

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division

IN RE:

FREDERICK KEITEL,

Debtor.

CASE NO. 15-21654

CHAPTER 11

**THIRD AMENDED DISCLOSURE STATEMENT**

The Debtor, FREDERICK KEITEL, submits this Disclosure Statement to its creditors and other parties in interest. The approval of the Disclosure Statement is not tantamount to a decision by the Court on the merits of the Plan.

**I. INTRODUCTION**

**A. Purpose of this Document.**

This Disclosure Statement is submitted pursuant to the requirement imposed on the proponent of a Plan of Reorganization by 11 U.S.C. § 1125. The purpose is to disclose information deemed to be material, important, and necessary for the creditors to arrive at a reasonably informed decision in exercising their right, or to vote for acceptance or rejection of the Plan of Reorganization. This Disclosure Statement should be read in conjunction with the accompanying Plan of Reorganization. The Plan is a legally binding document once it is approved by the Court, and should be read in its entirety. Accordingly, creditors may wish to consult with their own attorney to more fully understand the Plan.

No representations concerning the Debtor, its future business operations, the value of its property or the value of any benefits offered to holders of claims or interests in connection with the Plan are authorized other than as set forth in this Disclosure Statement. Any representations or inducements made to secure acceptance of the Plan other than those contained in this Disclosure Statement should not be relied upon by a creditor or interest holder. Any such additional

representations and inducements should be reported to counsel for the Debtor at the address below and to the United States Trustee.

The information contained in this Disclosure Statement has not been subject to certified audit and is based in large extent on information maintained and collected by the Debtor. While every effort has been made to provide the most accurate information available, the books and records of the Debtor are not warranted or represented to be completely and historically accurate. Further, much of the information contained herein consists of projections of future performance. While every effort has been made to insure that the assumptions are valid and that the projections are as accurate as can be made under the circumstances, neither the Debtor nor its accountant undertakes to certify or warrant the absolute accuracy of the projections.

B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

1. Time and Place of the Hearing to Confirm the Plan

The hearing at which the Court will determine whether to confirm the Plan will take place on \_\_\_\_\_, in Courtroom A, Room 801, at 1515 North Flagler Drive, West Palm Beach, FL 33401.

2. Deadline for Voting to Accept or Reject the Plan

If you are entitled to accept or reject the plan, vote on the enclosed ballot and return the ballot to the United States Bankruptcy Court, 1515 N. Flagler Drive, Room 801, West Palm Beach, FL 33401. See section VIII for a discussion of voting eligibility requirements.

The ballot must be received by \_\_\_\_\_ or it will not be counted.

3. Deadline for Objecting to the Confirmation of the Plan

Objections to the confirmation of the Plan must be filed with the Court and served upon the

Debtor, Frederick J. Keitel, III, P.O. Box 3243, Palm Beach, FL 33480; Ariel Rodriguez, Office of the U.S. Trustee, 51 S.W. First Ave, Suite 1204, Miami, FL 33130; and all interested parties by \_\_\_\_\_.

4. Identity of Person to Contact for More Information

If you want additional information about the Plan, you should contact Frederick J. Keitel, III, Palm Beach, FL 33480.

5. Effective Date. As the term is used in this disclosure statement and the plan of reorganization, the effect date shall be 10 days after the date the Order of Confirmation becomes final.

## II. BACKGROUND

The Debtor, Frederick Keitel, is an individual that, at the time of the filing, owned various interests in companies that own valuable commercial real estate. At the time of the filing of his case, the Debtor's companies and their assets were valued at over \$30,000,000.00.

<u>Company</u>	<u>% ownership</u>	<u>Assets owned</u>	<u>Value of assets</u>
FJK Properties	100%	230 Royal Palm Way	\$ 5,733,333.00 (net value)
FJK III Properties	100%	240 Royal Palm Way	\$ 1,566,666.00 (net value)
FJK IV Properties	100%	50 % interest in FJK-Tee Jay 241 Royal Palm Way	\$ 6,750,000.00
KMS Restaurant Corp	100%	malpractice claim (claim against Cohen, Norris et al And Katzman Wasserman et al)	\$ 4,000,000.00
Frederick J. Keitel, III, P.A.	100%	none	\$ 0,00
WMK Properties	100%	5829 Corporate Way	\$ 334,203.00 (net value)
FJK Management, LLC	100%	none	\$ 0.00
Florida Capital Management	100%	237 Brazilian Ave.	\$ 5,500,000.00

Palm Beach Executive Suites 100%	none	\$	0.00
812 Investors 100%	none	\$	0.00

412 Brazilian Ave.

At the time of the filing, the Debtor individually owned property located at 412 Brazilian Ave, Palm Beach, FL. The Court approved the sale of the property [ECF #83] on January 13, 2016. The Debtor netted approximately \$1,400,000.00, which was placed in the trust account of Furr and Cohen pending further resolution of claims. On September 2, 2016, the Court approved a settlement with PNC allowing PNC to be paid \$1,175,000.00. There remains the amount \$305,958.81 in the trust account of Furr and Cohen. Those funds are subject to the claims of creditors Thomas B. D'Agostino and Tasha Enterprises. Thomas B. D'Agostino's lien on the proceeds has been satisfied. The remaining amount is subject to the lien of Tasha Enterprises. The Debtor filed an adversary complaint to determine the validity, priority and extent of the liens on the property, Adv. Case No. 16-01042. The complaint remains pending.

FJK IV Properties – 241 Royal Palm

At the time of the filing of the case, the Debtor was involved in litigation with his corporate partners relating to FJK IV Properties' interest in FJK-Tee Jay. The lawsuit is pending in the 15<sup>th</sup> Judicial Circuit, in and for Palm Beach County, FL. Case No. FJK-Tee Jay, Ltd owns property located at 241 Royal Palm Way, Palm Beach, FL. The estimated value of this property is over \$12,200,000.00. It is subject to a disputed lien held by Thomas D'Agostino, Sr. in the approximate amount of \$4,734,000.00. The nature of the dispute between the entities relate to the former partners causing damage to FJK IV Properties, and the Debtor, by failing to sell the property after it received a cash offer of \$12,200,000.00. After FJK IV Properties and the Debtor filed suit against the former partners, FJK-Tee Jay, Thomas D'Agostino, Jr. and Jonathan D'Agostino filed counterclaims against the Debtor. Those claims remain pending and unliquidated.

Debtor received numerous letters of intent to purchase and contracts to purchase the property owned by FJK-Tee Jay. One offer was for \$12,200,000.00 with substantial earnest money deposits and a quick cash closing. The D'Agostinos refused to consider or negotiate with any buyers, creating further disruption to the Debtor's ability to reorganize. See attached composite exhibit A.

Florida Capital Management – 237 Brazilian

The Debtor also is involved in litigation relating to his company, Florida Capital Management ("FCM"). FCM filed bankruptcy, but the bankruptcy was voluntarily dismissed on May 24, 2016. FCM owns a piece of property worth approximately \$5,500,000.00. Thomas D'Agostino has asserted a claim in this case in the amount of \$4,548,706.09. Despite the litigation, FCM is redeveloping that property and has spent over \$400,000.00 toward the redevelopment. To date, the Debtor and FCM has obtained Architectural Commission ("Arcom") approval from the Town of Palm Beach, furnished all drawings for the property, hired a contractor and architect, and secured \$5,200,000.00 financing for the project, which will dramatically increase the value of the property. The \$5,200,000.00 is in escrow from an entity owned by the Debtor's father in law, Peter Callahan. The entity is 237 Brazilian Enterprises, LLC. 237 Brazilian Enterprises is committing \$100,000.00 to the demolition of the existing buildings on the property and for permitting for new construction. The remaining funds will be used for construction of the townhomes on the property. After the development is finished, it is expected that the two townhomes will have a value of \$7,500,000.00 to \$8,000,000.00 each. Copies of the plans are attached hereto as Exhibit E.

FJK Properties (230 Royal Palm Way) and FJK III Properties (240 Royal Palm Way)

Since the filing of the case the properties owned by FJK Properties (230 Royal Palm Way) and FJK III Properties (240 Royal Palm Way) have been sold. The Debtor did not receive any proceeds. However, one of the creditors in this case, Thomas D'Agostino, Sr., was paid \$4,431,615.55, satisfying his claim in this case. There may be a remaining claim related to attorney's fees. The remaining

portion of the claim may be secured by the Debtor's stock in FJK IV Properties.

### WMK Properties

WMK also filed for chapter 11 bankruptcy. The case was converted to Chapter 7 on October 29, 2015. The Debtor no longer has any interest in WMK. To the detriment of the Debtor's creditors, the profit that could have been obtained from the WMK property were squandered by the appointed trustee, the lawyers, and the real estate brokers.

### **III. FINANCIAL INFORMATION**

The Debtor has filed schedules of assets, liabilities, income and expenses, a Statement of Financial Affairs, and Monthly Operating Reports which contain the most accurate and current information available to the Debtor.

A. Real Property. The Debtor does not presently own any real property in his name.

B. Personal Property. The Debtor holds stock in various companies that own valuable pieces of property. The remaining assets are:

<u>Company</u>	<u>% ownership</u>	<u>Assets owned</u>	<u>Value of assets</u>
FJK IV Properties	100%	50 % interest in FJK-Tee Jay 241 Royal Palm Way	\$ 6,750,000.00
KMS Restaurant Corp	100%	malpractice claim (claim against Cohen, Norris et al And Katzman Wasserman et al)	\$ 4,000,000.00
Florida Capital Management	100%	237 Brazilian Ave.	\$ 5,500,000.00
FJK-Tee Jay, Ltd	distributions		\$ 750,000.00
Claim relating to overpayment of FCM note			\$ 884,000.00

The Debtor has household goods, personal electronics, and clothes that have a combined value of \$37,000.00.

The Debtor is owed money by business partners and has claims against those business partners. He also has potential malpractice claims. The value of these asserts are unknown, but are believed to

exceed \$30,000,000.00.

C. Post-petition litigation

As mentioned above, at the time of the filing, the Debtor individually owned property located at 412 Brazilian Ave, Palm Beach, FL. The Court approved the sale of the property [ECF #83] on January 13, 2016. The Debtor netted approximately \$1,400,000.00, which was placed in the trust account of Furr and Cohen pending further resolution of claims. On September 2, 2016, the Court approved a settlement with PNC allowing PNC to be paid \$1,175,000.00. There remains the amount \$305,958.81 in the trust account of Furr and Cohen. The Debtor initiated an adversary proceeding to determine the extent, validity and priority of the liens held by PNC (now resolved), Thomas D'Agostino, Sr., and Tasha Enterprises. The Debtor, through the sale of property owned by a related entity, satisfied the judgments held by D'Agostino. The remaining amount is subject to the lien held by Tasha Enterprises. The Debtor is investigating whether there was a possible preferential transfer in granting Tasha Enterprises a lien.

FJK Tee Jay, Ltd. and Tee Jay of Florida, RLLP filed an adversary proceeding against the Debtor seeking a determination of a debt and that the debt is non-dischargeable. Through an oversight by the Debtor, he failed to file a timely response to the complaint and a default was entered. The Debtor has valid defenses to the complaint and is preparing an answer and a motion to vacate the default.

D. Ability to Fund and Complete Plan

The Debtor's financial problems stem mostly around his dispute with his partners, Thomas D'Agostino, Sr., Thomas D'Agostino, Jr. and the Trust. Much of the dispute centers on a \$1,230,000 wire transfer to the trust account of Robert King, the attorney for the Trust. Thomas D'Agostino, Sr. failed to recognize this payment as a partial payment on the mortgage, but instead, insisted it was a gift to Mr. D'Agostino. This testimony was deemed unbelievable by Judge Hyman in a six-hour hearing

held on April 15, 2015. See attached transcript by Judge Hyman as part of composite Exhibit B. On July 11, 2016, Mr. King changed his testimony and admitted he represented the Trust at the time he received the \$1,230,000 from FCM's lawyer. This testimony contradicted his testimony before Judge Hyman. See deposition of Robert King attached hereto as Exhibit C. The disputed payment led to a default for which the creditors now claim that the Debtor is liable to them in the amount of \$4,548,706.09. The Debtor believes he is actually owed money for Debtor believes he will prevail in that lawsuit, which will result in the Debtor actually being owed \$800,000.00. If the Debtor and FCM are successful, the Debtor will own 100% of a company that holds a \$5,500,000.00 asset free and clear of liens.

Aside from the alleged, disputed amount owed to the D'Agostinos and their affiliates, the Debtor has listed on his schedules less than \$200,000.00 to undisputed unsecured creditors. Some of the claims have been satisfied and claims withdrawn. The Debtor will file objections to claims to clarify the remaining claims. At the time of the filing of this disclosure statement, the remaining outstanding undisputed, unsecured debt is approximately \$131,906.54. The Debtor intends to work out a deal with Tasha Enterprises that will allow the Debtor to use the money being held in Furr and Cohen trust account for the purposes of paying the unsecured creditors in full on the effective date. If an arrangement cannot be made, the Debtor will use the \$15,000.00 per month that he is to receive as a development fee to satisfy the creditors over an 18 month period, or from the sale of one of the townhomes.

As mentioned above, the Debtor's wholly owned entity, FCM, owns, 237 Brazilian Ave., which has an approximate worth of \$5,500,000.00. See Appraisal attached as Exhibit D. The development of the property will raise the value of the property to over \$15,000,000.00. As part of the investment, 237 Brazilian Enterprises will provide FCM with enough funds to allow the Debtor to receive a \$15,000.00 per month "development manager fee". A portion of that monthly fee will be dedicated to creditors.



Another of the Debtor's companies, FJK IV Properties, is the 50% owner of income generating property. The Debtor, through his company, has a claim for distributions exceeding \$750,000.00 and is owed \$10,000.00 per month.

#### **IV. EXECUTORY CONTRACTS**

The Debtor does not have any pre-petition executory contracts.

#### **V. LIQUIDATION ANALYSIS**

Estimated value of assets:

<u>Company</u>	<u>% ownership</u>	<u>Assets owned</u>	<u>Value of assets</u>
FJK IV Properties	100%	50 % interest in FJK-Tee Jay 241 Royal Palm Way	\$ 6,750,000.00
		Past due distributions	\$ 750,000.00
		Civil claims (claim against Christu, Hart, Shutts & Bowen, et al.)	\$20,000,000.00
KMS Restaurant Corp	100%	malpractice claim (claim against Cohen, Norris et al And Katzman Wasserman et al)	\$ 4,000,000.00
Frederick J. Keitel, III, P.A.	100%	none	\$ 0.00
FJK Management, LLC	100%	none	\$ 0.00
Florida Capital Management	100%	237 Brazilian Ave.	\$ 5,500,000.00
		Overpayment on note	\$ 884,000.00
Palm Beach Executive Suites	100%	none	\$ 0.00
812 Investors	100%	none	\$ 0.00
Personal property			\$ 37,000.00
Potential claims/lawsuits			\$30,000,000.00
		Amount available for unsecured creditors	\$67,921,000.00
Administrative Claims		\$ 200,000.00	

(\*\$150,000 of admin claims are disputed)  
 Priority Claims \$ 20,008.67

	\$67,700,991.33
Amount available for general unsecured creditors	

### **VI. SPECIAL RISK FACTORS**

Certain substantial risk factors are inherent in most plans of reorganization in Chapter 11 cases. If such plans are accepted, it is usually because they represent a far greater return in dividends than in a liquidating Chapter 7 case. There is no risk in this plan to undisputed unsecured creditors. They will be paid in full on the effective date. The Debtor expects to pre-sell one of the townhomes within 4-6 months of the start of construction. The Debtor's success is also predicated on his success with litigation with his business partners. These business partners are fully protected by the value of the property (\$5,500,000.00) owned by the Debtor. The risk to all creditors is mitigated by the value of the various properties. The creditors would all be paid in full if the Debtor is not able to make the proposed payments and the property is liquidated. However, the Debtor would needlessly be denied the ability to realize profits of \$5,000,000.00 to \$6,000,000.00 after all creditors are paid 100% on the dollar.

ALL THE RISK FACTORS INHERENT IN A PLAN OF REORGANIZATION UNDER CHAPTER 11 ARE PRESENT IN THIS CASE. CREDITORS ARE URGED TO CAREFULLY READ THIS DISCLOSURE STATEMENT AND THE ACCOMPANYING PLAN OF REORGANIZATION SO THAT AN INFORMED JUDGMENT CAN BE MADE WITH RESPECT TO VOTING ON THE PLAN.

### **VII. SUMMARY OF NON-BANKRUPTCY LITIGATION**

At the time of the filing of the case, the Debtor had the following pending cases in state court:

FJK IV Properties, Inv., et al. vs. FJK-Tee Jay, Ltd, et al. 2012CA023240: Action for partition, fraud, tortuous interference. No action has been taken on this case since February, 2016.

Thomas D'Agostino vs. Frederick Keitel, III, et al, 2013CA004692: Foreclosure of property. Judgment entered, plaintiff satisfied from sale of property. Dispute exists as to amount of attorneys' fees.

Thomas B. D'Agostino, Sr., et al. vs. Florida Capital Management, et al. 2013CA004699: Action against FCM to foreclose on property.

Thomas B. D'Agostino vs. Frederick Keitell, III, 2015A000166: Final Judgment entered, satisfied by sale of property.

PNC Bank, N.A. vs. Frederick Keitel, III, et al. 2015CA010746: Final judgment entered. PNC has been fully satisfied with approval by this Court.

FJK IV Properties, Inc., et al. vs. Thomas B. D'Agostino, Jr. et al. 2015CA011522: Complaint for damages and injunctive relief. Amended complaint is pending. There has been no activity since February, 2016.

Tee Jay of Florida, RLLP v. FJK IV Properties, Inc., 2016CA010381: Initial Complaint filed. Case is without merit. Answer and counterclaims for fraud, conspiracy, and other causes of action will be filed. A motion to remove the case to the U.S. District Court will also be filed.

### **VIII. CLAIMS**

The deadline to file a proof of claim was April 7, 2016.

The Internal Revenue Service has filed a claim for estimated taxes in the amount of \$39,815.37. The amount of \$20,008.67 is claimed as a priority claim. The claim is based on unfiled returns for 2011 and 2014. The Debtor has been unable to file a return for other tax years because his business partners have failed to provide necessary documents to complete a return, in an attempt to tortuously interfere with this reorganization plan.

The secured claim filed by Thomas D'Agostino, Sr. in the amount of \$4,195,044.20 was satisfied on February 5, 2016 when he received a payment of \$4,431,815.55.

Claim number 4 filed by FJK-Tee Jay of Florida and Thomas D'Agostino, Jr. is disputed and is

being liquidated in state court proceedings. The Debtor initially filed an original lawsuit against the claimant and the D'Agostinos for damages in excess of \$20,000,000.00. The claim filed against the Debtor in this case is retaliatory, unsubstantiated, and based on fraud.

FJK-Tee Jay of Florida and FJK Tee Jay, Ltd. filed an adversary proceeding against the Debtor seeking a determination that debts in excess of \$5,000,000 were non-dischargeable. The Debtor mistakenly failed to file a timely response. The Debtor has defenses to this action and will be seeking to have the discharge vacated.

Claim number 10 filed by Thomas D'Agostino, Sr. and Thomas D'Agostino, Jr as Trustees arises from a guarantee of a debt alleged owed by Florida Capital Management. That claim is disputed and being litigated in state court. The claim is a contingent claim for \$4,548,706.09. The property that secures the debt is valued at \$5,500,000.00. Consequently, it is unlikely that the Debtor will have any liability for this claim. Further, neither the Debtor nor Florida Capital Management is liable to the claimant. Rather the claimants owe Florida Capital Management \$884,803.00 as a result of overpayments. The Trust's claim, through the testimony of Thomas D'Agostino, Sr., that the disputed \$1,230,000.00 wire payment was a gift, has already been discounted by this Court when Chief Judge Paul Hyman, Jr. described Mr. D'Agostino, Sr.'s testimony as not believable or credible after a six hour evidentiary hearing on April 15, 2015. See exhibits B and C.

The claim of Tasha Enterprises is partially secured by funds held in trust by Furr and Cohen. A portion of Tasha Enterprises claim will be paid from the remainder of the amount being held in Trust. The unsecured portion owed to Tasha Enterprises will be paid within 18 months, or upon the sale of one of the townhomes to be developed at 237 Brazilian.

Other unsecured, undisputed claims, filed and unfiled, amount to \$131,906.54.

## **IX. SUMMARY OF PLAN OF REORGANIZATION**

### A. Purpose of the Plan of Reorganization

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

#### B. Unclassified Claims

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has not placed the following claims in any class:

##### 1. Administrative Claims

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the Plan, unless a particular claimant agrees to a different treatment.

##### Administrative claims:

Professional fees:	estimated \$160,000.00 (*most of this amount is disputed)	Subject to Court authorization, to be paid in full on effective date or as agreed to by attorney and Debtor.
Office of the US Trustee	current	Paid in full on effective date

##### 2. Priority Claims

The Internal Revenue Service has filed a priority claim for estimated taxes in the amount of \$20,008.67. The debtor will pay this amount in full by on the effective date.

C. Classes of Claims and Equity Interests

The Plan shall provide for the payment of all expenses of this proceeding, including fees due the Office of the U.S. Trustee. The accompanying Plan of Reorganization divides creditors into the following classes:

Class 1 –PNC Mortgage. PNC has filed a secured claim in the amount of \$1,204,102.08. Furr and Cohen was holding \$1,400,000.00 from the sale of the Debtor’s property located at 412 Brazilian Court. PNC has been paid an agreed reduced amount of \$1,175,000.00 from these proceeds in September, 2016.

Class 2 – Thomas D’Agostino, Sr. D’Agostino, Sr. has filed a secured claim in the amount of \$4,195,044.20. D’Agostino has been paid the sum of \$4,431,815.55 and the claim is satisfied.

Class 3 – Tasha Enterprises, Inc. Tasha Enterprises has filed a secured claim in the amount of \$403,543.29. The claim is secured by proceeds from the sale of the property located at 412 Brazilian Court. It is estimated that Tasha has a valid secured claim in the approximate amount of \$125,000.00 which will be satisfied from the funds held by Furr and Cohen. The remaining amount owed within 18 months or will be paid in full upon the sale of one of the Palm Beach townhomes.

Class 4 – Tee Jay of Florida. FJK-Tee Jay has filed two unsecured claims, one in the amount of \$5,923,551.31 and the other in the amount of \$504,948.49. The Debtor has a lawsuit against the claimant for \$20,000,000.00. Both claims are unsubstantiated and are being litigated in the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, FL.<sup>1</sup> If FJK-Tee Jay is successful, it will be able to execute on ownership interest of the Debtor in FJK IV Properties. Based on offers sent to FJK-Tee Jay, Ltd to purchase the property and rejected by Jonathan D’Agostino, the Debtor estimates the value of his ownership interest in FJK IV Properties is approximately \$6,750,000.00. Tee Jay of Florida would be fully satisfied from the shares in FJK IV Properties.

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<sup>1</sup> Thomas D’Agostino, Jr. has already admitted under oath that part of the allegations have no merit or basis in fact regarding the loss of income on Citicorp’s lease. Further there is a valid defense as to whether a valid mortgage exists on the property at 241 Royal Palm Way, Palm Beach, FL.

Class 5 – Thomas D. D’Agostino, Jr. as Trustee filed a claim on behalf of the Thomas B. and Elzbieta M. D’Agostino 1997 CRT. The Trust’s claim is a contingent claim in the amount of \$4,548,706.09. This claim is unsecured as to the Debtor but is secured by property owned by Florida Capital Management. The claimant has been fully satisfied and, in fact, owes the Debtor \$884,802.00. This claim is being litigated in the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, FL. The value of the property in its present state is \$5,500,000.00. If it is determined that the claim against the Debtor is valid, the claimant will be fully satisfied from the property and will have no remaining claim against the Debtor. The Debtor will be filing a motion to estimate this claim pursuant to 11 U.S.C. § 502(c)(1).

Class 6 – Unsecured creditors. Excluding the remaining unsecured portion of Tasha Enterprises, the total amount of undisputed unsecured claims, including the IRS unsecured claim, and is approximately \$151,713.24. Unsecured creditors will be paid in full on the effective date.

Class 7 – The Debtor shall retain all property of the estate.

The Debtor shall pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. Section 1930(a)(6) within ten (10) days of the entry of this order for pre-confirmation periods and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period. The reorganized Debtor shall further pay the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930(a)(6) based upon all disbursements of the reorganized debtor for post-confirmation periods within the time period set forth in 28 U.S.C. § 1930(a)(6), until the earlier of the closing of this case by the issuance of a Final Decree by the Court, or upon the entry of an Order by this Court dismissing this case or converting this case to another chapter under the United States Bankruptcy Code, and the party responsible for paying the post-confirmation United States Trustee fees shall provide to the United States Trustee upon the payment of each post-confirmation payment an appropriate affidavit indicating all the cash disbursements for the relevant period.

The plan proposes to pay all costs and expenses of administration within thirty days of the date of confirmation of the Plan, or within such additional time as the administrative claimants may allow. The total amount of administrative expenses has not yet been determined, but will be set by the Court at the hearing on the confirmation of the Plan.

The plan will be funded by the income to be received by the Debtor as the developer of the Florida Capital Management project and money in escrow. The Plan of Reorganization is deemed by the Debtor to be feasible and secured.

#### **X. CONFIRMATION REQUIREMENTS AND PROCEDURES**

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requires that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor at least as much as the creditor would receive in a chapter 7 liquidation case, unless the creditor votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are not the only requirements for confirmation.

##### **A. Who May Vote or Object**

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to accept or reject the Plan. A creditor has a right to vote for or against the Plan only if that creditor has a claim that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan. The Plan Proponent believes that classes are unimpaired and that holders of claims in each of these classes, therefore, do not have the right to vote to accept or reject the Plan.



1. What is an Allowed Claim?

Only a creditor with an allowed claim has the right to vote on the Plan. Generally, a claim is allowed if either (1) the Debtor has scheduled the claim on the Debtor's schedules, unless the claim has been scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim, unless an objection has been filed to such proof of claim. When a claim is not allowed, the creditor holding the claim cannot vote unless the Court, after notice and hearing, either overrules the objection or allows the claim for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

***The deadline for filing a proof of claim in this case was April 7, 2016***

2. What is an Impaired Claim?

As noted above, the holder of an allowed claim has the right to vote only if it is in a class that is impaired under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

3. Who is Not Entitled to Vote?

The holders of the following types of claims and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of claims and equity interests that are not “allowed claims” or “allowed equity interests”, unless they have been “allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3) and (a)(8) of the Code;
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan; and
- administrative expenses

*Even if you are not entitled to Vote on the Plan, you have a right to object to Confirmation of the Plan.*

4. Who Can Vote in More than One Class?

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise holds claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class of creditors, and (2) all impaired classes have voted to accept the Plan, unless the Plan is eligible to be confirmed by “cram down” on non-accepting classes as discussed below in Section B.2.

1. Votes Necessary for a Class to Accept the Plan

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one-half ( $\frac{1}{2}$ ) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds ( $\frac{2}{3}$ ) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

2. Treatment of Nonaccepting Classes

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonaccepting classes is commonly referred to as a “cram down” plan. The Code allows the Plan to bind nonaccepting classes or of claims or equity interests if it meets all the requirements for consensual confirmation except the voting requirements of § 1129(a)(8) of the Code, does not “discriminate unfairly” and is “fair and equitable” toward each impaired class that has not voted to

accept the Plan.

*You should consult your own attorney if a “cram down” confirmation will affect your claim or equity interest, as the variations on this general rule are numerous and complex.*

#### **XI. EFFECT OF CONFIRMATION**

In accordance with 11 U.S.C. § 1141(d)(5), the Debtor will not, without court order, be entitled to a discharge until all payments are made pursuant to the terms of the Plan.

The Debtor will seek to have the case administratively closed until all payments are made and the Debtor is entitled to a discharge.

#### **XII. CONCLUSION**

The Plan offers to pay all undisputed creditors in full.



Frederick Keitel, III

## EXHIBIT A

T 212 490.2626  
F 212 490.1060

**PROPERTY GROUP PARTNERS**  
669 FIFTH AVENUE SIXTH FLOOR NEW YORK, NEW YORK 10017-1021

May 27, 2016



Ms. Lorrie Garbarz  
Principal  
Private Asset Exchange  
Pinnacle Real Estate Associates  
625 N. Flagler Drive, Suite 402  
West Palm Beach, FL 33401

Re: 241 Royal Palm Way, Palm Beach, FL

Dear Lorrie:

On behalf of an entity formed by affiliates of Property Group Partners and a subsidiary of W. R. Berkley Corporation ("Purchaser"), I am pleased to submit this non-binding proposal to purchase the Property described below from the current owner ("Seller").

The general terms are as follows:

- Property:** Land and improvements located at 241 Royal Palm Way, Palm Beach, Florida, consisting of approximately 12,700 square feet of net rentable space that is fully leased to First Republic Bank (the "Property").
- Purchase Price:** An all cash purchase price of Twelve Million Two Hundred Thousand Dollars (\$12,200,000) (the "Purchase Price").
- Purchase Agreement:** Simultaneous with the Due Diligence Period (as defined below), Purchaser and Seller shall negotiate a definitive purchase and sale agreement (the "Purchase and Sale Agreement") containing customary representations, warranties, indemnification, conditions and escrows relating to the parties and the Property.
- Deposit:** Purchaser will post a deposit equivalent to ten percent (10.0%) of the Purchase Price in escrow (the "Deposit") upon execution of the Purchase and Sale Agreement. The Deposit will be refundable during the Due Diligence Period. Upon the closing of the transaction, the Deposit and all interest earned thereon shall be credited towards the Purchase Price.
- Due Diligence:** Purchaser requires forty-five (45) days to complete its full due diligence (the "Due Diligence Period"). During the Due Diligence Period, Purchaser must be entitled to have business-related discussions with representatives of First Republic Bank.
- Closing:** The closing of the transaction (the "Closing") shall occur within fifteen (15) days following the Due Diligence Period subject to the mutual satisfaction of the conditions set forth in the Purchase and Sale Agreement.

Page 2  
May 27, 2016



- Closing Costs:** Purchaser and Seller shall each be responsible for all Closing prorations and adjustments customarily applicable to such party. Seller will be responsible for the documentary stamps tax and any other related transfer taxes. Purchaser and Seller shall each be responsible for their own transaction costs, including, but not limited to, legal fees.
- Commissions:** Purchaser has not engaged a broker in connection with this proposal. Purchaser shall be responsible for a brokerage commission due to Pinnacle Real Estate Associates equal to one percent (1.0%) of the Purchase Price should a transaction be consummated.
- Source of Funds:** The source of funds for the transaction will be provided by an entity formed by Purchaser, all cash.
- Existing Financing:** At Closing, the Property shall be free and clear of any and all existing financing and any liens related thereto.
- Confidentiality:** We request that this non-binding indication of interest and its terms be maintained in confidence.

This letter describes the general terms and conditions under which Purchaser would consider a purchase of the Property. This letter is for discussion purposes only and must not be understood as a commitment, notwithstanding anything to the contrary set forth herein. This letter is not binding in any way and none of Seller, Purchaser or their respective affiliates shall be legally obligated with respect to the matters set forth herein unless and until the parties enter into the Purchase and Sale Agreement.

The proposal set forth in this letter shall be of no further force and effect after June 3, 2016.

I look forward to hearing from you shortly.

Yours very truly,

Jeffrey I. Sussman  
President

Cc: Jesse Faneuil

Subj: Re: LOI: 241 Royal Palm Way, Palm Beach FL 33480  
Date: 5/31/2016 1:58:25 P.M. Eastern Daylight Time  
From: JDodge@privateassetexchange.com  
To: jbdagostino@gmail.com, RickKeitel@aol.com, tdagostino@smartsourcelc.com,  
hries@foxrothschild.com, wwwhite@hailesshaw.com, lfarley@palladiumgroup.net, lgary88@aol.com  
CC: Lgarbarz@privateassetexchange.com

Hello Mr. Dagostino & Mr. Keitel,

The buyer has advised they would like a response to the offer submitted below. This is a very real buyer and a legitimate offer. As you know, the buyer has only given until June 3rd for a formal response or they will be moving on to a different property.

Regards,

John Dodge III  
Private Asset Exchange  
Pinnacle Real Estate Associates  
Direct: 561.307.0925  
Office: 561.865.6880  
625 N. Flagler Drive | Suite 402 | West Palm Beach | Florida | 33401  
JDodge@privateassetexchange.com

On May 27, 2016, at 1:57 PM, Lorrie Garbarz <Lgarbarz@privateassetexchange.com> wrote:

This email is sent to the attention of all partners of FJK-TeeJay Ltd. in relation to the property known as 241 Royal Palm Way, Palm Beach FL 33480.

Based on the efforts of myself as well as John F. Dodge III, Pinnacle Real Estate Associates is pleased to present the attached offer to purchase the property located at 241 Royal Palm Way, commonly known as the First Republic Building.

The terms of the purchase are as follows:

- Purchase Price: \$12,200,000, all cash, no financing contingencies
- 10% / \$1,220,000 deposit
- 45 day due diligence period, closing to occur 15 days following satisfaction of due diligence period
- 2% brokerage commission, 1% paid by the buyer and 1% paid by the seller
- \$12,078,000 - Net proceeds to seller (after commission and not including closing costs)

We are thrilled to bring this offer to your group for several reasons. Not only is this an extremely qualified buyer who has the financial ability and track record of closing on these types of assets, at an impressive \$960.63 per square foot this purchase will dramatically set a record for the highest sale price per square foot on Bankers Row - far exceeding \$720psf for 250 Royal Palm Way, which closed this past week. John and I have worked very hard to get you the absolute best price for this asset.

The buyer includes publicly traded insurance company W.R. Berkley <http://www.wrberkley.com> with over \$7 billion in revenue and its subsidiary Property Group Partners <http://www.pgp.us.com/about/overview.php>.

Please be advised that the buyer is very serious about moving forward quickly with this purchase, therefore I respectfully request a response to this email as soon as possible. The buyer requires a formal response to the attached LOI **no later than June 3, 2016**, so time is of the essence.

In the interim, feel free to contact either John or myself with any questions. We look forward to working with you on this transaction.

Regards,

Lorrie Garbarz | Principal  
Private Asset Exchange  
Pinnacle Real Estate Associates  
Direct: 248.943.3331  
Office: 561.865.6880  
625 N. Flagler Drive | Suite 402 | West Palm Beach | Florida | 33401  
[Lgarbarz@privateassetexchange.com](mailto:Lgarbarz@privateassetexchange.com)

<Indication of Interest - 241 RPW.pdf>

<Doc - 5-27-16, 1-48 PM.pdf>



Subj: **Fwd: \$12,000,000. LOI for FJK-TeeJay,Ltd the First Republic Bank Building 241 RPW**  
Date: 5/27/2016 5:13:51 P.M. Eastern Daylight Time  
From: [JDodge@privateassetexchange.com](mailto:JDodge@privateassetexchange.com)  
To: [rickkeitel@aol.com](mailto:rickkeitel@aol.com)

See below

John F. Dodge, III  
(561) 307-0925

Begin forwarded message:

**From:** "Eric C. Christu" <[EChristu@shutts.com](mailto:EChristu@shutts.com)>  
**Date:** May 27, 2016 at 4:53:31 PM EDT  
**To:** "[RickKeitel@aol.com](mailto:RickKeitel@aol.com)" <[RickKeitel@aol.com](mailto:RickKeitel@aol.com)>, "[jdodge@privateassetexchange.com](mailto:jdodge@privateassetexchange.com)" <[jdodge@privateassetexchange.com](mailto:jdodge@privateassetexchange.com)>, "[jbdagostino@gmail.com](mailto:jbdagostino@gmail.com)" <[jbdagostino@gmail.com](mailto:jbdagostino@gmail.com)>  
**Cc:** "[hries@foxrothschild.com](mailto:hries@foxrothschild.com)" <[hries@foxrothschild.com](mailto:hries@foxrothschild.com)>, "[wwhite@haileshaw.com](mailto:wwhite@haileshaw.com)" <[wwhite@haileshaw.com](mailto:wwhite@haileshaw.com)>, "[briankmcmahon@gmail.com](mailto:briankmcmahon@gmail.com)" <[briankmcmahon@gmail.com](mailto:briankmcmahon@gmail.com)>, "[lfarley@palladiumgroup.net](mailto:lfarley@palladiumgroup.net)" <[lfarley@palladiumgroup.net](mailto:lfarley@palladiumgroup.net)>, "Jonathan P. Hart" <[JHart@shutts.com](mailto:JHart@shutts.com)>  
**Subject:** RE: \$12,000,000. LOI for FJK-TeeJay,Ltd the First Republic Bank Building 241 RPW

Mr. Dodge:

I do not believe we have met and I am not really sure of your exact involvement in the matter Mr. Keitel is discussing in his email; but allow me to hopefully clarify some of the misinformation in Mr. Keitel's below communication. The property at 241 Royal Palm Way, which you may or may not be interested in purchasing, is owned by FJK – Tee Jay, Ltd. ("FJK"). FJK is a limited partnership, the General Partner of which is FJK – TEE JAY, Inc., and the limited partners in which are FJK IV Properties, Inc. and Tee Jay of Florida. The General Partner has the sole and exclusive right to manage the business of the Partnership. Jonathan D'Agostino is the President of the General Partner and a Florida state court has already determined that Mr. Keitel has no authority to act or speak on behalf of the General Partner. In any event, there is a lawsuit between the limited partners that has been pending since 2012 and the Partnership cannot properly consider the sale of the building in the midst of this litigation and given other issues presently affecting the Partnership.

Mr. Keitel has also copied on his email the trial lawyer from the United States Trustee's Office who is overseeing Mr. Keitel's personal bankruptcy case, and while we do not understand why he has included Ms. Feinman in this exchange since neither the owner of the building nor either of the partners are in bankruptcy, if there is some basis for the Bankruptcy Court to be involved, Mr. Keitel has never sought any bankruptcy court approval for any of his activities in this regard.

At such time as the Partnership may in the future desire to sell this property, we would certainly keep your information on file.

Thank you



**Eric C. Christu**  
Partner

---

**Shutts & Bowen LLP**

CityPlace Tower, 525 Okeechobee Blvd, Suite 1100 | West Palm Beach, FL 33401

Direct: (561) 650-8556 | Fax: (561) 671-5900

[E-Mail](#) | [Biography](#) | [V-Card](#) | [Website](#)

Please consider the environment before printing this email

**From:** [RickKeitel@aol.com](mailto:RickKeitel@aol.com) [<mailto:RickKeitel@aol.com>]

**Sent:** Wednesday, May 25, 2016 11:40 AM

**To:** [jdodge@privateassetexchange.com](mailto:jdodge@privateassetexchange.com); [jbdagostino@gmail.com](mailto:jbdagostino@gmail.com)

**Cc:** [hries@foxrothschild.com](mailto:hries@foxrothschild.com); Eric C. Christu; [wwhite@haileshaw.com](mailto:wwhite@haileshaw.com); [heidi.a.feinman@usdoj.gov](mailto:heidi.a.feinman@usdoj.gov); [briankmcmahon@gmail.com](mailto:briankmcmahon@gmail.com); [lfarley@palladiumgroup.net](mailto:lfarley@palladiumgroup.net); [RickKeitel@aol.com](mailto:RickKeitel@aol.com)

**Subject:** \$12,000,000. LOI for FJK-TeeJay,Ltd the First Republic Bank Building 241 RPW

John Dodge

I have forwarded your \$12,000,000.00 offer and LOI to Jonathan D'Agostino who represents TeeJay of Florida, RLLP, who own 50% of the First Republic Bank Building, and his lawyers, as well as multiple correspondence and emails requesting an immediate response to/from both Jonathan, and his lawyers, Heather Ries at Fox Rothschild, and Eric Christu at Shutts and Bowen.

I have explained the importance of a quick answer, since April, when you made the initial offer of \$11,500,000., due to your client's 1031 Exchange requirements. I also told Jonathan and his lawyers that your clients, would accept a counter at \$12,000,000.00 (prior to your written counter for \$12m), but don't want to continue to bid against themselves.

Jonathan, and his lawyers have refused to respond, because, as per his email below,, "in his (my) business judgment, it is not in the best interest of FJK Tee Jay Ltd to make an initial contact with these unsolicited interested parties".

Obviously Jonathan and his lawyers are playing games for litigation purposes, and have refused to respond, in violation of his Fiduciary duties to FJK Tee Jay, Ltd, and the limited partners, and/or attempt to devalue the FMV of the building.

Since Jonathan and the lawyers for the LTD have been on notice of the offer(s), LOI's and all correspondence for almost a month, I suggest you send the offer directly to Jonathan D'Agostino (email address above), and his lawyer directly, and give them 48 hours to respond. Since they have had a long, long time to consider the LOI's, counter offers, and/or their options, they have a duty to FJK-TeeJay, LTD, and the limited partners, to respond immediately to your client's offer.

If you don't get a response with the time frame, I'll file a Emergency Motion to Dissolve the LTD, and put the property up for sale. All the email addresses will be listed at the top and everyone copied by my email.

Since I have copied everyone in this email, Jonathan and his lawyers will know immediately to expect your offer. I have previously forwarded both the signed \$11,500,000. LOI, and your clients unsigned \$12,000,000

LOI, notifying them that once signed by FJK Tee Jay, Ltd, your client would sign immediately and wire a deposit.

Jonathan has the option to consult with me, and either accept the offer, and/counter the offer, or be in breach of his duties, so all the partners in FJK-TeeJay,Ltd, agree to the terms.

Thanks for your serious interest and patience.  
Rick

---

From: [jbdagostino@gmail.com](mailto:jbdagostino@gmail.com)  
To: [rickkeitel@aol.com](mailto:rickkeitel@aol.com)  
CC: [HRies@foxrothschild.com](mailto:HRies@foxrothschild.com), [EChristu@shutts.com](mailto:EChristu@shutts.com)  
Sent: 5/11/2016 3:38:14 P.M. Eastern Daylight Time  
Subj: RE: Financial Documents JFK - Tee Jay LTD.

Rick-

In my business judgment, it is not in the best interests of FJK Tee Jay Ltd to make an initial contact with these unsolicited interested parties. While the parties may have had prior contact with you, I was not privy to the conversations and therefore lack necessary information to assess the credibility and viability of any offer or to formulate any negotiation strategy.

If there are parties who are interested in the property, they need to initiate contact with me as President of the General Partner. This will allow the best analysis of any offer and ensure the best result for FJK Tee Jay Ltd., should the partners decide to pursue any sale.

Best,

Jonathan D'Agostino

## EXHIBIT B

1 UNITED STATES BANKRUPTCY COURT  
2 SOUTHERN DISTRICT OF FLORIDA

3 Judge Paul G. Hyman, Jr.  
4

5 In Re:  
6

7 Case No. 15-10576-BKC-PGH

8 WMK PROPERTIES, INC.,  
9 FLORIDA CAPITAL MANAGEMENT, LLC,

10 Debtor.  
11

---

12 ECF #30, 31  
13

14 April 15, 2015  
15

16  
17  
18 The above entitled cause came on for hearing before  
19 the HONORABLE PAUL G. HYMAN, JR., the Chief Judge in  
20 the UNITED STATES BANKRUPTCY COURT, in and for the  
21 SOUTHERN DISTRICT OF FLORIDA, at 1515 North Flagler  
22 Drive, West Palm Beach, Palm Beach County, Florida, on  
23 April 15, 2015, commencing on or about 9:30 a.m., and  
24 the following proceedings were had:  
25

Transcribed from a digital recording by:  
Jacquelyn Ann Jones, Court Reporter

1 it, and then maybe if it's available, it should just  
2 be a matter of days.

3 THE COURT: Yeah. When she -- Mr. Grant.

4 MR. GRANT: Your Honor, I know when you look  
5 at that transcript that also there may be additional  
6 testimony that I might want to take from Mr. King  
7 regarding the trust account and the receipt. So is  
8 Your Honor only going to look at the oral -- the  
9 ruling from Judge Sasser, or do I have an opportunity,  
10 because --

11 THE COURT: I don't know what else you're  
12 going to ask from Mr. King, since he said I don't --  
13 in essence, he had no conversations with your client,  
14 doesn't remember anything else. In essence, that was  
15 his testimony.

16 MR. GRANT: Correct. But the money was  
17 wired out. And if there's anything that shows, you  
18 know, the application of those moneys, you know, Mr.  
19 D'Agostino testified it was from some other  
20 transaction. So if it -- I'd like to see where the  
21 money went, because it would contradict the  
22 testimony.

23 THE COURT: I don't know why it's relevant,  
24 because he -- Mr. King did testify it went to Mr.  
25 D'Agostino or one of his entities. So there's no --

1 MR. GRANT: (Inaudible) obligation for Mr.  
2 Keitel.

3 THE COURT: Yes.

4 MR. CHRISTU: He said that, Your Honor. He  
5 said it did not have anything to -- because he didn't  
6 know who Mr. Keitel was.

7 THE COURT: I understand that. So  
8 that's -- if you're an attorney, and you receive a  
9 wire transfer, and your client says wire to, and it  
10 has your client's account number, and your client says  
11 that's my money and wire to X, Y, Z trust, or A, B, C  
12 Corporation, and you get appropriate authorization,  
13 you do it. You don't have -- it's not your job as an  
14 attorney to figure out why your client wants it  
15 wired -- assuming there's no illegal, listen, your  
16 compliant with all the dregs and all that stuff about,  
17 you know, money with the Fed and all that. Assuming  
18 that there is.

19 MR. GRANT: Just so I'm clear, what summary  
20 judgment hearing, because I wasn't part of the  
21 underlying State Court litigation.

22 THE COURT: It wasn't summary judgment.

23 MR. GRANT: Which matter -- which matter are  
24 we looking to have a transcript prepared from, and  
25 when was the date of that hearing.

## EXHIBIT C



IN THE CIRCUIT COURT  
OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 50 2013 CA 004699 XXXX MB AN

THOMAS B. D'AGOSTINO, SR. and  
THOMAS B. D'AGOSTINO, JR., as  
Trustees of the Thomas B. and  
ELZBIETA M. D'AGOSTINO 1997 CRT,

Plaintiffs,

vs.

FLORIDA CAPITAL MANAGEMENT, LLC,  
a Florida Limited Liability Company, and  
FREDERICK J. KEITEL, III,

Defendants.

---

DEPOSITION OF ROBERT KING, ESQUIRE,  
A WITNESS,  
TAKEN BY THE DEFENDANTS

Monday, July 11, 2016

10:08 a.m. - 11:13 a.m.

EXHIBIT "H"

1 Q. Okay. Now, did -- were you ever requested by  
2 Mr. Keitel to deliver an estoppel letter with regard to  
3 the \$2 million loan that occurred in 2005?

4 A. No, not to the best of my knowledge.

5 Q. You customarily do those, I presume, in your  
6 business as a real estate, estate planning type person?

7 A. I'm familiar with estoppel letters, yes.

8 Q. And there's a statute, isn't there, that sort  
9 of requires you, if you're requested, to provide an  
10 estoppel letter with regard to a loan or a mortgage?

11 A. It requires the person who has the mortgage to  
12 provide it, yes.

13 Q. Right. Or as a lawyer --

14 A. Or they can hire somebody to provide it on  
15 their behalf.

16 Q. Such as yourself?

17 A. Such as an attorney or accountant.

18 Q. Okay. In 2005, you were not representing the  
19 charitable remainder trust, correct?

20 A. Generally, except for that one instance, that's  
21 correct.

22 Q. But in 2005 were you representing them or was  
23 that thereafter?

24 A. No, that was before 2005, that one mortgage.

25 Q. Okay. So you actually, as of the time you

1 received this \$1,230,000, you had previously represented  
2 the trust; is that correct?

3 A. On that one issue, yes.

4 Q. And what -- how much before that receipt of the  
5 money in March of 2005 did you represent the charitable  
6 remainder trust involving Mr. D'Agostino and his wife?

7 A. It was in 2004.

8 Q. And how long did you represent them?

9 A. It was a single incident as far as the  
10 mortgage. And then with -- you know, later, when the  
11 mortgage wasn't paid on time, there were, you know,  
12 issues that would come up. But I didn't handle the  
13 litigation per se.

14 Q. I know you didn't handle the litigation, but  
15 how long did you continue to do anything on behalf of  
16 the charitable remainder trust involving Mr. D'Agostino  
17 and his wife?

18 A. I don't know a final date when the -- when the  
19 matter was concluded.

20 Q. Do you have -- was it sometime in 2005 or --

21 A. No.

22 Q. -- thereafter?

23 A. Much after.

24 Q. Much after?

25 A. (Nods head.)

1 Q. So, I mean, '06 or '07 you mean?

2 A. Or '10 or '12.

3 Q. Okay. So were you representing or doing any  
4 legal work for the trust back in 2005?

5 A. No.

6 Q. Well, you said that you had started in 2004 and  
7 it didn't conclude until after, long after that. Is  
8 that a fair statement?

9 A. I was not representing the trust as long as the  
10 mortgage payments were paid. I mean, that was not my --  
11 that was all that would have been done. I mean, I  
12 wasn't representing them per se.

13 Q. What do you mean by per se?

14 A. I was not representing the trust except that to  
15 the extent that if there was a question regarding the  
16 mortgage, I would have been consulted perhaps regarding  
17 it and the payments.

18 Q. Well, were you consulted?

19 A. I don't remember. I mean, that's ten years  
20 ago. I don't remember what all did come up and when it  
21 came up.

22 Q. Well, you were asked this question on Page 150  
23 by Mr. -- I think it was actually Mr. Christu asked you  
24 this, said: Were you in any way representing or doing  
25 any legal work for the Thomas and Elzbieta trust back in

1 2005? Your answer was no. So --

2 A. To the best of my knowledge, I did not remember  
3 that the mortgage was part of that.

4 Q. But you really would correct that statement and  
5 say, yes, you were. That was an incorrect statement.

6 A. That was an incorrect statement.

7 Q. Uh-huh. When did you discover that that was an  
8 incorrect statement that you'd made under oath to  
9 Judge Hyman?

10 A. A matter of probably a week ago perhaps when I  
11 was going through files.

12 Q. Have you taken any steps to correct this  
13 incorrect statement with Judge Hyman?

14 A. No, because I didn't -- considered it, number  
15 one, pretty irrelevant, but, number two, more important,  
16 is that was to the best of my knowledge at that time.

17 Q. But now your knowledge is, after having looked  
18 at your records, your knowledge is such that that answer  
19 should have been yes, correct?

20 A. That's correct.

21 Q. Did you ever have a discussion with Mr. Lubitz  
22 about where this money should go when it showed up in  
23 your trust account?

24 A. I do not remember having any discussions with  
25 Mr. Lubitz, no.

1 account?

2 A. The same way I account for any money. It's on  
3 my ledger card.

4 Q. And you don't have to send -- believe you don't  
5 have to send a 1099 if you receive money from a  
6 client --

7 A. Correct.

8 Q. -- when you're paying it out on behalf of a  
9 client?

10 A. Correct.

11 Q. Well, how would the IRS know that they received  
12 the money?

13 A. I don't know how they know.

14 Q. Is it your practice ever to send a 1099 or any  
15 tax information generally?

16 A. We send them when we do real estate sales, and  
17 when we're representing the buyer we do.

18 Q. And do you recall who -- the projects the money  
19 went to?

20 A. I don't recall all the specific projects the  
21 monies went to.

22 Q. So if we subpoenaed your records, it would have  
23 on there?

24 A. It would show who the monies went to, correct.

25



1 DIRECT EXAMINATION (continued)

2 BY MR. REID:

3 Q. I just want to ask the question on three. I  
4 noticed redactions on top. What are those redactions?

5 A. That probably was monies.

6 Q. And here?

7 A. That would have been -- I believe.

8 Q. Take a look.

9 A. That would have been the monies received and  
10 paid out at that point.

11 Q. Like sort of --

12 A. Running total.

13 Q. -- what came in and -- and how about the  
14 redaction in the -- below those two, what is that?

15 A. That was a deposit on behalf of Mr. D'Agostino.  
16 It says deposit over here.

17 Q. All right.

18 A. Where he sent money in.

19 Q. Where Mr. D'Agostino sent money in?

20 A. Yes.

21 Q. Okay. Do you have a ledger -- would that be  
22 called a ledger card? Is that what that is?

23 A. Correct.

24 Q. Do you have a ledger card for the trust?

25 A. For the trust?

1 Q. Yeah.

2 A. I would have one regarding the mortgage and  
3 that one project, yes.

4 Q. Okay. That shows money coming in and going out  
5 basically?

6 A. Basically, yes, correct.

7 Q. Is there more than one trust?

8 Okay. So the DEP stands for, obviously,  
9 deposit, correct?

10 A. Correct.

11 Q. Okay. And what are these numbers that follow?  
12 What are those? Are those control numbers that -- after  
13 the dates? You see all those?

14 A. Let's see. Probably check numbers.

15 Q. Check numbers, okay.

16 MR. REID: That's all the questions we have.

17 DIRECT EXAMINATION (continued)

18 BY MR. KEITEL:

19 Q. Was \$2 million wired in from your account to  
20 Boose, Casey?

21 A. I don't specifically remember. I don't know.

22 Q. Well, do you know where the money came from for  
23 the mortgage?

24 A. I don't remember.

25 Q. Okay. If this wasn't redacted, would it show



1 the 2 million coming out of your trust account to go to  
2 Boose, Casey?

3 A. Back then, no. That's 2005.

4 Q. Yes. Would it show the 2 million from  
5 D'Agostino to Boose, Casey for the mortgage on Florida  
6 Capital Management?

7 A. If Florida Capital Management was being handled  
8 back then, it would show, but I don't -- I don't know  
9 that it was. I mean, we have nothing reflecting Florida  
10 Capital Management back then.

11 Q. Okay. Well, the money that went from  
12 Mr. D'Agostino, the 2 million to fund the mortgage --

13 A. Okay.

14 Q. -- for Florida Capital Management came out of  
15 the trust, correct?

16 A. I don't remember specifically that.

17 Q. Okay. Well --

18 MR. REID: Here's -- take a look at this.

19 Eric, here's a copy for you.

20 DIRECT EXAMINATION (continued)

21 BY MR. REID:

22 Q. My question is does that sort of help you  
23 recall that there was -- that you wired money in on  
24 behalf of the trust on 2/25/05?

25 A. It -- I can almost guarantee this money was not

Page 1

1 UNITED STATES BANKRUPTCY COURT  
 2 SOUTHERN DISTRICT OF FLORIDA  
 3  
 4 Judge Paul G. Hyman, Jr.  
 5  
 6 In Re:  
 7 Case No. 15-10576-BKC-PGH  
 8 WMK PROPERTIES, INC., FLORIDA  
 9 CAPITAL MANAGEMENT, LLC.  
 10 Debtor.  
 11  
 12 \*\*\*\*\*  
 13 EXCERPT OF HEARING - AFTERNOON PROCEEDINGS  
 14 ECF #30, 31  
 15  
 16 April 15, 2015  
 17  
 18 The above entitled cause came on for hearing before  
 19 the HONORABLE PAUL G. HYMAN, JR., the Chief Judge in  
 20 the UNITED STATES BANKRUPTCY COURT, in and for the  
 21 SOUTHERN DISTRICT OF FLORIDA, at 1515 North Flagler  
 22 Drive, West Palm Beach, Palm Beach County, Florida, on  
 23 April 15, 2015, commencing out of about 9:30 a.m., and  
 24 the following proceedings were had:  
 25  
 Transcribed from a digital recording by:  
 Jacquelyn Ann Jones, Court Reporter

Page 2

1 APPEARANCES:  
 2  
 3 SHUTTS & BOWEN, LLP  
 4 By: LARRY GLICK, ESQUIRE  
 5 ERIC CHRISTU, ESQUIRE  
 6 JONATHAN HART, ESQUIRE  
 7 On behalf of D'Agostino Creditors  
 8  
 9 MARSHALL SOCARRAS GRANT, P.L.  
 10 By: JOE GRANT, ESQUIRE  
 11 On behalf of the Debtor  
 12  
 13 INDEX  
 14 PAGE  
 15 WITNESS: FREDERICK KEITEL  
 16 RE-CROSS EXAMINATION BY MR. CHRISTU ----- 2  
 17 REDIRECT EXAMINATION BY MR. GRANT ----- 13  
 18  
 19 WITNESS: ROBERT KING  
 20 DIRECT EXAMINATION BY MR. CHRISTU ----- 15  
 21 CROSS EXAMINATION BY MR. GRANT ----- 18  
 22  
 23 EXHIBITS  
 24 Exhibits No. 19, 20, 21 admitted ----- 12  
 25 Exhibits No. 9, 10, 11 admitted ----- 22

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1 \*\*\*\*\*  
 2 THE COURT: Please be seated.  
 3 I had another question, Mr. Keitel. I need  
 4 you to come back on the stand, and then I'll let  
 5 everyone ask additional questions if they so desire.  
 6 And sir, you're still under oath.  
 7 As of your petition date, bankruptcy  
 8 petition date --  
 9 THE WITNESS: Okay.  
 10 THE COURT: What debts did you still owe or  
 11 have to Mr. D'Agostino?  
 12 THE WITNESS: Since that date --  
 13 THE COURT: Not since. As of that date.  
 14 THE WITNESS: As of that date it's the WMK  
 15 case.  
 16 THE COURT: Which is with the judgment.  
 17 THE WITNESS: 750 on a piece of property.  
 18 And it's on appeal. The FJK IV case is on appeal,  
 19 which is the one we were talking about with the  
 20 affidavit. And then we have this case.  
 21 THE COURT: Is that the one that resulted in  
 22 this judgment, summary judgment?  
 23 THE WITNESS: Yes.  
 24 THE COURT: Okay. Okay.  
 25 THE WITNESS: That's it.

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1 THE COURT: That's the only debt?  
 2 THE WITNESS: That's the only debt. Not  
 3 counting --  
 4 THE COURT: I want you to count those. I  
 5 want --  
 6 THE WITNESS: And Florida Capital  
 7 Management, which we think that we overpaid by  
 8 \$74,000.  
 9 THE COURT: And?  
 10 THE WITNESS: And that's it.  
 11 THE COURT: Don't you have two debts here in  
 12 this bankruptcy?  
 13 THE WITNESS: Yes. I said WMK, I'm sorry.  
 14 that's the 750.  
 15 THE COURT: Got it.  
 16 THE WITNESS: Florida Capital is this one,  
 17 and then that's --  
 18 THE COURT: The final judgment. So those  
 19 are the three.  
 20 THE WITNESS: We actually have a bond for  
 21 that, but we haven't posted it yet.  
 22 THE COURT: Okay. Those are the three.  
 23 that's it?  
 24 THE WITNESS: Yes.  
 25 THE COURT: Okay. Thank you. Additional

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1 consideration we could depose him further if there's  
 2 an opportunity to present later evidence to cross  
 3 examine him.  
 4 THE COURT: I will wait and see what his  
 5 testimony is, and if there is, at the end of his  
 6 direct if you think there was a reason you needed to  
 7 depose him previously, I'll consider continuing the  
 8 hearing.  
 9 MR. GRANT: Thank you.  
 10 MR. CHRISTU: Thank you, Your Honor.  
 11 DIRECT EXAMINATION  
 12 BY MR. CHRISTU:  
 13 Q. What's your occupation, Mr. King?  
 14 A. I'm an attorney.  
 15 Q. And how long have you been an attorney?  
 16 A. I was licensed in 1973.  
 17 Q. And where do you practice?  
 18 A. I practice in Fort Lauderdale and also  
 19 licensed in Indiana.  
 20 Q. And what are your areas of practice?  
 21 A. Mainly now, real estate, wills and trusts,  
 22 probate.  
 23 Q. Do you know Thomas D'Agostino, Senior?  
 24 A. Yes.  
 25 Q. And how do you know him?

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1 A. He's a client of mine.  
 2 Q. If you would --  
 3 MR. CHRISTU: And I believe, Your Honor, if  
 4 I may approach, I believe there's a binder perhaps in  
 5 front of you, the white one. Your Honor, if I can  
 6 just grab it because --  
 7 THE COURT: Yes, sir.  
 8 BY MR. CHRISTU:  
 9 Q. I'm going to direct your attention to what  
 10 has been put into evidence as Exhibit K by the  
 11 debtors. Do you have Exhibit K, Debtor's Exhibit K in  
 12 front of you?  
 13 A. Yes.  
 14 Q. Okay. And is that a one page wire transfer  
 15 form?  
 16 A. Yes, it is.  
 17 Q. Did you receive the wire that is referenced  
 18 in that wire transfer form back in 2005?  
 19 A. It's -- I would have to say yes, I did. I  
 20 mean, I -- I do not have specific recollection of it,  
 21 but my name and account number and my trust account  
 22 are all in it. So I would say yes.  
 23 THE COURT: Sir, he asked did you receive  
 24 it. No one asked you to guess. Did you receive it?  
 25 THE WITNESS: Okay. I do not have specific

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1 recollection of receiving this wire.  
 2 THE COURT: Thank you. Answer the questions  
 3 that are asked.  
 4 BY MR. CHRISTU:  
 5 Q. Did you, at this time in 2005, did you know  
 6 Mr. Chuck Lubitz?  
 7 A. I don't know that I knew him, no.  
 8 Q. Okay. Did you know -- in 2005 did you know  
 9 a Mr. Frederick Keitel?  
 10 A. Again, I don't know that I knew him, no.  
 11 Q. And in 2005, in the course of any  
 12 representation you were doing on behalf of Mr.  
 13 D'Agostino, did you have any dealings at that time  
 14 with Mr. Keitel or Mr. Lubitz?  
 15 A. Not that I know of.  
 16 Q. Were you in any way representing or doing  
 17 any legal work for the Thomas and Elsbjeta Trust back  
 18 in 2005?  
 19 A. No.  
 20 Q. In 2005, the date of that wire transfer, did  
 21 you receive any instructions either verbally or in  
 22 writing from Mr. Lubitz telling you what it was for?  
 23 A. No, I did not.  
 24 Q. Did Mr. Lubitz or anyone else ever advise  
 25 you that it was for a payment on any type of note?

Page 20

1 A. No one represented what it was a payment  
 2 for, no.  
 3 Q. Did Mr. Lubitz or anyone else ever ask you  
 4 to provide any type of satisfaction of note or  
 5 mortgage in conjunction with receiving the funds set  
 6 forth in Exhibit K?  
 7 A. No, he did not, and no one else did.  
 8 Q. In 2005, as of the date of that wire  
 9 transfer in front of you, were you in any way  
 10 responsible for accepting payments of any -- on behalf  
 11 of the Thomas and Elsbjeta Trust?  
 12 A. No, I was not.  
 13 Q. In a State Court action in front of Judge  
 14 Sasser, did Mr. Keitel accuse you of committing fraud  
 15 for failing to file a satisfaction of mortgage?  
 16 A. He did.  
 17 Q. And was that for specific notes in the  
 18 amounts of 500,000 and \$700,000?  
 19 A. I'd have to look to make sure, but it could  
 20 have been.  
 21 MR. CHRISTU: Nothing further. Your Honor.  
 22 THE COURT: Cross.  
 23 CROSS EXAMINATION  
 24 BY MR. GRANT:  
 25 Q. I don't know if it constitutes a cross, Your

## EXHIBIT D

FINCH APPRAISAL SERVICE, INC.

File No. 16-3102

**APPRAISAL OF**



**LOCATED AT:**

237 BRAZILIAN AVENUE  
PALM BEACH, FL 33480

**FOR:**

HAILE, SHAW & PFAFFENBERGER, P.A  
660 U.S. HIGHWAY ONE, 3RD FL  
NORTH PALM BEACH, FL33408

**BORROWER:**

PETER CALLAHAN

**AS OF:**

October 17, 2016

**BY:**

ROGER A. FINCH



LAND APPRAISAL REPORT

File No. 16-3102

**SUBJECT**  
 Borrower PETER CALLAHAN Census Tract 35.09 Map Reference LAND  
 Property Address 237 BRAZILIAN AVENUE  
 City PALM BEACH County PALM BEACH State FL Zip Code 33480  
 Legal Description ROYAL PARK ADD LOT 3 BLOCK E PLAT BOOK 4 PAGE 1  
 Sale Price N/A Date of Sale N/A Loan Term \_\_\_\_\_ yrs. Property Rights Appraised  Fee  Leasehold  De Minimus PUD  
 Actual Real Estate Taxes 34729 (15) (yr.) Loan charges to be paid by seller N/A Other sale concessions \_\_\_\_\_  
 Lender/Client HAILE, SHAW & PFAFFENBERGER, P.A Address 660 U.S. HIGHWAY ONE, 3RD FL NORTH PALM BEACH, FL33408  
 Occupant VACANT Appraiser ROGER A. FINCH Instructions to Appraiser FAIR MARKET VALUE

**NEIGHBORHOOD**

Location	<input checked="" type="checkbox"/> Urban	<input type="checkbox"/> Suburban	<input type="checkbox"/> Rural	Good	Avg	Fair	Poor
Built Up	<input checked="" type="checkbox"/> Over 75%	<input type="checkbox"/> 25% to 75%	<input type="checkbox"/> Under 25%	Employment Stability	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Growth Rate	<input type="checkbox"/> Fully Dev.	<input type="checkbox"/> Rapid	<input checked="" type="checkbox"/> Steady	Convenience to Employment	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Property Values	<input checked="" type="checkbox"/> Increasing	<input type="checkbox"/> Stable	<input type="checkbox"/> Declining	Convenience to Shopping	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Demand/Supply	<input type="checkbox"/> Shortage	<input checked="" type="checkbox"/> In Balance	<input type="checkbox"/> Over Supply	Convenience to Schools	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing Time	<input type="checkbox"/> Under 3 Mos.	<input type="checkbox"/> 4-6 Mos.	<input checked="" type="checkbox"/> Over 6 Mos.	Adequacy of Public Transportation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Present	<u>70</u> % One-Unit	<u>   </u> % 2-4 Units	<u>   </u> % Apts	Recreational Facilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Land Use	<u>   </u> % Industrial	<u>   </u> % Vacant	<u>   </u> %	Adequacy of Utilities	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Change in Present Land Use	<input checked="" type="checkbox"/> Not Likely	<input type="checkbox"/> Likely	<input type="checkbox"/> Taking Place(*)	Property Compatibility	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	(*)From _____ To _____			Protection from Detrimental Conditions	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Predominant Occupancy	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Tenant	<u>   </u> % Vacant	Police and Fire Protection	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
One-Unit Price Range \$	<u>2000</u> to \$	<u>100M+</u>	Predominant Value \$	General Appearance of Properties	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
One-Unit Age	<u>NEW</u> yrs. to	<u>100</u> yrs.	Predominant Age	Appeal to Market	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise) APN 50-43-43-23-05-025-0030. SEE THE ADDENDUM FOR NEIGHBORHOOD COMMENTS. PALM BEACH IS A SEASONAL MARKET IN WHICH THE MARKET ACTIVITY INCREASES FROM NOVEMBER TO MAY. THIS IS TYPICAL FOR OTHER SOUTH FLORIDA MARKETS.

**SITE**

Dimensions 100' X 180' SUBJECT TO SURVEY = 18000 SQ.FT.  Corner Lot  
 Zoning Classification SINGLE FAMILY R-C Present Improvements  Do  Do Not Conform to Zoning Regulations  
 Highest and Best Use  Present Use  Other (specify) SITE FOR CONSTRUCTION  
 Elec.  Public  Other (Describe) \_\_\_\_\_  
 Gas  \_\_\_\_\_  
 Water  \_\_\_\_\_  
 San. Sewer  \_\_\_\_\_  
 Underground Elec & Tel \_\_\_\_\_  
 OFF-SITE IMPROVEMENTS  
 Street Access  Public  Private  
 Surface ASPHALT  
 Maintenance  Public  Private  
 Storm Sewer  Curb/Gutter  
 Sidewalk  Street Lights  
 Topo LEVEL ABOVE ROAD GRADE  
 Size LARGER THAN AVERAGE  
 Shape RECTANGULAR  
 View OTHER HOMES / CONDOMINIUM  
 Drainage APPEARS ADEQUATE  
 Property located in a HUD identified Special Flood Hazard Area?  Yes  No

Comments (favorable or unfavorable including any apparent adverse easements, encroachments or other adverse conditions) THE INTENDED USER IS THE ADDRESSEE. THE INTENDED USE IS FOR INTERNAL USE. FLOOD ZONE AE PANEL # 120220 0002C. SEE THE ADDENDUM FOR SITE COMMENTS.

The undersigned has recited three recent sales of properties most similar and proximate to the subject and has to be considered these in the market analysis. The description includes a dollar adjustment, reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to, or more favorable than subject property, a minus (-) adjustment is made, thus reducing the indicated value of the subject, if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made, thus increasing the indicated value of the subject.

ITEM	SUBJECT	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	<u>237 BRAZILIAN AVENUE PALM BEACH, FL 33480</u>	<u>212 CORAL LANE PALM BEACH, FL 33480</u>		<u>307 CHILEAN AVENUE PALM BEACH, FL 33480</u>		<u>232 CORAL LANE PALM BEACH, FL 33480</u>	
Proximity to subject		<u>1.49 MILES NW</u>		<u>0.16 MILES SW</u>		<u>1.50 MILES NW</u>	
Sales Price	\$	\$ <u>4,200,000</u>		\$ <u>1,900,000</u>		\$ <u>3,750,000</u>	
Price \$/Sq. Ft.				<u>\$304</u>		<u>\$268</u>	
Data Source		<u>MLS/FIELD</u>		<u>MLS/FIELD</u>		<u>MLS/FIELD</u>	
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION	+(-) Adjust.	DESCRIPTION	+(-) Adjust.	DESCRIPTION	+(-) Adjust.
Location	<u>GOOD</u>	<u>INFERIOR+5% \</u>	<u>0</u>	<u>GOOD</u>		<u>INFERIOR+5% \</u>	<u>0</u>
Site/View	<u>HOMES/CONDO</u>	<u>HOMES -5% /</u>	<u>0</u>	<u>HOMES -5%</u>	<u>-100,000</u>	<u>HOMES -5% /</u>	<u>0</u>
LOT SIZE	<u>18,000 SQ. FT.</u>	<u>17,040 SQ. FT.</u>	<u>264,000</u>	<u>6,250 SQ. FT.</u>	<u>3,231,000</u>	<u>14,000 SQ. FT.</u>	<u>1,100,000</u>
TNHN CAPABLE	<u>YES</u>	<u>NO +5%</u>	<u>210,000</u>	<u>NO +5%</u>	<u>100,000</u>	<u>NO +5%</u>	<u>190,000</u>
APPROVALS	<u>YES</u>	<u>NO</u>	<u>325,000</u>	<u>NO</u>	<u>325,000</u>	<u>NO</u>	<u>325,000</u>
Sales or Financing Concessions							
Net Adj. (Total)		<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ <u>925,000</u>	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ <u>3,632,000</u>	<input checked="" type="checkbox"/> + <input type="checkbox"/> -	\$ <u>1,765,000</u>
Indicated Value of Subject		Gross Adj: <u>22.0 %</u>		Gross Adj: <u>201.7 %</u>		Gross Adj: <u>47.1 %</u>	
		Net Adj: <u>22.0 %</u>	\$ <u>5,125,000</u>	Net Adj: <u>191.2 %</u>	\$ <u>5,532,000</u>	Net Adj: <u>47.1 %</u>	\$ <u>5,515,000</u>

Comments on Market Data SEE SALE 4 AND THE ADDENDUM FOR THE DISCUSSION OF THE ADJUSTMENTS. MOST WEIGHT WAS PLACED SALES 2-4 IN THE MARKET ANALYSIS SINCE SALE 1 APPEARS TO HAVE SOLD BELOW MARKET BASED ON ALL OTHER INDICATIONS.

Comments and Conditions of Appraisal THE EXISTING STRUCTURES DO NOT CONTRIBUTE TO VALUE.

Final Reconciliation THE SALES COMPARISON APPROACH IS THE ONLY INDICATION OF VALUE FOR A SINGLE FAMILY HOMESITE, UTILIZING THE MARKET ANALYSIS OF COMPARABLE PROPERTIES TO ACCOUNT FOR THE DIFFERENCES IN LOCATIONAL AND PHYSICAL CHARACTERISTICS.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF THE SUBJECT PROPERTY AS OF OCTOBER 17, 2016 TO BE \$ 5,500,000

**RECONCILIATION**

APPRaiser ROGER A. FINCH SUPERVISORY APPRAISER (if applicable) \_\_\_\_\_  
 Signature \_\_\_\_\_ Signature \_\_\_\_\_  
 Name \_\_\_\_\_ Name \_\_\_\_\_  
 Title \_\_\_\_\_ Title \_\_\_\_\_  
 Date Report Signed 10/20/2016 Date Report Signed \_\_\_\_\_  
 State Certification # CERT RES RD824 State FL State Certification # \_\_\_\_\_ State \_\_\_\_\_  
 State License # \_\_\_\_\_ State \_\_\_\_\_ State License # \_\_\_\_\_ State \_\_\_\_\_  
 Expiration Date of Certification or License 11/30/2018 Expiration Date of Certification or License \_\_\_\_\_  
 Date of Inspection OCTOBER 17, 2016  Did  Did Not Inspect Property Date of Inspection \_\_\_\_\_



Borrower: PETER CALLAHAN	File No.: 16-3102
Property Address: 237 BRAZILIAN AVENUE	Case No.:
City: PALM BEACH	State: FL Zip: 33480
Lender: HAILE, SHAW & PFAFFENBERGER, P.A	

#### NEIGHBORHOOD COMMENTS

THE SUBJECT PROPERTY IS LOCATED IN THE TOWN OF PALM BEACH. PALM BEACH IS A BARRIER ISLAND EAST OF THE CITY OF WEST PALM BEACH IN CENTRAL PALM BEACH COUNTY. IT IS BOUNDED TO THE EAST BY THE ATLANTIC OCEAN AND TO THE WEST BY THE INTRACOASTAL WATERWAY, ALSO KNOWN AS LAKE WORTH. THE ISLAND EXTENDS FROM THE LAKE WORTH INLET, FOURTEEN MILES SOUTH TO THE TOWN OF SOUTH PALM BEACH. FOUR BRIDGES PROVIDE ACCESS TO THE ISLAND FROM THE MAINLAND. THE NARROWEST PORTION IS APPROXIMATELY 1/4 MILE WIDE AND INCREASES TO ABOUT 3/4'S OF A MILE WIDE AT THE WIDEST PORTION.

THE NORTHERN PORTION OF THE ISLAND, NORTH OF THE PALM BEACH COUNTRY CLUB LARGELY CONSISTS OF BERMUDA STYLE HOMES BUILT IN THE 1950'S. MANY AREAS SOUTH OF THE PALM BEACH COUNTRY CLUB TO WORTH AVENUE ARE ZONED MULTIPLE FAMILY. HENCE, THESE ARE THE ONLY "IN TOWN" LOCATIONS WHICH CONSISTS OF MULTIPLE FAMILY USES IN ADDITION TO SINGLE FAMILY HOMES. THE AREA SOUTH OF WORTH AVENUE TO SLOAN'S CURVE IS LOCALLY REFERRED TO AS THE "ESTATE SECTION" OF PALM BEACH. THIS AREA PREDOMINANTLY CONSISTS OF 1920'S MEDITERRANEAN OR COLONIAL STYLE MANSIONS ON LARGER THAN AVERAGE LOTS DUE TO THE R-A ZONING. THE AREA SOUTH OF SLOAN'S CURVE TO THE TOWN OF SOUTH PALM BEACH CONSISTS OF HIGHRISE CONDOMINIUMS.

PALM BEACH IS WORLD RENOWNED FOR ITS EUROPEAN ATMOSPHERE AND EXCELLENT SHOPPING AND DINING FACILITIES. SHOPPING IS PROVIDED BY SEVERAL CENTERS, THE MOST FAMOUS OF WHICH IS WORTH AVENUE. LOCATED FIVE BLOCKS SOUTH OF ROYAL POINCIANA WAY, WORTH AVENUE WAS DESIGNED FOR SHOPPING AND STROLLING ALONG IT'S FOUR PALM LINED BLOCKS. THE ESPLANADE ON WORTH AVENUE, A 90,000 SQUARE FOOT SHOPPING MALL FEATURES A SAKS FIFTH AVENUE AND 48 SELECTED SHOPS AND BOUTIQUES. HISTORICALLY, PROPERTIES WITHIN WALKING DISTANCE TO WORTH AVENUE COMMAND PREMIUMS. NEIMAN MARCUS OPENED ON WORTH AVENUE AND THE CITY PLACE SHOPPING AND SOCIAL DEVELOPMENT IN WEST PALM BEACH OPENED IN 2000.

MAR-A-LAGO, THE CROWN JEWEL OF PALM BEACH IS THE LARGEST ESTATE ON THE ISLAND. CONSTRUCTED FROM 1923 TO 1927, THE HOME WAS BUILT BY CEREAL HEIRESS MARJORIE MERRIWEATHER POST AND FINANCIER HUSBAND E.F. HUTTON. THIS NON-CONTIGUOUS OCEAN TO INTRACOASTAL ESTATE CONTAINS 17.5 ACRES. THE MAIN RESIDENCE COMPRISES 34,500 +/- SQUARE FEET PLUS AN ADDITIONAL 35,000 SQUARE FEET IN OUT BUILDINGS. THE ESTATE CONTAINS 118 ROOMS, 52 BEDROOMS AND 32 BATHROOMS. PURCHASED IN 1985 BY DONALD TRUMP, THIS LANDMARKED RESIDENCE WAS CONVERTED INTO A PRIVATE SOCIAL CLUB IN 1995. OTHER PRIVATE CLUBS CONSIST OF THE BATH AND TENNIS CLUB, THE EVERGLADES CLUB, THE PALM BEACH YACHT CLUB, THE SAILFISH CLUB AND THE PALM BEACH COUNTRY CLUB. IN TOWN GOLF COURSES ARE LOCATED AT THE PALM BEACH COUNTRY CLUB, THE BREAKERS RESORT AND THE EVERGLADES CLUB. THERE IS A PUBLIC PAR THREE GOLF COURSE ON THE SOUTHERN END OF THE ISLAND.

#### MARKET CONDITIONS

VALUES INCREASED FROM 2000 TO 2007 AND STABILIZED IN MOST AREAS IN LATE 2008. DECLINES WERE NOTED FROM 2009 TO EARLY 2012 AND STABILIZED IN MID 2012. SINCE THEN, THERE WERE SIGNIFICANT SIGNS OF INCREASE UNTIL THE END OF THE 2016 SEASON WHICH VALUES APPEARED TO BE LEVELING OFF.



Borrower: PETER CALLAHAN	File No.: 16-3102	
Property Address: 237 BRAZILIAN AVENUE	Case No.:	
City: PALM BEACH	State: FL	Zip: 33480
Lender: HAILE, SHAW & PFAFFENBERGER, P.A		

**COMMENTS ON THE SUBJECT SITE**

THE SUBJECT IS LOCATED BETWEEN ROYAL PALM WAY AND WORTH AVENUE ON THE CENTRAL PORTION OF THE ISLAND WHICH IS A VERY DESIRABLE LOCATION. IN REFERENCE TO THE TAX MAP AND PHOTOS, THE SITE HAS DIMENSIONS OF 100' X 180' AND IS ADJACENT TO A HIGH RISE CONDOMINIUM.

**HIGHEST AND BEST USE**

THE SITE IS CURRENTLY IMPROVED WITH RENTAL UNITS CONSTRUCTED IN 1925. HOWEVER, DUE TO THEIR AGE AND INCREASING LAND VALUES, THE IMPROVEMENTS WERE NOT CONSIDERED TO CONTRIBUTE TO VALUE

THE SITE IS ZONED MULTIPLE FAMILY R-C WHICH REQUIRES MINIMUM SITE SIZE OF 13,333 SQUARE FEET TO CONSTRUCT TWO ATTACHED LUXURY TOWNHOMES WHICH IS A COMMON USE FOR THE IMMEDIATE AREA. TOWNHOME DEVELOPMENT WAS CONSIDERED TO BE THE HIGHEST AND BEST USE FOR THE SUBJECT SITE SINCE THE SITE CONTAINS 18,000 SQUARE FEET.

**LAND VALUE ANALYSIS**

FOUR LAND SALES WERE ANALYZED TO ESTIMATE THE VALUE OF THE SUBJECT SITE. SINCE THIS MARKET IS INCREASING, ALL SALES WERE ADJUSTED UPWARD FOR TIME TO EQUATE THEM TO CURRENT MARKET CONDITIONS. WHILE THE SALES 1 AND 3 ON THE SAME STREET INDICATE A DECLINE IN VALUE WITH REGARDS TO THEIR PRICE PER SQUARE FOOT, THIS IS DUE TO THE IMPERFECTIONS OF THE MARKET. THE TIME ADJUSTMENTS WERE ESTIMATED AT .5% PER MONTH OF THEIR SALE PRICE WHICH WERE APPLIED FROM THEIR SALE DATES, UP TO AND INCLUDING OCTOBER 2016.

THE ADJUSTMENTS FOR LOCATION AND EXPOSURE WERE APPLIED ON A PERCENTAGE BASIS OF THE TIME ADJUSTED SALE PRICES WHICH WERE ROUNDED TO THE NEAREST \$10,000. CONSIDERATION WAS GIVEN TO THE SUBJECTS LOCATION NEXT TO THE BRAZILIAN OF PALM BEACH CONDOMINIUM WHICH WOULD OFFER INFERIOR VIEWS FROM THE HYPOTHETICAL EAST SUBJECT TOWNHOME COMPARED TO AN EXPOSURE TO A SINGLE FAMILY HOME. SALES 1 AND 3 ARE INFERIOR LOCATIONS NORTH OF ROYAL POINCIANA WAY. THE DOWNWARD ADJUSTMENTS FOR VIEW WERE OFFSET BY THEIR INFERIOR LOCATION.

THE LOT SIZE ADJUSTMENTS WERE BASED ON THE DIFFERENCE IN SIZE TIMES \$275 PER SQUARE FOOT.

THE PREMIUM FOR A TOWNHOME CAPABLE LOT WITH REGARDS TO ZONING AND LOT SIZE WAS ESTIMATED AT 5% OF THE TIME ADJUSTED SALE PRICE.

LASTLY, UPWARD ADJUSTMENTS WERE APPLIED FOR THE BUILDING APPROVAL COSTS WHICH WERE STATED TO BE \$325,000 TO DATE FROM THE OWNER.

THE LAND VALUE CONCLUSION OF \$5,175,000 EXCLUSIVE OF \$325,000 PERMITS FEES EQUATES TO \$288 PER SQUARE FOOT WHICH WAS CONSIDERED TO BE REASONABLE COMPARED TO THE OTHER INDICATIONS.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions\* granted by anyone associated with the sale.

\*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the Appraiser's judgment.

## STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

**CONTINGENT AND LIMITING CONDITIONS:** The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.
3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.
6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc. ) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc. ) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.
9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.
10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated ) to anyone other than the borrower; the mortgagee or its successors and assigns; the mortgage insurer; consultants; professional appraisal organizations; any state or federally approved financial institution; or any department, agency, or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

**APPRAISERS CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and Limiting Conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

**SUPERVISORY APPRAISER'S CERTIFICATION:** If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that: I directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

**ADDRESS OF PROPERTY APPRAISED:** 237 BRAZILIAN AVENUE, PALM BEACH, FL, 33480

**APPRAISER:**

**SUPERVISORY APPRAISER (only if required)**

Signature: *Roger A. Finch*  
 Name: ROGER A. FINCH  
 Date Signed: 10/20/2016  
 State Certification #: CERT RES RD824  
 or State License #: \_\_\_\_\_  
 State: FL  
 Expiration Date of Certification or License: 11/30/2018

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Date Signed: \_\_\_\_\_  
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 or State License #: \_\_\_\_\_  
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 Expiration Date of Certification or License: \_\_\_\_\_

Did  Did Not Inspect Property



Borrower: PETER CALLAHAN	File No.: 16-3102
Property Address: 237 BRAZILIAN AVENUE	Case No.:
City: PALM BEACH	State: FL Zip: 33480
Lender: HAILE, SHAW & PFAFFENBERGER, P.A	



**FRONT VIEW OF  
SUBJECT PROPERTY**

Appraised Date: October 17, 2016  
Appraised Value: \$ 5,500,000



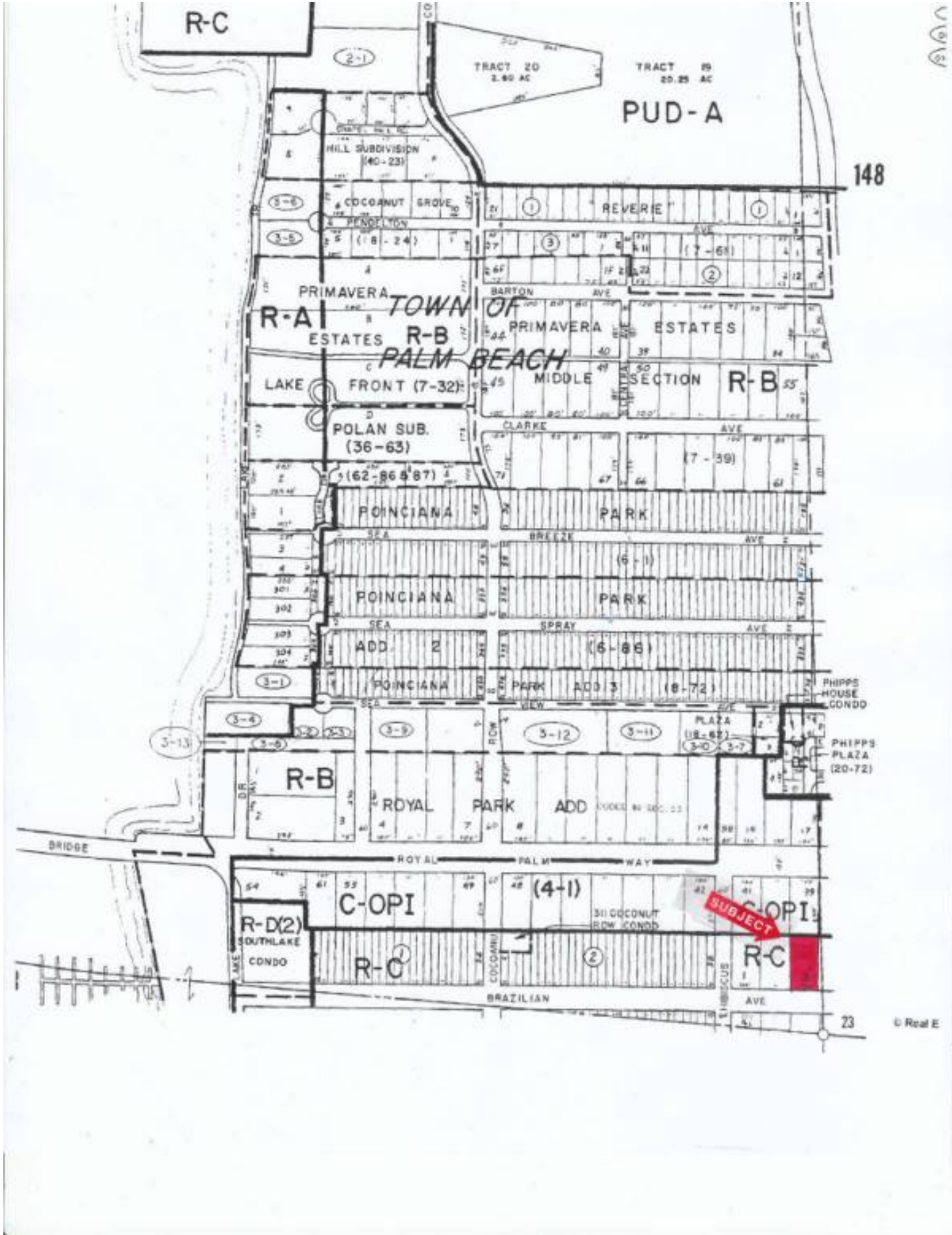
**REAR VIEW OF  
SUBJECT PROPERTY**



**STREET SCENE**

PLAT MAP

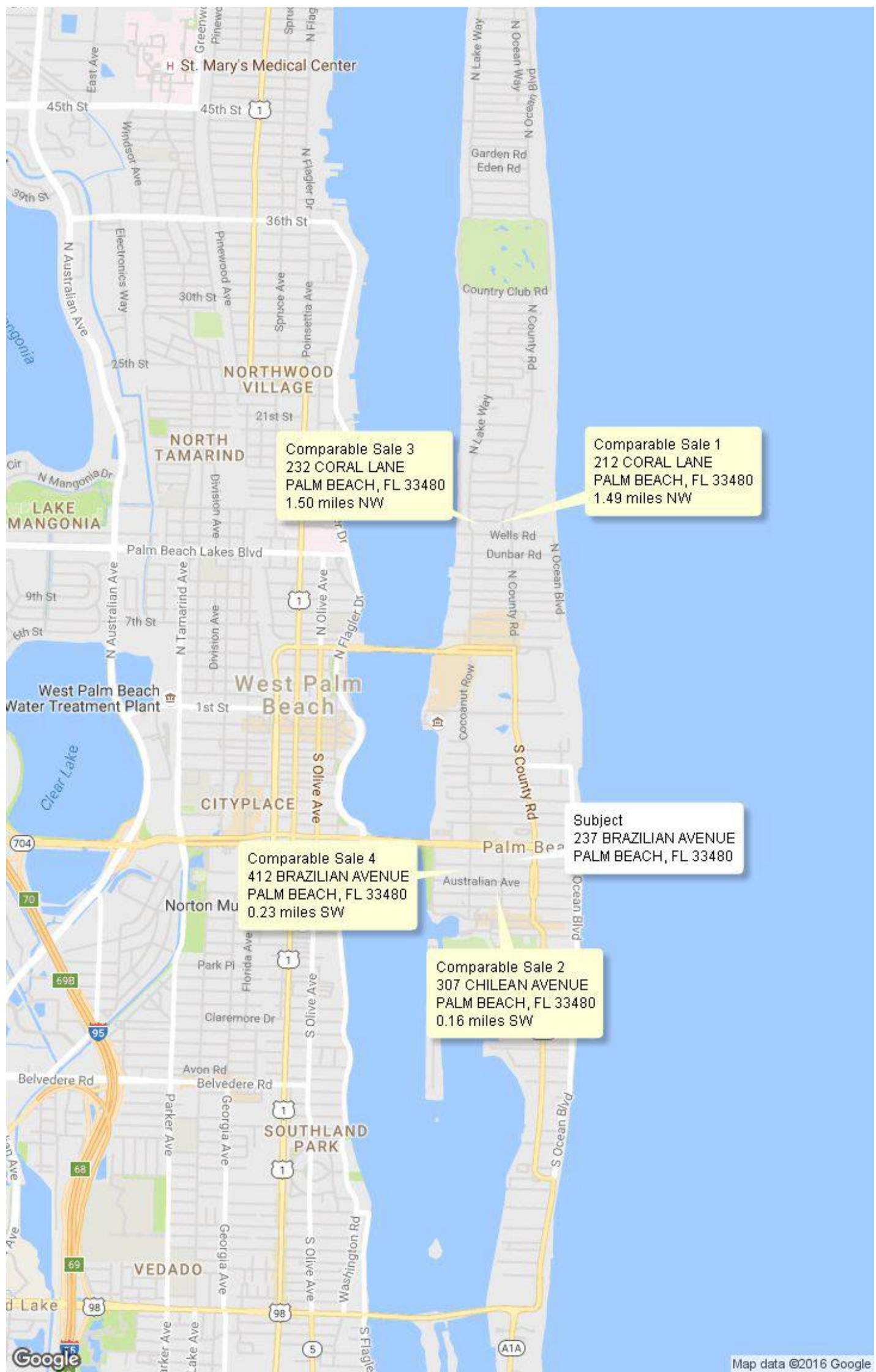
Borrower: PETER CALLAHAN	File No.: 16-3102
Property Address: 237 BRAZILIAN AVENUE	Case No.:
City: PALM BEACH	State: FL Zip: 33480
Lender: HAILE, SHAW & PFAFFENBERGER, P.A	





LOCATION MAP

Borrower: PETER CALLAHAN	File No.: 16-3102
Property Address: 237 BRAZILIAN AVENUE	Case No.:
City: PALM BEACH	State: FL Zip: 33480
Lender: HAILE, SHAW & PFAFFENBERGER, P.A	



FINCH APPRAISAL SERVICE, INC.

File No. 16-3102

\*\*\*\*\* INVOICE \*\*\*\*\*

File Number: 16-3102

OCTOBER 20, 2016  
WILTON WHITE  
HAILE, SHAW & PFAFFENBERGER, P.A  
660 U.S. HIGHWAY ONE, 3RD FL  
NORTH PALM BEACH, FL 33408

Borrower : PETER CALLAHAN

Invoice # : 16-3102  
Order Date :  
Reference/Case # :  
PO Number :

237 BRAZILIAN AVENUE  
PALM BEACH, FL 33480

APPRAISAL FEE	\$	650.00
	\$	-----
Invoice Total	\$	650.00
State Sales Tax @	\$	
Deposit	(\$	)
Deposit	(\$	)
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Amount Due	\$	650.00

Terms: DUE UPON RECEIPT

Please Make Check Payable To:

FINCH APPRAISAL SERVICE, INC.  
4912 BROADSTONE CIRCLE  
WEST PALM BEACH, FL 33417

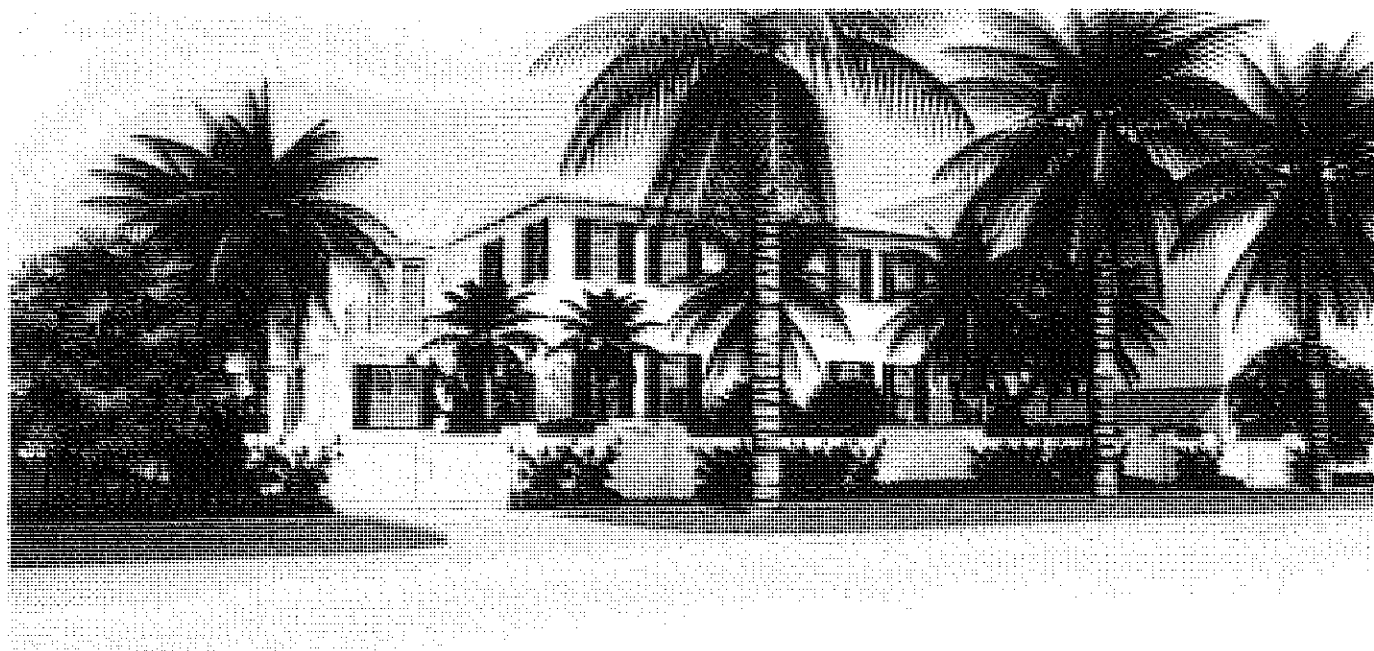
Fed. I.D. #: 65-1055234

## EXHIBIT E



PROPOSED RESIDENCE AT:  
**237 BRAZILIAN AVENUE**  
TOWN OF PALM BEACH PALM BEACH COUNTY, FLORIDA

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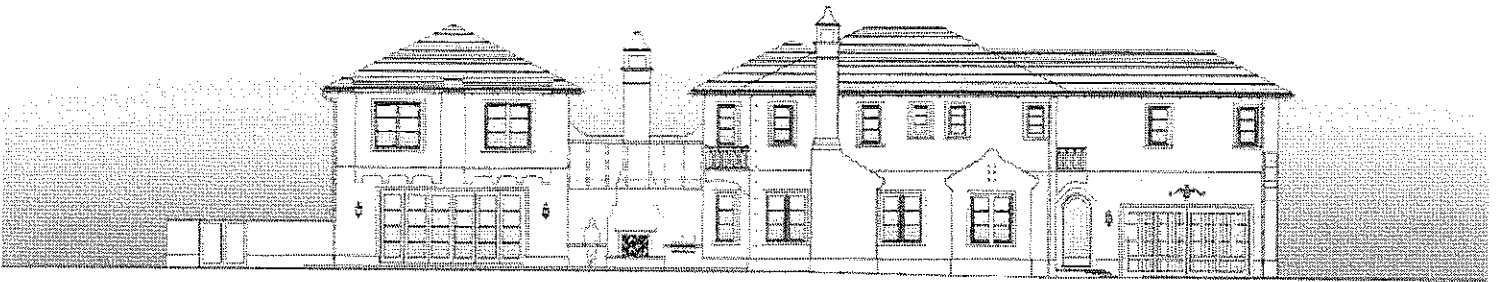


**DAILEY JANSSEN ARCHITECTS, P.A.**  
400 Orange Street, Suite #200 Palm Beach, Florida 33401 TEL: 561-633-4707



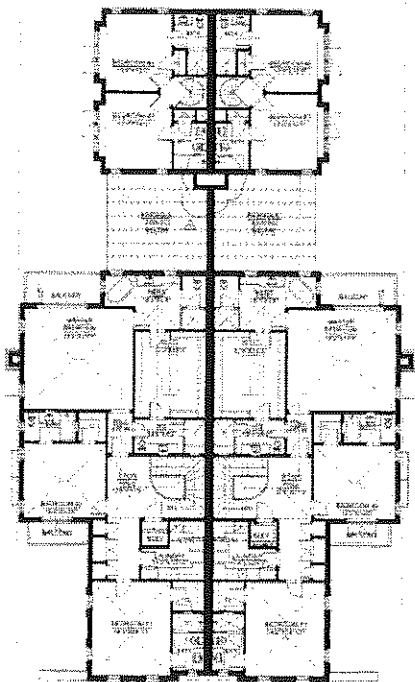
CURRENTLY PROPOSED WEST ELEVATION

SCALE 1/4" = 1'-0"

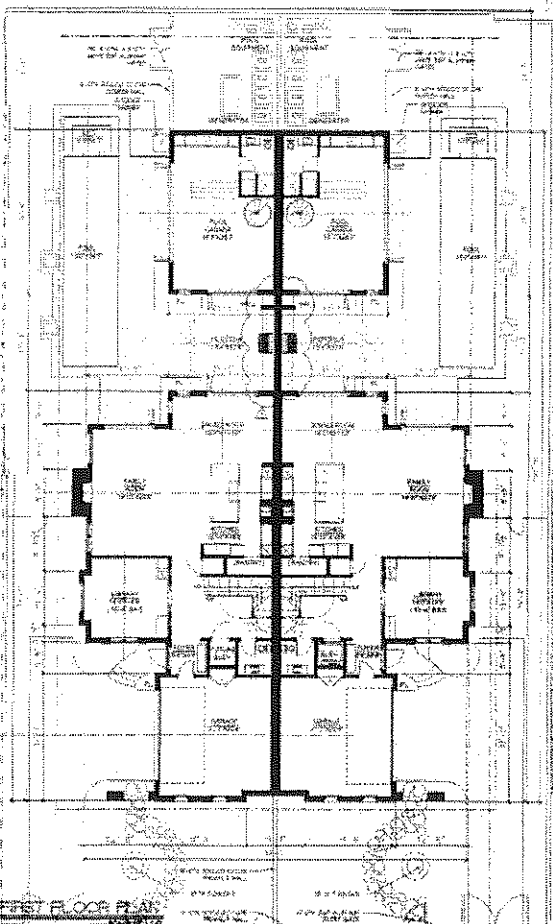


PREVIOUSLY PROPOSED WEST ELEVATION

SCALE 1/4" = 1'-0"



SECOND FLOOR PLAN



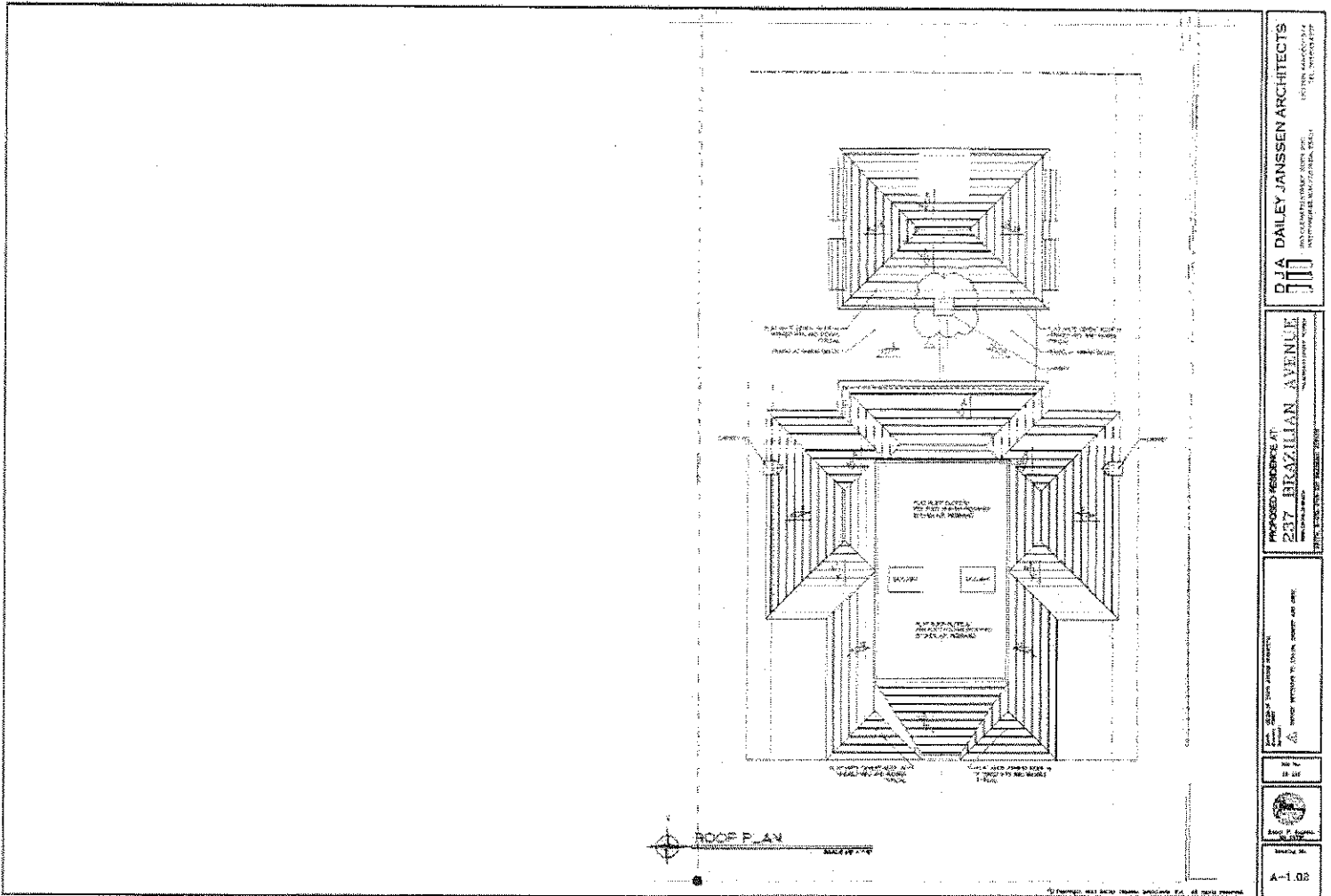
FIRST FLOOR PLAN

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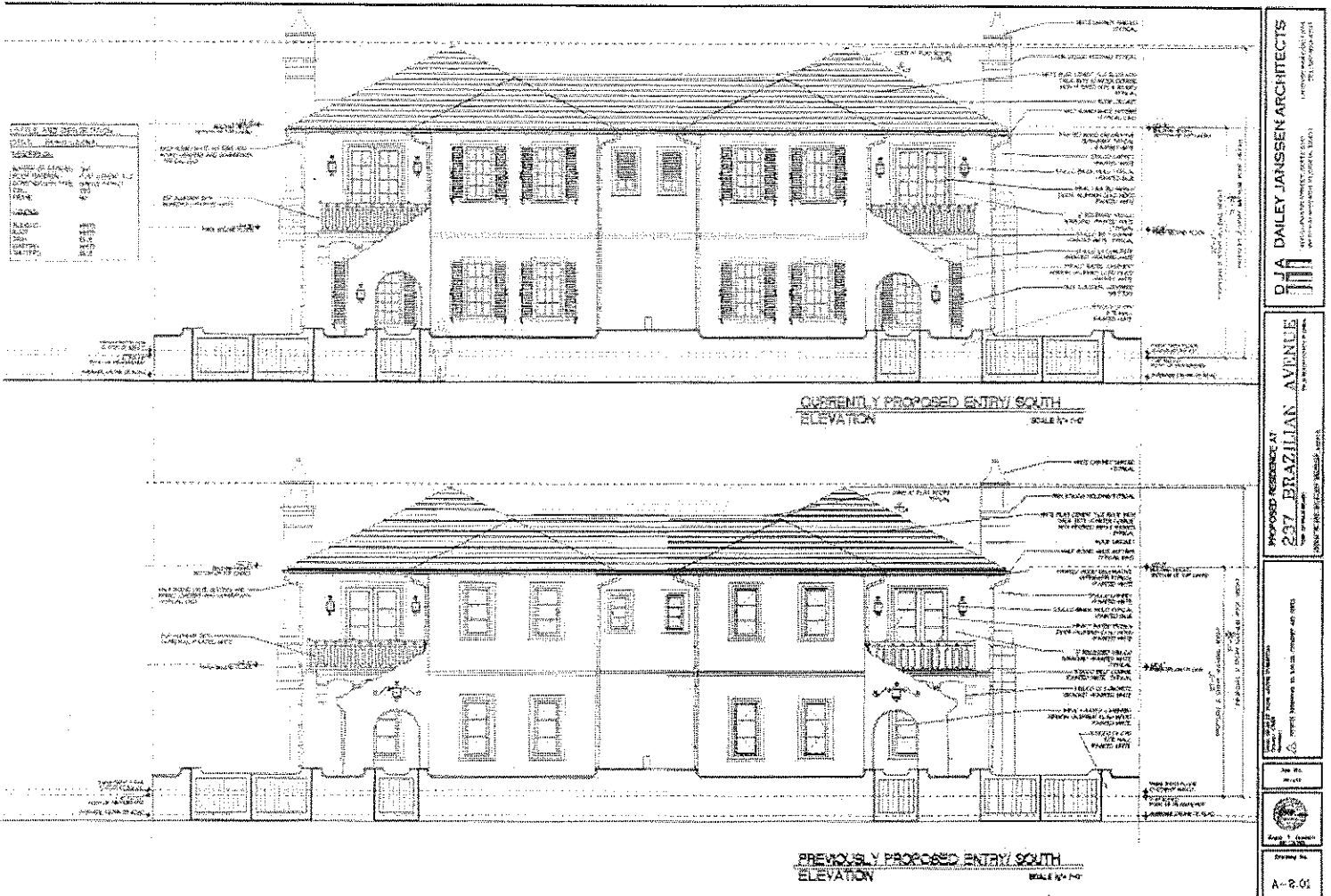


**PJA DAILEY JANSSEN ARCHITECTS**  
 1000 UNIVERSITY AVENUE, SUITE 100  
 ANN ARBOR, MI 48106-1000  
 TEL: 734.763.1000 FAX: 734.763.1001  
 WWW.DAJAARCHITECTS.COM

PROPOSED RESIDENCE AT  
**237 BRAZILIAN AVENUE**  
 ANN ARBOR, MI 48106-1000

PJA DAILEY JANSSEN ARCHITECTS  
 1000 UNIVERSITY AVENUE, SUITE 100  
 ANN ARBOR, MI 48106-1000  
 TEL: 734.763.1000 FAX: 734.763.1001  
 WWW.DAJAARCHITECTS.COM

A-1.02



# **EXHIBIT - F**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:

Case No.: 15-21654-EPK

FREDERICK J. KEITEL, III,

Chapter 11

Debtor.

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**DEBTOR'S MOTION TO COMPEL CREDITOR TRUSTEE THOMAS B. D'AGOSTINO, SR.'S ANSWERS TO DEPOSITION QUESTIONS AND FOR ENTRY OF AN ORDER TO SHOW CAUSE AGAINST CREDITOR ATTORNEY ERIC CHRISTU**

Debtor, Frederick J. Keitel, III ("Keitel" or the "Debtor") *pro se*, files this Motion to Compel Creditor Trustee Thomas B. D'Agostino, Sr.'s Answers to Deposition Questions and for Entry of an Order to Show Cause against Creditor Attorney Eric Christu, and in support thereof, states as follows:

1. On September 29, 2016, from approximately 1:30 p.m. to 3:20 p.m., Debtor, through the undersigned, took the deposition of Thomas B. D'Agostino, Sr. ("D'Agostino, Sr."), Trustee to Creditor Thomas B. and Elzbieta M. D'Agostino 1997 CRT (the "Trust"), at the offices of Phipps Reporting, 1551 Forum Place, Bldg. 200, Suite E, West Palm Beach, Florida (see *Deposition of Thomas D'Agostino, Sr.*, attached hereto as Exhibit "A").

2. During the aforementioned deposition, the undersigned asked D'Agostino, Sr. numerous relevant questions and/or questions designed to lead to the discovery of relevant evidence.

3. Throughout D'Agostino, Sr.'s testimony, however, the Trust's attorney, Eric Christu, continually interjected himself into the proceedings to prevent the undersigned from traveling down relevant lines of inquiry.



4. In addition to blatantly directing D'Agostino, Sr. not to answer proper questions, Mr. Christu would engage in drawn out speaking objections and commentary, from which his client would take cues and subsequently refuse to answer any questions on a particular topic any further.

5. These types of hindrances began literally at the beginning of the deposition, and continued until its premature adjournment.

6. By way of example, the following interaction occurred after the undersigned sought only to learn whether D'Agostino, Sr. and the Trust were seeking to stop the Debtor from developing the 237 Brazilian Avenue property, which is central to the reorganization plan in this matter:

**Q. Are you trying to stop the construction of the property; the redevelopment?**

A. I believe that I was supposed to be paid by you, according to the court, and I know that I have never been paid by you. You're behind. So if that's what it is. . .

**Q. I'm asking you, sitting here today as trustee of the trust, if you're trying to stop Florida Capital Management from going ahead and developing the two townhomes at 237 Brazilian Avenue?**

MR. CHRISTU: I'm going to object. It's been asked and answered. I'm going to object to the extent it calls for a legal conclusion.

Mr. Keitel, I object. It has nothing to do with the motion to convert that is before the court.

BY MR. KEITEL:



**Q. Fine. Your objection is note.** [sic]

**Please answer, Mr. D'Agostino.**

MR. CHRISTU: We can call the judge, as you know.

MR. KEITEL: Call the judge.

MR. CHRISTU: So if you're not --

MR. KEITEL: This is continually done by you in every hearing.

You call the judge right now, and we'll sit here and ask him questions.

MR. CHRISTU: I will call the judge when I believe you have done something improper, but move on.

MR. KEITEL: Fine. Please read the question to Mr. D'Agostino.

THE COURT REPORTER: "I'm asking you, sitting here today as trustee of the trust, if you're trying to stop Florida Capital Management from going ahead and developing the two townhomes at 237 Brazilian Avenue?"

MR. CHRISTU: Objection, asked and answered.

BY MR. KEITEL:

**Q. You can answer.**

A. I've given you my best answer that I can give you.

**Q. I'm asking whether or not you're trying to stop the development plans at Florida Capital Management? It's a yes or no question.**

A. I think I have given you the best answer that I can give you.

**Q. I'm looking for a yes or no. You're either trying to stop it or you're not.**

MR. CHRISTU: Mr. Keitel, the witness has answered.

MR. KEITEL: He has not answered the question.

MR. CHRISTU: He has answered it.

(P. 6, L. 15-25; P. 7, L. 1-25; P. 8, L. 1-20, *Deposition of Thomas D'Agostino, Sr.*, attached hereto as Exhibit "A").

7. In addition to making speaking objections, from which D'Agostino, Sr. clearly took direction, Mr. Christu attempted to use the threat of calling the Court to intimidate the undersigned into backing off of a proper line of questioning. When the undersigned requested that the Court be called, Mr. Christu suddenly saw no reason to do so at that time.

8. The duration of the deposition continued as it began: D'Agostino, Sr. persisted in refusing to answer simple "yes" or "no" questions with a "yes" or "no", Mr. Christu continued to make speaking objections and running commentary, as well as continuous threats to involve the Court.

9. In preparation for the upcoming Motion to Convert, the Debtor has the right to inquire into areas relevant to the issues raised in that motion. The Trust has not allowed the Debtor to do so and thus, the Debtor would request that the Court enter an order directing D'Agostino, Sr. to reappear for his deposition and to provide responsive answers to all relevant questions posed to him, including those directed to him during the September 29, 2016 deposition proceeding.

10. The Debtor further requests that the Court take notice of and review the attached deposition transcript (Exhibit "A") and the misbehavior contained therein, and enter an Order to Show Cause why Mr. Christu should not be held in contempt of this Court and subject to sanctions.

WHEREFORE, the Debtor respectfully requests that this Honorable Court: 1) enter an order directing Creditor Trustee Thomas D'Agostino, Sr. to reappear for his deposition and to provide responsive answers to all relevant questions, including those posed during the September 29, 2016 deposition; and 2) enter an Order to Show Cause why Eric Christu should not be held in contempt of Court and subject to sanctions; and such further relief as deemed necessary and proper.

Dated: October 25, 2016

Respectfully Submitted,

/s/ Frederick J. Keitel, III

FREDERICK J. KEITEL, III

Florida Bar No. 884936

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 25<sup>th</sup> day of October, 2016, I personally filed this document with the Clerk of Court or electronically using CM/ECF. I also certify that the document and its attachments are being served this day on all counsel of record or pro se parties identified on the attached Service List and official Court Mailing Matrix in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF, first class U.S. Mail, or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Filing.

FREDERICK J. KEITEL, III

P.O. Box 3243

Palm Beach, FL 33480

Ph: (561) 310-6864

Email: [RickKeitel@aol.com](mailto:RickKeitel@aol.com)

/s/ Frederick J. Keitel, III

FREDERICK J. KEITEL, III

Florida Bar No. 884936

## SERVICE LIST

### **Electronic Mail Notice List**

The following is the list of parties who are currently on the list to receive email notice/service for this case.

- Leslie C Adams [leslieburgk@gmail.com](mailto:leslieburgk@gmail.com) ,  
[sdaversa@haileshaw.com](mailto:sdaversa@haileshaw.com); [hspbkfilings@gmail.com](mailto:hspbkfilings@gmail.com)
- Charles I Cohen [ccohen@furrcohen.com](mailto:ccohen@furrcohen.com), [pmouton@furrcohen.com](mailto:pmouton@furrcohen.com),  
[atty\\_furrcohen@bluestylus.com](mailto:atty_furrcohen@bluestylus.com)
- Heidi A Feinman [Heidi.A.Feinman@usdoj.gov](mailto:Heidi.A.Feinman@usdoj.gov)
- Larry I Glick [lglick@shutts.com](mailto:lglick@shutts.com)
- Frederick Joseph Keitel [rickkeitel@aol.com](mailto:rickkeitel@aol.com)
- Harris J. Koroglu [hkoroglu@shutts.com](mailto:hkoroglu@shutts.com), [fsantelices@shutts.com](mailto:fsantelices@shutts.com)
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