

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

COMERICA BANK,  
a Texas banking association,

CASE NO. 11-028447 (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,

Defendants.

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**PLAINTIFF'S MOTION TO COMPEL BETTER ANSWERS  
FROM DEFENDANT OCEAN 4660, LLC**

Plaintiff, Comerica Bank, pursuant to Florida Rule of Civil Procedure 1.370(a), hereby moves this Court for an order compelling Defendant Ocean 4660, LLC ("Ocean 4660") to provide better answers to its Response to Comerica Bank's First Request for Admissions. In support of this Motion, Comerica Bank states as follows:

1. When a party responds to a request for admissions under Rule 1.370, the answering party must either admit or specifically deny the matter requested. Fla. R. Civ. P. 1.370(a).

2. If a party cannot admit or specifically deny the matter requested, then the

answering party must set forth in detail the reasons why it cannot truthfully admit or deny the matter. *Id.* Moreover, the answering party cannot give lack of information as the basis for failing to admit or specifically deny unless the answering party states that it made a reasonable inquiry and that the information known or readily obtainable by the answering party was insufficient to enable it to admit or specifically deny. *Id.*

3. After the answers are served, the party who requested the admissions may move to determine the sufficiency of the answers. *Id.*

4. If the Court finds that the answering party provided inadequate reasons for either admitting or denying the request, then the answering party's response is the equivalent of an admission. Fla. R. Civ. P. 1.370, Auth. Cmt. (1967) ("Inadequate reasons for neither admitting nor denying are the equivalent of an admission.").

5. Here, Comerica Bank served its First Request for Admissions to Ocean 4660 on June 28, 2012. A true and correct copy of Comerica Bank's First Request for Admissions is attached as **Exhibit "A."**

6. On September 11, 2012, Ocean 4660 served its Response to Comerica Bank's First Request for Admissions. A true and correct copy of Ocean 4660's Responses to Comerica Bank's First Request for Admissions is attached as **Exhibit "B."**

7. In response to requests 6, 11, 12, 13, and 15, Ocean 4660 stated it "neither admits nor denies" the matters requested.

8. Ocean 4660, however, failed to set forth in detail the reasons why it cannot truthfully admit or deny the matter as required by Rule 1.370(a).

9. As a result, Ocean 4660 failed to comply with the requirements of Rule 1.370(a). *See* Fla. R. Civ. P. 1.370(a); *see also Hornbeck v. Club Madonna*, No. 09-23447-CIV, 2010 WL

1911381, at \*3 (S.D. Fla. May 12, 2010) (holding that "denied as worded" was a legally insufficient response because answering party failed to state in detail why they cannot truthfully admit or deny the statement).<sup>1</sup>

10. Because Ocean 4660 failed to comply with the requirements of Rule 1.370(a), their response to requests 6, 11, 12, 13, and 15 should be construed as admissions. *See* Fla. R. Civ. P. 1.370, Auth. Cmt. (1967).

11. Alternatively, this Court should strike Defendants' responses to requests 6, 11, 12, 13, and 15 and order Defendants to file a revised response within 10 days of the Court's order.


WHEREFORE, Comerica Bank respectfully requests that this Court:

- (i) find that requests 6, 11, 12, 13, and 15 are deemed admitted; or, alternatively,
- (ii) hold Ocean 4660's responses to requests 6, 11, 12, 13, and 15 are stricken as legally insufficient; and
- (iii) grant any other relief as this Court deems necessary and equitable.

Dated: January 8, 2013.

Respectfully Submitted,

**HOLLAND & KNIGHT LLP**  
Counsel for Comerica Bank  
515 East Las Olas Boulevard, Suite 1200  
Fort Lauderdale, Florida 33301  
Telephone No: (954) 525-1000  
Fax No: (954) 463-2030

By:   
Brian K. Hole  
Fla. Bar No. 0019968  
brian.hole@hklaw.com  
Joshua R. Levenson  
Fla. Bar No. 0056208  
joshua.levenson@hklaw.com

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<sup>1</sup> Because Rule 1.370 is modeled after the federal rules, federal cases interpreting the federal rule dealing with requests for admissions are highly persuasive. *Adams v. Freel*, 409 So. 2d 1176, 1177 (Fla. 5th DCA 1982).

### CERTIFICATE OF SERVICE

I hereby certify that on **January 8, 2013**, a true and correct copy of the foregoing was served on all parties on the Service List below in the manner specified.



Brian K. Hole  
Fla. Bar No. 0019968  
[brian.hole@hkclaw.com](mailto:brian.hole@hkclaw.com)  
Joshua R. Levenson  
Fla. Bar No. 0056208  
[joshua.levenson@hkclaw.com](mailto:joshua.levenson@hkclaw.com)

### SERVICE LIST

Krystol L. Rappuhn, Esq. 55 E. Long Lake Road, Suite 204 Troy, Michigan 48085-4738 (248) 645-5400 - Office (313) 319-0743 - Cellular (248) 879-3124 - Facsimile <i>Co-Counsel for Ocean 4660, LLC</i> <b>[Via U.S. Mail only]</b>	Michael Tobin, Esq. Rothman & Tobin, P.A. 11900 Biscayne Boulevard, Suite 740 Miami, Florida 33181 Phone: (305) 895-3225 Fax: (305) 895-7175 E-mail: <a href="mailto:mtobin@rothmanandtobin.com">mtobin@rothmanandtobin.com</a> <i>Counsel for Ocean 4660, LLC, Hanna Karcho-Polselli and Remo Polselli</i> <b>[Via E-mail]</b>
Eduardo M. Soto, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, FL 33134 Phone: (305) 854-0800 Fax: (305) 854-2323 E-mail: <a href="mailto:esoto@wsh-law.com">esoto@wsh-law.com</a> <i>Counsel for Town of Lauderdale-By-The-Sea</i> <b>[Via E-mail]</b>	Maya A. Moore, Esq. Joni Armstrong Coffey, Esq. County Attorney for Broward County Office of the County Attorney Governmental Center, Suite 423 115 South Andrews Avenue Fort Lauderdale, FL 33301 Phone: (954) 357-7600 Fax: (954) 357-7641 E-mail: <a href="mailto:mmoore@broward.org">mmoore@broward.org</a> <i>Counsel for Broward County</i> <b>[Via E-mail]</b>

<p>Charmaine J. Comprosky, Esq.  Law Office of Charmaine J. Comprosky, P.A.  2310 East Atlantic Boulevard, Suite 204  Pompano Beach, Florida 33062  E-mail: <a href="mailto:law@comprosky.com">law@comprosky.com</a>  <i>Counsel for Oceanside Lauderdale, Inc.</i>  <b>[Via E-mail]</b></p>	<p>Kenneth A. Frank, <i>Pro Se</i>  2310 East Atlantic Boulevard, Suite 206  Pompano Beach, FL 33062  E-mail: <a href="mailto:kenknaassociates@gmail.com">kenknaassociates@gmail.com</a>  <b>[Via U.S. Mail and E-mail]</b></p>
<p>Oceanside Lauderdale, Inc.  2310 East Atlantic Boulevard, Suite 206  Pompano Beach, FL 33062  <b>[Via U.S. Mail]</b></p>	<p>Angela Dipilato  2310 East Atlantic Boulevard, Suite 206  Pompano Beach, FL 33062  <b>[Via U.S. Mail]</b></p>
<p><b>Waste Management Inc. of Florida</b>  d/b/a Southern Sanitation Service  c/o Registered Agent, CT Corporation System  1200 South Pine Island Road  Plantation, FL 33324  <b>[Via U.S. Mail]</b></p>	<p>Angela Dipilato  1323 S.E. 3<sup>rd</sup> Avenue  Pompano Beach, FL 33060  <b>[Via U.S. Mail]</b></p>
<p>Affinity Mechanical Inc.  c/o Edward J. Bender, Registered Agent  2805 E. Oakland Park Boulevard, #144  Fort Lauderdale, FL 33306  Phone: (954) 332-8363  Fax: (954) 688-2524  <b>[Via U.S. Mail]</b></p>	<p>Rose Portelli  5915 Park Drive  Margate, FL 33063  <b>[Via U.S. Mail]</b></p>
<p>Motion Elevator, Inc.  c/o Registered Agent, Rose Portelli  5915 Park Drive  Margate, FL 33063  <b>[Via U.S. Mail]</b></p>	<p>Michal Holovka  1261 S.E. 7th Avenue  Pompano Beach, FL 33060  <b>[Via U.S. Mail]</b></p>
<p>Euro Fist Choice Enterprises, Inc.  c/o Registered Agent, Michal Holovka  1261 S.E. 7<sup>th</sup> Avenue  Pompano Beach, FL 33060  <b>[Via U.S. Mail]</b></p>	

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

CASE NO. 11-028447 (03)

COMERICA BANK, a Texas banking  
association,

Plaintiff,

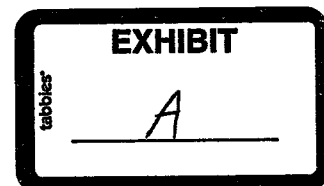
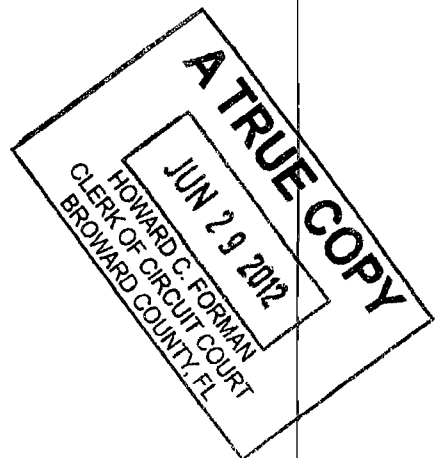
vs.

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,

Defendants.

**PLAINTIFF'S FIRST REQUEST FOR ADMISSIONS  
TO DEFENDANT OCEAN 4660, LLC**

Pursuant to Florida Rule of Civil Procedure 1.370, Plaintiff Comerica Bank  
("Plaintiff") requests Defendant Ocean 4660, LLC to admit the following within  
thirty (30) days after service hereof:



1. You own real property located in Broward County, Florida with a street address of 4660 N. Ocean Drive, Lauderdale-by-the-Sea, Florida (the "Property").

2. You borrowed Ten Million Eight Hundred Fifty Thousand and No/Dollars (\$10,850,000.00) from Plaintiff on January 3, 2008 (the "First Loan").

3. On January 3, 2008, you also borrowed One Million and No/Dollars (\$1,000,000.00) from Plaintiff (the "Second Loan").

4. In connection with the First Loan, you executed and delivered to Plaintiff an Installment Note.

5. In connection with the Second Loan, you executed and delivered to Plaintiff a Draw-To Note.

6. On January 25, 2008, you entered into an ISDA Master Agreement, as confirmed by a written Confirmation Letter dated January 25, 2008 (the "Swap Agreement").

7. You made some payments to Plaintiff under the Swap Agreement.

8. On June 9, 2010, Plaintiff entered into a Forbearance Agreement with you, as amended on September 3, 2010 and again on May 5, 2011.

9. You owe money to Plaintiff in connection with the First Loan.

10. You owe money to Plaintiff in connection with the Second Loan.

11. You do not have sufficient funds to repay the First Loan in full.

12. You do not have sufficient funds to repay the Second Loan in full.

13. You owe money to Plaintiff in connection with the Swap Agreement.

14. You do not have sufficient funds to pay Plaintiff what you owe under the Swap Agreement.

15. You owe Plaintiff \$78,229.44 for 2009 and 2010 real property taxes that were due on the Property and that Plaintiff paid on your behalf.

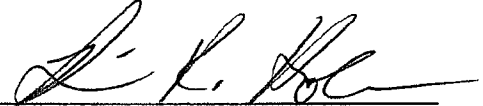
16. You have not paid the real property taxes that are due on the Property for 2011.

17. You do not currently have insurance coverage for the Property.

Dated: June 28, 2012

Respectfully Submitted,

**HOLLAND & KNIGHT LLP**  
Counsel for Comerica Bank  
515 East Las Olas Boulevard  
Suite 1200  
Fort Lauderdale, Florida 33301  
Telephone No: (954) 525-1000  
Fax No: (954) 463-2030

By:   
Brian K. Hole  
Fla. Bar No. 0019968  
Nicole C. Velasco  
Fla. Bar No. 0028585



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 28, 2012, a true and correct copy of the foregoing was provided to all parties on the Service List below.

By: 

Brian K. Hole  
Fla. Bar No. 0019968

### SERVICE LIST

Krystol L. Rappuhn, Esq. 55 E. Long Lake Road, Suite 204 Troy, Michigan 48085-4738 <i>Co-Counsel for Ocean 4660, LLC</i> <b>By regular U.S. Mail and facsimile</b>	Michael Tobin, Esq. Rothman & Tobin, P.A. 11900 Biscayne Boulevard, Suite 740 Miami, Florida 33181 <i>Co- Counsel for Ocean 4660, LLC</i> <b>By regular U.S. Mail and facsimile</b>
Eduardo M. Soto, Esq. Weiss Serota Helfman Pastoriza Cole & Boniske, P.L. 2525 Ponce de Leon Blvd., Suite 700 Coral Gables, FL 33134 <i>Counsel for Town of Lauderdale-By-The-Sea</i> <b>By regular U.S. Mail and facsimile</b>	Maya A. Moore, Esq. Joni Armstrong Coffey, Esq. County Attorney for Broward County Office of the County Attorney Governmental Center, Suite 423 115 South Andrews Avenue Fort Lauderdale, FL 33301 <i>Counsel for Broward County</i> <b>By regular U.S. Mail and facsimile</b>
Oceanside Lauderdale, Inc. 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 <b>By regular U.S. Mail</b>	Kenneth A. Frank 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 <b>By regular U.S. Mail</b>
Waste Management of Florida d/b/a Southern Sanitation Service c/o Registered Agent, CT Corporation System 1200 South Pine Island Road Plantation, FL 33324 <b>By regular U.S. Mail</b>	Affinity Mechanical Inc. c/o Edward J. Bender, Registered Agent 2805 E. Oakland Park Boulevard, #144 Fort Lauderdale, FL 33306 <b>By regular U.S. Mail</b>

Angela Dipilato 2310 East Atlantic Boulevard, Suite 206 Pompano Beach, FL 33062 <b>By regular U.S. Mail</b>	Angela Dipilato 1323 S.E. 3rd Avenue Pompano Beach, FL 33060 <b>By regular U.S. Mail</b>
Motion Elevator, Inc. c/o Registered Agent, Rose Portelli 5915 Park Drive Margate, FL 33063 <b>By regular U.S. Mail</b>	Rose Portelli 5915 Park Drive Margate, FL 33063 <b>By regular U.S. Mail</b>
Euro Fist Choice Enterprises, Inc. c/o Registered Agent, Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 <b>By regular U.S. Mail</b>	Michal Holovka 1261 S.E. 7th Avenue Pompano Beach, FL 33060 <b>By regular U.S. Mail</b>

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COMERICA BANK,

Plaintiff,

vs.

IN THE CIRCUIT COURT OF THE 17<sup>TH</sup>  
JUDICIAL CIRCUIT, IN AND FOR  
BROWARD COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO.: CACE11028447 (03)

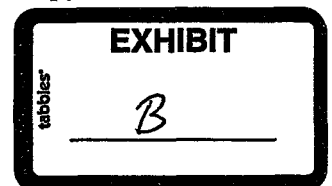
OCEAN 4660, LLC, et. al.,

Defendants.

**DEFENDANT'S, OCEAN 4660, LLC, RESPONSES TO PLAINTIFF'S,  
COMERICA BANK, FIRST REQUEST FOR ADMISSIONS**

Defendant, OCEAN 4660, LLC, by and through its undersigned counsel hereby files its responses to Plaintiff's, COMERICA BANK, First Request of Admissions as follows:

1. Defendant admits paragraphs 1, 2, 3, 4, 5, 7, 9, 10, and 16 solely with respect to the instant action.
2. Defendant neither admits nor denies paragraph 6 and does not have specific recollection of executing the SWAP Agreement.
3. Defendant admits paragraph 8 and entered into a Forbearance Agreement as a last resort to avoid the foreclosure of the property.
4. Defendant neither admits nor denies paragraphs 11, 12, 13, and 15 with respect to the instant action.
5. Defendant denies paragraph 14 for it believes there is no outstanding balance due.
6. Defendant denies paragraph 17 since Plaintiff has purchased insurance coverage on the property and has not provided Defendant with a copy of said insurance policy.



CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was sent by U.S. Mail this 11 day of September, 2012 to: Brian K. Hole, Esq., Holland & Knight LLP, 515 E. Las Olas Blvd., Suite 1200, Fort Lauderdale, FL 33301-4249; E-Mail: brian.hole@hkllaw.com.

ROTHMAN & TOBIN, P.A.

11900 Biscayne Boulevard  
Suite 740  
North Miami, Florida 33181  
Telephone: (305) 895-3225  
Facsimile: (305) 895-7175

By: 

Michael S. Tobin, Esq.  
Florida Bar No. 958931  
Paula Levy, Esq.  
Florida Bar No. 0117031