

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

**COMPLEX BUSINESS LITIGATION
DIVISION**

CASE NO: 2021-015089-CA-01
SECTION: CA43
JUDGE: MICHAEL HANZMAN

In re:

Champlain Towers South Collapse Litigation
_____ /

**RECEIVER’S EXPEDITED MOTION FOR ENTRY OF ORDER
APPROVING AMENDMENT TO (A) PURCHASE AND
SALE AGREEMENT AND (B) BIDDING AND SALE PROCEDURES**

Michael I. Goldberg (the “**Receiver**”), files this *Expedited Motion for Entry of Order Approving Amendment to (A) Purchase and Sale Agreement and (B) Bidding and Sale Procedures* (the “**Motion**”). In support of the Motion, the Receiver states:

1. On October 6, 2021, the Court entered the *Order Granting Receiver’s Expedited Motion for Entry of an Order (A) Approving Purchase and Sale Agreement; (B) Approving Competitive Bidding and Sale Procedures; (C) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale; and (D) Granting Related Relief* (the “**Bidding Procedures Order**”)¹.

2. Pursuant to the Bidding Procedures Order the Court, *inter alia*, approved the *Purchase and Sale Agreement* dated October 6, 2021, as amended by *First Amendment to Purchase and Sale Agreement* dated January 28, 2022 (collectively, the “**Agreement**”) between

¹ Capitalized terms used in this Motion and not otherwise defined herein shall have the meanings ascribed to such terms in the Bidding Procedures Order.

the Receiver, as seller, and East Oceanside Development, LLC, as purchaser (“**Purchaser**”), pursuant to which Purchaser proposes to purchase the Property for \$120,000,000 in cash, upon the terms set forth in the Agreement.

3. The sale of the Property is subject to the Receiver’s receipt of higher and better offers and an auction. Accordingly, the Bidding Procedures Order also approved the Bid Procedures attached to the Agreement as **Exhibit C**.

4. Subject to the terms of the Agreement, Purchaser has deposited \$16,000,000.00 in escrow as the Earnest Money deposit.

5. Purchaser’s Inspection Period expires on Friday, May 6, 2022. Pursuant to the Bid Procedures, if the Buyer does not terminate the Agreement prior to the expiration of the Inspection Period the Receiver is authorized to conduct an auction sale of the Property 45 days later, or June 20, 2022.

6. On May 2, 2022, Purchaser advised the Receiver that it has waived the balance of its Inspection Period and will not deliver the Purchaser’s Termination Notice pursuant to Section 4 of the Agreement. Therefore, the right of termination available in Section 4 of the Agreement is waived and Purchaser’s obligation to close is firm, subject to the provisions set forth in the Agreement.

7. Purchaser also advised the Receiver that it is willing to increase the Earnest Money currently held under the Agreement from **\$16 million to \$50 million** on the condition that the final auction for the Property occurs during the week of May 23, 2022. In the event the Purchaser is the successful bidder at the auction and the order approving the sale to Purchaser is appealed and the appeal is not dispensed of within 30 days from the date the appeal is filed, the \$34 million extra deposit will be returned to the Purchaser so that the increased portion of the deposit is not

unnecessarily tied up for an extended period of time. However, the original \$16 million deposit will remain in place and be governed by the terms of the Agreement.

8. The Receiver believes that the amendments proposed by the Purchaser are in the best interest of the Receivership estate and all stakeholders and will not prejudice any prospective buyer or make the auction less competitive. More specifically, the Receiver's broker, Avison Young, has been continually marketing the Property since October and has spoken with dozens of potential buyers over the past eight months. It was originally anticipated that the auction would take place in February or March, 2022, but due to delays in obtaining borings on the Property to enable the Purchaser to complete its due diligence, the auction date was postponed more than two months. Therefore, potential buyers should have expected the auction to take place a couple of months ago and should not be prejudiced by the scheduling of the auction at the end of May. Moreover, geo-political and economic uncertainties also support conducting the auction as soon as possible. Accordingly, the Receiver and the Purchaser have negotiated the *Second Amendment to Purchase and Sale Agreement* (the "**Second Amendment**"). Pursuant to the Second Amendment:

a. Within one (1) business day following the date of the Second Amendment, the Purchaser shall deposit **\$34 million** with the Escrow Agent, which will increase the total Earnest Money held by the Escrow Agent to **\$50 million**.²

b. Purchaser has already waived the remainder of the Inspection Period and no longer has the right to send Purchaser's Termination Notice pursuant to Section 4(d) of the Agreement.

c. Section 1(e) of the Bid Procedures is deleted in its entirety and replaced with the following:

² As stated above, this additional \$34 million will be returnable to the Purchaser in the event the order approving the sale of the Property to the Purchaser is appealed and the appeal is not dispensed of within 30 days.

(e) *Bid Deadline*. The deadline for submitting bids by a Qualified Bidder shall be Friday, May 20, 2022, at 5:00 p.m. (prevailing Eastern Time) (the "**Bid Deadline**").

d. The second (2nd) sentence of Section 2(b) of the Bid Procedures is deleted in its entirety and replaced with the following:

The Auction, if required, will occur during the week of May 23, 2022 ("Auction Date").

9. If the Bid Deadline is changed to May 20, 2022, the auction will be conducted on the date set by the Court in the manner prescribed by Section 2.(b) of the Bid Procedures during the week of May 23, 2022. In all other respects, the Agreement and Bid Procedures remain in full force and effect.

WHEREFORE, the Receiver respectfully requests the Court to enter an order granting this Motion, approving the Second Amendment to Purchase and Sale Agreement, and grant such other and further relief as the Court deems just and proper.

Dated: May 3, 2022

Respectfully submitted.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 3, 2022, the foregoing was electronically filed with the Clerk of Court by using the Florida Courts E-Filing Portal, which furnished a copy of same to all counsel of record through the Florida Court's E-Filing Portal.

By: /s/ Paul Steven Singerman
Paul Steven Singerman