

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

CASE NO: 2021-015089-CA-01

SECTION: CA43

JUDGE: Michael Hanzman

Manuel Drezner

Plaintiff(s),

vs.

Champlain Towers South Condominium Association Inc.

Defendant(s),

**RECEIVER'S MOTION FOR AUTHORIZATION
TO REFUND SPECIAL ASSESSMENT PAYMENTS**

Receiver, Michael I. Goldberg (the “**Receiver**”), on behalf of the Champlain Towers South Condominium Association, Inc. (the “**Association**”), pursuant to Rule 4 of the Complex Business Litigation Rules, seeks authority to refund special assessments paid by certain of the owners of units in the Property (as defined below), and in support thereof states:

1. At a hearing conducted on July 2, 2021 (the “**Commencement Date**”) in the captioned cases, the Court ordered the appointment of Michael I. Goldberg as Receiver for the Association. Following the hearing, the Court entered an order so appointing Mr. Goldberg.

2. This receivership is the result of multiple lawsuits that were filed after the tragic collapse of a portion of the real property with a physical address of 8777 Collins Avenue, Surfside, Florida 33154 (the “**Property**”).

3. Prior to the Commencement Date, on or about April 13, 2021, the Association approved a special assessment of \$15 million on the units at the Property, with the amounts due per unit depending on the type (line) of unit (the “**Special Assessment**”). A true and correct copy

of the Special Assessment Notice, which identifies the purpose of the Special Assessment—to make needed repairs on the Property and pass the 40-year recertification (the “**Contemplated Use of Special Assessment Proceeds**”), is attached hereto as **Exhibit A**. If a unit owner were to pay the Special Assessment in full, and avoid paying interest, payment was due by June 30, 2021. If, however, a unit elected to make installments payments over a period of one-hundred eighty (180) months, with interest at 4% per annum, the first such payment was due July 1, 2021.

4. As of the Commencement Date, certain of the unit owners paid all or a portion of the Special Assessment attributable to them, and as of the Commencement Date, the Association held \$2,416,395.22 on deposit. A list of the unit owners and how much each unit owner paid to the Association (whether in full or in part), as of the Commencement Date is attached hereto as **Exhibit B** (the “**Special Assessment Unit Owner Payments**”).

5. Given the collapse of a portion of the Property on June 24, 2021, the subsequent demolition of the remaining portion of the Property then-left standing, and commencement of the instant receivership, the Contemplated Use of Special Assessment Proceeds, no longer exists, that is, the fundamental purpose of the Special Assessments has been, from the Association’s and unit owners’ perspective, completely frustrated. *See Crown Ice Mach. Leasing Co. v. Sam Senter Farms, Inc.*, 174 So. 2d 614, 617-18 (Fla. 2d DCA 1965) (“‘Impossibility of performance’ refers to those factual situations, too numerous to catalog, where the purposes, for which the contract was made, have, on one side, become impossible to perform. ‘Frustration of purpose’ refers to that condition surrounding the contracting parties where one of the parties finds that the purposes for which he bargained, and which purposes were known to the other party, have been frustrated because of the failure of consideration, or impossibility of performance by the other party.”) (citations omitted); *Marathon Sunsets, Inc. v. Coldiron*, 189 So. 3d 235, 236 (Fla. 3d DCA 2016)

(“Under the doctrine of impossibility of performance or frustration of purpose, a party is discharged from performing a contractual obligation which is impossible to perform and the party neither assumed the risk of impossibility nor could have acted to prevent the event rendering the performance impossible.”) (citations omitted).

6. Accordingly, the Receiver requests that he be authorized to return the Special Assessment Unit Owner Payments to the unit owners in the amounts reflected on **Exhibit B**, and deem any obligations under the Special Assessment satisfied to the extent necessary. To the extent that any individual unit owner(s) who paid all or some of the Special Assessment attributable to him or her and that individual unit owner(s) passed away as a result of the tragic collapse on June 24, 2021, the Receiver requests authorization to refund the special assessment to the applicable decedent’s estate at such time as the estate is opened and a personal representative is appointed.

7. The Receiver submits that good cause exists for the Court to authorize the Receiver to refund to the unit owners the Special Assessment Unit Owner Payments in the amounts reflected on **Exhibit B**, and that the obligation to fund the Special Assessment be deemed satisfied to the extent necessary.

WHEREFORE, the Receiver respectfully requests that the Court enter an Order authorizing him to refund to the unit owners the Special Assessment Unit Owner Payments in the amounts reflected on **Exhibit B**, and to the extent that any individual unit owner(s) who paid all or some of the Special Assessment attributable to him or her and that individual unit owner(s) passed away as a result of the tragic collapse on June 24, 2021, the Receiver respectfully requests authorization to refund the special assessment to the applicable decedent’s estate at such time as the estate is opened and a personal representative is appointed, and that the obligation to fund the

Special Assessment be deemed satisfied to the extent necessary, and grant such other, further and related relief as may be appropriate under the circumstances.

Dated: July 8, 2021

Respectfully submitted,

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By: s/ Jordi Guso

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2021, a copy of the foregoing was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal and furnished a copy of same to all counsel of record through the Florida Court's E-Filing Portal.

By: s/ Jordi Guso

Jordi Guso

EXHIBIT “A”



Champlain Towers South Condominium Association, Inc.

8777 Collins Ave. Surfside, FL 33154 tel. 305-865-4740 fax. 305-865-7800
Champlainsouth.org

Dear Owners at Champlain Towers South,

As you have likely heard by now, the Board of Directors approved a fifteen (15) million-dollar special assessment on April 13th, 2021 to make needed repairs on our building and pass the 40-year recertification. The specific purposes of the special assessment are to repay the loan to Valley National Bank and for the following work to be undertaken at our Condominium:

Champlain Towers South Condominium Association Inc. Special Assessment 2021 Estimated Schedule of Expense for Remediation Repairs and to pay for Loan from Valley National Bank		
ITEM	PROJECT REPAIR ITEMS AND SCOPE	Estimated Amount
A	Mobilization, Demobilization, General Conditions	\$ 1,163,848.00
B	Bid Package IIB: New Roof Membrane and OSHA Suspension Anchors	\$ 722,768.00
B - M	Roof Mechanical, Electrical, Plumbing and Fire	\$ 133,827.00
C	Facade, Balcony and Railing Repairs	\$ 3,405,627.00
D	Entrance, Plaza & Pool Deck - New Pavers & Waterproofing	\$ 1,809,293.00
E	Pool - Structural Repairs Subtotal	\$ 143,297.00
F	Entrance, Plaza & Pool - Planter Landscaping & Waterproofing	\$ 1,041,086.00
G	Entrance, Plaza & Pool Deck and Garage - Miscellaneous Repairs	\$ 280,314.00
H	Pool & Spa Repair and Finishes	\$ 245,820.00
M	Mechanical, Electrical, Fire and Plumbing	\$ 788,205.00
HW	Hallway and Public Area Renovations	\$ 722,078.00
S	Soft Cost	\$ 1,742,676.00
Construction and Remediation Repairs Estimated SUBTOTAL		\$ 12,198,839.00
CONTRACTOR'S PERFORMANCE BOND (with Labor and Material Clauses)		\$ 365,369.00
CONTINGENCY AND INFLATION		\$ 2,435,792.00
ESTIMATE OF THE PROBABLE CONSTRUCTION AND REMEDIATION COST		\$ 15,000,000.00

The motion which was passed stated:

"Motion to levy a 15M special assessment for projects as outlined in the meeting notice and loan repayment to Valley National Bank, to be paid monthly over 15 years with the option to pay in full in advance. It is understood that the amounts of estimates and subcategories may change. The interest rate will be tied to the interest rate charged by the bank."

The Special Assessment is payable over 180 months (15 years) in payment starting on July 1st, 2021 and is based on the proportional share for the unit type as specified in the Declaration of Condominium plus interest corresponding to that of the loan [The interest rate is fixed at 4% for the first 13 years; thereafter the rate will lock at the current 5-year Treasury rate plus 275 basis points for the remainder of the term. Rate floor of 4% for the term of the loan]. Unit Owners do have the opportunity to make a onetime payment prior to June 30th, 2021 to avoid paying interest on their share.

CHAMPLAIN TOWERS SOUTH CONDOMINIUM ASSOCIATION, INC.							
SPECIAL ASSESSMENT 2021							
UNIT OWNER PAYMENT SCHEDULE							
				Total Special Assessment	\$ 15,000,000		
				Rate	4.00%		
				Term [months]	180		
Apt. Type	Line#	# of Units	Ind, % Share	Combine Percentage Share	Total Single Payment Per Unit	Monthly Payment - with INTEREST	Total Cost of Interest
A	12	12	1.00220%	12.02640%	\$ 150,330.00	\$ 1,111.97	\$ 49,825
B	1	12	0.79510%	9.54120%	119,265.00	882.19	39,529
C	2-11	23	0.74470%	17.12810%	111,705.00	826.27	37,023
D	10	11	0.77860%	8.56460%	116,790.00	863.88	38,709
E	5	11	0.71260%	7.83860%	106,890.00	790.65	35,427
F	9	11	0.76980%	8.46780%	115,470.00	854.12	38,271
G	6-7	22	0.53460%	11.76120%	80,190.00	593.16	26,578
H	3-4	22	0.63470%	13.96340%	95,205.00	704.22	31,555
I	8.0	11	0.76980%	8.46780%	115,470.00	854.12	38,271
J	Ph-2	1	2.24090%	2.24090%	336,135.00	2,486.35	111,408
Totals		136		100.00000%			
				Sumproduct Total	\$ 15,000,000		

Anyone who has not paid the Assessment in full by June 30th, 2021 will be assumed to have elected to pay over 180 months with interest corresponding to that of the loan. Coupon books will be issued to the mailing address on file with the Association. They may not arrive in time for your first payment, on July 1, 2021, but you are still responsible to make the payment timely. Remember the payment is due on the 1st day of the month and needs to be a separate check from your regular maintenance. Please indicate your unit number on the check. We recommend that you sign up for ACH, so the amount is automatically deducted from your account. If you are already signed up for ACH you will need to complete a new form indicating that you want your Special Assessment deducted from your account (form Attached). If you have multiple units, you will need one form per unit. If you use your bank's BillPay service, you will need to set up a separate BillPay for this payment to ensure it is posted to the correct bank.

EXHIBIT “B”

WIRE TRANSFERS			
Post Date	Description	Credit	Unit
6/18/2021	RICARDO JARSUN [REDACTED]	\$ 150,330.00	612
6/17/2021	[REDACTED] [REDACTED]:VILLAGE 14306 LLC [REDACTED] [REDACTED]	\$ 79,939.00	706
6/15/2021	[REDACTED] [REDACTED]:HOWARD COLE [REDACTED] [REDACTED]	\$ 119,265.00	301
6/11/2021	[REDACTED] [REDACTED]:ALBERT ANELLI [REDACTED]	\$ 106,890.00	1005
6/10/2021	[REDACTED] [REDACTED]:MR PAOLO LONGOBARDI [REDACTED] [REDACTED]	\$ 115,470.00	309
6/9/2021	[REDACTED] [REDACTED]:ODEX CAPITAL INVESTMENT CORP. [REDACTED]	\$ 187,080.00	905/906
6/9/2021	[REDACTED] [REDACTED]:JOSE OJALVO [REDACTED] [REDACTED]:	\$ 115,470.00	909
6/9/2021	[REDACTED] [REDACTED]:MRS SHARON BLANKENSTEIN WAISGLASS [REDACTED] [REDACTED]	\$ 150,320.00	1012
6/8/2021	[REDACTED] [REDACTED]:REAL PARE [REDACTED] [REDACTED]	\$ 119,265.00	201
6/7/2021	[REDACTED] [REDACTED]:ANDRES BEREILH AND MARIANA SANZ JTW [REDACTED]	\$ 116,790.00	710

WIRE TRANSFERS			
Post Date	Description	Credit	Unit
5/27/2021	<div></div> <div></div> <div> :RAUL BALSECA OR BERTHA VALENCIA DE <div></div> </div>	\$ 80,190.00	606
5/25/2021	<div></div> <div>GOLDSTEIN 2014 INVESTMENT TRUST,</div> <div></div>	\$ 150,307.00	1112
5/20/2021	<div></div> <div> <div></div> :ALBAY INVESTMENTS LIMITED <div></div> </div>	\$ 80,190.00	507
	TOTAL	\$ 1,571,506.00	

Checks

	SA Account			Valley [REDACTED] 2685
Check				
Copy Pg	Unit #	Check #	Name	Amount
2	1003	9412	Cordaro	\$ 95,205.00
2	607	[REDACTED] 4928	Rodriguez	\$ 80,190.00
2	1103	4443	Rose	\$ 95,205.00
1	408	160	Silva	\$ 115,470.00
1	1203	241	Segal	\$ 704.22
1	709	3872	Godt	\$ 115,470.00
1	408	160	Silva	\$ 115,470.00
1	608	4262	Schwarz	\$ 115,470.00
	511	10112	Chiaraviglio	\$ 111,705.00
	9 Checks			\$ 844,889.22