

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

COMERICA BANK, a Texas Banking,
Association,

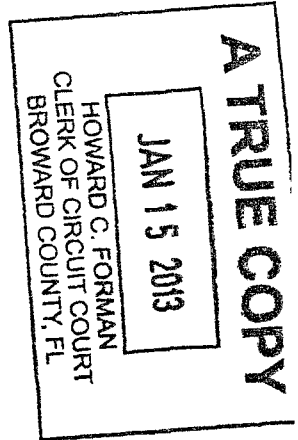
Plaintiff,

Case No.: 11-028447

v.

OCEAN 4660, LLC, a Florida limited
liability company, *et. al.*,

Defendant.



**DEFENDANT OCEANSIDE LAUDERDALE INC'S MOTION TO DISMISS
COMPLAINT FOR LACK OF JURISDICTION OVER THE DEFENDANT, LACK OF
STANDING AND ALTERNATIVE MOTION TO STRIKE THE COMPLAINT
WITH INCORPORATED MEMORANDUM OF LAW**

Defendant, Oceanside Lauderdale, Inc, *Pro Se*, Moves this Honorable Court for an order under Rule 1.130, 1.140(b)(2)(3)(4)(5)(6) and 1.150 of the Florida Rules of Civil Procedure dismissing the complaint for (i) Plaintiff's lack of standing; (ii) insufficiency of process, (iii) improper venue, and (vi) failure to state a cause of action, or alternatively, striking the complaint because it is a sham pleading, and in support thereof states:

I. INTRODUCTION

1. Plaintiff Comerica Bank's Complaint falls far short of its mark. It is fatally procedurally flawed and legally unfounded.

2. In the instant action federal law preempts state law, specifically the Securities Exchange Act and, among other things, the plaintiff by way of contract has set forth that jurisdiction with respect to any suit lies within the United States District Court for the Southern District of New York. A defendant may, at its option, raise any affirmative defense, including the defense of federal preemption, in a motion to dismiss. Boca Burger, Inc. v. Forum, 912 So. 2d 561, 2005 Fla. LEXIS 1449, 30 Fla. Weekly S 649 (Fla. Supreme Court 2005).

APPLICABILITY OF FEDERAL LAW

3. The Plaintiff Comerica Bank and Defendant Ocean 4660, LLC, entered into a Master Swap Agreement which is annexed to the Complaint as Exhibit "A", and incorporated herein by reference. Said instrument specifically sets forth that the Agreement between the parties will be governed by the laws specified in the schedule, to wit; Securities Exchange Act *Id. Master Swap Agreement at page 13, paragraph 13(a)* and, (ii) the Plaintiff submitted to the jurisdiction of the United States District Court with respect to any suit, action or proceeding.

- Background and Facts -

4. Plaintiff commenced this action by filing a summons and complaint on or about November

17, 2011. The Complaint seeks to foreclose on commercial property owned by Defendant Ocean 4660, LLC. Defendant Oceanside Lauderdale, Inc maintains a Federal Common Law Lien and Writ of Attachment upon the subject property that is superior to any *alleged* lien claimed by Plaintiff.

5. Defendant Oceanside Lauderdale, Inc also has a prior pending action against Defendant Ocean 4660, LLC in the Circuit Court of the 17th Judicial District where it seeks to maintain an foreclose an equitable lien, and a constructive trust upon the same real property upon which Plaintiff Comerica Bank seeks to foreclose within this action. Oceanside Lauderdale, Inc. has filed its Lis Pendens prior to the plaintiffs commencement of this action.

6. First, the Plaintiff Comerica Bank lacks standing to maintain this action.

7. Second, Plaintiff Comerica Bank *admits* that it has entered into a *swap agreement* whereby it has exchanged the security for another. As a result, Plaintiff Comerica Bank has altered the status of the ‘ negotiable instrument ‘, and forfeited its right to foreclose upon a negotiable instrument, and its standing to maintain this lawsuit. [Bifurcation has occurred].

8. Third, Plaintiff Comerica Bank has failed to attach *all* the written instruments and contracts for the exchange(s) to the Complaint in violation of Rule 1.130.

9. Fourth, The Summons is otherwise fatally defective because it is not in approved form pursuant to Fla. R. Civ. P. 1900(a) or as approved by the Supreme Court of the State of Florida.

10. Fifth, Plaintiff has converted the “ instrument “ to a security which is no longer subject to enforcement as a negotiable instrument. *See, Fla. Stat. section 673.1021.*

11. Sixth, Plaintiff has failed to join indispensable parties to the action.

12. Seventh, Plaintiff Comerica Bank is not owed a “ debt “ and/or the “ debt ‘ has been satisfied.

13. Eighth, Plaintiff Comerica Bank does not own, hold and/or possess the note. As is evidenced throughout herein. The Complaint fails to sufficiently state that Plaintiff owns both the note and mortgage, therefore, the Complaint fails to state a cause of action for foreclosure and must be dismissed, and (ii) *via* the flawed chain of custody of the note.

14. Ninth, Since Plaintiff has failed to establish a valid chain of custody, and proving that they own, hold and possess the original promissory note, and did so at the time this proceeding was commenced, the Complaint is false and should be stricken or alternatively dismissed. *See, Lizio v. McCullom*, 36 So. 2d 927, (*holding* “ The party seeking to foreclose must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action”. Here, the Plaintiff admits that pursuant to the “swap” agreement it swapped the note for another security. As a result, the “debt” and “security” have been separated. As such, Plaintiff Comerica Bank has no enforceable right against the mortgagor, and lacks standing to foreclose because it is no longer a real party in interest. *See, American Bank of the South v. Rothenberg*, 598 So. 2d 289, n. 2 (5th DCA 1992)(*holding* “ separation of the debt and security results in bifurcation. The holder of the mortgage unaccompanied by the debt has no enforceable right against the mortgagor.”“The holder of the debt alone has no security upon which he can depend for satisfaction thereof”.)

15. Tenth, Defendants' Federal Common Law lien is superior to any lien claimed by Plaintiff.

16. Plaintiff's Complaint fails to allege that Plaintiff owns and holds both the mortgage and note. A prerequisite to bringing and maintaining a foreclosure action. Upon information and belief, a separation of the debt and the security occurred (*bifurcation*). This is true because FAS 140 requires the note to be separated from the mortgage, while the "note" is swapped for another security. The holder of the mortgage unaccompanied by the debt has no enforceable right against the mortgagor. As a result, the holder of the "debt" alone has no security upon which he can depend. Here, plaintiff has no enforceable right against the mortgagor. American Bank of the South v Rothenberg, 598 So. 2d 289 at 290 n. 2 (*stating* " the holder of the mortgage unaccompanied by the debt has no enforceable right against the mortgagor "). As a result, the Plaintiff does not have standing to maintain this foreclosure action and/or is not the real party in interest.

17. Plaintiff has failed to state a cause of action and demonstrate a valid chain of custody of the mortgage note.

18. The Complaint must be dismissed. Failure to dismiss the Complaint, would constitute a denial of Defendant Oceanside's constitutionally guaranteed right to due process of law.

19. Additionally, Plaintiff's complaint must be dismissed pursuant to other grounds set forth herein.

20. Accordingly, Plaintiff's complaint must be dismisseded or alternatively, stricken.

MEMORANDUM OF LAW

II. ARGUMENT

A. PLAINTIFF LACKS STANDING TO BRING THIS ACTION

- i. Plaintiffs Complaint must be dismissed for Lack of Standing to bring this Action.

RULE 1.130. ATTACHING COPY OF CAUSE OF ACTION AND EXHIBITS

(a) Instruments Attached. *All* bonds, notes, bills of exchange, contracts, accounts, or documents upon which action may be brought or defense made, or a copy thereof or a copy of the portions thereof material to the pleadings, shall be incorporated in or attached to the pleading. No papers shall be unnecessary recitals of deeds, documents, contracts, or other instruments.

(b) Part for All Purposes. Any exhibit attached to a pleading shall be considered a part thereof for all purposes. Statements in a pleading may be adopted by reference in a different part of the same pleading, in another pleading, or in any motion. (*Emphasis Added*).

Plaintiff Comerica Bank admits that it has entered into transactions where it has exchanged the security for another through a dealer.

Swap is defined in Black's Law Dictionary as:

“ An exchange of one security for another “

As a result of the ‘ swap ‘ Plaintiff must attach and incorporate the documents that it asserts gives rise to its standing to bring this Action. In this case, all bills of exchange, contracts with the parties with whom the security was swapped, and an accounting of the trades. These are all

essential documents upon which a defense could be made.

Under these circumstances, Plaintiff has not demonstrated any valid chain of custody of the mortgage note, that it has not altered the 'notes' status as a negotiable instrument, that at the time the action was commenced, plaintiff was the holder of the note, among other things. A party seeking foreclosure must present evidence that it owns and holds the note and mortgage in question in order to proceed with a foreclosure action. Verizzo v. Bank of N.Y., 28 So. 3d 976, 978 (Fla. 2d DCA 2010); Philogene v. ABN Amro Mortgage Group Inc., 948 So. 2d 45, 46 (Fla. 4th DCA 2006). Here, there is no evidence to prove that Plaintiff Comerica bank has not exchanged the security for another. Among other defects, the Plaintiff has failed to annex the promissory note to the Complaint.

Where a Defendant denies that the party seeking foreclosure has an ownership interest in the mortgage, the issue of ownership becomes an issue the plaintiff must prove. Carapezza v. Pate, 143 So. 2d 346, 347 (Fla. 3d DCA 1962).

Therefore, as required by Fla. R. Civ. P. 1.130(a), Plaintiff must attach and incorporate all the bills of exchanges, contracts, assignments, promissory note, and other accounting documents into the Complaint.

Its failure to do so renders the Complaint fatally flawed; without such documents, Plaintiff lacks the ability to even assert that it has standing to bring this Action. Plaintiff has failed to attach the promissory note, assignments of note, bills of exchanges, contracts, REMIC trust documents, servicing agreements, and other relevant documents which allegedly gives rise to the Complaint and Plaintiff's standing to bring this lawsuit. Therefore, the Plaintiff has failed to state a cause of action, thus, the complaint must be dismissed. See, Copy of Complaint annexed

hereto as Exhibit “B”, and incorporated herein by reference.

As a result, Plaintiff has failed to demonstrate its standing to bring this lawsuit and the Complaint must be dismissed.

ii. **PLAINTIFF DOES NOT OWN, HOLD OR POSSESS THE MORTGAGE NOTE**

- UNDERSTANDING THE PARTIES IN THE ‘ SWAP ‘ and COMMERCIAL MORTGAGE (SECURITIZATION) TRANSACTION -

In today’s mortgage market, most mortgages are sold or otherwise transferred to another entity shortly after origination. As a result, the mortgage holder frequently will not be the bank or mortgage company that is listed on the note or mortgage (The Plaintiff herein admits this fact). Instead, a majority of loans are securitized. The securitization process involves pooling mortgage loans, transferring these obligations to a trust, and then selling fractional interests in the trust’s pool of mortgages to investors. The relationship of the parties to the securitization is typically governed by a pooling and servicing agreement (PSA). Securitized loans account for roughly 70 to 75 percent of all outstanding commercial mortgages. *See, “ Mortgage Liquidity du Jour: Underestimated No More. ” Credit Suisse, p. 28 (Mar. 13 2007).* (As this Court can see, for this reason alone, the original mortgage note showing its chain of custody on the back side of the note is a requisite to establishing ownership of the “ mortgage note “ in today’s mortgage climate).

The rights to service mortgage loans may be sold or transferred from its agents, independently of the loans themselves. Commonly, the originating lender retains the servicing rights when it sells a mortgage loan. Such a lender would be considered both the originator and servicer, but not the current creditor, or holder, of the loan. In these cases, however, borrowers may never know the ownership of their mortgage loans has changed. (production of the original note, showing the chain of custody, is necessary herein to determine if this *scenario* is present).

“ *Prima facie* is defined in Black’s Law Dictionary as: “ at first sight; on first appearance but subject to further evidence or information; sufficient to establish a fact or raise a presumption.....”

Plaintiff Does Not Own, Hold or Possess Defendants original Mortgage Note

A mortgage note is a “ negotiable instrument “. The Uniform Commercial Code governs negotiable instruments. Specifically, the right for a bank (Plaintiff) to enforce and foreclose on a property is subject to the claimant being a *real party of interest*. Plaintiff is not and cannot be a real party of interest and, therefore, has no standing and/or right to foreclose.

Simply put, there exists evidence and admissions herein that the loan has been sold and/or exchanged for another security. As a result, the Plaintiff is not a real party of interest. Attached to the Complaint is a copy of a “ swap agreement “ under which Plaintiff admits they have exchanged the security for another. Plaintiff has failed to attach the promissory note, assignments, bills of exchange, accounting and other pertinent documents to establish Plaintiff

~~owns, possesses and/or holds said note and mortgage.~~

Plaintiff's Claim to Be the Owner of the Mortgage Must Fail

Plaintiff Comerica Bank claims to be the holder of the Note and Mortgage which are the subject of this lawsuit (foreclosure proceeding). *Id.* paragraph number 23 of the Complaint, Exhibit "B", annexed hereto and incorporated herein by reference. Plaintiff Comerica Bank *claims* it is the holder of the note without demonstrating how, or annexing the promissory note, assignments, trade documents, etc..... to the Complaint.

Only proper assignments, and the chain of custody of the original mortgage note can be admissible evidence of ownership and possession of the mortgage note. Here, none of the above exist. There appears to be a " fraud in the securitization process ". This Court knows, that all changes in ownership of a " mortgage note " must be recorded with the County Clerk to preserve the " chain of custody " of the note and to be valid. No such recordings exist. *Nor* has Plaintiff produced a *valid* mortgage note with the SEC tracking card on its reverse side to establish a valid chain of custody.

As a result, of plaintiff "swapping" the note on the international exchange market for another security, bifurcation has occurred. Simply put, the "debt" and "security" have been separated by the plaintiff. The holder of the mortgage unaccompanied by the debt has no enforceable right against the mortgagor. The holder of the debt alone has no security upon which he can depend for satisfaction thereof. *See, American Bank of the South v. Rothenberg*, 598 So. 2d 289, n. 2 (5th DCA 1992).

Under these circumstances, the Plaintiff Comerica Bank never had " standing " to bring or maintain this lawsuit to foreclose the real property rights.

Plaintiff Is Not the Real Party In Interest. the Owner and Holder of the Note and the Note has been Sold or Otherwise Transferred

Plaintiff has failed and refused to demonstrate and produce a *valid* mortgage note which contains the SEC tracking card with the assignments on its back, and (ii) Plaintiff Comerica Bank admits this note was sold as part of a REMIC trust under a pooling and servicing agreement, therefore, under the law the original note would have had to been destroyed because it was converted into stock, *inter alia*. See, Gramm-Leach-Bliley Act, a/k/a Financial Services Modernization Act of 1999, codified 12 U.S.C. *section* 24a, Pub. L. 106-102 (allowing banks to package and *securitize* their loans onto Wall Street). FAS 140 (Financial Accounting Standards (FAS))(*under FAS 140 not recognizing arm's length sales of securities and sales to one's self*), The Investment Company Act of 1940, Trust Indenture Act of 1939, and the Over the Counter Derivatives Markets Act of 2009 which was created to govern the sale and securitization of a negotiable instrument.

Despite plaintiff's *futile* argument to the contrary, Defendant has rebutted the *prima facie* presumption that plaintiff is the owner of the mortgage note and Plaintiff has already failed to produce the original mortgage note. Under these circumstances, Plaintiff cannot establish its rightful *ownership* of this note without production of the *original* mortgage note evidencing the chain of custody of the note on the back side of the note and, thus, showing its assignment to plaintiff, among other things. All mortgage notes go through the SEC and they have a tracking card for what pool your note was sold in and there will be a bar code and there should be a

CUSIP #. If there is neither of these on the note, then it is a forgery. The requisite SEC tracking numbers must be present for Plaintiff to prove it's ownership of the mortgage note and standing to bring this lawsuit.

Naturally, if Plaintiff cannot and has not, produced the “ original mortgage note “ for this Court they cannot establish the existence of a debt and prove they are owed payments and entitled to foreclose. Thus, the Plaintiff would not have standing to bring this foreclosure action and dismissal would be just and proper. It is essential, that the Court establish the Plaintiffs right to bring suit before the proceedings should be allowed to go any further. The right to payment depends, with limited exception, upon the actual possession of the mortgage note. See, Matter of: Olga D. Paredes, (U.S.D.N.Y.), Civil Action No.: 09-22261, (2009)(Honorable Robert D. Drain, United States Bankruptcy Judge for the Southern District of New York determined that; Production of the original note is paramount to establishing standing to bring a foreclosure, without it the Plaintiffs’ lack the standing to bring the lawsuit and the complaint must be dismissed). The same holds true herein.

Contrary to the Bank’s contentions, it has failed to demonstrate its *prima facie* entitlement to standing and the equitable relief of foreclosure as a matter of law because it did not submit sufficient documentation that it owns the mortgage note. See, Lizio v. McCullom, 36 So. 2d 927, 929 (4th DCA 2010). Plaintiff “ lacks standing to sue “ for several reasons: (a) Plaintiff has not produced an original mortgage note; (b) Plaintiff is not a proper party to this action; (c) Plaintiff must produce an *original* promissory “ Note “ establishing it’s standing to bring suit, (d) Plaintiff or Comerica Bank sold the ‘ note ‘ to a REMIC Trust and the ‘ note ‘ was traded - as “ stock “ on wall street, thus, they are not the “ owner “ of the note, *nor* can they any longer enforce equitable rights to relief such as foreclosure, and (e) among other things.

Plaintiff's Complaint fails to sufficiently and adequately allege that Plaintiff owns and holds both the mortgage and note due to the attachment of the "swap agreement" This is so, because the Exhibits attached to the Complaint control. A prerequisite to bringing and maintaining a foreclosure action. Upon information and belief, a separation of the debt and the security occurred (*bifurcation*). This is true because FAS 140 requires the note to be separated from the mortgage, while the "note" is swapped on the international market in favor of another security. The holder of the mortgage unaccompanied by the debt has no enforceable right against the mortgagor. As a result, the holder of the "debt" alone has no security upon which he can depend. Here, plaintiff has no enforceable right against the mortgagor. American Bank of the South v. Rothenberg. 598 So. 2d 289 at 290 n. 2 (*stating* " the holder of the mortgage unaccompanied by the debt has no enforceable right against the mortgagor ").

Surely, if there is no legitimate underlying " mortgage note ", *i.e.*, an original mortgage note showing the chain of custody, assignments, endorsements and other indicia of ownership the Plaintiff cannot evidence a debt, the right to payment and the right to bring this foreclosure action. Thus, the complaint must be dismissed.

In light of the "swap agreement" and the securitization and chopping up of rights to mortgages, it is essential that this Court require the original mortgage note with the SEC tracking numbers to prove that these plaintiff's actually own this mortgage note.

Alternatively, upon information and belief, the " note " has been "swapped" in favor of another security, therefore, is no longer enforceable as a security instrument and should have been destroyed because " swap agreement " and a " negotiable instrument cannot exist at the same

time under the Securities Exchange Act, codified at 15 USC *section 782, et. seq.*, (ii) the copy of the document (*i.e.* “ note “) does not contain the SEC tracking card with the assignment(s) on its back, and (iii) Plaintiffs’ admit this note was “swapped” for another security, therefore, under the law the original note would have had to been destroyed because it was “ swapped”,thus, the document filed cannot be the original mortgage note.

Plaintiff’s should not be allowed to foreclose without explanation. *See, Gramm-Leach-Bliley Act, a/k/a Financial Services Modernization Act of 1999*, codified 12 U.S.C. *section 24a*, Pub. L. 106-102 (allowing banks to package and *securitize* their loans onto Wall Street). FAS 140 (Financial Accounting Standards (FAS))(*under FAS 140 not recognizing arm’s length sales of securities and sales to one’s self*) was created to govern the sale and securitization of a negotiable instrument and swaps.

As such, Plaintiff cannot assert that it is the owner, holder and in possession of the mortgage note. [No Proper Assignment of Mortgage and Mortgage Note to Plaintiff was filed with the County Clerk].

Under the Uniform Commercial Code (UCC), the mortgage note is a one of a kind instrument. ALL assignments have to be done as permanent fixture onto the original promissory note. The original promissory note has the only binding chain of title. Without a proper chain of title, the instrument is faulty. Simply put, these Plaintiff’s have already admitted that they are not the owner, holder and/or in possession of the “ mortgage note “, and because of their prior ‘swap’ of the note. Therefore, they are not the real party of interest and have no standing to

foreclose. Here, the Plaintiff has not and cannot document a proper chain of title, thus, precluding foreclosure.

Although, Florida Court's have not yet addressed the issue it has been addressed by the Massachusetts Supreme Court in the matter of; U.S. Bank v. Ibanez, Case No.: SJC-10694. In U.S. Bank v. Ibanez, *supra* the Court held that: "Plaintiff U.S. Bank was not the owner and holder of the note when the loans were pooled into a trust and converted into mortgage backed securities ". As a result, the U.S. Bank's foreclosure was improper. The same holds true herein.

On or about June 19, 2012, Defendant Oceanside sent Plaintiff Comerica Bank a Demand for Documentation of Securitization through a Request for Production. To date, Plaintiff Comerica Bank refused and continues to refuse to provide the disclosure of the real parties in interest - owners of the note in violation of the Securities Exchange Act of 1934 ("Exchange Act") codified at 17 C.F.R. Part 240. For this reason alone, Plaintiff Comerica Bank cannot demonstrate that it owns the note and is entitled to foreclosure. Hence, the Complaint must be dismissed.

The party seeking **foreclosure** must present evidence that it owns and holds the note and **mortgage** in question in order to proceed with a **foreclosure** action. Lizio v. McCullom, 36 So. 2d 927, 929 (Fla. 4th. DCA 2010). A **plaintiff** must tender the original promissory note to the trial court. State Street Bank and Trust Co. v. Lord, 851 So. 2d 790, 791 (Fla. DCA 2003). If the note does not name the plaintiff as payee, the note must bear a special endorsement in favor of the plaintiff. Riggs v. Aurora Loan Servs., LLC., 36 So. 3d 932, 933 (Fla. 4th. DCA 2010). In the instant action, Plaintiff has failed to do so, thus, has no standing and foreclosure is improper.

Since, Plaintiff has elected to 'swap' the note in favor of another security, therefore, plaintiff has forfeited its right to enforce the note and foreclose on the subject real property.

Under these circumstances, Plaintiff cannot establish its rightful ownership of this note without production of the original mortgage note evidencing the chain of custody of the note on the back side of the note and, thus, showing its assignment to plaintiff, among other things. All mortgage notes go through the SEC and they have a tracking card for what pool your note was sold in and there will be a bar code and there should be a CUSIP #. If there is neither of these on the note, then it is a forgery.

Federal Rules of Evidence Require Production of Original Mortgage Note

Fed. R. 1002 states in pertinent part:

“ To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by Act of Congress.....”

iii. The Underlying “ Debt “ Has Been Satisfied. Plaintiff Is Not Owed A Debt, thus, Maintaining This Action Constitutes A Fraud Upon Defendant and This Court.

Once the mortgage note was swapped. The Plaintiff and the other investors maintained a Credit Default Swap Insurance Policy insuring the loan against default. As a result, the Plaintiff has no basis to maintain a foreclosure action because the loan has been satisfied. Plaintiff Comerica Bank refused and continues to refuse to provide the Defendant Oceanside the names of the insurers pursuant to his Request For Production

For the reasons set forth above herein at argument, the Complaint must be dismissed.

**B. DEFECTIVE SUMMONS - DEPRIVES THE COURT OF JURISDICTION
AND MANDATES DISMISSAL OF COMPLAINT**

Improper service is not the only objection to personal jurisdiction warranting dismissal of the Complaint pursuant to Fla. R. Civ. P. 1.140(b)(2).

Defective contents of a summons, such as, failure to include mandatory notices, renders the summons fatally defective and deprives the court of jurisdiction over the defendant where “ a substantial right has been violated “, as herein, and no amendment can cure the defect, as also herein. *See, Seymour v. Panchita Investment, Inc.*, 28 So. 3d 194 (2010) 2010 Fla. App. LEXIS 2097 (*dismissing* complaint based upon a defective summons.).

Due process requires “ notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. “ *See, Mullane v. Central Hanover Bank & Trust, Co.*, 1950, 339 U.S. 306, 314, 70 S. Ct. 652, 656.

- i. “ **The Summons is Improper and Defective pursuant to Florida Rules of Civil Procedure 1.900(a) and its contents not in a form approved by the Supreme Court of the State of Florida, therefore, the Summons is Defective, and the Court lacks Personal Jurisdiction over the Defendant:**

As set forth, *supra*, Due process requires “ notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to

~~present their objections. “ *See, Mullane v. Central Hanover Bank & Trust, Co.*, 1950, 339 U.S.~~

~~306, 314, 70 S. Ct. 652, 656.~~

A cursory review of the “ Notice “, *i.e.*, “ Summons “ (EXHIBIT “B”) in the instant action clearly reveals that it does not contain the mandated “ Notice “ requirements (noticed number of days is improper) and is an unauthorized summons in violation of Rule 1.070.4[1]. As a result, the summons is fatally defective and jurisdiction has not been obtained over Defendant Oceanside. Rule 1.902(b) contains the specialized summons, approved for service of process upon a natural person under Fla. Stat. 48.031 and as approved by the Supreme Court of the State of Florida.

Here, it is clear that the Summons issued was not an authorized Summons form under statute or by the Florida Supreme Court, among other irregularities and defects, (i) it fails to properly set forth that the Defendant had 20 calendar days to file a written response to the complaint; (ii) it does not contain any of the property litany about the proper ways for the Defendant to protect his rights, and (iii) it fails to set forth the legal requirements of a summons, and as required to acquire personal jurisdiction and meet the “ due process” standards set forth by the United States Supreme Court in Mullane v. Central Hanover Bank & Trust Co., (1950), 339 U.S. 306, 314, 70 S. Ct. 652, 656 (*holding* Due Process requires “ notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections “). Here, it is clear that “ notice “ was not reasonably calculated because the “ Notice “ tendered violates the provisions of Florida Law and Defendant Frank was not given “ Notice “.

Based upon the foregoing, the Court has not jurisdiction over the Defendant, Oceanside Lauderdale, Inc., thus, pursuant to Fla. R. Civ. P. 1.140 the Complaint must be dismissed.

C. SATISFACTION OF DEBT

Upon information and belief, the underlying debt has been satisfied. Pursuant to the mortgage the lender was required to release the security interest. Plaintiff has failed to do so.

Upon information and belief, the underlying debt has been satisfied numerous times, to wit; (i) the original lender was paid 1.5 times the value of the loan when it was securitized and converted to stock, (ii) the original lender owns stock in the REMIC which appreciated, (iii) the original lender accepted and was paid TARP money, (iv) the original lender was paid 80% of the value of the loan by the FDIC when it went into default, and (v) the entire debt was satisfied through credit default swap insurance.

Pursuant to the mortgage the security interest must be released and the Plaintiff's Complaint must be dismissed.

D. IMPROPER EVIDENTIARY DOCUMENTS

Upon information and belief, Rule 2.055(a) of the Florida Rules of Judicial Procedure prohibits the xerographic reduction of legal size paper to letter size paper. The "master swap agreement and other documents attached to the Complaint, upon which the Plaintiff relies is reduced from legal size to letter size.

As a result, the Complaint must be dismissed.

E. FAILURE TO JOIN AN INDISPENSABLE PARTY

The Plaintiff has failed to join indispensable parties to this action. According to Rule 1.140 of

the Florida Rules of Civil Procedure, the Plaintiff must join all indispensable parties who may have an interest in this action. The Plaintiff has failed to do so.

Upon information and belief, due to IRS Code 860 which governs tax pass through for Special Purpose Vehicles (SPV), the real parties in interest to this action have to be the parties to whom the mortgage note was swapped. The parties to the “swap” must be a party to this action.

By failing to join an indispensable party, the Plaintiff has failed to give proper notice and opportunity to be heard. Consequently, the above-indicated parties’ rights are being adjudicated without notice.

F. FAILURE TO STATE A CAUSE OF ACTION

The Plaintiff has alleged the OWNER, Defendant OCEAN 4660, LLC, has breached the terms of their agreement as set forth in the promissory note by failing to make payments as they became due. *Id.* Complaint. This claim is essentially a breach of contract claim.

To bring this claim properly, the Plaintiff must first establish performance on its part of the contractual obligations imposed in the contract. Babe, Inc. v. Bahies Formula Services, Inc., 165 So. 2d 795 (Fla. 3d DCA 1964). The Plaintiff has failed to do so.

Furthermore, the Complaint is *invalid* if it fails to comply with the requirements of Florida Statute section 673.3091(2), which states in pertinent part:

The court may not enter judgment in favor of the person seeking enforcement unless it finds that the person required to pay the instrument is adequately protected against loss that might occur by reason of a claim by another person to enforce the instrument, Adequate protection may be provided by any reasonable means.

There has been no assurance or allegation in the Complaint that the OWNER is adequately protected against the loss that might occur by reason of a claim brought by another party to enforce the instrument.

G. DEFENDANT OCEANSIDE'S FEDERAL CLAIM COMMON LAW LIEN AND NOTICE OF FEDERAL COMMON LAW LIEN AND WRIT OF ATTACHMENT ON REAL PROPERTY SUPERCEDES THE *alleged* MORTGAGE AND EQUITY LIEN

Defendant Oceanside asserts and has recorded a Federal Claim of Common Law Lien and Notice of Federal Common Law Lien with Writ of Attachment. Writ of Attachments are a form of Federal Common Law Lien which supersede mortgages and equity liens. See, Drummond Carriage v. Mills, (1878) N.W. 99; Hewitt v. Williams, 47 La. Ann. 742, 17 So. 269; Carr v. Dail, 19 S.E. 235; McMaham v. Ludin, 58 N.H. 827.

The ruling of the United States Supreme Court in Rich v. Braxton, 158 U.S. 375, specifically forbids judges from invoking equity jurisdiction to remove common law liens or “ similar clouds of title “.

III. CONCLUSION

For the foregoing reasons, Defendant Oceanside requests that Plaintiff's Complaint be dismissed for lack of jurisdiction over the defendant, (ii) lack of standing to bring the lawsuit, (iii) insufficiency of process, (iv) improper venue, (v) failure to state a cause of action, and (vi)

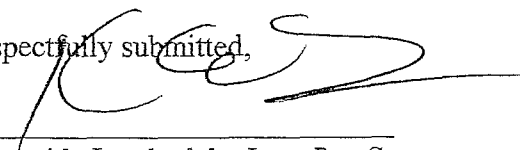
~~the other grounds warranting dismissal set forth herein, or alternatively the Complaint should be~~
stricken as a sham pleading.

In addition to the foregoing, this motion will be based on the papers and records filed in the above-entitled action, and on such oral and documentary evidence as may be presented at the hearing on the motion.

WHEREFORE, Defendant Oceanside Lauderdale, Inc. prays this Honorable Court Dismiss the Plaintiff's Complaint with prejudice, or alternatively, the Complaint should be stricken as a sham pleading.

Dated this 14th day of January, 2013.

Respectfully submitted,


Oceanside Lauderdale, Inc., *Pro Se*

By: Kenneth A. Frank, *Pro Se*, corporate
representative
- Defendant -

2310 East Atlantic Boulevard, Suite 206
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Tel: (914) 563-4510
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CERTIFICATE OF SERVICE

I, KENNETH A FRANK, *Pro Se*, certify that a copy of the foregoing motion to dismiss has been furnished to HOLLAND & KNIGHT, LLP, c/o Brian K. Hole, ESQ., attorney for plaintiff, at his offices located at 515 East Las Olas Boulevard, 12th Floor, Fort Lauderdale, Florida 33302, *via* regular mail on this 17th day of January, 2013.

By: 

Kenneth A. Frank, *Pro Se*

EXHIBIT A

(Multicurrency Cross Border)

ISDA

International Swap Dealers Association, Inc

MASTER AGREEMENT

dated as of January 25, 2008

COMERICA BANK, a Texas banking association and OCEAN 4660, LLC, a Michigan limited liability company, have entered and/or anticipate entering into one or more transactions (each a "Transaction") that are or will be governed by this Master Agreement, which includes the schedule (the "Schedule"), and the documents and other confirming evidence (each a "Confirmation") exchanged between the parties confirming those Transactions

Accordingly, the parties agree as follows:-

1. Interpretation

(a) *Definitions.* The terms defined in Section 14 and in the Schedule will have the meanings therein specified for the purpose of this Master Agreement

(b) *Inconsistency.* In the event of any inconsistency between the provisions of the Schedule and the other provisions of this Master Agreement, the Schedule will prevail. In the event of any inconsistency between the provisions of any Confirmation and this Master Agreement (including the Schedule), such Confirmation will prevail for the purpose of the relevant Transaction.

(c) *Single Agreement.* All Transactions are entered into in reliance on the fact that this Master Agreement and all Confirmations form a single agreement between the parties (collectively referred to as this "Agreement"), and the parties would not otherwise enter into any Transactions

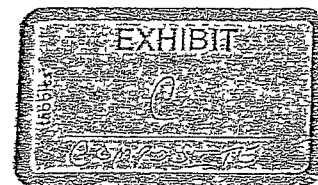
2. Obligations

(a) *General Conditions.*

(i) Each party will make each payment or delivery specified in each Confirmation to be made by it, subject to the other provisions of this Agreement.

(ii) Payments under this Agreement will be made on the due date for value on that date in the place of the account specified in the relevant Confirmation or otherwise pursuant to this Agreement, in freely transferable funds and in the manner customary for payments in the required currency. Where settlement is by delivery (that is, other than by payment), such delivery will be made for receipt on the due date in the manner customary for the relevant obligation unless otherwise specified in the relevant Confirmation or elsewhere in this Agreement.

(iii) Each obligation of each party under Section 2(a)(i) is subject to (1) the condition precedent that no Event of Default or Potential Event of Default with respect to the other party has occurred and is continuing, (2) the condition precedent that no Early Termination Date in respect of the relevant Transaction has occurred or been effectively designated and (3) each other applicable condition precedent specified in this Agreement.



(b) *Change of Account.* Either party may change its account for receiving a payment or delivery by giving notice to the other party at least five Local Business Days prior to the scheduled date for the payment or delivery to which such change applies unless such other party gives timely notice of a reasonable objection to such change.

(c) *Netting.* If on any date amounts would otherwise be payable:-

(i) in the same currency; and

(ii) in respect of the same Transaction,

by each party to the other, then, on such date, each party's obligation to make payment of any such amount will be automatically satisfied and discharged and, if the aggregate amount that would otherwise have been payable by one party exceeds the aggregate amount that would otherwise have been payable by the other party, replaced by an obligation upon the party by whom the larger aggregate amount would have been payable to pay to the other party the excess of the larger aggregate amount over the smaller aggregate amount.

The parties may elect in respect of two or more Transactions that a net amount will be determined in respect of all amounts payable on the same date in the same currency in respect of such Transactions, regardless of whether such amounts are payable in respect of the same Transaction. The election may be made in the Schedule or a Confirmation by specifying that subparagraph (ii) above will not apply to the Transactions identified as being subject to the election, together with the starting date (in which case subparagraph (ii) above will not, or will cease to, apply to such Transactions from such date). This election may be made separately for different groups of Transactions and will apply separately to each pairing of Offices through which the parties make and receive payments or deliveries.

(d) *Deduction or Withholding for Tax.*

(i) *Gross-Up.* All payments under this Agreement will be made without any deduction or withholding for or on account of any Tax unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party ("X") will:-

(1) promptly notify the other party ("Y") of such requirement;

(2) pay to the relevant authorities the full amount required to be deducted or withheld (including the full amount required to be deducted or withheld from any additional amount paid by X to Y under this Section 2(d)) promptly upon the earlier of determining that such deduction or withholding is required or receiving notice that such amount has been assessed against Y;

(3) promptly forward to Y an official receipt (or a certified copy), or other documentation reasonably acceptable to Y, evidencing such payment to such authorities; and

(4) if such Tax is an Indemnifiable Tax, pay to Y, in addition to the payment to which Y is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Y (free and clear of Indemnifiable Taxes, whether assessed against X or Y) will equal the full amount Y would have received had no such deduction or withholding been required. However, X will not be required to pay any additional amount to Y to the extent that it would not be required to be paid but for:-

(A) the failure by Y to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d); or

(B) the failure of a representation made by Y pursuant to Section 3(f) to be accurate and true unless such failure would not have occurred but for (I) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (II) a Change in Tax Law.

(ii) *Liability. If:-*

(1) X is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, to make any deduction or withholding in respect of which X would not be required to pay an additional amount to Y under Section 2(d)(i)(2);

(2) X does not so deduct or withhold; and

(3) a liability resulting from such Tax is assessed directly against X,

then, except to the extent Y has satisfied or then satisfies the liability resulting from such Tax, Y will promptly pay to X the amount of such liability (including any related liability for interest, but including any related liability for penalties only if Y has failed to comply with or perform any agreement contained in Section 4(a)(i), 4(a)(iii) or 4(d)).

(e) *Default Interest; Other Amounts.* Prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party that defaults in the performance of any payment obligation will, to the extent permitted by law and subject to Section 6(c), be required to pay interest (before as well as after judgment) on the overdue amount to the other party on demand in the same currency as such overdue amount, for the period from (and including) the original due date for payment to (but excluding) the date of actual payment, at the Default Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed. If, prior to the occurrence or effective designation of an Early Termination Date in respect of the relevant Transaction, a party defaults in the performance of any obligation required to be settled by delivery, it will compensate the other party on demand if and to the extent provided for in the relevant Confirmation or elsewhere in this Agreement.

3. *Representations*

Each party represents to the other party (which representations will be deemed to be repeated by each party on each date on which a Transaction is entered into and, in the case of the representations in Section 3(f), at all times until the termination of this Agreement) that:-

(a) *Basic Representations.*

(i) *Status.* It is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and, if relevant under such laws, in good standing;

(ii) *Powers.* It has the power to execute this Agreement and any other documentation relating to this Agreement to which it is a party, to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver and to perform its obligations under this Agreement and any obligations it has under any Credit Support Document to which it is a party and has taken all necessary action to authorise such execution, delivery and performance;

(iii) *No Violation or Conflict.* Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;

(iv) *Consents.* All governmental and other consents that are required to have been obtained by it with respect to this Agreement or any Credit Support Document to which it is a party have been obtained and are in full force and effect and all conditions of any such consents have been complied with; and

(v) *Obligations Binding.* Its obligations under this Agreement and any Credit Support Document to which it is a party constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms (subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law)).

(b) *Absence of Certain Events.* No Event of Default or Potential Event of Default or, to its knowledge, Termination Event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any Credit Support Document to which it is a party.

(c) *Absence of Litigation.* There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency or official or any arbitrator that is likely to affect the legality, validity or enforceability against it of this Agreement or any Credit Support Document to which it is a party or its ability to perform its obligations under this Agreement or such Credit Support Document.

(d) *Accuracy of Specified Information.* All applicable information that is furnished in writing by or on behalf of it to the other party and is identified for the purpose of this Section 3(d) in the Schedule is, as of the date of the information, true, accurate and complete in every material respect.

(e) *Payer Tax Representation.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(e) is accurate and true.

(f) *Payee Tax Representations.* Each representation specified in the Schedule as being made by it for the purpose of this Section 3(f) is accurate and true.

4. Agreements

Each party agrees with the other that, so long as either party has or may have any obligation under this Agreement or under any Credit Support Document to which it is a party:-

(a) *Furnish Specified Information.* It will deliver to the other party or, in certain cases under subparagraph (iii) below, to such government or taxing authority as the other party reasonably directs:-

(i) any forms, documents or certificates relating to taxation specified in the Schedule or any Confirmation;

(ii) any other documents specified in the Schedule or any Confirmation; and

(iii) upon reasonable demand by such other party, any form or document that may be required or reasonably requested in writing in order to allow such other party or its Credit Support Provider to make a payment under this Agreement or any applicable Credit Support Document without any deduction or withholding for or on account of any Tax or with such deduction or withholding at a reduced rate (so long as the completion, execution or submission of such form or document would not materially prejudice the legal or commercial position of the party in receipt of such demand), with any such form or document to be accurate and completed in a manner reasonably satisfactory to such other party and to be executed and to be delivered with any reasonably required certification,

in each case by the date specified in the Schedule or such Confirmation or, if none is specified, as soon as reasonably practicable.

(b) *Maintain Authorisations.* It will use all reasonable efforts to maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Agreement or any Credit Support Document to which it is a party and will use all reasonable efforts to obtain any that may become necessary in the future.

~~(c) *Comply with Laws.* It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Agreement or any Credit Support Document to which it is a party.~~

(d) *Tax Agreement.* It will give notice of any failure of a representation made by it under Section 3(f) to be accurate and true promptly upon learning of such failure.

(e) *Payment of Stamp Tax.* Subject to Section 11, it will pay any Stamp Tax levied or imposed upon it or in respect of its execution or performance of this Agreement by a jurisdiction in which it is incorporated,

organised, managed and controlled, or considered to have its seat, or in which a branch or office through which it is acting for the purpose of this Agreement is located ("Stamp Tax Jurisdiction") and will indemnify the other party against any Stamp Tax levied or imposed upon the other party or in respect of the other party's execution or performance of this Agreement by any such Stamp Tax Jurisdiction which is not also a Stamp Tax Jurisdiction with respect to the other party.

5. Events of Default and Termination Events

(a) *Events of Default.* The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any of the following events constitutes an event of default (an "Event of Default") with respect to such party:-

(i) *Failure to Pay or Deliver.* Failure by the party to make, when due, any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) required to be made by it if such failure is not remedied on or before the third Local Business Day after notice of such failure is given to the party,

(ii) *Breach of Agreement.* Failure by the party to comply with or perform any agreement or obligation (other than an obligation to make any payment under this Agreement or delivery under Section 2(a)(i) or 2(e) or to give notice of a Termination Event or any agreement or obligation under Section 4(e)(i), 4(a)(iii) or 4(d)) to be complied with or performed by the party in accordance with this Agreement if such failure is not remedied on or before the thirtieth day after notice of such failure is given to the party;

(iii) *Credit Support Default.*

(1) Failure by the party or any Credit Support Provider of such party to comply with or perform any agreement or obligation to be complied with or performed by it in accordance with any Credit Support Document if such failure is continuing after any applicable grace period has elapsed,

(2) the expiration or termination of such Credit Support Document or the failing or ceasing of such Credit Support Document to be in full force and effect for the purpose of this Agreement (in either case other than in accordance with its terms) prior to the satisfaction of all obligations of such party under each Transaction to which such Credit Support Document relates without the written consent of the other party, or

(3) the party or such Credit Support Provider disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Credit Support Document;

(iv) *Misrepresentation.* A representation (other than a representation under Section 3(e) or (f)) made or repeated or deemed to have been made or repeated by the party or any Credit Support Provider of such party in this Agreement or any Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;

(v) *Default under Specified Transaction.* The party, any Credit Support Provider of such party or any applicable Specified Entity of such party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three Local Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf);

(vi) *Cross Default.* If "Cross Default is specified in the Schedule as applying to the party, the occurrence or existence of (1) a default, event of default or other similar condition or event (however described) in respect of such party, any Credit Support Provider of such party or any applicable Specified Entity of such party under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the applicable Threshold Amount (as specified in the Schedule) which has resulted in such Specified

*Credit default
swap insurance*

Indebtedness becoming, or becoming capable at such time of being declared, due and payable under such agreements or instruments, before it would otherwise have been due and payable or (2) a default by such party, such Credit Support Provider or such Specified Entity (individually or collectively) in making one or more payments on the due date thereof in an aggregate amount of not less than the applicable Threshold Amount under such agreements or instruments (after giving effect to any applicable notice requirement or grace period),

(vii) *Bankruptcy*. The party, any Credit Support Provider of such party or any applicable Specified Entity of such party,-

(1) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (2) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due; (3) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (4) institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, such proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not dismissed, discharged, stayed or restrained in each case within 30 days of the institution or presentation thereof; (5) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (6) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets; (7) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 30 days thereafter; (8) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (1) to (7) (inclusive); or (9) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts; or

(viii) *Merger Without Assumption*. The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and, at the time of such consolidation, amalgamation merger or transfer:-

(1) the resulting, surviving or transferee entity fails to assume all the obligations of such party or such Credit Support Provider under this Agreement or any Credit Support Document to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other party to this Agreement; or

(2) the benefits of any Credit Support Document fail to extend (without the consent of the other party) to the performance by such resulting, surviving or transferee entity of its obligations under this Agreement.

(b) *Termination Events*. The occurrence at any time with respect to a party or, if applicable, any Credit Support Provider of such party or any Specified Entity of such party of any event specified below constitutes an Illegality if the event is specified in (i) below, a Tax Event if the event is specified in (ii) below or a Credit Event Upon Merger if the event is specified in (iii) below, and, if specified to be applicable, a Credit Event Upon Merger if the event is specified pursuant to (iv) below or an Additional Termination Event if the event is specified pursuant to (v) below:-

(i) *Illegality*. Due to the adoption of, or any change in, any applicable law after the date on which a Transaction is entered into, or due to the promulgation of, or any change in, the interpretation by any court, tribunal or regulatory authority with competent jurisdiction of any applicable law after such date, it becomes unlawful (other than as a result of a breach by the party of Section 4(b)) for such party (which will be the Affected Party):-

(1) to perform any absolute or contingent obligation to make a payment or delivery or to receive a payment or delivery in respect of such Transaction or to comply with any other material provision of this Agreement relating to such Transaction; or

(2) to perform, or for any Credit Support Provider of such party to perform, any contingent or other obligation which the party (or such Credit Support Provider) has under any Credit Support Document relating to such Transaction;

(ii) *Tax Event*. Due to (x) any action taken by a taxing authority, or brought in a court of competent jurisdiction, on or after the date on which a Transaction is entered into (regardless of whether such action is taken or brought with respect to a party to this Agreement) or (y) a Change in Tax Law, the party (which will be the Affected Party) will, or there is a substantial likelihood that it will, on the next succeeding Scheduled Payment Date (1) be required to pay to the other party an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount is required to be deducted or withheld for or on account of a Tax (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) and no additional amount is required to be paid in respect of such Tax under Section 2(d)(i)(4) (other than by reason of Section 2(d)(i)(4)(A) or (B));

(iii) *Tax Event Upon Merger*. The party (the "Burdened Party") on the next succeeding Scheduled Payment Date will either (1) be required to pay an additional amount in respect of an Indemnifiable Tax under Section 2(d)(i)(4) (except in respect of interest under Section 2(e), 6(d)(ii) or 6(e)) or (2) receive a payment from which an amount has been deducted or withheld for or on account of any Indemnifiable Tax in respect of which the other party is not required to pay an additional amount (other than by reason of Section 2(d)(i)(4)(A) or (B)), in either case as a result of a party consolidating or amalgamating with, or merging with or into, or transferring all or substantially all its assets to, another entity (which will be the Affected Party) where such action does not constitute an event described in Section 5(a)(viii);

(iv) *Credit Event Upon Merger*. If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or its successor or transferee, as appropriate, will be the Affected Party), or

(v) *Additional Termination Event*. If any "Additional Termination Event" is specified in the Schedule or any Confirmation as applying, the occurrence of such event (and, in such event, the Affected Party or Affected Parties shall be as specified for such Additional Termination Event in the Schedule or such Confirmation).

(c) *Event of Default and Illegality*. If an event or circumstance which would otherwise constitute or give rise to an Event of Default also constitutes an Illegality, it will be treated as an Illegality and will not constitute an Event of Default.

6. Early Termination

(a) *Right to Terminate Following Event of Default*. If at any time an Event of Default with respect to a party (the "Defaulting Party") has occurred and is then continuing, the other party (the "Non-defaulting Party") may, by not more than 20 days notice to the Defaulting Party specifying the relevant Event of Default, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions. If, however, "Automatic Early Termination" is specified in the Schedule as applying to a party, then an Early Termination Date in respect of all outstanding Transactions will occur immediately upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(1), (3), (5), (6) or, to the extent analogous thereto, (8), and as of the time immediately preceding the institution of the relevant proceeding or the presentation of the relevant petition upon the occurrence with respect to such party of an Event of Default specified in Section 5(a)(vii)(4) or, to the extent analogous thereto, (8).

(b) *Right to Terminate Following Termination Event.*

(i) *Notice.* If a Termination Event occurs, an Affected Party will, promptly upon becoming aware of it, notify the other party, specifying the nature of that Termination Event and each Affected Transaction and will also give such other information about that Termination Event as the other party may reasonably require.

(ii) *Transfer to Avoid Termination Event.* If either an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there is only one Affected Party, or if a Tax Event Upon Merger occurs and the Burdened Party is the Affected Party, the Affected Party will, as a condition to its right to designate an Early Termination Date under Section 6(b)(iv), use all reasonable efforts (which will not require such party to incur a loss, excluding immaterial, incidental expenses) to transfer within 20 days after it gives notice under Section 6(b)(i) all its rights and obligations under this Agreement in respect of the Affected Transactions to another of its Offices or Affiliates so that such Termination Event ceases to exist.

If the Affected Party is not able to make such a transfer it will give notice to the other party to that effect within such 20 day period, whereupon the other party may effect such a transfer within 30 days after the notice is given under Section 6(b)(i).

Any such transfer by a party under this Section 6(b)(ii) will be subject to and conditional upon the prior written consent of the other party, which consent will not be withheld if such other party's policies in effect at such time would permit it to enter into transactions with the transferee on the terms proposed.

(iii) *Two Affected Parties.* If an Illegality under Section 5(b)(i)(1) or a Tax Event occurs and there are two Affected Parties, each party will use all reasonable efforts to reach agreement within 30 days after notice thereof is given under Section 6(b)(i) on action to avoid that Termination Event.

(iv) *Right to Terminate, If:-*

(1) a transfer under Section 6(b)(ii) or an agreement under Section 6(b)(iii), as the case may be, has not been effected with respect to all Affected Transactions within 30 days after an Affected Party gives notice under Section 6(b)(i), or

(2) an Illegality under Section 5(b)(i)(2), a Credit Event Upon Merger or an Additional Termination Event occurs, or a Tax Event Upon Merger occurs and the Burdened Party is not the Affected Party,

either party in the case of an Illegality, the Burdened Party in the case of a Tax Event Upon Merger, any Affected Party in the case of a Tax Event or an Additional Termination Event if there is more than one Affected Party, or the party which is not the Affected Party in the case of a Credit Event Upon Merger or an Additional Termination Event if there is only one Affected Party may, by not more than 20 days notice to the other party and provided that the relevant Termination Event is then continuing, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all Affected Transactions.

(c) *Effect of Designation.*

(i) If notice designating an Early Termination Date is given under Section 6(a) or (b), the Early Termination Date will occur on the date so designated, whether or not the relevant Event of Default or Termination Event is then continuing.

(ii) Upon the occurrence or effective designation of an Early Termination Date, no further payments or deliveries under Section 2(a)(i) or 2(e) in respect of the Terminated Transactions will be required to be made, but without prejudice to the other provisions of this Agreement. The amount, if any, payable in respect of an Early Termination Date shall be determined pursuant to Section 6(e).

(d) *Calculations.*

(i) *Statement.* On or as soon as reasonably practicable following the occurrence of an Early Termination Date, each party will make the calculations on its part, if any, contemplated by Section 6(e) and will provide to the other party a statement (i) showing, in reasonable detail, such calculations (including all relevant quotations and specifying any amount payable under Section 6(e)) and (2) giving details of the relevant account to which any amount payable to it is to be paid. In the absence of written confirmation from the source of a quotation obtained in determining a Market Quotation, the records of the party obtaining such quotation will be conclusive evidence of the existence and accuracy of such quotation.

(ii) *Payment Date.* An amount calculated as being due in respect of any Early Termination Date under Section 6(e) will be payable on the day that notice of the amount payable is effective (in the case of an Early Termination Date which is designated or occurs as a result of an Event of Default) and on the day which is two Local Business Days after the day on which notice of the amount payable is effective (in the case of an Early Termination Date which is designated as a result of a Termination Event). Such amount will be paid together with (to the extent permitted under applicable law) interest thereon (before as well as after judgment) in the Termination Currency, from (and including) the relevant Early Termination Date to (but excluding) the date such amount is paid, at the Applicable Rate. Such interest will be calculated on the basis of daily compounding and the actual number of days elapsed.

(e) *Payments on Early Termination.* If an Early Termination Date occurs, the following provisions shall apply based on the parties' election in the Schedule of a payment measure, either "Market Quotation" or "Loss", and a payment method, either the "First Method" or the "Second Method". If the parties fail to designate a payment measure or payment method in the Schedule, it will be deemed that "Market Quotation" or the "Second Method", as the case may be, shall apply. The amount, if any, payable in respect of an Early Termination Date and determined pursuant to this Section will be subject to any Set-off.

(i) *Events of Default.* If the Early Termination Date results from an Event of Default:-

(1) *First Method and Market Quotation.* If the First Method and Market Quotation apply, the Defaulting Party will pay to the Non-defaulting Party the excess, if a positive number, of (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party over (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party.

(2) *First Method and Loss.* If the First Method and Loss apply, the Defaulting Party will pay to the Non-defaulting Party, if a positive number, the Non-defaulting Party's Loss in respect of this Agreement.

(3) *Second Method and Market Quotation.* If the Second Method and Market Quotation apply, an amount will be payable equal to (A) the sum of the Settlement Amount (determined by the Non-defaulting Party) in respect of the Terminated Transactions and the Termination Currency Equivalent of the Unpaid Amounts owing to the Non-defaulting Party less (B) the Termination Currency Equivalent of the Unpaid Amounts owing to the Defaulting Party. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(4) *Second Method and Loss.* If the Second Method and Loss apply, an amount will be payable equal to the Non-defaulting Party's Loss in respect of this Agreement. If that amount is a positive number, the Defaulting Party will pay it to the Non-defaulting Party; if it is a negative number, the Non-defaulting Party will pay the absolute value of that amount to the Defaulting Party.

(ii) *Termination Events.* If the Early Termination Date results from a Termination Event:-

(1) *One Affected Party.* If there is one Affected Party, the amount payable will be determined in accordance with Section 6(e)(i)(3), if Market Quotation applies, or Section 6(e)(i)(4), if Loss applies, except that, in either case, references to the Defaulting Party and to the Non-defaulting Party will be deemed to be references to the Affected Party and the party which is not the

Affected Party, respectively, and, if Loss applies and fewer than all the Transactions are being terminated, Loss shall be calculated in respect of all Terminated Transactions.

(2) *Two Affected Parties.* If there are two Affected Parties:-

(A) if Market Quotation applies, each party will determine a Settlement Amount in respect of the Terminated Transactions, and an amount will be payable equal to (I) the sum of (a) one-half of the difference between the Settlement Amount of the party with the higher Settlement Amount ("X") and the Settlement Amount of the party with the lower Settlement Amount ("Y") and (b) the Termination Currency Equivalent of the Unpaid Amounts owing to X less (II) the Termination Currency Equivalent of the Unpaid Amounts owing to Y, and

(B) if Loss applies, each party will determine its Loss in respect of this Agreement (or, if fewer than all the Transactions are being terminated, in respect of all Terminated Transactions) and an amount will be payable equal to one-half of the difference between the Loss of the party with the higher Loss ("X") and the Loss of the party with the lower Loss ("Y").

If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of that amount to Y.

(iii) *Adjustment for Bankruptcy.* In circumstances where an Early Termination Date occurs because "Automatic Early Termination" applies in respect of a party, the amount determined under this Section 6(e) will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one party to the other under this Agreement (and retained by such other party) during the period from the relevant Early Termination Date to the date for payment determined under Section 6(d)(ii).

(iv) *Pre-Estimate.* The parties agree that if Market Quotation applies an amount recoverable under this Section 6(e) is a reasonable pre-estimate of loss and not a penalty. Such amount is payable for the loss of bargain and the loss of protection against future risks and except as otherwise provided in this Agreement neither party will be entitled to recover any additional damages as a consequence of such losses.

7. Transfer

Subject to Section 6(b)(ii), neither this Agreement nor any interest or obligation in or under this Agreement may be transferred (whether by way of security or otherwise) by either party without the prior written consent of the other party, except that:-

(a) a party may make such a transfer of this Agreement pursuant to a consolidation or amalgamation with, or merger with or into, or transfer of all or substantially all its assets to, another entity (but without prejudice to any other right or remedy under this Agreement); and

(b) a party may make such a transfer of all or any part of its interest in any amount payable to it from a Defaulting Party under Section 6(e).

Any purported transfer that is not in compliance with this Section will be void.

8. Contractual Currency

(a) *Payment in the Contractual Currency.* Each payment under this Agreement will be made in the relevant currency specified in this Agreement for that payment (the "Contractual Currency"). To the extent permitted by applicable law, any obligation to make payments under this Agreement in the Contractual Currency will not be discharged or satisfied by any tender in any currency other than the Contractual Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in a reasonable manner and in good faith in converting the currency so tendered into the Contractual Currency, of the full amount in the Contractual Currency of all amounts payable in respect of this Agreement. If for any reason the amount in the Contractual Currency so received falls short of the amount in the Contractual Currency

payable in respect of this Agreement, the party required to make the payment will, to the extent permitted by applicable law, immediately pay such additional amount in the Contractual Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Contractual Currency so received exceeds the amount in the Contractual Currency payable in respect of this Agreement, the party receiving the payment will refund promptly the amount of such excess.

(b) *Judgments.* To the extent permitted by applicable law, if any judgment or order expressed in a currency other than the Contractual Currency is rendered (i) for the payment of any amount owing in respect of this Agreement, (ii) for the payment of any amount relating to any early termination in respect of this Agreement or (iii) in respect of a judgment or order of another court for the payment of any amount described in (i) or (ii) above, the party seeking recovery, after recovery in full of the aggregate amount to which such party is entitled pursuant to the judgment or order, will be entitled to receive immediately from the other party the amount of any shortfall of the Contractual Currency received by such party as a consequence of sums paid in such other currency and will refund promptly to the other party any excess of the Contractual Currency received by such party as a consequence of sums paid in such other currency if such shortfall or such excess arises or results from any variation between the rate of exchange at which the Contractual Currency is converted into the currency of the judgment or order for the purposes of such judgment or order and the rate of exchange at which such party is able, acting in a reasonable manner and in good faith in converting the currency received into the Contractual Currency, to purchase the Contractual Currency with the amount of the currency of the judgment or order actually received by such party. The term "rate of exchange" includes, without limitation, any premiums and costs of exchange payable in connection with the purchase of or conversion into the Contractual Currency.

(c) *Separate Indemnities.* To the extent permitted by applicable law, these indemnities constitute separate and independent obligations from the other obligations in this Agreement, will be enforceable as separate and independent causes of action, will apply notwithstanding any indulgence granted by the party to which any payment is owed and will not be affected by judgment being obtained or claim or proof being made for any other sums payable in respect of this Agreement.

(d) *Evidence of Loss.* For the purpose of this Section 8, it will be sufficient for a party to demonstrate that it would have suffered a loss had an actual exchange or purchase been made.

9. Miscellaneous

(a) *Entire Agreement.* This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto.

(b) *Amendments.* No amendment, modification or waiver in respect of this Agreement will be effective unless in writing (including a writing evidenced by a facsimile transmission) and executed by each of the parties or confirmed by an exchange of telexes or electronic messages on an electronic messaging system.

(c) *Survival of Obligations.* Without prejudice to Sections 2(a)(iii) and 6(c)(ii), the obligations of the parties under this Agreement will survive the termination of any Transaction.

(d) *Remedies Cumulative.* Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by law.

(e) *Counterparts and Confirmations.*

(i) This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

(ii) The parties intend that they are legally bound by the terms of each Transaction from the moment they agree to those terms (whether orally or otherwise). A Confirmation shall be entered into as soon as practicable and may be executed and delivered in counterparts (including by facsimile transmission) or be created by an exchange of telexes or by an exchange of electronic messages on an electronic messaging system, which in each case will be sufficient for all purposes to evidence a binding supplement to this Agreement. The parties will specify therein or through another effective means that any such counterpart, telex or electronic message constitutes a Confirmation.

(f) *No Waiver of Rights.* A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

(g) *Headings.* The headings used in this Agreement are for convenience of reference only and are not to affect the construction of or to be taken into consideration in interpreting this Agreement.

10. Offices; Multibranch Parties

(a) If Section 10(a) is specified in the Schedule as applying, each party that enters into a Transaction through an Office other than its head or home office represents to the other party that, notwithstanding the place of booking office or jurisdiction of incorporation or organisation of such party, the obligations of such party are the same as if it had entered into the Transaction through its head or home office. This representation will be deemed to be repeated by such party on each date on which a Transaction is entered into.

(b) Neither party may change the Office through which it makes and receives payments or deliveries for the purpose of a Transaction without the prior written consent of the other party.

(c) If a party is specified as a Multibranch Party in the Schedule, such Multibranch Party may make and receive payments or deliveries under any Transaction through any Office listed in the Schedule, and the Office through which it makes and receives payments or deliveries with respect to a Transaction will be specified in the relevant Confirmation.

11. Expenses

A Defaulting Party will, on demand, indemnify and hold harmless the other party for and against all reasonable out-of-pocket expenses, including legal fees and Stamp Tax, incurred by such other party by reason of the enforcement and protection of its rights under this Agreement or any Credit Support Document to which the Defaulting Party is a party or by reason of the early termination of any Transaction, including, but not limited to, costs of collection.

12. Notices

(a) *Effectiveness.* Any notice or other communication in respect of this Agreement may be given in any manner set forth below (except that a notice or other communication under Section 5 or 6 may not be given by facsimile transmission or electronic messaging system) to the address or number or in accordance with the electronic messaging system details provided (see the Schedule) and will be deemed effective as indicated:-

(i) if in writing and delivered in person or by courier, on the date it is delivered;

(ii) if sent by telex, on the date the recipient's answerback is received;

(iii) if sent by facsimile transmission, on the date that transmission is received by a responsible employee of the recipient in legible form (if being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender's facsimile machine);

(iv) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted; or

(v) if sent by electronic messaging system, on the date that electronic message is received,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Local Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Local-Business Day, in which case that communication shall be deemed given and effective on the first following day that is a Local Business Day.

(b) *Change of Addresses.* Either party may by notice to the other change the address, telex or facsimile number or electronic messaging system details at which notices or other communications are to be given to it.

13. Governing Law and Jurisdiction

(a) *Governing Law.* This Agreement will be governed by and construed in accordance with the law specified in the Schedule.

(b) *Jurisdiction.* With respect to any suit, action or proceedings relating to this Agreement ("Proceedings"), each party irrevocably:-

(i) submits to the jurisdiction of the English courts, if this Agreement is expressed to be governed by English law, or to the non-exclusive jurisdiction of the courts of the State of New York and the United States District Court located in the Borough of Manhattan in New York City, if this Agreement is expressed to be governed by the laws of the State of New York; and

(ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such party.

Nothing in this Agreement precludes either party from bringing Proceedings in any other jurisdiction (outside, if this Agreement is expressed to be governed by English law, the Contracting States, as defined in Section 1(3) of the Civil Jurisdiction and Judgments Act 1982 or any modification, extension or re-enactment thereof for the time being in force) nor will the bringing of Proceedings in any one or more jurisdictions preclude the bringing of Proceedings in any other jurisdiction

(c) *Service of Process.* Each party irrevocably appoints the Process Agent (if any) specified opposite its name in the Schedule to receive, for it and on its behalf, service of process in any Proceedings. If for any reason any party's Process Agent is unable to act as such, such party will promptly notify the other party and within 30 days appoint a substitute process agent acceptable to the other party. The parties irrevocably consent to service of process given in the manner provided for notices in Section 12. Nothing in this Agreement will effect the right of either party to serve process in any other manner permitted by law.

(d) *Waiver of Immunities.* Each party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction, order for specific performance or for recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

14. Definitions

As used in this Agreement:-

"*Additional Termination Event*" has the meaning specified in Section 5(b).

"*Affected Party*" has the meaning specified in Section 5(b).

"*Affected Transactions*" means (a) with respect to any Termination Event consisting of an Illegality, Tax Event or Tax Event Upon Merger, all Transactions affected by the occurrence of such Termination Event and (b) with respect to any other Termination Event, all Transactions.

"*Affiliate*" means, subject to the Schedule, in relation to any person, any entity controlled, directly or indirectly, by the person, any entity that controls, directly or indirectly, the person or any entity directly or indirectly under common control with the person. For this purpose, "control" of any entity or person means ownership of a majority of the voting power of the entity or person.

"*Applicable Rate*" means:-

(a) in respect of obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Defaulting Party, the Default Rate;

(b) in respect of an obligation to pay an amount under Section 6(e) of either party from and after the date (determined in accordance with Section 6(d)(ii)) on which that amount is payable, the Default Rate;

(c) in respect of all other obligations payable or deliverable (or which would have been but for Section 2(a)(iii)) by a Non-defaulting Party, the Non-default Rate; and

(d) in all other cases, the Termination Rate.

"Burdened Party" has the meaning specified in Section 5(b).

"Change in Tax Law" means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any law (or in the application or official interpretation of any law) that occurs on or after the date on which the relevant Transaction is entered into.

"consent" includes a consent, approval, action, authorisation, exemption, notice, filing, registration or exchange control consent.

"Credit Event Upon Merger" has the meaning specified in Section 5(b).

"Credit Support Document" means any agreement or instrument that is specified as such in this Agreement

"Credit Support Provider" has the meaning specified in the Schedule.

"Default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the relevant payee (as certified by it) if it were to fund or of funding the relevant amount plus 1% per annum

"Defaulting Party" has the meaning specified in Section 6(a).

"Early Termination Date" means the date determined in accordance with Section 6(a) or 6(b)(iv)

"Event of Default" has the meaning specified in Section 5(a) and, if applicable, in the Schedule.

"Illegality" has the meaning specified in Section 5(b).

"Indemnifiable Tax" means any Tax other than a Tax that would not be imposed in respect of a payment under this Agreement but for a present or former connection between the jurisdiction of the government or taxation authority imposing such Tax and the recipient of such payment or a person related to such recipient (including, without limitation, a connection arising from such recipient or related person being or having been a citizen or resident of such jurisdiction, or being or having been organised, present or engaged in a trade or business in such jurisdiction, or having or having had a permanent establishment or fixed place of business in such jurisdiction, but excluding a connection arising solely from such recipient or related person having executed, delivered, performed its obligations or received a payment under, or enforced, this Agreement or a Credit Support Document).

"law" includes any treaty, law, rule or regulation (as modified, in the case of tax matters, by the practice of any relevant governmental revenue authority) and "lawful" and "unlawful" will be construed accordingly.

"Local Business Day" means, subject to the Schedule, a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) (a) in relation to any obligation under Section 2(a)(i), in the place(s) specified in the relevant Confirmation or, if not so specified, as otherwise agreed by the parties in writing or determined pursuant to provisions contained, or incorporated by reference, in this Agreement, (b) in relation to any other payment, in the place where the relevant account is located and, if different, in the principal financial centre, if any, of the currency of such payment, (c) in relation to any notice or other communication, including notice contemplated under Section 5(a)(i), in the city specified in the address for notice provided by the recipient and, in the case of a notice contemplated by Section 2(b), in the place where the relevant new account is to be located and (d) in relation to Section 5(a)(v)(2), in the relevant locations for performance with respect to such Specified Transaction.

"Loss" means, with respect to this Agreement or one or more Terminated Transactions, as the case may be, and a party, the Termination Currency Equivalent of an amount that party reasonably determines in good faith to be its total losses and costs (or gain, in which case expressed as a negative number) in connection with this Agreement or that Terminated Transaction or group of Terminated Transactions, as the case may be, including any loss of bargain, cost of funding or, at the election of such party but without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or reestablishing any hedge or related trading position (or any gain resulting from any of them). Loss includes losses and costs (or gains) in respect of any payment or delivery required to have been made (assuming satisfaction of each applicable condition precedent) on or before the relevant Early Termination Date and not made, except, so as to avoid duplication, if Section 6(e)(i)(1) or (3) or 6(e)(ii)(2)(A) applies. Loss does not include a party's legal fees and out-of-pocket expenses referred to under Section 11. A party will determine its Loss as of the relevant Early Termination Date, or, if that is not reasonably practicable, as of the earliest date thereafter as is reasonably practicable. A party may (but need not) determine its Loss by reference to quotations of relevant rates or prices from one or more leading dealers in the relevant markets.

"Market Quotation" means, with respect to one or more Terminated Transactions and a party making the determination, an amount determined on the basis of quotations from Reference Market-makers. Each quotation will be for an amount, if any, that would be paid to such party (expressed as a negative number) or by such party (expressed as a positive number) in consideration of an agreement between such party (taking into account any existing Credit Support Document with respect to the obligations of such party) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for such party the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the parties under Section 2(a)(i) in respect of such Terminated Transaction or group of Terminated Transactions that would, but for the occurrence of the relevant Early Termination Date, have been required after that date. For this purpose, Unpaid Amounts in respect of the Terminated Transaction or group of Terminated Transactions are to be excluded but, without limitation, any payment or delivery that would, but for the relevant Early Termination Date, have been required (assuming satisfaction of each applicable condition precedent) after that Early Termination Date is to be included. The Replacement Transaction would be subject to such documentation as such party and the Reference Market-maker may, in good faith, agree. The party making the determination (or its agent) will request each Reference Market-maker to provide its quotation to the extent reasonably practicable as of the same day and time (without regard to different time zones) on or as soon as reasonably practicable after the relevant Early Termination Date. The day and time as of which those quotations are to be obtained will be selected in good faith by the party obliged to make a determination under Section 6(e), and, if each party is so obliged, after consultation with the other. If more than three quotations are provided, the Market Quotation will be the arithmetic mean of the quotations, without regard to the quotations having the highest and lowest values. If exactly three such quotations are provided, the Market Quotation will be the quotation remaining after disregarding the highest and lowest quotations. For this purpose, if more than one quotation has the same highest value or lowest value, then one of such quotations shall be disregarded. If fewer than three quotations are provided, it will be deemed that the Market Quotation in respect of such Terminated Transaction or group of Terminated Transactions cannot be determined.

"Non-default Rate" means a rate per annum, equal to the cost (without proof or evidence of any actual cost) to the Non-defaulting Party (as certified by it) if it were to fund the relevant amount.

"Non defaulting Party" has the meaning specified in Section 6(a).

"Office" means a branch or office of a party, which may be such party's head or home office.

"Potential Event of Default" means any event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

"Reference Market-makers" means four leading dealers in the relevant market selected by the party determining a Market Quotation in good faith (a) from among dealers of the highest credit standing which satisfy all the criteria that such party applies generally at the time in deciding whether to offer or to make an extension of credit and (b) to the extent practicable, from among such dealers having an office in the same city.

"Relevant Jurisdiction" means, with respect to a party, the jurisdictions (a) in which the party is incorporated, organised, managed and controlled or considered to have its seat, (b) where an Office through which the party is

acting for purposes of this Agreement is located, (c) in which the party executes this Agreement and (d) in relation to any payment, from or through which such payment is made.

"Scheduled Payment Date" means a date on which a payment or delivery is to be made under Section 2(a)(i) with respect to a Transaction.

"Set-off" means set-off, offset, combination of accounts, right of retention or withholding or similar right or requirement to which the payer of an amount under Section 6 is entitled or subject (whether arising under this Agreement, another contract, applicable law or otherwise) that is exercised by, or imposed on, such payer.

"Settlement Amount" means, with respect to a party and any Early Termination Date, the sum of:-

(a) the Termination Currency Equivalent of the Market Quotations (whether positive or negative) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation is determined; and

(b) such party's Loss (whether positive or negative and without reference to any Unpaid Amounts) for each Terminated Transaction or group of Terminated Transactions for which a Market Quotation cannot be determined or would not (in the reasonable belief of the party making the determination) produce a commercially reasonable result.

"Specified Entity" has the meanings specified in the Schedule.

"Specified Indebtedness" means, subject to the Schedule, any obligation (whether present or future, contingent or otherwise, as principal or surety or otherwise) in respect of borrowed money.

"Specified Transaction" means, subject to the Schedule, (a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one party to this Agreement (or any Credit Support Provider of such party or any applicable Specified Entity of such party) and the other party to this Agreement (or any Credit Support Provider of such other party or any applicable Specified Entity of such other party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions), (b) any combination of these transactions and (c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.

"Stamp Tax" means any stamp, registration, documentation or similar tax.

"Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Agreement other than a stamp, registration, documentation or similar tax.

"Tax Event" has the meaning specified in Section 5(b).

"Tax Event Upon Merger" has the meaning specified in Section 5(b).

"Terminated Transactions" means with respect to any Early Termination Date (a) if resulting from a Termination Event, all Affected Transactions and (b) if resulting from an Event of Default, all Transactions (in either case) in effect immediately before the effectiveness of the notice designating that Early Termination Date (or, if "Automatic Early Termination" applies, immediately before that Early Termination Date).

"Termination Currency" has the meaning specified in the Schedule.

"Termination Currency Equivalent" means, in respect of any amount denominated in the Termination Currency; such Termination Currency amount and, in respect of any amount denominated in a currency other than the Termination Currency (the "Other Currency"), the amount in the Termination Currency determined by the party making the relevant determination as being required to purchase such amount of such Other Currency as at the relevant Early Termination Date, or, if the relevant Market Quotation or Loss (as the case may be), is determined as of a later date, that later date, with the Termination Currency at the rate equal to the spot exchange rate of the foreign exchange agent (selected as provided below) for the purchase of such Other

Currency with the Termination Currency at or about 11:00 a.m. (in the city in which such foreign exchange agent is located) on such date as would be customary for the determination of such a rate for the purchase of such Other Currency for value on the relevant Early Termination Date or that later date. The foreign exchange agent will, if only one party is obliged to make a determination under Section 6(e), be selected in good faith by that party and otherwise will be agreed by the parties.

"Termination Event" means an Illegality, a Tax Event or a Tax Event Upon Merger or, if specified to be applicable, a Credit Event Upon Merger or an Additional Termination Event.

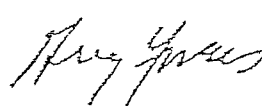
"Termination Rate" means a rate per annum equal to the arithmetic mean of the cost (without proof or evidence of any actual cost) to each party (as certified by such party) if it were to fund or of funding such amounts.

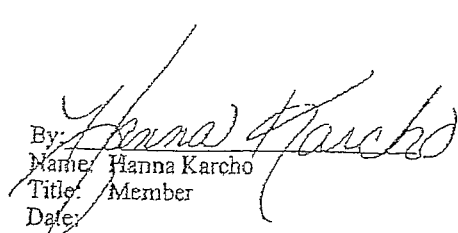
"Unpaid Amounts" owing to any party means with respect to an Early Termination Date, the aggregate of (a) in respect of all Terminated Transactions, the amounts that became payable (or that would have become payable but for Section 2(a)(iii)) to such party under Section 2(a)(i) on or prior to such Early Termination Date and which remain unpaid as at such Early Termination Date and (b) in respect of each Terminated Transaction, for each obligation under Section 2(a)(i) which was (or would have been but for Section 2(a)(iii)) required to be settled by delivery to such party on or prior to such Early Termination Date and which has not been so settled as at such Early Termination Date, an amount equal to the fair market value of that which was (or would have been) required to be delivered as of the originally scheduled date for delivery, in each case together with (to the extent permitted under applicable law) interest, in the currency of such amounts, from (and including) the date such amounts or obligations were or would have been required to have been paid or performed to (but excluding) such Early Termination Date, at the Applicable Rate. Such amounts of interest will be calculated on the basis of daily compounding and the actual number of days elapsed. The fair market value of any obligation referred to in clause (b) above shall be reasonably determined by the party obliged to make the determination under Section 6(e) or, if each party is so obliged, it shall be the average of the Termination Currency Equivalents of the fair market values reasonably determined by both parties.

IN WITNESS WHEREOF the parties have executed this document on the respective dates specified below with effect from the date specified on the first page of this document.

COMERICA BANK

OCEAN 4660, LLC

By: 
Name: Greg Yovan
Title: Vice President
Date: January 25, 2008

By: 
Name: Hanna Karcho
Title: Member
Date:

SCHEDULE to the 1992 Master Agreement
(Multicurrency-Cross Border)
Dated as of January 25, 2008

between COMERICA BANK and OCEAN 4660, LLC,
("Party A") ("Party B")

Part I
Termination Provisions

In this Agreement:

- (e) "Specified Entity" means in relation to Party A - NOT APPLICABLE, and in relation to Party B - Affiliates.
- (b) "Specified Transaction" will have the meaning specified in Section 14 of this Agreement.
- (c) The "Cross Default" provisions of Section 5(e)(vi) will apply not to Party A and will apply to Party B.

"Specified Indebtedness" will have the meaning specified in Section 14 except that such term shall not include obligations in respect of deposits received in the ordinary course of a party's banking business.

"Threshold Amount" means:

with respect to Party A - not applicable.

with respect to Party B - an amount equal to U.S. \$10,000.

- (d) The "Credit Event Upon Merger" provisions of Section 5(b)(iv) will apply to Party A and to Party B.
- (e) The "Automatic Early Termination" provision of Section 6(a) will only apply to Party A and to Party B if the laws of a jurisdiction other than the laws of the United States applies to this Master Agreement, the Credit Support Annex, or the collateral under the Credit Support Annex.
- (f) Payments on Early Termination for the purpose of Section 6(e) of this Agreement - Second Method and Market Quotation will apply.
- (g) "Termination Currency" means United States Dollars.
- (h) Additional Termination Event means in relation to Party A - NOT APPLICABLE, and in relation to Party B - each of the following events: (i) Party A may, at its sole discretion, terminate this Agreement or any Specified Transaction, by giving five (5) days prior written notice to Party B which notice shall specify the Early Termination Date; or (ii) if Party A deems itself insecure, believing in good faith that the prospect of payment under, or performance of, this Agreement or any Specified Transaction is materially impaired or Party A fears deterioration, removal or waste of any of the collateral under any Credit Support Documents, then Party A may, at its sole discretion, provide written notice of termination of this Agreement or any Specified Transaction to Party B which notice shall specify the Early Termination Date. In case of any Additional Termination Event under this Section 1(h), each party will be considered an Affected Party.

- (i) Section 5(b)(iv) is hereby deleted in its entirety and replaced by the following:

"Credit Event Upon Merger: If "Credit Event Upon Merger" is specified in the Schedule as applying to the party, such party ("X"), any Credit Support Provider of X or any applicable Specified Entity of X consolidates or amalgamates with, or merges with or into, or all or substantially all its assets and/or voting stock is transferred to or comes under the practical, beneficial, or effective control of, another entity, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, another entity and such action does not constitute an event described in Section 5(a)(viii) but the creditworthiness of the resulting, surviving or transferee entity is materially weaker than that of X, such Credit Support Provider or such Specified Entity, as the case may be, immediately prior to such action (and, in such event, X or resulting entity, or its successor or transferee, as appropriate, will be the Affected Party) (for purposes hereof, if Moody's Investors Service, Inc. ("Moody's") or Standard and Poor's Corporation ("S&P") maintains a long term unsubordinated debt rating of the party, materially weaker means below Baa2 by Moody's and BBB by S&P)," or

- (j) Section 5(a)(vii)(I) is hereby amended by inserting after the word "amalgamation" the following words: ", transfer, reorganization, incorporation, reincorporation, reconstitution,".
- (k) Section 5(a)(viii) is hereby amended by deleting and replacing, in its entirety, the introductory paragraph by the following:

"The party or any Credit Support Provider of such party consolidates or amalgamates with, or merges into, or all or substantially all its assets and/or voting stock is transferred to or comes under the practical, beneficial, or effective control of, another entity, or reorganizes, incorporates, reincorporates, or reconstitutes into or as, another entity and, at the time of such consolidation, amalgamation, merger, transfer, reorganization, incorporation, reincorporation, or reconstitution:"

Part 2 Tax Representations

- (a) **Payer Tax Representations.** For the purpose of Section 3(e), each party, for itself represents that it is not required by any applicable law, as modified by the practice of any relevant governmental revenue authority, of any Relevant Jurisdiction to make any deduction or withholding for or on account of any Tax from any payment (other than interest under Section 2(e) or 6(d)) to be made by it to the other party under this Agreement.

In making this representation, each Party is relying on:

- (i) the accuracy of any representation made by the other party pursuant to Section 3(f);
- (ii) the satisfaction of the agreement of the other party contained in Section 4(a)(i) or Section 4(a)(iii) and the accuracy and effectiveness of any document provided by the other party pursuant to Section 4(a)(i) or Section 4(a)(iii); and
- (iii) the satisfaction of the agreement of the other party contained in Section 4(d),

provided that it shall not be a breach of this representation where reliance is placed on clause (ii) and the other party does not deliver a form or document under Section 4(a)(iii) by reason of material prejudice to its legal or commercial position.

- (b) **Payee Tax Representations.** For the purpose of Section 3(f), Party A represents that it is a banking association organized under the law of the State of Texas.
- (c) **Payee Tax Representations:** For the purpose of Section 3(f), Party B represents that it is a limited liability company organized under the law of the State of Michigan.

Part 3
Agreement to Deliver Documents

For the purpose of Section 4(a):

- (a) Tax forms, documents or certificates to be delivered are: None
- (b) Other documents to be delivered are:

Party required to deliver document	Form/Document/Certificate	Date by which to be delivered	Covered by Section 3(d)
Party A and Party B	Evidence reasonably satisfactory in form and substance to the other party as to the names, true signatures, and authority of its officers and officials signing this Agreement or any Confirmation	Upon execution of this Agreement and, if requested, upon execution of any Confirmation	Yes
Party A and Party B	A copy of the annual report for such party containing audited or certified financial statements for the most recently ended financial year prepared and audited or certified in accordance with accounting principles, standards (if applicable) and practices generally accepted and consistently applied in accordance with the laws of such party's jurisdiction of incorporation or organization together with the related auditor's or accountants' reports and approvals (as the case may be)	As soon as publicly available	Yes

Part 4
Miscellaneous

- (a) Addresses for Notices. For the purpose of Section 12(a) of this Agreement:

Address for notices or communications to Party A:

Address: Comerica Bank, Oaktec Office Center
3551 Hamlin Road, MC 7272
Auburn Hills, Michigan 48326

Attention: Global Capital Market Operations

Facsimile No. 248 / 371-6797 Telephone No: 248 / 371-6796

Address for notices or communications to Party B:

Address: 30800 Woodward Bloomfield Hills, MI 48301

Authorized
Signer: Hanna Karcho
Phone # 248.645.5400
Fax#: 248.645.5015
Email: hkarcho@yahoo.com

- (b) Offices. The provisions of Section 10(a) will apply to this Agreement
- (c) Multibranch Party. For the purpose of Section 10(c) of this Agreement:
Party A is not a Multibranch Party.
Party B is not a Multibranch Party.
- (d) Calculation Agent. The Calculation Agent is Party A.
- (e) Credit Support Document: Credit Support Document is not applicable in relation to Party A. Credit Support Document is applicable in relation to Party B and shall mean Letter Agreement dated January 3, 2008, Security Agreement (All Assets) dated January 3, 2008, Continuing Collateral Mortgage dated January 3, 2008, Guaranty by Hanna Karcho-Polselli, Guaranty by Remo Polselli. Additionally, Credit Support Documents includes each agreement and instrument, now or hereafter existing, of any kind or nature which secures, guarantees or otherwise provides direct or indirect assurance of payment or performance of any existing or future obligation of Party B under this Agreement, made by or on behalf of any person or entity (including, without limiting the generality of the foregoing, any credit or loan agreement, note, reimbursement agreement, security agreement, mortgage, pledge agreement, assignment of rents or any other agreement or instrument granting any lien, security interest, assignment, charge or encumbrance to secure any such obligation, any guaranty, suretyship, letter of credit or subordination agreement relating to any such obligation and any other financial support agreement relating to Party B or any Credit Support Provider) in favor of Party A or any of its Affiliates.
- Security: Party B agrees that the security interests in collateral granted to Party A under the foregoing Credit Support Documents shall secure the obligations of Party B to Party A under this Agreement. To further secure the obligations of Party B under this Agreement, Party A may at any time without prior notice or demand set off against any credit balance or deposit account maintained with Party A by Party B or any of its Affiliates, all or any part of the Party B's obligations hereunder. Party B hereby grants to Party A a security interest in and lien on any such deposit accounts, credit balance or other money.
- (f) Credit Support Provider: Credit Support Provider is not applicable in relation to Party A. Credit Support Provider is applicable in relation to Party B and means Hanna Karcho-Polselli, Remo Polselli and any other person or entity (other than Party B) that now or hereafter secures, guarantees or otherwise provides direct or indirect assurance of payment or performance of any existing or future obligation of Party B under this Agreement or any Credit Support Document.
- (g) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Michigan (without reference to choice of law doctrine).
- (h) Netting of Payments. Subparagraph (ii) of Section 2(c) of this Agreement will not apply from the date of this Agreement.
- (i) "Affiliate" will have the meaning specified in Section 14 of this Agreement.

Part 5
Other Provisions

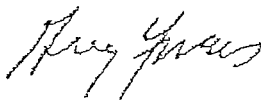
- (a) **ISDA Definitions.** The 2000 ISDA Definitions (the "2000 Definitions"), as published by the International Swaps and Derivatives Association, Inc. ("ISDA"), and the 1998 FX and Currency Option Definitions (the "FX Definitions" and together with the 2000 Definitions, the "Definitions"), as published by ISDA, Emerging Markets Traders Association and The Foreign Exchange Committee, each as hereinafter amended, are incorporated by reference into this Agreement as if fully set forth herein; provided, however, unless otherwise agreed in writing by the parties, the FX Definitions shall apply only with respect to FX Transactions and Currency Option Transactions.
- (b) **Inconsistency.** Unless expressly provided otherwise, in the event of any inconsistency between any of the documents listed below, the document listed first will prevail: (i) the Confirmation; (ii) the Schedule; (iii) the printed form of ISDA Master Agreement; and (iv) the Definitions (including: (1) the FX Definitions, as applicable, and (2) the 2000 Definitions).
- (c) **Representations.** The following is added as a new Section 3(a)(vi):
- "(vi) **Independence.** For any Relevant Agreement (defined below), (i) it acts as principal and not as agent, (ii) it acknowledges that the other party acts only at arm's length and is not its agent, broker, advisor or fiduciary in any respect, and any agency, brokerage, advisory or fiduciary services that the other party (or any of its affiliates) may otherwise provide to the party (or to any of its affiliates) excludes the Relevant Agreement, (iii) it is relying solely upon its own evaluation of the Relevant Agreement (including the present and future results, consequences, risks, and benefits thereof, whether financial, accounting, tax, legal or otherwise) and upon advice from its own professional advisors, (iv) it understands the Relevant Agreement and those risks, has determined they are appropriate for it, and willingly assumes those risks, and (v) it has not relied and will not be relying upon any evaluation or advice (including any recommendation, opinion, or representation) from the other party, its affiliates or the representatives or advisors of the other party or its affiliates (except representations expressly made in the Relevant Agreement or an opinion of counsel required thereunder).
- "Relevant Agreement" means this Agreement, each Transaction, each Confirmation, any Credit Support Document, and any agreement (including any amendment, modification, transfer or early termination) between the parties relating thereto or to any Transaction."
- (d) **Additional Agreements.** Each of Party A and Party B, if applicable, hereby further covenants and agrees that at all times during the term of this Agreement it will continuously include and maintain as part of the official written books and records this Agreement, this Schedule and all other exhibits, supplements, and attachments hereto and documents incorporated by reference herein, all Confirmations and evidence of all necessary approvals. In addition to any other remedies which the other party may have under this Agreement or otherwise, if it breaches or defaults on any of its obligations set forth in this subparagraph (d), the other party shall be entitled to apply to any court of competent jurisdiction for an order requiring specific performance of such obligations, and the defaulting party shall not contest any such application and shall comply with any such order.

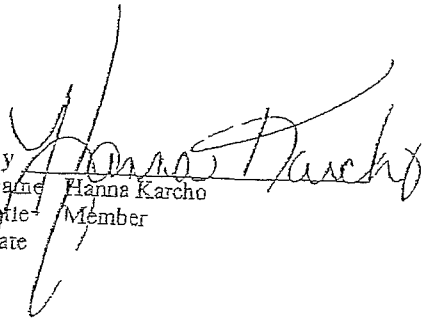
- (e) Set-off. Any Amount (the "Early Termination Amount") payable to one party (the Payee) by the other party (the Payer) under Section 6(e), in circumstances where there is a Defaulting Party or one Affected Party in the case where a Termination Event under Section 5(b)(iv) has occurred, will, at the option of the party ("X") other than the Defaulting Party or the Affected Party (and without prior notice to the Defaulting Party or the Affected Party), be reduced by its set-off against any amount(s) (the "Other Agreement Amount") payable (whether at such time or in the future or upon the occurrence of a contingency) by the Payee to the Payer (irrespective of the currency, place of payment or booking office of the obligation) under any other agreement(s) between the Payee and the Payer or instrument(s) or undertaking(s) issued or executed by one party to, or in favor of, the other party (and the Other Agreement Amount will be discharged promptly and in all respects to the extent it is so set-off). X will give notice to the other party of any set-off effected under this paragraph. For this purpose, either the Early Termination Amount or the Other Agreement Amount (or the relevant portion of such amounts) may be converted by X into the currency in which the other is denominated at the rate of exchange at which such party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency. If an obligation is unascertained, X may in good faith estimate that obligation and set-off in respect of the estimate, subject to the relevant party accounting to the other when the obligation is ascertained. Nothing in this paragraph shall be effective to create a charge or other security interest. This paragraph shall be without prejudice and in addition to any right of set-off, combination of accounts, lien or other right to which any party is at any time otherwise entitled (whether by operation of law, contract or otherwise).
- (f) **Local Business Day.** Instead of the meaning specified in Section 14, "Local Business Day" means a day on which Party A and commercial banks are open for business in the City of Detroit, Michigan.
- (g) **Jurisdiction.** Section 13(b)(i) shall be deleted and replaced with the following:
"(i) submits to the non-exclusive jurisdiction of the courts of the State of Michigan and the United States District Court located in the City of Detroit, Michigan; and"
- (h) **Transfers.** The parties agree that Party A may transfer its rights and obligations under this Agreement, in whole or in part, to any other Affiliate of Party A, provided that such assignment will not give rise to a Termination Event or an Event of Default with respect to either Party A or such assignee of Party A. Each party further agrees that Party A may share any information concerning Party B with any Affiliate. Party B may not transfer its rights and obligations under this Agreement without the prior written consent of Party A.
- (i) **Recorded Conversations.** Each party may electronically record any and all telephone conversations between itself and the other party in connection with this Agreement (including any Transaction) and agrees that any such recordings may be submitted in evidence to any court or in any proceeding for the purpose of establishing any matters pertinent thereto.
- (j) **Condition Precedent to Payments to the Defaulting Party.** All obligations on a non-defaulting party ("X") and any Affiliate of X under this Agreement, any Specified Transaction with the other Party ("Y"), and any other matured or liquidated obligation to Y, are subject to the condition precedent that Y shall have performed all of its obligations to X and any Affiliate of X under this Agreement, any Specified Transaction with X, and all other matured or liquidated obligations of Y, whether or not contingent and regardless of the currency, place of payment, or booking office of the obligation.

(c) PARTY A AND PARTY B ACKNOWLEDGE THAT THE RIGHT TO TRIAL BY JURY IS A CONSTITUTIONAL ONE, BUT THAT IT MAY BE WAIVED UNDER CERTAIN CIRCUMSTANCES. EACH PARTY, AFTER CONSULTING (OR HAVING HAD THE OPPORTUNITY TO CONSULT) WITH COUNSEL OF THEIR CHOICE, KNOWINGLY AND VOLUNTARILY, AND FOR THEIR MUTUAL BENEFIT, WAIVES ANY RIGHT TO TRIAL BY JURY IN THE EVENT OF LITIGATION REGARDING THE PERFORMANCE OR ENFORCEMENT OF, OR IN ANY WAY RELATED TO, THIS AGREEMENT. IF PARTY A AND PARTY B ARE PARTIES TO AN AGREEMENT THAT CONTAINS A JUDICIAL REFERENCE PROVISION, THEN THE TERMS OF SUCH PROVISION ARE HEREBY INCORPORATED INTO AND MADE A PART OF THIS AGREEMENT AND IN THE EVENT THE JURY TRIAL WAIVER SET FORTH ABOVE IS NOT ENFORCEABLE, THE PARTIES ELECT TO PROCEED UNDER THE TERMS OF THE JUDICIAL REFERENCE PROVISION

COMERICA BANK

OCEAN 4660, LLC


By _____
Name Greg Yovan
Title Vice President
Date January 25, 2008


By _____
Name Hanna Karcho
Title Member
Date _____

Confirmation

Date January 25 2008

To Ocean 4660, llc
Attention Hanna Karcho
Phone = 248 645 5400
Fax = 248 645 5015

From COMERICA BANK

Subject Swap Transaction (Ref: SW1558)

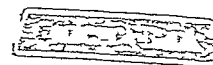
The purpose of this communication is to set forth the terms and conditions of the swap transaction entered into on the Trade Date referred to below (the "Swap Transaction") between COMERICA BANK ("Party A") and OCEAN 4660 LLC ("Party B"). This communication constitutes a "Confirmation" as referred to in the Swap Agreement specified below

This confirmation supplements forms part of and is subject to the Master Agreement dated January 25 2008, between Party A and Party B (the "Swap Agreement"). All provisions contained in, or incorporated by reference to such Swap Agreement shall govern this Confirmation except as expressly modified below

Party A and Party B each represent that entering into the Swap Transaction is authorized and does not violate any laws of its jurisdiction of organization or residence or the terms of any agreement to which it is a party, and it has reached its own conclusions about the Swap Transaction and any legal, regulatory, tax accounting or economic consequences arising from the Swap Transaction, and has concluded that the Swap Transaction is suitable in light of its own evaluation of the Swap Transaction and its own financial capabilities and sophistication

This Confirmation incorporates the definitions and provisions contained in the 2000 ISDA Definitions (as published by the International Swaps and Derivatives Association, Inc) (The "Definitions") In the event of any inconsistency between those definitions and provisions and this Confirmation, this Confirmation will govern

The terms of the particular Swap Transaction to which this Confirmation relates are as follows



Party A

COMERICA BANK

Party B

OCEAN 4660, LLC

Initial Notional Amount

\$10 650 000 00 USD

Notional Schedule

See Schedule A – Dates will adjust according to the Modified Following Business Day Convention

Trade Date

January 25 2008

Effective Date

February 1, 2008

Termination Date

February 1, 2011 subject to adjustment in accordance with the Modified Following Business Day convention, with respect to a New York and London Banking Day

FIXED AMOUNTS:

Fixed Rate Payer

OCEAN 4660 LLC
[Party B]

Fixed Rate Payer Payment Dates [or, Period End Dates, if Delayed Payment or Early Payment applies]

Monthly on the 1st day of each month commencing March 01, 2008, through and including the Termination Date, subject to adjustment in accordance with the Modified Following Business Day Convention

Fixed Rate

3.40%

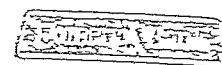
Fixed Rate Day Count Fraction

Actual / 360

FLOATING AMOUNTS:

Floating Rate Payer

COMERICA BANK
[Party A]



Floating Rate Payer Payment Dates [or
Period End Dates, if Delayed Payment
or Early Payment applies]

Monthly on the 1st day of each month,
commencing March 01, 2008, through and
including the Termination Date, subject to
adjustment in accordance with the Modified
Following Business Day Convention

Floating Rate for initial
Period

TSD

Floating Rate Option

USD-LIBOR-BBA

Designated Maturity

One (1) month

Floating Rate Day
Count Fraction

Actual / 360

Reset Dates

The first day of each Floating Rate Payer
Calculation Period

Business Days

New York and London

Calculation Agent

Comerica Bank

Offices.

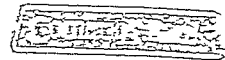
Party A is not a Multi branch Party
Party B is not a Multi branch Party

Payment instructions for Party A in:

We will settle amounts to your account
1852-40098-3 with Comerica Bank

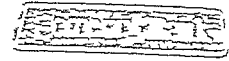
Payment instructions for Party B in:

We will settle amounts to your account
1852-40098-3 with Comerica Bank



Schedule A*			
From and Including	To	Monthly Notional Amortization	Outstanding Notional Amount
02/01/08	03/03/08		10,250,000.00
03/03/08	04/01/08	37,627.49	10,812,372.51
04/01/08	05/01/08	37,812.49	10,774,560.03
05/01/08	06/02/08	37,998.40	10,736,561.63
06/02/08	07/01/08	38,185.22	10,698,376.40
07/01/08	08/01/08	38,372.97	10,660,003.44
08/01/08	09/02/08	38,561.64	10,621,441.80
09/02/08	10/01/08	38,751.23	10,582,690.57
10/01/08	11/03/08	38,941.76	10,543,748.81
11/03/08	12/01/08	39,133.22	10,504,615.59
12/01/08	01/02/09	39,325.63	10,465,289.97
01/02/09	02/02/09	39,518.98	10,425,770.99
02/02/09	03/02/09	39,713.28	10,386,057.71
03/02/09	04/01/09	39,908.54	10,346,149.18
04/01/09	05/01/09	40,104.75	10,306,044.42
05/01/09	06/01/09	40,301.93	10,265,742.49
06/01/09	07/01/09	40,500.09	10,225,242.40
07/01/09	08/03/09	40,699.21	10,184,543.19
08/03/09	09/01/09	40,899.32	10,143,643.88
09/01/09	10/01/09	41,100.40	10,102,543.48
10/01/09	11/02/09	41,302.48	10,061,241.00
11/02/09	12/01/09	41,505.55	10,019,735.44
12/01/09	01/04/10	41,709.62	9,978,025.82
01/04/10	02/01/10	41,914.69	9,936,111.13
02/01/10	03/01/10	42,120.77	9,893,990.36
03/01/10	04/01/10	42,327.87	9,851,662.49
04/01/10	05/04/10	42,535.98	9,809,126.51
05/04/10	06/01/10	42,745.11	9,766,381.40
06/01/10	07/01/10	42,955.28	9,723,426.12
07/01/10	08/02/10	43,166.47	9,680,259.65
08/02/10	09/01/10	43,378.71	9,636,880.94
09/01/10	10/01/10	43,591.99	9,593,288.95
10/01/10	11/01/10	43,806.32	9,549,482.64
11/01/10	12/01/10	44,021.70	9,505,460.94
12/01/10	01/04/11	44,238.14	9,461,222.81
01/04/11	02/01/11	44,455.64	9,416,767.17

* Dates will adjust according to the Modified Following Business Day Convention.



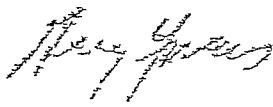
Please confirm that the foregoing correctly sets forth the terms of our agreement with respect to the Swap Transaction by signing in the space provided below and sending a copy of the executed Confirmation by fax (248-371-6801)

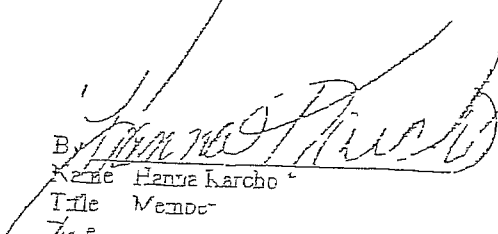
It has been a pleasure working with you on this transaction and we look forward to working with you again in the future

COMERICA BANK

Confirmed

OCEAN 4660, LLC


By _____
Name Greg Yovan
Title Vice President
Date January 25, 2008


By _____
Name Hanna Karcho
Title Member
Date _____

Global Capital Market Operations
Telephone: (248)371-6745
Facsimile: (248)371-6844
Email: FMOperations_CAL@comerica.com



3551 Hamlin Road, 2nd Floor
Auburn Hills, MI 48326

PAYMENT CONFIRMATION

To Ocean 4660, LLC

January 31, 2011

ATTN: Ms Hanna Kercho
Phone No: (248) 645-5400
Fax No: (248) 645-5015

The following rate selling and payment calculations have been made for deal number SW1558 between Comerica Bank and Ocean 4660, LLC dated February 1, 2008 and maturing on February 1, 2011.

Counterparty Reference #:

Comerica Bank Receives:

Period Start	Period End
01/04/2011	02/01/2011
Rate Description	Fixed Rate
Current Rate:	3.400000
Day Basis:	A/3
Day Count:	28
Notional Amount:	9,416,767.17
Currency:	USD
Payment Amount:	24,902.12

Comerica Bank Pays

Period Start	Period End
01/04/2011	02/01/2011
Rate Description:	
TELERATE 1 MO LIBOR	
Current Rate:	0.260630
Day Basis:	A/3
Day Count:	28
Notional Amount:	9,416,767.17
Currency:	USD
Payment Amount:	1,908.89

On February 1, 2011 Ocean 4660, LLC shall pay Comerica Bank 22,993.23 at

FL DDA 1811-054-335

If any of the above information is incorrect, please contact us.

EXHIBIT B

11/18/11 3:40 PM

11/21/11 10:40 AM 1146

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

COMERICA BANK,
a Texas banking association,

CASE NO.

03

Plaintiff,

vs.

OCEAN 4660, LLC a Florida limited
liability company, OCEANSIDE
LAUDERDALE, INC., a Florida
corporation, KENNETH A. FRANK,
individually, ANGELA DIPILATO,
individually, TOWN OF
LAUDERDALE-BY-THE-SEA, a
political subdivision of the State of
Florida, WASTE MANAGEMENT
INC OF FLORIDA d/b/a SOUTHERN
SANITATION SERVICE, a Florida
corporation, AFFINITY
MECHANICAL INC., a Florida
corporation, and BROWARD
COUNTY, a political subdivision of
the State of Florida,

11-28447

NOTICE OF LIS PENDENS

Defendants.

CIVIL ACTION SUMMONS

THE STATE OF FLORIDA

To All and Singular the Sheriffs of the State:

YOU ARE HEREBY COMMANDED to serve this Summons and a copy of the
Complaint for Foreclosure and Damages, Lis Pendens, and Motion for Appointment of a
Receiver or, Alternatively, Motion for an Order Sequestering Rents on OCEANSIDE
LAUDERDALE, INC., a Florida corporation, by serving its Registered Agent:

KENNETH FRANK
2310 E. ATLANTIC BOULEVARD, SUITE 206
POMPANO BEACH, FL 33062

A lawsuit has been filed against you. You are required to serve written defenses to
the Complaint for Foreclosure and Damages on Plaintiff's attorney, Brian K. Hole, Esq.,
whose address is Holland & Knight LLP, 515 East Las Olas Boulevard, Suite 1200, Ft.

NOV 18 2011

Lauderdale, Florida 33301, within 20 days after service of this Summons, exclusive of the day of service and to file the original of the defenses, with the Clerk of this Court either before service on Plaintiff's attorneys or immediately thereafter. If you fail to do so, a default will be entered against you for the relief demanded in the Complaint.

Americans With Disabilities Act (ADA) Notice

IF YOU ARE A PERSON WITH A DISABILITY WHO NEEDS ANY ACCOMMODATION IN ORDER TO PARTICIPATE IN THIS PROCEEDING, YOU ARE ENTITLED, AT NO COST TO YOU, TO THE PROVISION OF CERTAIN ASSISTANCE. PLEASE CONTACT BETTY LETTS, 201 S.E. 6TH STREET, ROOM 136, FORT LAUDERDALE, FL 33301, OR TELEPHONE (954) 831-6364 WITHIN 2 WORKING DAYS OF YOUR RECEIPT OF THIS DOCUMENT. IF YOU ARE HEARING IMPAIRED, CALL (TDD) 1-800-955-8771; IF YOU ARE VOICE IMPAIRED, CALL 1-800-955-8770.

WITNESS my hand and the seal of said Court on _____, 2011.

HOWARD C. FORMAN
as Clerk & Comptroller of said Court

By: _____

Deputy Clerk
(Court Seal)

ANGELA REED-SHEFFIELD

NOV 17 2011

A TRUE COPY
Circuit Court Seal

#10733619_v1

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

COMERICA BANK,
a Texas banking association.

CASE NO.

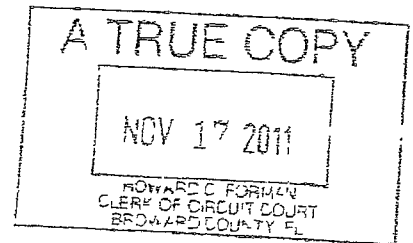
Plaintiff,

11-28447

vs.

OCEAN 4660, LLC a Florida limited
liability company, OCEANSIDE
LAUDERDALE, INC., a Florida
corporation, KENNETH A. FRANK,
individually, ANGELA DIPILATO,
individually, TOWN OF LAUDERDALE-
BY-THE-SEA, a political subdivision of the
State of Florida, WASTE MANAGEMENT
INC OF FLORIDA d/b/a SOUTHERN
SANITATION SERVICE, a Florida
corporation, AFFINITY MECHANICAL
INC., a Florida corporation, and
BROWARD COUNTY, a political
subdivision of the State of Florida,

Defendants



NOTICE OF LIS PENDENS

TO: OCEAN 4660, LLC, OCEANSIDE LAUDERDALE, INC., KENNETH A. FRANK,
ANGELA DIPILATO, TOWN OF LAUDERDALE-BY-THE-SEA, WASTE
MANAGEMENT INC. OF FLORIDA d/b/a SOUTHERN SANITATION SERVICE,
AFFINITY MECHANICAL, INC., BROWARD COUNTY, AND OTHERS TO WHOM
IT MAY CONCERN:

You are notified of the institution of this action by Comerica Bank, against you seeking
to foreclose a mortgage on the following property in Broward County, Florida:

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL A

Lots 11, 12, 13, 14, 15, 16, 17, 18, and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9 of
LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of
the Public Records of Broward County, Florida; ALSO, all of that parcel of land, if any, bounded

on the West by the easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the north line of Lot 17 of said Block 9, bounded on the South by the south line of Lot 14 of said Block 9, extended easterly to the Atlantic Ocean, said land fronting on the Atlantic Ocean.

Land situated in the County of Broward, State of Florida, described as follows

PARCEL B

Lots 20 and 21, in Block 10 of LAUDERDALE BY THE SEA, ACCORDING TO THE Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

PARCEL C

Lots 9, 10, 22, 23, and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida.

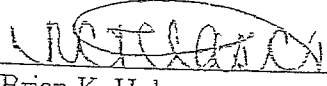
Tax Identification No.s 19318-01-06100 and 19318-01-07000 (Parcel A)
19381-01-07300 (Parcel B)
19318-01-06800 and 19318-01-06820 (Parcel C)

Commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida.

Dated: November 17, 2011.

HOLLAND & KNIGHT LLP
Attorneys for Comerica Bank
515 East Las Olas Boulevard, 12th Floor
Fort Lauderdale, FL 33302-4070
Tel: (954) 525-1000
Fax: (954) 463-2030

By: _____


Brian K. Hole
Florida Bar No. 019968
Nicole C. Velasco
Florida Bar No. 0028585

#10301433_v1

11/31/11 3:40 PM 11/14/10
11/21/11 10:40 AM

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

COMERICA BANK,
a Texas banking association,

CASE NO.

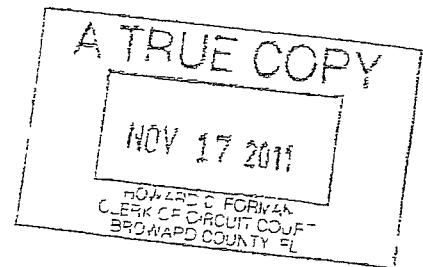
Plaintiff,

03

vs.

11-28447

OCEAN 4660, LLC a Florida limited
liability company, OCEANSIDE
LAUDERDALE, INC. a Florida
corporation, KENNETH A FRANK,
individually, ANGELA DIPILATO,
individually, TOWN OF
LAUDERDALE-BY-THE-SEA, a
political subdivision of the State of
Florida, WASTE MANAGEMENT
INC. OF FLORIDA d/b/a SOUTHERN
SANITATION SERVICE, a Florida
corporation, AFFINITY
MECHANICAL INC., a Florida
corporation, and BROWARD
COUNTY, a political subdivision of
the State of Florida,



Defendants

COMPLAINT FOR FORECLOSURE

Plaintiff Comerica Bank, a Texas banking association ("Comerica"), sues
Defendants Ocean 4660, LLC ("Ocean 4660"), Oceanside Lauderdale, Inc.
("Oceanside Lauderdale"), Kenneth A. Frank ("Frank"), Angela Dipilato ("Dipilato"),
Town of Lauderdale-By-The-Sea (the "Town"), Waste Management Inc. of Florida
d/b/a Southern Sanitation ("WMIF"), Affinity Mechanical Inc. ("Affinity"), and
Broward County (the "County"), and states:

GENERAL AND JURISDICTIONAL ALLEGATIONS

1. This is an action to foreclose on real and personal property located in Broward County, Florida.
 2. Comerica is a Texas banking association.
 3. Ocean 4660 is a Florida limited liability company doing business in Broward County, Florida.
 4. Oceanside Lauderdale is a Florida corporation with its principal place of business in Broward County, Florida.
 5. Upon information and belief, Frank is an adult resident of Broward County, Florida and is otherwise *sui juris*.
 6. Upon information and belief, Dipilato is an adult resident of Broward County, Florida and is otherwise *sui juris*.
 7. The Town is a political subdivision of the State of Florida located in Broward County, Florida.
 8. WMIF is a Florida corporation doing business in Broward County, Florida.
 9. Affinity is a Florida corporation with its principal place of business in Broward County, Florida.
 10. The County is a political subdivision of the State of Florida.
 11. Comerica has complied with all conditions precedent to the institution of this action, they have occurred, or they have been waived by all of the Defendants.
-

12. Comerica has retained the law firm of Holland & Knight LLP to represent it in this matter and is obligated to pay its counsel a reasonable fee, which is secured under and pursuant to the lien of the Loan Documents (as defined hereinafter).

COMMON BACKGROUND FACTUAL ALLEGATIONS

13. On January 3, 2008, Comerica agreed to loan Ocean 4660 a principal sum of Ten Million Eight Hundred Fifty Thousand and No/Dollars (\$10,850,000.00) (the "First Loan"). As evidence of the First Loan, Ocean 4660 executed and delivered to Comerica an Installment Note ("First Note"). A true and correct copy of the First Note is attached hereto and incorporated as Exhibit "A."

14. On January 3, 2008, Comerica also agreed to loan Ocean 4660 a principal sum of One Million and No/Dollars (\$1,000,000.00) (the "Second Loan") (collectively with the First Loan, the "Loans"). As evidence of the Second Loan, Ocean 4660 executed and delivered to Comerica a Draw-To Note ("Second Note") (collectively with the First Note, the "Notes"). A true and correct copy of the Second Note is attached hereto and incorporated as Exhibit "B."

15. On January 25, 2008, Ocean 4660 and Comerica entered into an ISDA Master Agreement, as confirmed by a written Confirmation Letter dated January 25, 2008 (collectively, the "Swap Agreement"), whereby each party agreed to enter into a series of transactions resulting in certain payments between the parties, as set forth in more detail in the Schedule contained therein. A true and correct copy of the Swap Agreement is attached hereto as Composite Exhibit "C."

16. On January 3, 2008, to secure repayment of the Notes, Ocean 4660 executed and delivered to Comerica a Continuing Collateral Mortgage ("Mortgage"). The Mortgage was recorded on January 7, 2008 in Official Records Book 44971 at Page 797 of the Public Records of Broward County, Florida. A true and correct copy of the Mortgage is attached hereto and incorporated as Exhibit "D."

17. The Mortgage grants Comerica a lien on real property located in Broward County, Florida (hereinafter the "Subject Real Property"), as more fully described below and in Exhibit A of the Mortgage. See Ex. D at 1.

18. The Mortgage also grants Comerica a security interest in all personal property, as more fully described below, located in or used or procured for use in connection with the Subject Real Property, at the time the Mortgage was executed or thereafter. See Ex. D at 1-2.

19. Pursuant to the Mortgage, Ocean 4660 absolutely and unconditionally mortgaged, warranted, and assigned to Comerica all of Ocean 4660's right, title and interest existing at the time the Mortgage was executed and thereafter arising in and to the rents, issues, profits, revenues, accounts and general intangibles arising from the Subject Real Property or relating to any business conducted by Ocean 4660 thereon under present or future leases, licenses or otherwise. Ex. D at 1.

20. On January 3, 2008, Ocean 4660 executed and delivered to Comerica a Security Agreement (the "Security Agreement"), whereby Ocean 4660 pledged, assigned and granted to Comerica a continuing security interest and lien in certain

personal property, as more fully described therein. A true and correct copy of the Security Agreement is attached hereto and incorporated as Exhibit "E."

21. To further perfect the respective security interests granted by the Mortgage and by the Security Agreement in the personal property described in each document and in the UCC-1 (as hereinafter defined) (collectively, the "Subject Personal Property"), Ocean 4660 delivered to Comerica a Uniform Commercial Code Financing Statement (the "UCC-1").

22. The UCC-1 was filed with the Florida Secretary of State under File Number 20080735983X on January 4, 2008. A true and complete copy of the UCC-1 is attached hereto and incorporated as Exhibit "F."

23. Comerica is the owner and holder of the original Notes, Mortgage, Swap Agreement, Security Agreement, UCC-1, and all other documents evidencing and/or securing the Loans (hereinafter collectively referred to as the "Loan Documents").

24. On June 9, 2010, Ocean 4660 and Comerica entered into a Forbearance Agreement, as amended on September 3, 2010 and again on May 5, 2011 (collectively, the "Forbearance Agreement"). A true and correct copy of the Forbearance Agreement is attached hereto and incorporated as Composite Exhibit "G."

25. The Loans are in default for, among other things:

- a) failure to pay Comerica the sum of \$78 229 44 for reimbursement of the protective advance Comerica made for 2009 and 2010 real property taxes, which payment was due by July 31, 2011
- b) failure to provide Comerica by May 31, 2011 evidence that the conditions of Section 13 of the Forbearance Agreement (regarding discharge of certain liens) had been met,
- c) failure to deliver to Comerica by May 31 2011 an executed Non-Disturbance and Attornment Agreement and Landlord's Consent as required by Section 19 of the Forbearance Agreement,
- d) failure to pledge to Comerica a first priority security interest in the Bank of America Accounts (as defined in the Forbearance Agreement) by May 16 2011
- e) failure to deliver to Comerica by May 16, 2011 a fully executed personal financial statement for guarantor Remo Polselli as required by Section 30 of the Forbearance Agreement
- f) failure to cause all liens, notices of pendency, notices of lis pendens and any other documents recorded in the real property records against the Subject Real Property by Oceanside Lauderdale Frank, Dipilato, or any other party related to them to be discharged by July 31, 2011 as required by Section 13 of the Forbearance Agreement; and
- g) failure to pay the amounts owed under the Swap Agreement when it matured on February 1, 2011.

26. Pursuant to a delinquency notice dated October 26, 2011, Comerica notified Ocean 4660 that the Loans were in default. Comerica further notified Ocean 4660 that commencement of foreclosure and legal proceedings was imminent. A true and complete copy of the delinquency notice is attached hereto and incorporated as Exhibit "H."

27. Ocean 4660 failed to cure the defaults.

28. Additionally, Ocean 4660 has failed to maintain real property insurance coverage for the Subject Real Property.

29. Comerica hereby declares the entire outstanding balances of the Notes immediately due and payable, together with title search expenses for ascertaining necessary parties to this action, advances for taxes, insurance, protection of the Subject Real and Personal Property, the costs of this action and attorneys' fees.

30. As of November 7, 2011, after giving Ocean 4660 credit for all sums which have been paid, a principal sum of \$10,651,445.32 (exclusive of accrued and unpaid interest and fees, attorneys' fees, and costs) remains due pursuant to the First Note; a principal sum of \$933,449.13 (exclusive of accrued and unpaid interest and fees, attorneys' fees, and costs) remains due pursuant to the Second Note; and a sum of \$101,844.60 remains due pursuant to the Swap Agreement.

31. In addition, Comerica has incurred investigatory, title search and UCC search expenses to ascertain the necessary parties to this action, which expenses are secured by the lien of the Loan Documents.

32. Comerica has already advanced funds to pay the 2008, 2009 and 2010 real estate taxes, and may be required to advance funds during the pendency of this action to preserve and protect its collateral. All such advances are secured by the lien of the Loan Documents.

33. The Subject Real and Personal Property encumbered by the Mortgage is currently owned by and in the possession of Ocean 4660. The current legal description of the Subject Real Property is:

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL A

Lots 11, 12, 13, 14, 15, 16, 17, 18, and 19, in Block 10, and Lots 14, 15, 16 and 17, in Block 9 of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida; ALSO, all of that parcel of land, if any, bounded on the West by the easterly line of said Lots 14, 15, 16 and 17, of said Block 9, bounded on the East by the Atlantic Ocean, bounded on the North by the north line of Lot 17 of said Block 9, bounded on the South by the south line of Lot 14 of said Block 9, extended easterly to the Atlantic Ocean, said land fronting on the Atlantic Ocean.

Land situated in the County of Broward, State of Florida, described as follows:

PARCEL B

Lots 20 and 21, in Block 10 of LAUDERDALE BY THE SEA, ACCORDING TO THE Plat thereof, recorded in Plat Book 6, Page 2, of the Public Records of Broward County, Florida.

PARCEL C

Lots 9, 10, 22, 23, and 24, in Block 10, of LAUDERDALE BY THE SEA, according to the Plat thereof, recorded in Plat Book 6, Page 2 of the Public Records of Broward County, Florida.

Tax Identification No.s 19318-01-06100 and 19318-01-07000 (Parcel A)
 19381-01-07300 (Parcel B)
 19318-01-06800 and 19318-01-06820 (Parcel C)

Commonly known as 4660 N. Ocean Drive, Lauderdale by the Sea, Florida

The current legal description of the Subject Personal Property is:

Together with (a) all related easements, hereditaments, appurtenances, rights, licenses and privileges; (b) all buildings and improvements situated under, upon or over any of the above described land, (c) all the rents issues, profits, revenues, accounts and general intangibles arising from the above described land, or relating to any business conducted by the Mortgagor on it, under present or future leases, licenses or otherwise; (d) all machinery, equipment, goods, fixtures, and articles of personal property of every kind and nature (other than Household Goods, as defined by 12 CFR 227.12, as amended from time to time, and other than consumer goods, as defined in the Uniform Commercial Code, unless such goods were purchased with the proceeds of any loan specifically referenced as being secured by the Mortgage), now or later located upon the above described land and useable in connection with any present or future operation on the land including, without limit, all lighting, heating, cooling, ventilating, air-conditioning, incinerating, refrigerating, plumbing, sprinkling, communication and electrical systems, and all general intangibles, including without limit software, acquired or used in connection therewith (e) all "as-extracted collateral", and (f) all awards or payments, and interest on them, made with respect to the premises as a result of (i) any eminent domain proceeding, (ii) any street grade alteration, (iii) any loss of or damage to any building or other improvement, (iv) any other injury to or decrease in the value of the premises, (v) any refund due on account of the payment of real estate taxes, assessments or other charges levied against the premises or (vi) any refund of utility deposits or right to any tenant deposit

34. Ocean 4660 now owns, holds, and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the deed dated January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971 at Page 759; the deed dated January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971 at Page 757; and Assignment of Leasehold Interest dated January 3, 2008 and recorded on January 7, 2008 in Official Records Book 44971 at Page 761 of the Public Records of Broward County, or may otherwise claim ~~an interest in the Property.~~

35. Oceanside Lauderdale now owns, holds, and may claim some interest in the Property that is the subject of this foreclosure action as a party in possession

of the Subject Real Property, and by virtue of the Lis Pendens recorded on October 28, 2011 in Official Records Book 48272 at Page 1346; the Notice of Pendency recorded on January 11, 2010 in Official Records Book 46790 at Page 604; the Notice of Pendency recorded on May 25, 2010 in Official Records Book 47106 at Page 1585; the Notice of Mechanics Lien recorded November 4, 2010 in Official Records Book 47501 at Page 1818; the Notice of Mechanics Lien recorded January 21, 2011 in Official Records Book 47664, Page 42; and the Notice of Claim of Lien recorded August 16, 2011 in Official Records Book 48116 at Page 1756 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

36. Frank now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Lis Pendens recorded on October 28, 2011 in Official Records Book 48272 at Page 1346; the Notice of Pendency recorded on January 11, 2010 in Official Records Book 46790 at Page 604; the Notice of Pendency recorded on May 25, 2010 in Official Records Book 47106 at Page 1585; the Notice of Mechanics Lien recorded on November 4, 2010 in Official Records Book 47501 at Page 1818; and the Notice of Mechanics Lien recorded January 21, 2011 in Official Records Book 47664 at Page 42 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

37. Dipilato now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action as a party in possession of the Subject

Real Property, and by virtue of the Lis Pendens recorded on October 28, 2011 in Official Records Book 48272 at Page 1346; the Notice of Pendency recorded on May

25, 2010 in Official Records Book 47106 at Page 1585; the Notice of Mechanics Lien recorded on November 4, 2010 in Official Records Book 47501 at Page 1818; the Notice of Pendency recorded on January 18, 2011 in Official Records Book 47653 at Page 1590 and re-recorded January 21, 2011 in Official Records Book 47663 at Page 1853, and the Notice of Mechanics Lien recorded on January 21, 2011 in Official Records Book 47664 at Page 42 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

38. The Town now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Claim of Liens dated November 10, 2010 and recorded on November 15, 2010 in Official Records Book 47521 at Page 1395 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

39. WMIF now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Default Final Judgment dated December 8, 2010 and recorded on December 29, 2010 in Official Records Book 47618 at Page 75, and re-recorded on June 15, 2011 in Official Records Book 47977 at Page 298 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

40. Affinity now owns, holds and may claim some interest in the Property that is the subject of this foreclosure action by virtue of the Claim of Lien dated January 13, 2011 and recorded on January 18, 2011 in Official Records Book 47655

at Page 1644 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

41. The County may claim an interest in the Property that is the subject of this foreclosure action by virtue of the Broward County Tourist Development Tax Warrant Lien recorded on April 14, 2009 in Official Records Book 46134 at Page 1028 of the Public Records of Broward County, or may otherwise claim an interest in the Property.

42. The interests of the defendants in the Subject Real and Personal Property are junior and inferior to the interests of Comerica therein.

COUNT I

ACTION TO FORECLOSE MORTGAGE ON REAL PROPERTY SECURING NOTES

43. This is a suit to foreclose the Mortgage, which encumbers the Subject Real Property. Comerica adopts and realleges the averments of paragraphs 1 through 42 above and incorporates those paragraphs as its paragraph 43.

WHEREFORE, Comerica respectfully requests that:

(1) The Court will assume jurisdiction of the subject matter of this action and of the named parties.

(2) The Court will ascertain the amount of money due Comerica for principal and interest on the Notes and the Swap Agreement and for late charges, ~~abstracting, taxes, expenses and all expenses of foreclosure, including attorneys'~~ fees, that Comerica is entitled to recover in this action, plus interest thereon.

(3) The Court decree that Comerica has a lien on the Subject Real Property described in the Mortgage for the sum of money found to be due Comerica.

(4) If the sums due Comerica under the Notes, the Swap Agreement and Mortgage are not paid immediately, the Court shall foreclose the Mortgage in accordance with the rules and established practice of the Court, and the Clerk of the Court shall sell all of the above-mentioned Subject Real Property securing the indebtedness to satisfy the mortgage lien of Comerica in accordance with the provisions of section 45.031, Florida Statutes.

(5) The Court decree that the mortgage lien interests of Comerica are superior and paramount to all liens, rights, title and interest of any defendant, or any party claiming by, through, under or against any defendant, and that such liens, rights, title or interest of any defendant named herein or hereafter made a defendant or any party claiming by, through, under or against any defendant be forever barred and foreclosed.

(6) The Court retain jurisdiction of this action to make any and all further orders and judgments as may be necessary and proper.

(7) The Court grant such other and further relief as Comerica may be entitled to receive.

COUNT II

ACTION TO FORECLOSE MORTGAGE
ON PERSONAL PROPERTY SECURED BY THE NOTES

44 This is a suit to foreclose the Mortgage, which encumbers the Subject Personal Property Comerica adopts and realleges the averments of paragraphs 1 through 42 above and incorporates those paragraphs as its paragraph 44

WHEREFORE, Comerica requests that

(1) The Court will assume jurisdiction of the subject matter of this action and of the named parties

(2) The Court will ascertain the amount of money due Comerica for principal and interest on the Notes and the Swap Agreement and for late charges abstracting, taxes, expenses and all expenses of foreclosure including attorneys' fees, that Comerica is entitled to recover in this action plus interest thereon

(3) The Court decree that Comerica has a lien on the Subject Personal Property for the sum of money found to be due Comerica that is superior to the interest of any defendant

(4) If the sums due Comerica under the Notes, the Swap Agreement and Mortgage are not paid immediately, the Court shall foreclose the Mortgage in accordance with the rules and established practice of the Court and the Clerk of the Court shall sell all of the above-mentioned Subject Personal Property securing the indebtedness to satisfy the mortgage lien of Comerica.

(5) The Court decree that the mortgage lien interests of Comerica are superior and paramount to all liens, rights, title and interest of any defendant. or

any party claiming by, through, under or against any defendant, and that such liens, rights, title or interest of any defendant named herein or hereafter made a defendant or any party claiming by, through, under or against any defendant be forever barred and foreclosed.

(6) The Court retain jurisdiction of this action to make any and all further orders and judgments as may be necessary and proper.

(7) The Court grant such other and further relief as Comerica may be entitled to receive.

Dated: November 17, 2011

HOLLAND & KNIGHT LLP
Attorneys for Comerica Bank
515 East Las Olas Boulevard, 12th Floor
Fort Lauderdale, FL 33302-4070
Tel: (954) 525-1000
Fax: (954) 463-2030

By: 

Brian K. Hole
Florida Bar No. 0019968
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Florida Bar No. 0028585

#10300551_v2