

**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

In Re: Champlain Towers South Collapse Litigation

Plaintiff(s)

vs.

N/A

Defendant(s)

_____ /

FINAL BAR ORDER

THIS MATTER came before the Court upon the *Motion for (I) Approval of Allocation Settlement Agreement Among Receiver, Unit Owners, and Wrongful Death Class; (II) Approval of Form, Content, and Manner of Notice of Settlement and Bar Order; (III) Entry of Bar Order; and (IV) Scheduling a Hearing, with Incorporated Memorandum of Law* [Filing # 145128910] (the “**Motion**”) filed by Michael I. Goldberg, in his capacity as the Court-appointed receiver (the “**Receiver**”) of the Champlain Towers South Homeowners Association, Inc. (the “**Association**”), in the above-captioned matter (the “**Receivership Proceeding**”). Pursuant to its *Order Preliminarily Approving "Allocation Settlement Agreement"* (the “**Preliminary Approval Order**”), the Court granted preliminary approval of the *Allocation Settlement Agreement* attached to the Motion as **Exhibit A** (the “**Allocation Settlement Agreement**”), and scheduled a hearing in Miami, Florida on March 30, 2022, at 2:00 p.m. (the “**Final Approval Hearing**”) to consider the final approval of the Allocation Settlement Agreement, including the Assessment, entry of the Bar Order, and objections, if any.

[\[1\]](#)

By way of the Motion, the Receiver requests final approval of a proposed settlement (the

“**Settlement**”) among: (i) the holder or holders of legal title to a Condominium Unit at the time of the partial collapse of the building on June 24, 2021, such holder’s estate in an estate proceeding, if applicable, or the testate or intestate successor to the legal title to such Condominium Unit (each a “**Unit Owner**” and collectively, the “**Unit Owners**”)^[2], at the Champlain Towers South condominium (the “**Condominium**”), who do not affirmatively opt out in the manner provided for in the Allocation Settlement Agreement and this Order (the “**Participating Unit Owners**”); (ii) non-Unit Owner members of the not-yet-certified non-Unit Owner Wrongful Death Class (the “**WDC**”); and (iii) the Receiver, which is memorialized in the Allocation Settlement Agreement.^[3] Unit Owners have the right to opt-out of the Allocation Settlement Agreement by filing with the Court the form *Notice of Election to Opt-Out* attached as Exhibit E to the Allocation Settlement Agreement within ten (10) days after entry of the Court’s Final Approval Order.

The Receiver also requests entry of a litigation bar order (the “**Bar Order**”) permanently barring, restraining, and enjoining any person or entity from asserting claims against each Participating Unit Owner, every present and former member of the board of directors of the Association, and Scott Stewart, arising directly or indirectly in any manner whatsoever from the Association’s activities, work, conduct, omissions, or services in connection with the Condominium or the Collapse to the broadest extent permitted by law; *provided, however*, direct claims held by tenants and guests of Unit Owners against their respective landlord or host specific to a Participating Unit Owner will be carved out of the Bar Order issued in favor of the Participating Unit Owners (the “**Tenant/Guest Carve-Out**”) and are not barred by the Bar Order. The Court’s Preliminary Approval Order preliminarily approved the Allocation Settlement Agreement and set forth procedures for the manner and method of service and notice to all affected parties. The Preliminary Approval Order and related documents were posted on the Receiver’s website and served by email on all identifiable interested parties.

The Preliminary Approval Order set March 23, 2022 (the “**Objection Deadline**”) as the deadline for affected parties and other parties-in-interest to file written objections to the Allocation Settlement Agreement, including the Assessment, and entry of the Bar Order, and scheduled a Final Approval Hearing to consider such objections, as well as the Settling Parties’ argument and evidence in support of the Allocation Settlement Agreement, including the Assessment, and the Bar Order. While not required by the Preliminary Approval Order, the Receiver caused the *Notice of Proceedings to Approve Settlement Among Receiver, Participating Unit Owners and Wrongful Death Class, and Bar Order* (the “**Publication Notice**”) to be published for two (2) consecutive days in *The Miami Herald* on March 13 and 14, 2022, prior to the Objection Deadline.

On March 7, 2022, the Receiver filed his Receiver’s *Notice of Compliance With Preliminary Approval Order* with the Court in which he detailed his compliance with the notice provisions contained in the Preliminary Approval Order directing him to put the Allocation Settlement Agreement and Preliminary Approval Order on the website maintained by the Receiver in connection with the Receivership Proceeding (<https://ctsreceivership.com/>) (the “**Notice of Compliance**”). [D.E. No. 526 and supplemented thereafter by Filing No. 145831076]. Further, pursuant to the Preliminary Approval Order, Class Counsel emailed a copy of the Allocation Settlement Agreement and this Order to each of their clients. See, *Notice of Class Counsel Compliance* [D.E. No. 545].

This Court is fully advised of the issues in the Receivership Proceeding, the class action lawsuit (the “**Class Action Lawsuit**”), a subrogation action (the “**Subrogation Action**”), and related proceedings before it, as it has previously received evidence, reviewed memoranda, and heard argument concerning the events, circumstances, and transactions related to the Association, the Condominium Property, and the underlying Collapse, which resulted in, among other things, the appointment of the Receiver. In addition, the Court has read and considered the

Motion, the Allocation Settlement Agreement, the proposed Bar Order, other relevant filings of record, and the arguments and evidence presented at the Final Approval Hearing. Having done so, in addition to the findings of fact and conclusions of law made by the Court in the Preliminary Approval Order, all of which are incorporated as though fully set forth herein, the Court makes the following additional findings of fact and conclusions of law, as applicable:

A. The Court, as a court of equity, has jurisdiction over the subject matter including, without limitation, jurisdiction to consider the Motion, the Allocation Settlement Agreement, including the Assessment, and the Bar Order, and authority to grant the Motion, approve the Allocation Settlement Agreement, including the Assessment, and enter the Bar Order. *See* Art. V, § 5(b), Fla. Const.; Chapter 718, Florida Statutes; Fla. Stat. § 26.012(2)(c); *English v. McCray*, 348 So. 2d 293, 298 (Fla. 1977) (“Circuit courts of the State of Florida have exclusive jurisdiction of all cases in equity”) (citations omitted); *Terex Trailer Corp. v. McHwain*, 579 So. 2d 237, 241 (Fla. 1st DCA 1991) (“By constitution and statute, the circuit courts of Florida are vested with exclusive equity jurisdiction.”); *State of Fla., Office of Fin. Regulation v. Berman Mtg. Corp., et al.*, No. 07-43672 CA 09 (Mia. Dade Circuit Ct., Mar. 12, 2010) (Bagley, J.) (citing the foregoing constitutional, statutory, and case authorities in support of an order granting receiver’s motion seeking approval of a settlement and entry of a litigation bar order enjoining lenders and receivership creditors from prosecuting claims against the former auditor of a receivership entity); *Realty Bond & Share Co. v. Englar*, 143 So. 152, 154, 104 Fla. 329, 334 (Fla. 1932) (“The prevention of multiplicity of actions at law is one of the special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used.”) (quotation omitted); *see also In re Seaside Eng’g & Surveying, Inc.*, 780 F.3d 1070, 1076 (11th Cir. 2015) (affirming confirmation of chapter 11 plan which included litigation bar order); *SEC v. Kaleta*, 530 F. A’ppx 360 (5th Cir. 2013) (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action); *Matter of Munford, Inc.*, 97 F.3d 449 (11th Cir. 1996) (affirming approval of settlement and entry of bar order in

bankruptcy case); *In re U.S. Oil and Gas Lit.*, 967 F.2d 480 (11th Cir. 1992) (affirming approval of settlement and entry of bar order in class action lawsuit); *SEC v. Quiros, et al.*, No. 16-cv-21301 (S.D. Fla. Oct. 8, 2016) [ECF No. 231] (approving settlement and bar order in SEC receivership); *SEC v. Mutual Benefits Corp.*, No. 04-60573 [ECF No. 2345] (S.D. Fla. Oct. 13, 2009) (same); *SEC v. Latin American Svcs. Co., Ltd.*, No. 99-2360 [ECF No. 353] (S.D. Fla. May 14, 2002) (same).

B. Posting the Allocation Settlement Agreement and Preliminary Approval Order on the website maintained by the Receiver in connection with the Receivership Proceeding (<https://ctsreceivership.com/>) as described in the Receiver's Notice of Compliance, and service by Class counsel as provided in the Preliminary Approval Order, as well as publication of the Publication Notice in *The Miami Herald* for two (2) consecutive days prior to the Objection, Deadline constitutes good and sufficient notice, and was reasonably calculated under the circumstances to notify all affected persons and parties-in-interest of the Motion, the Allocation Settlement Agreement, including the Assessment, and the Bar Order, and of their opportunity to object thereto, of the deadline for objections, the fact that no untimely objections would be entertained at the Final Approval Hearing, and of their opportunity to appear and be heard at the Final Approval Hearing concerning these matters. Accordingly, all affected parties were furnished a full and fair opportunity to object to the Motion, the Allocation Settlement Agreement, including the Assessment, the Bar Order, and all matters related thereto and to be heard at the Final Approval Hearing. Service of the Motion, the Allocation Settlement Agreement, and Preliminary Approval Order, placing the Allocation Settlement Agreement and Preliminary Approval Order on the on the website maintained by the Receiver in connection with the Receivership Proceeding (<https://ctsreceivership.com/>), and additional publication notice in *The Miami Herald* complied with all requirements of applicable law, including, without limitation, the Florida Rules of Civil Procedure, the Court's local rules, and the due process and all other relevant requirements of the United States Constitution and the Florida

Constitution.

C. The Court has allowed any affected persons and other parties-in-interest, including objectors, if any, and parties to the Receivership Proceeding, the Class Action Lawsuit, and the Subrogation Action to be heard if they desired to participate at the Final Approval Hearing.

D. The Unit Owners, including the Participating Unit Owners, and WDC participated in a mediation before well-respected mediator Bruce Greer, Esq., appointed by the Court. At the conclusion of the mediation, counsel for the Participating Unit Owners and WDC prepared an agreed-upon term sheet that is the foundation for, and forms the basis of, the Allocation Settlement Agreement. In order to facilitate the Settlement, the Unit Owners, including the Participating Unit Owners, and WDC requested that the Receiver become a party to the Allocation Settlement Agreement, in part, because it was necessary for the Receiver to provide Participating Unit Owners with a release on behalf of the Association and to seek entry of the Bar Order that was, *and remains*, a condition precedent to their agreement to enter into the Allocation Settlement Agreement by which they have agreed to substantially reduce the amount of their claims against the Receivership Estate and waive or release their rights and property interests in the Condominium Property, including their Condominium Units, and assign to the Receiver each Participating Unit Owner's Property Damage Claims. The Allocation Settlement Agreement is the product of extensive good faith negotiations by competent, experienced, and conflict free counsel, undertaken at arm's length, and not collusive. The Allocation Settlement Agreement is unquestionably in the best interests of the Receivership Estate, and the Receiver's decision to enter into the Allocation Settlement Agreement is a prudent exercise of his business judgment which is well within the scope of his discretion acting on behalf of the Association and as a fiduciary to its creditors for multiple reason, including, but not limited to, the following:

1. The claims of each of the Unit Owners and members of the WDC against

the Receivership Estate and each other involve numerous third parties, disputed facts, and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of the litigation, the measurement of damages, the allocation of benefits to each such claimants, and any ensuing appeals. Such litigation is necessarily costly and burdensome, involves a highly complex set of facts, multiple witnesses requiring numerous depositions, substantial discovery and legal arguments, and will take a substantial time to complete. The Association denies that it is liable with respect to the underlying and tragic Collapse of the Condominium and related damages, instead, asserts that fault lies with multiple third parties.

2. Any lien claims the Receiver possesses against the Participating Unit Owners, as well as assessments he will or could levy to fund the Agreed Settlement Amount, will likewise involve disputed facts and issues of law that would require substantial time and expense to litigate, with significant uncertainty as to the outcome of such litigation. Such litigation is necessarily costly and burdensome, involves a highly complex set of facts, multiple witnesses requiring numerous depositions, substantial discovery and legal arguments, and will take a substantial time to complete.

E. In summary, the Allocation Settlement Agreement provides that the Participating Unit Owners agreed to cap their claims of not less than \$150 Million based on their asserted right to 100% of the (i) proceeds of the pending sale of the Condominium Property (\$120 Million subject to higher and better offers at auction) and (ii) property insurance proceeds immediately available to the Association (\$30 Million) at \$83 Million (the “**Common Fund**”), to be shared *pro rata* by them based on their respective ownership interests in the Condominium Property per the Declaration—their Individual Percentage Share—after satisfaction of third-party liens and mortgages on their individual Condominium Units, if any. In return for entry of the Bar Order, the Participating Unit Owners agreed to (i) cap their claims as set forth in the preceding sentence; (ii) waive or release their rights in the Condominium Property, including their Condominium Units; (iii) affirmatively support termination of Condominium; and (iv) be irretrievably bound by a decision of the Court adjudicating whether a Participating Unit Owner’s Individual Percentage Share of the Common Fund should be reduced, if at all, by the amount of insurance proceeds received by such Participating Unit Owner related to or on account of the

Collapse and attorneys' fees and costs that may be awarded by the Court to compensate counsel for services performed on behalf of the economic subclass; and (v) assign to the Receiver all Participating Unit Owners Property Damage Claims against third parties to be held and pursued by the Receiver for the benefit of the Receivership Estate, subject to further orders of the Court. Also, the Receivership Estate will, upon entry of this Bar Order, recognize an enforceable obligation in favor of the members of the WDC—the Agreed Settlement Amount—that will be funded by the Assessment. The Settling Parties will exchange mutual releases excepting the Tenant/Guest Carve-Out. Included in the releases in favor of the Receivership Estate are releases in favor of all current and former Association board members, and Scott Stewart.

F. Based upon the foregoing, the Court further finds and concludes that (i) entry into the Allocation Settlement Agreement is a prudent exercise of business judgment by the Receiver; (ii) the Allocation Settlement Agreement is the product of extensive good faith negotiations by competent, experienced, and conflict free counsel, undertaken at arm's length, and not collusive and is fair, adequate, and reasonable, will obviate the need for continued substantial litigation and avoid the extensive time and financial expense necessarily associated therewith; (iii) the interests of all affected persons and entities were fairly and reasonably considered and addressed; (iv) the rights to due process of all parties-in-interest were protected by the procedures the Court adopted in the Preliminary Approval Order, as well as the additional publication of the Publication Notice in *The Miami Herald* for two (2) consecutive days prior to the Final Approval Hearing, and that therefore the Settlement, including the Assessment, should be approved, and the requested Bar Order should issue. *See State of Fla., Office of Fin. Regulation, supra; Realty Bond & Share Co., supra; see also Sterling v. Stewart*, 158 F.3d 1199, 1203-1204 (11th Cir. 1996) (settlement in receivership proceeding properly approved where it was fair, adequate, and reasonable, and not the product of collusion between settling parties).

G. For the avoidance of doubt, the Participating Unit Owners have expressly conditioned their entry into the Allocation Settlement Agreement and agreement to accept a reduced amount from the amount to which they believe they are entitled from the Receivership Estate, waive or release their rights in the Condominium Property, including their Condominium

Units, as well as affirmatively supporting termination of Condominium status, upon issuance by the Court of this Order with respect to any claims that have been or could be brought against them arising directly or indirectly in any manner whatsoever from the Association's activities, work, conduct, omissions, or services in connection with the Condominium, or the Collapse to the broadest extent permitted by law that becomes a Final order (collectively, the "**Barred Claims**," as more fully defined below);^[4] *provided, however*, direct claims held by tenants and guests against specific Participating Unit Owners in which the claimant was a tenant or guest of the Participating Unit Owner are carved out of the release being issued in favor of the Participating Unit Owners, as well as the Bar Order. Pursuant to the terms of the Allocation Settlement Agreement, entry of the Bar Order and the Bar Order becoming Final are, therefore, necessary and express conditions precedent to consummation of the Settlement, which provides for a final resolution of the substantial claims asserted against the Association by the members of the WDC. For the avoidance of doubt, "**Barred Claims**" expressly excludes the **Subrogation Action**, and any claims asserted therein are not precluded by the Bar Order and all parties to the **Subrogation Action**, including the Receiver, reserve any and all rights and defenses associated with such claims (the "**Subrogation Carve-Out**").

H. **Notice to Affected Parties and Other Parties-in-Interest**. The Receiver has complied with the Preliminary Approval Order's directive that he place the Allocation Settlement Agreement and Preliminary Approval Order on the on the website maintained by the Receiver in connection with the Receivership Proceeding (<https://ctsreceivership.com/>). Additionally, although not required by the Preliminary Approval Order, the Receiver published the Publication Notice for two (2) consecutive days in *The Miami Herald* prior to the Objection Deadline. Moreover, as required by the Preliminary Approval Order, Class counsel has emailed each of their clients a complete copy of the Allocation Settlement Agreement and the Preliminary Approval Order. Through the foregoing, adequate and sufficient notice of the proposed Allocation Settlement Agreement, including the Assessment, and Bar Order, the right

of Unit Owners to opt out of the Allocation Settlement Agreement, the right of affected parties to object to the Motion (as well as the deadline to file written objections and that untimely objections would not be entertained), and the right to participate in the Final Approval Hearing, has been provided to all known interested persons whose rights are or might be affected by approval of the Settlement, including the Assessment, and entry of the Bar Order, including, but not limited to:

- i. all Unit Owners and their counsel;
- ii. all members of the WDC and their counsel;
- iii. all parties to the Class Action Lawsuit and their counsel;
- iv. all parties to the Subrogation Action and their counsel;
- v. counsel who are known by the Receiver to have appeared of record in any legal proceeding commenced by or on behalf of the Association; and
- vi. any other potentially interested parties through publication of the Publication Notice for two (2) consecutive days in *The Miami Herald* prior to the Final Approval Hearing.

The Receiver has maintained a list of those persons and entities to which notice has been given pursuant to subsection (i)-(v) of this paragraph. Access to that list will be permitted as necessary if a Barred Person (as defined below) denies receiving notice.

Through such notice and publication, anyone with an interest in the Receivership Proceeding would have become aware of or was on constructive notice of the Allocation Settlement Agreement, including the Assessment, and the Bar Order and been provided sufficient information to put them on notice of how to obtain any additional information and/or object to the relief requested, if they wished to do so. The Court comfortably finds and concludes that the foregoing notice procedures are consistent with, and satisfy, due process, and no further or additional notice is necessary or required.

I. Principal Benefits of the Settlement.

- (i) The Participating Unit Owners agree to accept their respective Individual Percentage Share of the Common Fund as a recovery from the Receivership Estate, a discount of not less than \$67 Million from their Initial Demand. An \$83 Million fund provides a meaningful recovery to the Participating Unit Owners which will facilitate satisfaction of third-party liens and mortgages, if any, on the Condominium Units of the Participating Unit Owners (liens and mortgages specific to a unit will be paid from such Participating Unit Owner's Individual Percentage Share) which otherwise remain in place notwithstanding the Collapse.
- (ii) The Participating Unit Owners agreed to (i) cap their claims in the amount of the Common Fund, to be shared *pro rata* by them based on their respective ownership interests in the Condominium Property per the Declaration after satisfaction of third-party liens and mortgages on their Condominium Units, if any; (ii) waive or release their rights in the Condominium Property, including their Condominium Units; (iii) affirmatively support termination of Condominium; (iv) be irretrievably bound by a decision of the Court adjudicating whether a Participating Unit Owner's Individual Percentage Share of the Common Fund should be reduced, if at all, by the amount of insurance proceeds received by any Participating Unit Owner related to or on account of the Collapse; and (v) assign to the Receiver all Participating Unit Owners Property Damage Claims against third parties to be held and pursued by the Receiver for the benefit of the Receivership Estate, subject to further orders of the Court, which will greatly assist the Receiver in the administration of the Receivership Estate.
- (iii) The Settlement provides a meaningful recovery for members of the WDC.
- (iv) The Receivership Estate is relieved of the continuing, substantial burden, and time and expense necessarily required by continued litigation with respect to claims being asserted against the Receivership Estate by the Participating Unit Owners and members of the WDC.
- (v) The Receivership Estate, including former and present members of the Association's Board of Directors, and Scott Stewart are the beneficiaries of broad releases being provided by the Participating Unit Owners and members of the WDC.

J. The Allocation Settlement Agreement was exhaustively negotiated by competent, experienced, and conflict free counsel. The Allocation Settlement Agreement also was approved by other counsel serving on the Court's Plaintiffs' counsel leadership structure, which consists of many of the most experienced and reputable members of the class action, commercial, and

personal injury bar in South Florida. The mediation was led by Mr. Greer, who the Court considered to be one of the most capable mediators not only in South Florida, but nationwide. Representatives from each victim group also participated in the process. Suffice it to say, the Settlement is the product of a lengthy arms-length negotiation. The Bar Order and the releases in the Allocation Settlement Agreement are tailored to matters relating to the Barred Claims and are appropriate to maximize the value of the Receivership Estate for the benefit of its creditors. The Receiver will hold the Settlement funds in trust pending further order(s) of the Court. Accordingly, the Allocation Settlement Agreement is fair, adequate, and reasonable, and in the best interests of all creditors and other parties-in-interest, including other persons or entities claiming an interest in or asserting claims against the Receivership Estate, and of all persons who could have claims against the Participating Unit Owners and members of the WDC relating to the Barred Claims.

Based on the foregoing findings of fact and conclusions of law, the Court **ORDERS, ADJUDGES, AND DECREES** as follows:

1. The Motion is **GRANTED** as set forth herein. Any objections to the Motion or the entry of this Order are overruled to the extent not otherwise withdrawn or resolved. Any other objections to the Motion or the entry of this Order, including, but not limited to, those not timely filed, are deemed waived and/or overruled.

2. The Allocation Settlement Agreement is hereby modified as follows:

a. The Allocation Settlement Agreement shall not be effective unless the Receiver consummates a sale of the Condominium Property on terms that are no less favorable to the Receivership Estate than those contained in the *Purchase and Sale Agreement* between the Receiver, as seller, and East Oceanside Development, LLC, as purchaser, and approved by the Court on October 6, 2021;

b. If the sale of the Condominium Property is consummated as set forth in Paragraph 2.a. above, and the Allocation Settlement Agreement thereby becomes effective as provided in Section 4 of the Allocation Settlement Agreement, the Receiver shall deduct \$750,000 from the Common Fund prior to distributing the Common Fund to the Participating Unit Owners, which shall be retained by the Receiver pending further order of the Court;

c. A Participating Unit Owner's distribution according to his/her/its Individual Percentage Share of the Common Fund, which distribution mechanism shall be established by a future order of the Court, shall not be reduced by the amount of any insurance proceeds or other collateral source recoveries received by or available to such Participating Unit Owner;

d. Subparagraph c. of Section 5 of the Allocation Settlement Agreement is renumbered to Subparagraph d;

e. New Subparagraph c. of Section 5 of the Allocation Settlement Agreement provides as follows:

c. Release of Current and Former Members of Association Board and Scott Stewart. Effective upon the Participating Owner's receipt of its Individual Percentage Share of the Common Fund, and without the need for execution and delivery of additional documentation or the entry of an Order approving the Allocation of the Common Fund, each of the Participating Unit Owners, the WDC and any person or entity claiming by or through them, including but not limited to their heirs, the Receiver, and Receivership Estate shall irrevocably and unconditionally, fully, finally and forever waive, release, acquit and discharge the current and former members of the Association's board of directors and Scott Stewart, and all of their counsel, from any and all claims, actions, causes of action, liabilities, obligations, rights, suits, accounts, covenants, contracts, agreements, promises, damages, judgments, claims, debts, encumbrances, liens, remedies, attorneys' fees, costs of court, interest and demands, of any and every kind, character or nature whatsoever (including unknown claims), whether liquidated or unliquidated, asserted or unasserted, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, now existing or hereafter arising, in law, at equity or otherwise, which the Participating Unit Owners, the WDC, and any person or entity claiming by or through them, including but not limited to their heirs, on their behalf or for their benefit, the Receiver, or the Receivership Estate may have or claim to have, now or in the future, against the current and former members of the Association's board of directors and Scott Stewart arising directly or indirectly in any manner whatsoever relating to the Condominium or the Collapse. Notwithstanding anything contained in this Agreement to the contrary, the foregoing is not intended to release, nor shall it have the effect of releasing, the current and former members of the Association's board of directors and Scott Stewart from the performance of any obligations they may have under this Agreement.

3. The Allocation Settlement Agreement, as modified by this Order, is **APPROVED** and is final and binding upon the Settling Parties and their successors and assigns, as provided in the Allocation Settlement Agreement. The Settling Parties are authorized and directed to perform

their obligations under the Allocation Settlement Agreement.

4. The Bar Order set forth in paragraph 5 of this Order is **APPROVED** as an essential and otherwise appropriate component of the Settlement, and entry of the Bar Order by the Court is well within the scope of its equity jurisdiction pursuant to the Florida Constitution, Florida Statutes, and Florida caselaw. See Art. V, § 5(b), Fla. Const.; Chapter 718, Florida Statutes; Fla. Stat. § 26.012(2)(c); *English*, 348 So. 2d at 298 (“Circuit courts of the State of Florida have exclusive jurisdiction of all cases in equity.”); *Terex Trailer Corp.*, 579 So. 2d at 241; *State of Fla., Office of Fin. Regulation, supra* (approving litigation bar order enjoining lenders and receivership creditors from prosecuting claims against former auditor of receivership entity); *Realty Bond & Share Co.*, 142 So. at 154 (prevention of multiplicity of actions at law is one of special grounds of equity jurisdiction and for that purpose the remedy by injunction is freely used); see also *SEC v. Kaleta, supra* (affirming approval of settlement and entry of bar order in equity receivership commenced in a civil enforcement action); *In re Seaside Eng’g & Surveying, Inc., supra* (affirming confirmation of chapter 11 plan which included litigation bar order); *Matter of Munford, Inc., supra* (affirming approval of settlement and entry of bar order in bankruptcy case); *In re U.S. Oil and Gas Lit., supra* (affirming approval of settlement and bar order in class action lawsuit); *SEC v. Quiros, supra* (approving bar order in SEC receivership); *SEC v. Mutual Benefits Corp., supra* (same); *SEC v. Latin American Svcs. Co., Ltd., supra* (same).

5. BAR ORDER: THE BARRED PERSONS ARE PERMANENTLY BARRED, ENJOINED, AND RESTRAINED FROM ENGAGING IN THE BARRED CONDUCT AGAINST THE BENEFICIARIES WITH RESPECT TO THE BARRED CLAIMS, as those terms are herein defined.

a. **“Barred Persons”**: Any person or entity that possesses Barred Claims, except for those persons or entities holding claims within the scope of the Tenant-Guest Carve-Out or the Subrogation Carve-Out;

b. **“Barred Conduct”**: instituting, reinstating, amending, intervening in, initiating, commencing, maintaining, continuing (including by filing any motion to vacate any previously issued order), filing, encouraging, soliciting, supporting, participating in, collaborating in, otherwise prosecuting, or otherwise pursuing or litigating in any case or manner, whether pre-judgment or post-judgment, or enforcing, levying, employing legal process, attaching, garnishing, sequestering, bringing proceedings supplementary to execution, collecting or otherwise recovering, by any means or in any manner, based upon any liability or responsibility, or asserted or potential liability or responsibility, directly or indirectly, relating in any way to the Barred Claims;

c. **“Barred Claims”**: any and all claims, actions, lawsuits, causes of action, investigation, demand, complaint, cross-claims, counterclaims, or third-party claims or proceeding of any nature, including, but not limited to, litigation, arbitration, or other proceeding, in any federal or state court, or in any other court, arbitration forum,

administrative agency, or other forum in the United States or elsewhere, whether arising under local, state, federal, or foreign law, regulation, or rule, that in any way relate to, are based upon, arise from, or are connected: with the released claims or interests of any kind as set forth in the Allocation Settlement Agreement; with the facts and claims that were, or could have been asserted, in the Class Action Lawsuit, the Receivership proceeding, or other proceeding involving the Association, the Receiver, or the Receivership Estate, or which arise directly or indirectly in any manner whatsoever from the Association's activities, work, conduct, omissions, or services in connection with Champlain Tower, or the Collapse, to the broadest extent permitted by law, except for (i) claims within the scope of the Tenant-Guest Carve-Out, (ii) the Subrogation Carve-Out, and (iii) any non-settling defendants' right to assert comparative fault and *Fabre* affirmative defenses, and make "empty chair" arguments, against parties released by the Allocation Settlement Agreement, which are not Barred Claims.

d. **"Beneficiaries"**: (i) Each Participating Unit Owner; (ii) every present and former member of the board of directors of the Association; and (iii) Scott Stewart.

6. Nothing in this Order bars the prosecution, or continued prosecution, of claims within the scope of the Tenant-Guest Carve-Out or the Subrogation Carve-Out.

7. Neither the Allocation Settlement Agreement, nor this Order, shall be impaired, modified, or otherwise affected in any manner other than by direct appeal of this Order, or motion for reconsideration or rehearing thereof, made in accordance with the Florida Rules of Civil Procedure and Florida Rules of Appellate Procedure, as applicable.

8. Nothing in this Order or the Allocation Settlement Agreement, nor the performance of the Settling Parties' obligations thereunder, shall in any way impair, limit, modify, or otherwise affect the rights of the Receiver, the Participating Unit Owners, or members of the WDC against any party not released or barred in the Allocation Settlement Agreement.

9. Any person or entity prosecuting claims against the Beneficiaries in any proceeding including Barred Claims in any lawsuit or action, including the Class Action Lawsuit are directed and authorized to dismiss their claims against any Beneficiary with prejudice, when this Order is Final within the meaning of the Allocation Settlement Agreement, in accordance with the terms of the Allocation Settlement Agreement, with no party admitting to wrongdoing or liability and all parties responsible for their own attorney's fees and costs.

10. Pursuant to the Court's authority in this equity receivership, this Order is a final order for purposes of the time to appeal or to seek rehearing or reconsideration.

11. This Order shall be served electronically by the Clerk of the Court on all counsel of record in the Receivership Proceeding, the Class Action Lawsuit, and the Subrogation Action, and electronically by Class counsel on each of their clients.

12. A Unit Owner may Opt-Out of the Allocation Settlement Agreement and become a Non-Participating Unit Owner by filing with this Court a Notice of Election to Opt-Out in the form attached to the Allocation Settlement Agreement as Exhibit “E” within ten (10) days of the date of this Order.

13. Without impairing or affecting the finality of this Order, the Court retains continuing and exclusive jurisdiction to construe, modify, interpret, and enforce this Order, including, without limitation, the releases and injunction in the Allocation Settlement Agreement. *See City of North Miami v. M.L. and L. Enterprises*, 294 So. 2d 42, 44 (Fla. 3d DCA 1974) (“a court which has granted a permanent injunction has inherent power to enforce it”). This retention of jurisdiction is not a bar to any person, including the Settling Parties, from raising the Bar Order to obtain its benefits in establishing reductions to damage awards or seeking to dismiss a claim or cause of action.

[1] Capitalized terms used in this Order and not defined herein shall have the meanings ascribed to them in the Motion, Allocation Settlement Agreement or Preliminary Approval Order, as applicable.

[2] The definition of Unit Owner in this Order supersedes and controls over the definition of Unit Owner in the Motion and Allocation Settlement Agreement.

[3] As used in this Order, the “**Settling Parties**” means the Receiver, Participating Unit Owners and the WDC. To the extent there is any discrepancy between a defined term in the Allocation Settlement Agreement and the same defined term herein, the definition in the Allocation Settlement Agreement shall control. Likewise, in the event of a discrepancy between the summary of the terms and conditions of the Allocation Settlement Agreement in this Order and those in the Allocation Settlement Agreement itself, the terms and conditions in the Allocation Settlement Agreement shall control.

[4] As used in this Order, any court order being “**Final**” means an order entered on the docket of a court of competent jurisdiction which has not been modified after the conclusion or expiration of any right or time period of any person or party to file a (x) motion seeking rehearing, reconsideration, clarification or modification, in whole or in part, or (y) notice of appeal of the order. Without in any way limiting the foregoing, an order, including the Bar Order, is not considered Final as used herein during the pendency of any appeal or rehearing of the order, or during the time that an appeal, rehearing, reversal, reconsideration, or modification of the order remains possible.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 6th day of April, 2022.



2021-015089-CA-01 04-06-2022 8:34 PM

2021-015089-CA-01 04-06-2022 8:34 PM

Hon. Michael Hanzman

CIRCUIT COURT JUDGE

Electronically Signed

No Further Judicial Action Required on **THIS MOTION**

CLERK TO **RECLOSE** CASE IF POST JUDGMENT

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