of obtaining such title evidence and the cost of the owner's title insurance policy shall be paid by Buyer. Buyer shall have 15 days from the date the Title Evidence is delivered to Buyer to examine the same and if title is found to be defective, Buyer shall notify Seller in writing specifying the defects within such 15 day period, otherwise Buyer waives any objections and shall accept title "as is". If said defects render the title unmarketable, the Seller shall have 7 days from receipt of such notice to cure the defects and if after said Seller shall not have cured the defects, Buyer shall have the option of either (a) accepting the title "as is"; or (b) demanding refund of all monies paid hereunder which shall forthwith be returned to Buyer and thereupon Buyer and Seller shall be released of all further obligations to each other under the contract however, Seller agrees that he will, if title is found to be unmarketable, use diligent effort to correct the defects in the title within the time limit provided above, but shall not be required to bring any suits.

9. **SURVEY:** Buyer may have the subject property surveyed at its expense during the title review period set forth in Paragraph 8. If the survey shows any defect or encroachment on said property or that the improvements presumed to be located on the subject property in fact encroach upon the lands of others, the same shall be treated as a title defect.

10. **EXPENSES:** State documentary stamps on the deed shall be paid by Seller. Recording of the deed shall be paid by Buyer. Recording of any corrective instrument shall be paid by Seller. Costs and expenses incident to any mortgage shall be paid by Buyer.

11. **"AS IS" SALE.** Subject only to the warranties and representations made herein, if any, the Property shall be conveyed in "AS IS" condition with all faults. Seller makes absolutely no warranties, representations or covenants to Buyer whatsoever regarding the Property or the condition or quality thereof, or the fitness thereof for the purposes intended by Buyer or for any other purpose or purposes whatsoever; (ii) Buyer acknowledges that Seller has not investigated and does not warrant or represent to Buyer that the Property is fit for the purpose intended by Buyer or for any other purpose or purposes whatsoever; (iii) Buyer represents that it is purchasing the Property in its "As Is" condition and based solely on Buyer's own inspection, investigation and evaluation; (v) neither Seller nor any agent of Seller has made any representation or warranty, express or implied, oral or written, concerning the Property or which have induced Buyer to execute this Contract; and (vi) any other representations and warranties are expressly disclaimed by Seller.

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING, IT IS UNDERSTOOD AND AGREED THAT SELLER IS NOT MAKING AND HAS NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESSED OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO HABITABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE (OTHER THAN SELLER'S WARRANTY OF TITLE IN THE DEED), ZONING, TAX CONSEQUENCES, LATENT OR PATENT PHYSICAL OR ENVIRONMENTAL CONDITION,

UTILITIES, OPERATING HISTORY OR PROJECTIONS, VALUATION, GOVERNMENTAL APPROVALS, THE COMPLIANCE OF THE PROPERTY WITH GOVERNMENTAL LAWS, THE TRUTH, ACCURACY OR COMPLETENESS OF THE PROPERTY DOCUMENTS OR ANY OTHER INFORMATION PROVIDED BY OR ON BEHALF OF SELLER TO PURCHASER, OR ANY OTHER MATTER OR THING REGARDING THE PROPERTY. PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PROPERTY "AS IS, WHERE IS, WITH ALL FAULTS", EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT OR IN THE DOCUMENTS DELIVERED BY SELLER AT CLOSING. PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLER IS NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PROPERTY OR RELATING THERETO (INCLUDING SPECIFICALLY, WITHOUT LIMITATION, ANY PROPERTY INFORMATION PACKAGES DISTRIBUTED WITH RESPECT TO THE PROPERTY) MADE OR FURNISHED BY SELLER, THE MANAGER OF THE PROPERTY, OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLER, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, UNLESS SPECIFICALLY SET FORTH IN THIS AGREEMENT. UPON CLOSING, PURCHASER SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY PURCHASER'S INVESTIGATIONS, AND PURCHASER, UPON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S TRUSTEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, MANAGERS, PARTNERS, EMPLOYEES AND AGENTS AND AFFILIATES) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL OR ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PROPERTY. SELLER WOULD NOT HAVE ENTERED INTO THIS AGREEMENT AT THE STATED PURCHASE PRICE BUT FOR PURCHASER'S UNQUALIFIED AND UNCONDITIONAL AGREEMENT TO THE PROVISIONS OF THIS SECTION.

12. PRORATIONS: Taxes, assessments, rent, interest, insurance and other expenses and income of the property shall be prorated through the day of closing. Cash at closing shall be increased or decreased as may be required by prorations. All expenses incident to the property, including without limitation, utilities, water, waste, salaries, and maintenance, which are not prorated and which are accrued or incurred through the date of closing shall be paid for by Seller. Buyer shall receive a credit for any security deposits and pre-paid rent.

13. RISK OF LOSS: If the improvements are damaged by fire or other casualty before the Closing Date or delivery of the deed and can be restored to substantially the same condition as now existing within a period of sixty days (60) days thereafter, Seller may restore the improvements and the closing date and date of delivery of

possession hereafter provided shall be extended accordingly. If Seller fails to do so, Buyer shall have the option of (1) taking the property "as is" together with the insurance proceeds, if any, and a credit for any deductible; or (2) canceling the contract and both parties will be released of any further liabilities hereunder.

14. MAINTENANCE: Between the date of the contract and date of closing, the Property and all personal property thereon shall be maintained by Seller in the condition as it exists as of the date of this contract, ordinary wear and tear excepted and all expenses in connection with said maintenance through the day before the Closing Date shall be paid by Seller.

15. FINANCING: THIS CONTRACT IS NOT SUBJECT TO FINANCING. Buyer agrees to use Buyer's best efforts, at Buyer's expense, to obtain a new first loan in the amount of 40% of the purchase price. If Buyer notifies Seller in writing that Buyer has failed to obtain such a loan within 21 calendar days of the effective date, Seller agrees to provide Buyer the following Seller's financing:

- 1) 1st mortgage loan equal to 4% of the sales price.
- 2) Monthly principal and interest payments based on a 20-year amortization schedule.
- 3) Balloon Payment in year 3 after closing (Maturity Date).
- 4) 5% Interest Rate
- 5) No Prepayment Penalty
- 6) 1% loan origination fee.

HP 3/17/2013

16. INSPECTIONS: Buyer may inspect the property as to tenure, roof, structure, appliances, personal property, plumbing, electrical systems, machinery, environmental matters, suitability and any other matters the Buyer deems appropriate. In the event such inspections of the property are not satisfactory to Buyer in its sole discretion, Buyer may cancel this contract and each party shall be relieved of any further obligations hereof. Buyer to complete such inspection within 21 days from the Effective Date, (the "Inspection Period"). In the event Buyer does not cancel this contract prior to the end of the inspection Period, then, subject to the terms and conditions of this contract, the Buyer shall accept the Property at closing in "As Is" condition. In the event Buyer does timely cancel the contract as provided herein, then Buyer's initial deposit shall be refunded to Buyer. All inspections shall be at the sole cost, expense and risk of the Buyer. Any entry upon the Property shall be made or performed only after obtaining permission from the Seller, during normal business hours, and shall not unreasonably interfere with the activities of any tenant. In no event shall Buyer or Buyer's Representatives, without the prior written consent of Seller make any intrusive physical testing (environmental, structural or otherwise) at the Property (such as: soil borings, water sampling or the like). Buyer shall indemnify and hold Seller harmless from any liability, claim or demand, including attorney's fees, arising out of the acts or negligence of Buyer or its agents, contractors, employees or other parties conducting activities on the Property on behalf of Buyer. Any entry by Buyer onto the Property shall be subject to, and conducted in accordance with, all applicable governmental laws, rules and regulations. Buyer shall promptly restore the Property to the condition that existed prior to Buyer's having made such inspections, studies, or tests. All inspections shall be carried out by duly licensed and insured professionals. Buyer will also seek to get an appraisal within the 21 day Inspection Period. In the event that the appraisal is lower than the purchase price and provided Buyer cancels this contract on or before the end of the inspection period all deposits held in escrow shall be refunded to Buyer.

In the event loan is in default and continues to be in default for a period of 30 days, then the property shall go through the traditional foreclosure process. The mortgage is not held by

*Le applied for and approved by Seller.
These shall be no secondary financing without prior approval.*

17. **REPRESENTATIONS AND WARRANTIES:** Seller represents and warrants, and such representations and warranties shall be true and correct at time of closing, that:

- A. Seller has the power and authority to own the property, enter into this contract, and convey the Property.
- B. The personal property has been lawfully acquired and is fully paid for or is subject only to the mortgages encumbering the property as of the date of this contract.
- C. Seller has not received written notice of any condemnation proceeding or threatened condemnation affecting the Property.
- D. Seller is not a "foreign person" (as defined in Section 1445 of the Internal Revenue Code and regulations thereunder).
- E. That the Property is not subject to any assessments except for current real estate taxes for the year 2012.
- F. The Leases delivered to Buyer are true and correct and have not been modified.

18. **BROKERAGE:** Each party represents and warrants that no other person, or entity brought about this sale and that there are no brokerage fees or commissions payable with respect to this transaction, except Marcus and Millichap who will be paid at closing by Seller. Each party hereto will indemnify and hold harmless the other against any other claim for brokerage and/or other commission relating to this Contract or to the transactions contemplated hereby or as to any assigned leases hereby, based in any way on agreements, arrangement or understandings claimed to have been made by such party with any third party.

19. **ASSIGNMENT:** This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns, in accordance with the terms hereof.

20. **ATTORNEYS FEES:** In the event of litigation between the parties for any matters arising out of this Agreement, the prevailing party of such litigation shall be entitled to recover from the other party reasonable attorneys fees and court costs at all levels.

21. **OTHER EXPENSES:** Except as may be provided herein, Buyer and Seller shall pay their own expenses associated with the performance of and the compliance with this Agreement unless otherwise provided herein.

22. **ENTIRE AND SOLE AGREEMENT:** This Agreement, the exhibits hereto and documents to be delivered at the time of closing constitute the entire and sole Agreement between the parties hereto and supersede all prior agreements and understandings. This Agreement may not be amended or modified except by an instrument of equal dignity.

23. **GOVERNING LAW:** This agreement shall be governed and construed according to the laws of the State of Florida.

24. **WAIVER:** The failure or delay of Seller or Buyer to exercise or enforce any rights, hereunder, shall not operate a waiver of such rights.

25. **CAPTIONS:** Captions of the various sections, of this Agreement are intended to be used solely for

convenience and are not intended and shall not be deemed to modify or aid in the construction of any of the provisions of this Agreement.

26. EFFECTIVE DATE/TIME COMPUTATION: The Effective Date of this agreement shall be the date when the last one of the Buyer and Seller has signed this agreement. All time periods expressed as days will be computed in calendar days. In the event (i) any day for performance is on a Saturday or Sunday or on any nationally recognized holiday or (ii) any time period expires on a Saturday or Sunday or on any nationally recognized holiday, such time period shall be extended to the next following business day. All time periods will end at 5:00 p.m. local time where the Property is located.

27. 1031 EXCHANGE: Seller and Buyer agree to cooperate, at no additional expense to the cooperating party, to facilitate a 1031 exchange if so requested by either party.

28. TIME FOR ACCEPTANCE OF OFFER: If this offer is not executed by both parties on or before March 29, 2013, this offer shall be deemed withdrawn.

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

30. RADON: 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.

31. ESCROW: Any escrow agent ("Agent") receiving funds or equivalent is authorized to hold same in escrow and, subject to clearance, disburse them in accordance with terms and conditions of this Contract. Failure of funds to clear shall not excuse Buyer's performance. If in doubt as to Agent's duties or liabilities under the provisions Contract, Agent may, at Agent's option, continue to hold the subject matter of the escrow until the parties hereto agree to its disbursement or until a judgment of a court of competent jurisdiction shall determine the rights of the parties, or Agent may deposit same with the clerk of the circuit court having jurisdiction of the dispute. Upon notifying all parties concerned of such action, all liability on the part of Agent shall fully terminate, except to the extent of accounting for any items previously delivered out of escrow. If a licensed real estate broker, Agent will comply with provisions of Chapter 475, F.L., as amended. Any suit between Buyer and Seller wherein Agent is made a party because of acting as Agent hereunder, or in 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 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 to any party or person for misdelivery to Buyer or Seller of the items subject to the escrow, unless such misdelivery is due to willful breach of the provisions of this Contract or gross negligence of Agent. Escrow Agent may resign upon 30 days' written notice to Seller and Buyer. If a successor escrow agent is not appointed jointly by Seller and Buyer within the 30-day period, Escrow Agent may petition a court of competent jurisdiction to name a successor.

32. PERSONS BOUND; NOTICE: This Contract shall bind and be sure to the benefit of the parties and their successors in interest. Whenever the context permits, singular shall include plural and one gender shall include

all. Notice given by or to the attorney for any party shall be as effective as if given by or to that party.

33. COUNTERPARTS/FACSIMILE SIGNATURES. This Agreement may be executed in several counterparts, all of which taken together shall constitute the entire agreement between the Parties hereto. Facsimile signatures shall have the same effect as original signatures.

34. FAILURE OF PERFORMANCE. If Buyer fails to perform this Contract within the time specified, including payment of all deposit(s), the deposit(s) paid by Buyer, may be retained by or for the account of Seller as agreed upon liquidated damages, consideration for 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. If for any reason other than failure of Seller to make Seller's title marketable after diligent effort, Seller fails, neglects or refuses to perform this contract, any condition precedent herein, or otherwise defaults, the Buyer may seek specific performance or elect to receive the return of Buyer's deposit(s) hereby waiving all actions for damages resulting from Seller's breach.

35. INSURANCE COVERAGE. Should Buyer be unable to obtain Basic Hazard, Wind or Flood insurance at a reasonable rate due to storm or extreme weather conditions that prohibit the issuance of such insurance, Buyer may delay the Closing for up to 3 days after such coverage becomes available.

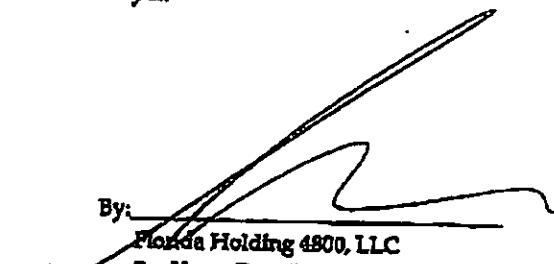
36. CONDITION TO CLOSING: The obligation of Seller hereunder and to take those actions required of it at closing shall be subject to Seller's lender approving this sale and agreeing to release the Property from the lien of its current mortgage.

37. DOCUMENTS TO BE DELIVERED PRIOR TO CLOSING: Seller shall deliver, within 1 day from the Effective Date, to Buyer the following documents to the extent they exist and are in the possession of Seller:

- a. Certified current and accurate rent rolls.
- b. The most recent title policy and survey of the property.
- c. Copies of all tenant leases relating to the property, and all documents affecting tenancy.
- d. Copies of actual historical income and expenses.
- e. Copies of the most recent tax bills.
- f. Copies of the most recent utility bills.
- g. Insurance declaration and statements.
- h. Copies of all service contracts.
- i. Copies of Certificates of Occupancy and other documents indicating compliance with all applicable governmental requirements, as available.
- j. Compliance with all applicable governmental requirements.
- k. A list of staff, payroll and payroll benefits.
- l. Seller shall provide the latest environmental and engineering reports; it is understood that Seller makes no representations in connection therewith.
- m. Copies of financial statements, tax returns, insurance, cleaning, maintenance and repair bills.

IN WITNESS WHEREOF, the parties have set their hands and seals to this instrument on the dates so written below.

Buyer:

By: 
Florida Holding 4900, LLC
By: Harry Dorviller, Manager
Date: 3/21/2013

Seller:

By: 
Lauderhill Mall Investments, LLC
By: Yomam Ichak, Manager
Date: 3-26-2013

EXHIBIT A

Tract A, of L.O.B. Plat, according to the plat thereof, as recorded in Plat Book 75, Page 24, Public Records of Broward County, Florida.

Charlie Bennardini

From: Charlie Bennardini
Sent: Thursday, August 1, 2019 4:32 PM
To: 'Harry Dorvilier'
Cc: 'Robert J. Hauser'
Subject: FW: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

Good afternoon, Harry, we need to discuss the below offer.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax
Email: cjb@kwblaw.com

From: Pataky, Morris [mailto:pataky@litchfieldcavo.com]
Sent: Thursday, August 1, 2019 4:30 PM
To: Charlie Bennardini <cjb@kwblaw.com>
Subject: RE: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

Charlie,
I haven't heard from you regarding the e-mail below, please advise.
Thanks, Morris

Morris D. Pataky
Counsel
Licensed in Florida
D 954.689.3005 | O 954.689.3000 | F 954.689.3001
Pataky@LitchfieldCavo.com

LITCHFIELD
CAVO LLP
ATTORNEYS AT LAW

600 Corporate Drive | Suite 600 | Ft. Lauderdale, FL 33334
LitchfieldCavo.com

From: Pataky, Morris [mailto:pataky@litchfieldcavo.com]
Sent: Friday, July 12, 2019 1:03 PM
To: Charlie Bennardini <cjb@kwblaw.com>
Subject: RE: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

Charlie,
My client has authorized me to offer \$10,000.00 with the understanding we had previously that we will not oppose the deposition of Izhak you are seeking and that the settlement will be perfected after Mr. Izhak's deposition or after the Court precludes his deposition in a protective order.
-Morris



Morris D. Pataky

Counsel

Licensed in Florida

D 954.689.3005 | O 954.689.3000 | F 954.689.3001

Pataky@LitchfieldCavo.com

LITCHFIELD
CAVO LLP
ATTORNEYS AT LAW

600 Corporate Drive | Suite 600 | Ft. Lauderdale, FL 33334

LitchfieldCavo.com

From: Charlie Bennardini [<mailto:cjb@kwblaw.com>]

Sent: Wednesday, July 10, 2019 3:51 PM

To: Pataky, Morris <pataky@litchfieldcavo.com>

Subject: RE: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

I can assure you that for \$5000.00 there will be no settlement.

Charles J. Bennardini, Esq.

Katzman Wasserman Bennardini & Rubinstein, P.A.

7900 Glades Road, Suite 140

Boca Raton, FL 33434

561 477-7774

561 477-7447 fax

Email: cjb@kwblaw.com

From: Pataky, Morris [<mailto:pataky@litchfieldcavo.com>]

Sent: Wednesday, July 10, 2019 3:49 PM

To: Charlie Bennardini <cjb@kwblaw.com>

Subject: RE: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

Of course. Try to let me know about the settlement negotiations this week so I can discuss our position regarding the deposition with my clients.

Morris D. Pataky

Counsel

Licensed in Florida

D 954.689.3005 | O 954.689.3000 | F 954.689.3001

Pataky@LitchfieldCavo.com

LITCHFIELD
CAVO LLP
ATTORNEYS AT LAW

600 Corporate Drive | Suite 600 | Ft. Lauderdale, FL 33334

LitchfieldCavo.com

From: Charlie Bennardini [<mailto:cjb@kwblaw.com>]

Sent: Wednesday, July 10, 2019 3:48 PM

To: Pataky, Morris <pataky@litchfieldcavo.com>

Subject: RE: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

Thanks, Morris I still want to take the deposition of course.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax
Email: cjb@kwblaw.com

From: Pataky, Morris [<mailto:pataky@litchfieldcavo.com>]
Sent: Wednesday, July 10, 2019 3:46 PM
To: Charlie Bennardini <cjb@kwblaw.com>
Subject: RE: Florida Holding 4800 v. Property Consulting Group - Confidential Communication

Charlie,

I had a long talk with my client and adjuster about the settlement proposal. The insured/client has a great deal of sway (more than I thought) and the adjuster only authorized me to offer \$1,000.00 more than was previously offered for a total offer of \$5,000.00 with the understanding we had previously about the settlement being perfected after Mr. Izhak's deposition or after the Court precludes his deposition in a protective order. I will of course relay any counter-offer to my client but I was clearly wrong about their outlook and they are more intractable than I thought they were.
-Morris

Morris D. Pataky

Counsel
Licensed in Florida
D 954.689.3005 | O 954.689.3000 | F 954.689.3001
Pataky@LitchfieldCavo.com

LITCHFIELD
CAVO ATTORNEYS AT LAW LLP

600 Corporate Drive | Suite 600 | Ft. Lauderdale, FL 33334
LitchfieldCavo.com

From: Charlie Bennardini [<mailto:cjb@kwblaw.com>]
Sent: Wednesday, July 10, 2019 3:39 PM
To: Glenn Widom <gwidom@gwidomlaw.com>
Cc: Jennifer Mannon <jam@kwblaw.com>; Robert J. Hauser <hauser@phflorida.com>; Pataky, Morris <pataky@litchfieldcavo.com>
Subject: Florida Holding 4800 v. Property Consulting Group

Good afternoon, Glenn. Please provide a date during the week of July 29 or August 19 for me to take the deposition of Yoram Izhak in the above referenced action. You do not represent a party in the subject action, but please consider this a courtesy email to coordinate scheduling of the deposition.

Charles J. Bennardini, Esq.
Katzman Wasserman Bennardini & Rubinstein, P.A.
7900 Glades Road, Suite 140
Boca Raton, FL 33434
561 477-7774
561 477-7447 fax
Email: cjb@kwblaw.com

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IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-17-022936

FLORIDA HOLDING 4800 LLC., a Florida
limited liability company,

Plaintiff,
vs.
PROPERTY CONSULTING GROUP, INC.
Defendant.

**YORAM IZHAK's MOTION TO QUASH PLAINTIFF'S SUBPOENA, FOR
ENTRY OF A PROTECTIVE ORDER, AND FOR AN AWARD OF EXPENSES**

Non-Party, YORAM IZHAK ("Mr. Izhak"), by and through undersigned counsel and pursuant to the Fla. R. Civ. P., moves for a protective order and to quash Defendant FLORIDA HOLDING 4800 LLC's ("FH4800") July 12, 2019 Subpoena For Deposition ("Subpoena"), and states:

SUMMARY OF ARGUMENT

A Protective Order should be granted as FH4800's Subpoena for Mr. Izhak's deposition is a transparent attempt at forum shopping to avoid a Protective Order already entered against FH4800 in a related case. On May 17, 2019, the Honorable Judge Raag Singhal entered a Protective Order summarily rejecting FH4800's attempts to re-take Mr. Izhak's deposition, regarding the same issues, in *Florida Holding 4800 v. Lauderhill Lending LLC et al.* – Case No.: CACE-16-012986 ("Foreclosure Litigation"). ("Protective Order" attached as **Exhibit "A"**). Moreover, FH4800's Subpoena violates Rules 1.280 and 1.310(b), Fla. R. Civ. P., as the Subpoena interferes with LAUDERHILL MALL



INVESTMENTS, LLC's ("LMI"), right to choose its own Corporate Designee; FH4800 has not sought less intrusive means of discovery; and, Mr. Izhak, individually, has absolutely no relevant testimony that is reasonably calculated to lead to the discovery of admissible evidence in this action.

FACTUAL BACKGROUND

Mr. Izhak is the sole Managing Member of Lauderhill Members, LLC, the corporate Managing Member of LMI. In 2013, LMI sold to FH4800 the commercial office building located at 4200 NW 16th Street, Lauderhill, Florida ("Property"), which is the subject of both this action and the Foreclosure Litigation. After LMI and FH4800 signed a Purchase and Sale Agreement ("PSA") for the Property, FH4800 hired Defendant PROPERTY CONSULTING GROUP, INC. ("PCG"), to inspect the Property pursuant to FH4800's contractual rights to due diligence under its PSA with LMI. In pertinent part, this action relates to FH4800's claims that PCG failed to discover certain alleged defects in the Property's physical condition.

Similarly, FH4800 is pursuing a Third-Party Complaint against LMI relating, in pertinent part, to these same alleged defects in the Property's physical condition ("Foreclosure Litigation"). Other than FH4800's Third-Party Complaint, the Foreclosure Litigation *against FH4800* has concluded and Judge Singhal's foreclosure judgment (and the Property's foreclosure sale) was recently affirmed on appeal, with a Mandate issuing on August 16, 2019.¹

¹ Florida Holding 4800 v. Lauderhill Lending, LLC et al. – Case No. 4D18-1948.

Here, FH4800's Complaint against PCG does not allege that LMI or Mr. Izhak were involved in FH4800's selection of PCG, the hiring of PCG, or contract negotiations with PCG. Mr. Izhak never spoke with FH4800 about its inspection of the Property nor did Mr. Izhak ever speak to any representative of PCG, provide PCG with access to the Property, nor was LMI or Mr. Izhak involved in the scope or performance of PCG's services or the preparation of PCG's Report on FH4800's behalf. (See Affidavit of Mr. Izhak attached hereto as **Exhibit "B"**).

FH4800's only allegation relating to LMI (there are no allegations against Mr. Izhak) is that the PCG's Report states that "...PCG conducted a document review and interviewed the then-current property owner/manager to inquire about and review "historical repairs and replacements and their costs, level of preventative maintenance exercise, pending repairs and improvements, frequency of repairs and replacements, and existence of ongoing or pending litigation relating to subject property's physical condition." Report at Page 3". FH4800 Complaint ¶20. (Emphasis added). Notwithstanding FH4800's allegation, on information and belief, no discovery to date has suggested that PCG communicated with Mr. Izhak about the Property or any other matter.

Notably, before issuing its Subpoena, FH4800 has not sought any other alternate or less intrusive discovery from LMI in this action including, but not limited to, a deposition of LMI's *Corporate Designee* with knowledge of PCG's Report, PCG's communications with LMI, PCG's inspection, or the facts alleged in FH4800's Complaint.

FH4800's SUBPOENA

On July 12, 2019, FH4800 issued its Subpoena for the deposition of Mr. Izhak. (Copy attached hereto as Exhibit "C"). This Subpoena should be quashed for the following reasons:

A. HARRASSMENT AND OPPRESSIVE

Pursuant to Rule 1.280, Fla. R. Civ. P., this Court has the authority to protect Mr. Izhak from a Subpoena that would cause annoyance, embarrassment, oppression or undue burden or expense. Here, Judge Singhal's May 17, 2019 Protective Order confirms his finding that FH4800's attempt to retake Mr. Izhak's deposition in the Foreclosure Litigation was improper. Thus, FH4800's attempt to circumvent Judge Singhal's Protective Order by, only weeks later, issuing its July 12, 2019 Subpoena in this action, should be summarily rejected. Having previously taken the depositions of Mr. Izhak and two (2) of LMI's Corporate Designees, it is evident that the sole purpose of FH4800's Subpoena is either to harass Mr. Izhak; or represents a desperate attempt to secure discovery that FH4800 is dissatisfied with in the Foreclosure Litigation.

Parties are not entitled to simply re-take a corporate representatives' depositions when the whim arrives. This is especially true where, as here, the Court has already considered and ruled on this issue – by its Protective Order. After Mr. Segrera's deposition, FH4800 was granted a second opportunity to secure the information it required – but chose to ignore the Court's instructions and sacrifice that opportunity. As the principal officer at LMI responsible for the sale, Mr. Segrera properly answered the great majority of the questions posed by FH4800's counsel. In approximately 20 circumstances, Mr. Segrera responded "I don't know" to questions relating, in pertinent

part, to the maintenance of the Property, complaints from tenants about the Property's condition, etc. As a result, the Court issued an Order specifically limiting FH4800's right to a second Corporate Designee deposition to ask these questions (again where Mr. Segrera's testified "I don't know"). On February 13th, pursuant to the Court's instructions, LMI produced Yoram Lerner, LMI's onsite Property Manager since 2012. However, instead of asking about the permitted topics, as the Court allowed, FH4800's counsel spent two (2) hours asking Mr. Lerner questions that had already been asked and answered by Mr. Segrera. As a result, the Protective Order was issued to prevent FH4800's efforts to retake Mr. Izhak's deposition.²

B. FH4800 UNILATERAL APPOINTMENT OF CORPORATE DESIGNEE

In addition to the reasons stated above, FH4800's Subpoena violates Rules 1.310(b)(6) and 1.280, Fla. R. Civ. P. A corporation has the sole responsibility for choosing its corporate representative. Here, FH4800 has attempted to prevent LMI from choosing its own corporate designee by simply serving a Subpoena upon Mr. Izhak, individually. While the *apex doctrine* has not been generally recognized in Florida, the principals of this doctrine have been acknowledged by the District Courts as useful in examining the annoyance, embarrassment, oppression or undue burden or expense – that can be prevented by the entry of a protective order under Rule 1.280(c), Fla. R. Civ. P., *Citigroup Inc. v. Holtsberg*, 915 So.2d 1265 (Fla. 4th DCA 2005).

² In addition to its deposition of Mr. Segrera, Mr. Lerner and Mr. Izhak, FH4800 took the deposition of LMI's Real Estate Broker (Benjamin Silver of Marcus & Millichap), who was the primary representative for LMI during the sale. FH4800 took the deposition of Mr. Silver and Mr. Izhak on June 1, 2017 and February 20, 2018, respectively.

Here, Mr. Izhak's attached Affidavit confirms his lack of any relevant information to this action – nor any information that would lead to the discovery of admissible evidence. Moreover, FH4800's attempts to go around Judge Singhal's Protective Order and FH4800's failure to seek any alternate discovery from LMI illustrates FH4800's bad faith.

MEMORANDUM OF LAW

Florida Rule of Civil Procedure 1.280(c) provides that the Court may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense including ... (2) that the discovery may be had only on specified terms and conditions, including a designation of the time and place " FLA. R. CIV. P. 1.280(c). The Court should order that the deposition of Mr. Izhak that FH4800 has currently scheduled for September 3, 2019 be prohibited or, in the alternative, be postponed until the proper scope of discovery is determined; and its location in Miami-Dade County be altered for the witness' convenience.

FH4800 is not permitted to designate LMI's Corporate Designee. Rule 1.310(b)(6), Fla. R. Civ. P. , clearly provides: "The organization so named shall designate one or more officers, directors, or managing agents, or other persons who consent to do so, to testify on its behalf and may state the matters on which each person designated will testify." Accordingly, even if the Court permits a Corporate Designee deposition, FH4800 must not be permitted to make the designation. In fact, FH4800's insistence that *MR. IZHAK* be produced is a not-so veiled attempt to simply *RETAKE* Mr. Izhak's deposition for a *SECOND* Time – that would otherwise be prohibited.

Finally, after failing to comply with Judge Singhal' Protective Order, FH4800 must be sanctioned for its inappropriate actions, and should be required to reimburse LMI for the cost of having its counsel prepare and prosecute this Motion.

WHEREFORE, YORAM IZHAK, Individually, respectfully requests that the Court grant his Motion for Protective Order, Quash FH4800's Subpoena and order that his deposition be prohibited; or in the alternative, that any further depositions be postponed pending this Court's determination that the scope of any depositions be limited to matters strictly relating to the allegations in FH4800's Complaint in this matter. Moreover, if the Court does permit a deposition to proceed, it should require FH4800 to first take a Corporate Designee deposition, the Court should prohibit FH4800 from designating LMI's Corporate Designee and should require that any deposition proceed in Miami-Dade County, along with such other and further relief as this Court deems proper.

Respectfully submitted,

GLENN L. WIDOM, P.A.
Attorneys for YORAM IZHAK
696 N.E. 125th Street
North Miami, FL 33161
Phone: (305) 663-8770
Fax: (786) 206-3820

By: s/s Glenn L. Widom
GLENN L. WIDOM, ESQ.
Fla. Bar No. 024775

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 21, 2019, a true and correct copy of the foregoing was electronically filed and served upon all counsel of record using the Florida Courts E-Filing Portal.

By: s/s Glenn L. Widom
GLENN L. WIDOM

GLENN L. WIDOM, P.A.
A PROFESSIONAL ASSOCIATION

IN THE CIRCUIT COURT OF THE 17th
JUDICIAL CIRCUIT COURT IN AND
FOR BROWARD COUNTY, FLORIDA

LAUDERHILL LENDING, LLC, a Florida
Limited Liability Company.

CASE NO: CACE-16-012986

Plaintiff,
vs.

FH4800 4800, LLC, a Florida
Limited Liability Company; SOUTH FLORIDA
REGIONAL PLANNING COUNCIL, a Florida
Body corporate and politic; et al.,

Defendants.

FH4800 4800, LLC, a Florida
Limited Liability Company,

Third Party Plaintiff,
vs.

LAUDERHILL MALL INVESTMENT, LLC,
a Florida Limited Liability Company,

Third-Party Defendant,

**ORDER ON THIRD-PARTY DEFENDANT, LAUDERHILL MALL INVESTMENT, LLC's
MOTION FOR PROTECTIVE ORDER WITH REGARD TO THE THIRD DEPOSITION
OF ITS CORPORATE DESIGNEE, AND MOTION FOR AWARD OF EXPENSES**

THIS CAUSE came before the Court on Third-Party Defendant, Lauderhill Mall Investment, LLC's ("LMI") Motion for Protective Order with Regard to the Third Deposition of its Corporate Designee, and Motion for Award of Expenses. The court conducted a hearing on or about 16 April



2019, and has reviewed all pleadings regarding that hearing.

Having considered the arguments and deposition transcripts, it is hereby:

ORDERED AND ADJUDGED as follows:

The Motion for Protective Order is GRANTED.

DONE AND ORDERED in chambers in Fort Lauderdale, Florida this 17th day of May, 2018.

THE HONORABLE RAAG SINGHAL
CIRCUIT COURT JUDGE

RAAG SINGHAL
Circuit Court Judge

MAY 17 2019

Copies furnished to:

Charles J. Bennardini, Esq. (cjb@kwblaw.com, jam@kwblaw.com)
Glenn L. Widom, Esq. (gwidom@gwidomlaw.com)
Robert J. Hauser, Esq. (hauser@phflorida.com)

A TRUE COPY

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CASE NO.: CACE-17-022936

FLORIDA HOLDING 4800 LLC., a Florida
limited liability company,

Plaintiff,
vs.

PROPERTY CONSULTING GROUP, INC.

Defendant.

AFFIDAVIT OF YORAM IZHAK

STATE OF FLORIDA)
) SS:
MIAMI-DADE COUNTY)

BEFORE ME, the undersigned authority, duly authorized to take oath and
acknowledgment in the County and State aforesaid, personally appeared YORAM IZHAK,
who first being duly sworn deposes and states as follows:

1. My name is YORAM IZHAK and I am over the age of 18. The following
Affidavit is based upon my own personal knowledge of the matters contained herein.
2. I am the sole managing Member of LAUDERHILL MEMBERS, LLC, the
Managing Member of LAUDERHILL MALL INVESTMENT, LLC ("LMI").
3. In 2013, LMI sold to FLORIDA HOLDING 4800 LLC ("FH4800") the
commercial office building located at 4200 NW 16th Street, Lauderhill, Florida ("Property"),
which is the subject of the Foreclosure Litigation captioned *Florida Holding 4800 v.*
Lauderhill Lending LLC et al. – Case No.: CACE-16-012986.



4. I have reviewed the Complaint filed by Plaintiff FLORIDA HOLDING 4800, LLC in this action that, in pertinent part, relates to FH4800's claims that PROPERTY CONSULTING GROUP, INC. ("PCG"), failed to discover certain alleged defects in the Property's physical condition.

5. I have no knowledge or information regarding the Property's physical condition in 2013.

6. FH4800 was obligated under the Parties' Purchase and Sale Agreement to conduct its own due diligence of the Property including, but not limited to, the Property's physical condition.

7. I have no knowledge about nor was I involved in FH4800's hiring of PCG.

8. I have no knowledge about nor was I involved in FH4800's contract negotiations with PCG.

9. I was not involved in determining the scope of PCG's services or PCG's performance of any services.

10. I have no knowledge about nor was I involved in any services performed by PCG on FH4800's behalf.

11. I have never spoken with FH4800 about its or PCG's inspection of the Property.

12. I have never spoken to any representative of PCG.

13. I was not asked to provide PCG with access to the Property, nor was I directly involved. If PCG was provided access or information about the Property, that may have been accomplished by LMI's Real Estate Broker, Marcus & Millichap.

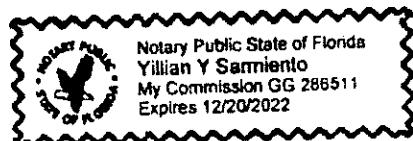
14. I was not involved in the preparation of PCG's Report on FH4800's behalf.
15. Other than the Property's existence and that the Property was more than 90% leased when LMI entered into the Purchase and Sale Agreement with FH4800, I have absolutely no information about FH4800's due diligence or its dealings with PCG.

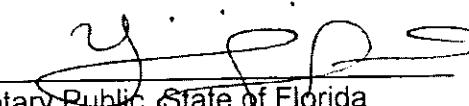
FURTHER AFFIANT SAYETH NAUGHT.

YORAM IZHAK

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

Sworn to and subscribed before me on this 21 day of August 2019, by YORAM IZHAK (✓) who is personally known to me, or () has produced _____ as identification.




Notary Public, State of Florida
My Commission Expires:

5B X244
5.50P 8/1/19

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

FLORIDA HOLDING 4800, LLC,

CASE NO.: CACE 17-022936

Plaintiff,

vs.

PROPERTY CONSULTING GROUP, INC.,

Defendant.

SUBPOENA FOR DEPOSITION

THE STATE OF FLORIDA:

TO: Yoram Izhak
230 Bal Bay Drive
Bal Harbor, FL 33154

YOU ARE COMMANDED to appear before a person authorized by law to take depositions at U.S. Legal Support 21500 Biscayne Boulevard, Suite 501, Aventura, FL 33180, 305.937.3880 on August 22, 2019 at 9:30 a.m., for the taking of your deposition in this action. If you fail to appear, you may be in contempt of court.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the court, you must respond to this subpoena as directed.



Florida Holding 4800, LLC v. Property Consulting Group, Inc.
Case No. CACE 17-022936
Subpoena for Deposition of Yoram Izhak

DATED this 12 day of July, 2019.

KATZMAN WASSERMAN
BENNARDINI & RUBINSTEIN, P.A.
Counsel for Plaintiff
7900 Glades Road, Suite 140
Boca Raton, Florida 33434
Tel.: (561) 477-7774
Fax: (561) 477-7447

By: 

CHARLES J. BENNARDINI
Fla. Bar No.: 694241
cjb@kwblaw.com, jam@kwblaw.com

If you are a person with a disability who needs any accommodation in order to participate in this deposition, you are entitled, at no cost to you, to the provision of certain assistance. Please contact Charles J. Bennardini, Esq., Katzman, Wasserman, Bennardini & Rubinstein, P.A., 7900 Glades Rd., Ste. 140, Boca Raton, FL 33434, (561) 477-7774 at least 7 days before your scheduled deposition, or immediately upon receiving this notification if the time before the scheduled appearance is less than 7 days; if you are hearing or voice impaired, call 711.

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

FLORIDA HOLDING 4800, LLC,

CASE NO. CACE-17-022936

Plaintiff,

v.

Property Consulting Group, Inc.,

Defendant.

/

**PLAINTIFF'S RESPONSE TO NON-PARTY YORAM IZHAK'S MOTION
TO QUASH SUBPOENA AND MOTION FOR PROTECTIVE ORDER**

Plaintiff Florida Holding 4800, LLC (“Florida Holding”) responds to non-party witness Yoram Izhak’s “Motion to Quash Subpoena, for Entry of a Protective Order, and for an Award of Expenses” filed on August 21, 2019 (the “Motion”) and states:

INTRODUCTION

This is an action for breach of a professional services contract.¹ It is not set for trial. As explained below, the deposition of non-party Yoram Izhak (“Izhak”) in this action is for discovery purposes in this action. It is **not** forum shopping to avoid a protective order issued by another division of this Court. It is not an effort to “re-take” Izhak’s deposition. Izhak’s deposition has not been taken in this action. The testimony sought from Izhak in this action is relevant to the allegations against Defendant Property Consulting Group, Inc. (“PCG”) before this division of this Court which are not the same as the allegations and issues before Judge Singhal.

¹ Florida Holding also has claims for fraud and negligence. These claims are not pertinent to the Motion.



In April 2013, Florida Holding retained PCG to conduct a property condition inspection and assessment of engineering and other needs of a commercial office building in Lauderhill, Florida known as the Ideal Building. The assessment was competed by PCG prior to Florida Holding closing the purchase of the Ideal Building. The seller was non-party Lauderhill Mall Investment, LLC (“LMI”). PCG breached the contract by failing to detect and notify Florida Holding of various material deficiencies in the Ideal Building. Post-closing, numerous deficiencies including HVAC, electrical, roofing, and the presence of mold were discovered. Consequently, Florida Holding filed this action against PCG.

In his affidavit attached to the Motion, Izhak admits that he is the sole managing member of non-party Lauderhill Members, LLC (“Lauderhill Members”). Lauderhill Members and non-party NS Lauderhill LLC (“NS Lauderhill”) are managing members of LMI. LMI, Lauderhill Members and NS Lauderhill are part of a vast network of commercial and business entities owned and/or controlled by Izhak throughout the state of Florida and valued in excess of \$100 million. This vast network includes IMC Property Management and Maintenance, Inc. (“IMC”). IMC is in the business of providing maintenance services to commercial office buildings and other real property customers. Based on information and belief, IMC provided these services at the Ideal Building prior to the sale to Florida Holding. Izhak is the President of IMC.

Pursuant to the contract, PCG was required to conduct site inspections and interviews.

As to interviews, page 3 of the contract states:

An interview with area and present site owner or owners and/or operator or operators and/or tenant or tenants will be conducted so as to identify operations and associated land use activities.

On April 12, 2013, PCG conducted the inspection. PCG's Property Condition Assessment dated April 23, 2013 (the "Report") states on page 3 of 27 that:

PCG requested that the owner or user identify a person or persons knowledgeable of the physical characteristics, maintenance, and repair of the property. If provided, PCG interviewed the property manager or agent of the owner so as to inquire about the subject property's historical repairs and replacements and their costs, level of preventive maintenance exercised, pending repairs and improvements, frequency of repairs and replacements, and existence of ongoing or pending litigation related to subject property's physical condition.

Section 6.0 of the Report is entitled "Limitations and Exclusions." This section does not report any limitations or exclusions caused by LMI's failure to provide the appropriate person(s) to interview.

Paragraphs 20 and 45 of the Complaint allege a breach of the contract by PCG by failing to conduct the required interviews. Florida Holding, of course, must put on evidence of this failure. Izhak is the witness who should have been interviewed by PCG or is the witness who knows who should have been interviewed by PCG. Izhak's affidavit stating that he was not interviewed by PCG is an inadequate substitute for deposition questioning by

Florida Holding 4800, LLC v. Property Consulting Group, Inc.

Case No. CACE-17-022936

Response to Motion to Quash and for Protective Order

Florida Holding's counsel and a deposition transcript. Further, the affidavit contains inadmissible hearsay and cannot be used at trial. A deposition is warranted and authorized by the Florida Rules of Civil Procedure and common law regarding discovery in civil actions.

ARGUMENT

“The Florida Supreme Court has frequently reiterated the importance of broad and liberal discovery rules in our adversary system.” *Thompson v. Wal-Mart Stores, Inc.*, 60 So. 3d 440, 444 (Fla. 3d DCA 2011)(citing, *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 948 (Fla. 2002)). This axiom is particularly true as it applies to depositions. In Florida, as well as state and federal courts throughout the United States, “it is fairly rare that it will be ordered that a deposition not be taken at all.” *The Deltona Corporation v. Bailey*, 336 So. 2d 1163, 1170 (Fla. 1976)(quoting, *Orlando Sports Stadium, Inc. v. Sentinel Star Co.*, 316 So. 2d 607, 610 (Fla. 4th DCA 1975)). “[A] **strong showing** is required before a party will be denied entirely the **right** to take a deposition.” *Id.* (emphasis added). Izhak therefore has the burden of presenting a “strong showing” of “good cause” as to why his deposition should not be taken at all by Florida Holding. *Id.*; *Fla. R. Civ. P.* 1280(c). In the Motion, Izhak has not, and cannot, meet this burden in light of Florida Holding’s entitlement and right to discovery.

The discovery sought by Florida Holding is in good faith and is reasonably calculated to lead to the discovery of admissible evidence. *Fla. R. Civ. P.* 1280(b)(1). Contrary to

Florida Holding 4800, LLC v. Property Consulting Group, Inc.

Case No. CACE-17-022936

Response to Motion to Quash and for Protective Order

Izhak's argument in the Motion, Florida Holding did not subpoena Izhak to appear as a corporate designee of LMI or any other entity. Florida Holding issued a subpoena to Izhak individually and, after he evaded service for almost two weeks, he was served at his home.

Izhak, as a non-party, is brought into this proceeding for Florida Holding to develop and learn his knowledge of the subject matter of the litigation. Here, that knowledge is that Izhak, the President of IMC (the maintenance provider to the Ideal Building) and a person in control of LMI (the Seller), was never contacted by PCG, was not interviewed by PCG, has no knowledge of PCG's inspection, and was not asked by PCG to provide access or information about the property. That testimony supports the allegations in paragraphs 20 and 45 of the Complaint that PCG failed to conduct required interviews. To the extent that Izhak will testify at deposition that he has no knowledge as to the property's physical condition in April 2013, Florida Holding is entitled to test the veracity of such testimony.

In the Motion and without citing to any authority, Izhak moved for "expenses" as a consequence of preparing and filing the Motion. Based on the above argument, the request should be denied. Florida Holding's conduct is in good faith and in compliance with Florida's discovery rules. After reviewing this response and the authorities cited herein, Izhak should withdraw the Motion. If Izhak refuses to withdraw the Motion, this Court should use its inherent authority and attorneys' fees should be awarded to Florida Holding.

Moakley v. Smallwood, 826 So. 2d 221, 226-227 (Fla. 2002).

Florida Holding 4800, LLC v. Property Consulting Group, Inc.
Case No. CACE-17-022936
Response to Motion to Quash and for Protective Order

CONCLUSION

The Motion should be denied and the deposition re-noticed for a time during September 2019. Izhak should be ordered to pay Florida Holding its reasonable attorneys' fees for having to prepare, file and argue this response to the Motion.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail to: Morris D. Pataky, Esq., Litchfield Cavo, LLP, 600 Corporate Drive, Suite 600, Fort Lauderdale, FL 33334, pataky@litchfieldcavo.com; Robert J. Hauser, Esq., Pankauski Hauser PLLC, 415 South Olive Avenue, West Palm Beach, FL 33401, courtfilings@phflorida.com; hauser@phflorida.com; kerry@phflorida.com, and Glenn L. Widom, Esq., Glenn L. Widom, P.A., 696 N.E. 125th Street, North Miami, FL 33161, gwidom@gwidomlaw.com this 26th day of August 2019.

KATZMAN, WASSERMAN,
BENNARDINI & RUBINSTEIN, P.A.
Co-Counsel for Plaintiff
Florida Holding 4800 LLC
Suite 140/Boca Corporate Plaza
7900 Glades Road
Boca Raton, FL 33434
Phone: (561) 477-7774
Fax: (561) 477-7447

By: 

CHARLES J. BENNARDINI, ESQ.
Florida Bar No. 694241
cjb@kwblaw.com
jam@kwblaw.com

Florida:

- Get the mortgage (Yoram has the mortgage with)
Ocean Bank
- Advertising by Broker
- City ordinance: Sheriff can not occupy the building
Because he cannot bring Criminal into
the building. Sheriff used that building
as his office and sue
- After closing: First claims came from Sheriff department
- A women → accusing mold. and refused to pay rent.
~~Then they sue Florida holding and sue~~
- A women → sue Florida holding, Yoram and Sheriff
for mold.