

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 1:23-CV-24903-CMA

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

RISHI KAPOOR, et al.

Defendants,

MARTIN I. HALPERN, AS TRUSTEE OF THE MARTIN I. HALPERN REVOCABLE TRUST AND TRUSTEE OF THE HALPERN FAMILY TRUST VERIFIED MOTION TO INTERVENE FOR THE LIMITED PURPOSE OF SEEKING RELIEF FROM THE COURT'S RECEIVERSHIP ORDER

Non-Party Movants, Martin I. Halpern, as trustee of the Martin I. Halpern Revocable Trust and as Trustee of the Halpern Family Trust (“The Trusts” or “Non-Party Movants”), pursuant to Rules 24(a) and (b) of the Federal Rules of Civil Procedure, moves to intervene to seek relief from the Court’s receivership order dated January 12, 2024 granting Plaintiff Securities and Exchange Commission’s Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief against the Company Defendants [DE 28] (the “Stay Order”), so that it may enforce its rights under certain mortgages encumbering real property granted by Defendants and possible affiliate of the Defendants and to file an objection to Receiver’s *Expedited* Motion to Approve Sale Free and Clear and Related Settlement Agreement and Lien Claims Process [DE 128] (the “Motion for *Expedited* Approval of Stewart Grove Property Sale”) as well as other sales in the future that affect the Trusts’ property rights. In support, the Trusts state:

MEMORANDUM OF LAW

I. INTRODUCTION

The Securities and Exchange Commission (“SEC”) commenced this action due to Defendants’ alleged fraudulent real estate development scheme and misappropriation of millions of dollars from investors. The real estate projects for which the funds were raised are, according to the SEC, “stalled, abandoned, or are the subject of litigation.”¹ Accordingly, on January 12, 2024, this Court entered the Stay Order to freeze all assets of the Company Defendants and of Mr. Kapoor. In relevant part, this Court granted the Receiver, *with broad and inclusive language*, the following general powers and duties:

“To use reasonable efforts to determine the nature, location, and value of all property interests of the Receivership Defendants, including, but not limited to, monies, funds, securities, credits, effects, goods, chattels, lands, premises, leases, claims, rights, and other assets, together with all rents, profits, dividends, interest, or other income attributable thereto, of whatever kind, which the Receivership Defendants own, possess, **have a beneficial interest in, or control directly or indirectly** (“Receivership Property” or, collectively, the “Receivership Estates”)[.]”

[DE 28], p. 5 ¶ 7-A (emphases added).

The Trusts are mortgagees under four mortgages that encumber real property in Miami-Dade County, Florida as described below that could be the subject of this Court’s Stay Order. Although the Three Properties are not in the name of the any Defendant, because of the broad and inclusive language of the Stay Order names Receivership Property as any property which the Receivership Defendants have a “beneficial” interest in or indirectly “control”, in an abundance of caution, the Trusts, seek to intervene in this case for the *sole* purpose of obtaining leave of this

¹ See Complaint for Injunctive and Other Relief, dated December 27, 2023 (“Compl.”) [DE 14-1].

Court's injunction order so it can protect its collateral by foreclosing on their interests in the Three Properties and the Stewart Grove Property; both defined below.

II. RELEVANT FACTUAL BACKGROUND

A. The Trusts own three Mortgages on Potential Receivership Property and/or interests

On or about May 24, 2022, the Trusts purchased certain loans which were allegedly used to finance the acquisition of three properties in which entities that Mr. Kapoor is associated with may have an interest. Thereafter, the Trusts executed new loan documents modifying the terms of the acquired loans. The first of the modified loans (the "3170 Mortgage") was issued to the Trusts, on or about May 27, 2022, by Urbin Commodore Residential II SPE LLC ("UC Residential II") securing obligations of a Promissory Note (the "3170 Note") in the principal amount of \$2,400,000.00. The 3170 Mortgage was recorded on June 1, 2022, in the Public Records of Miami-Dade County, Florida, in Official Records Book 33126 at Page 1208. A copy of the 3170 Mortgage is attached as **Exhibit 1**. The 3170 Mortgage gave the Trusts a security interest in real property as well as a secured interest on a long-term lease (the "3170 Property" and "3170 Lease" respectively) located in Miami-Dade County described in Exhibit A of the 3170 Mortgage. The 3170 Note matured on May 27, 2023, and remains unpaid.

Around the same time, the Trusts received a mortgage and thereafter a notice of upsizing mortgage (the "Plaza Mortgages") from Urbin Commodore SPE LLC ("UC SPE") and Urbin Commodore Restaurant SPE, LLC ("UC Restaurant") securing an initial obligation of \$9,500,000 which was upsized to \$14,500,000 (the "Plaza Notes"). The Plaza Mortgages were secured by two long-term leasehold interests held by UC SPE and UC Restaurant. UC SPE is a tenant in the TB 3138 99-year lease agreement (the "TB 3138 Lease") and UC Restaurant is the tenant in the TB

3120 99 year lease agreement (the “TB 3120 Lease”). The Plaza Mortgages were recorded on June 1, 2022 (\$9.5MM mortgage) and February 21, 2023 (\$14.5MM upside notice to clerk) in the Public Records of Miami-Dade County, Florida, in Official Records Book 33126 at Page 1237; Book 33587 at Page 4505 respectively. A copy of the Plaza Mortgages are attached as composite **Exhibit 2**. The Plaza Mortgages gave the Trusts a security interest in two leasehold interests in real property (the “Plaza Property”) located in Miami-Dade County described in Exhibit A of the Plaza Mortgages. The Plaza Notes, as amended, matured on May 27, 2023, and remains unpaid.

Additionally, on or about May 27, 2022, the Trusts received a mortgage (the “Condo Mortgage”)² from Urbin Commodore Residential I SPE LLC (“UC Residential I”) as security for a promissory note in the principal amount of \$4,100,000.00. The Condo Mortgage was recorded on June 1, 2022 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33126 at Page 1224. A copy of the Condo Mortgage is attached as **Exhibit 3**. The Condo Mortgage gave the Trusts a security interest in real property (the “Condo Property”) located in Miami-Dade County described in Exhibit A of the Condo Mortgage. The Condo Note matured on May 27, 2023, and remains unpaid. The 3170 Property, the Plaza Property and the Condo Property are together referred to herein as the “Three Properties”.

Although UC SPE, UC Residential I, UC Residential II, and UC Restaurant (the “Four Entities”) are not defendants in the Complaint, upon information and belief, Defendant Rishi Kapoor currently may have a “beneficial interest in, or control directly or indirectly” in these entities. For example, Defendant Kapoor executed the 3170 Note, the Plaza Note, the Amened Plaza Note, the Condo Note, the 3170 Mortgage and the Plaza Mortgage on behalf of the Four

² The Condo Note and Condo Mortgage restated preexisting loan obligations, which are referenced therein.

Entities. During negotiations of these documents with the Trusts, it was Defendant Rishi Kapoor who acted as the representative of these entities. Further, Mr. Kapoor is listed as the point-of-contact for each entity in the corresponding mortgage. Consequently, the Trusts have reason to suspect that Mr. Kapoor or one of the various Defendant entities listed in the Complaint and/or the Stay Order may own a beneficial interest in UC SPE, UC Residential I or UC Residential II.

B. The Three Properties are Subjected to Waste

In addition to defaulting on their loan obligations under the corresponding promissory notes, the Four Entities are allowing the Three Properties to waste jeopardizing the Trusts' security interest in these properties. Specifically, following the Trusts' mortgages, the Four Entities have caused 22 liens to be placed on the Three Properties due to their failing to pay construction debts associated with repairs, materials, improvements and construction conducted on the Three Properties. In addition, the Three Properties received several notices from the City of Miami concerning unsafe conditions on the premises, which were never addressed or redressed by the Four Entities which are in violation of the corresponding mortgages and did not inform the Trusts of these notices, resulting in an Order of Unsafe Structures encumbering the Three Properties. There is also a pending legal action against the Condo Property seeking foreclosure of a lien that was placed after the Trusts' mortgage. The liens, legal actions and encumbrances which affect the Trusts' collateral property include:

1. A Claim of Lien recorded on July 6, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33781 at Page 443;
2. A Claim of Lien recorded on August 24, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33850 at Page 4608;
3. An Order of Unsafe Structure entered by the City of Miami after multiple inspections and notices to the Four Entities to address safety concerns, which applies to all Three Properties, recorded on May 25, 2023 in the

- Public Records of Miami-Dade County, Florida, in Official Records Book 33722 at Page 3636;
4. A Claim of Lien recorded on July 6, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33781 at Page 432;
 5. A Claim of Lien recorded on August 24, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33850 at Page 4607;
 6. A Claim of Lien recorded on June 21, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33755 at Page 4789;
 7. A Claim of Lien recorded on July 7, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33783 at Page 2927;
 8. A Claim of Lien recorded on July 11, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33787 at Page 1997;
 9. A Claim of Lien recorded on June 15, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33750 at Page 4615;
 10. A Claim of Lien recorded on June 15, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33750 at Page 4616;
 11. A Claim of Lien recorded on June 20, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33753 at Page 2864;
 12. A Claim of Lien recorded on June 21, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33753 at Page 4191;
 13. A Claim of Lien recorded on June 21, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33755 at Page 4433;
 14. A Claim of Lien recorded on July 3, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33776 at Page 3920 and a Notice of Lis Pendens, indicating an action to foreclose on this lien was initiated, recorded on July 31, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33816 at Page 3155.
 15. A Claim of Lien recorded on July 5, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33779 at Page 4243;
 16. A Claim of Lien recorded on July 6, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33781 at Page 429;
 17. A Claim of Lien recorded on July 11, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33787 at Page 233;
 18. Claim of Lien recorded on July 19, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33799 at Page 4708;
 19. A Claim of Lien recorded on July 26, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33808 at Page 2787;
 20. A Claim of Lien recorded on July 27, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33812 at Page 1905;
 21. A Claim of Lien recorded in the Public Records of Miami-Dade County, Florida, in Official Records Book 33821 at Page 4867;
 22. A Claim of Lien recorded on August 3, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33825 at Page 453;

23. A Claim of Lien recorded on August 17, 2023 in the Public Records of Miami-Dade County, Florida, in Official Records Book 33842 at Page 2523.

The accumulation of 22 liens, in and of itself, evidences the Four Entities' complete lack of care towards the Three Properties that serve as collateral for the Trusts' loans. Moreover, the Order of Unsafe Structure must be addressed forthwith or the Condo Property risks further fines, penalties and even potential condemnation.

Not only have the Four Entities allowed these encumbrances, but the tenants of the 3170 Lease, the TB 3138 Lease and the TB 3120 Lease have failed to make the lease payments for nearly a year. As a result, the two landlords of the Plaza Property and the one landlord of the 3170 Property have threatened eviction unless the lease payments are made. In order to protect its security interests in the Plaza Mortgage and the 3170 Mortgage, the Trusts have been forced to make protective advances, paying the monthly lease payments to the Plaza landlords in the total monthly amount of \$29,376.15 and quarterly payments to the 3170 landlord in the amount of \$37,450 (payments in excess of half a million dollars have been paid during the term of the breach of leases). The Trusts continue to make these protective advances with no ability to take over control of the secured properties, remove the liens, and remove the unsafe structure (both of which are breaches of the lease agreements).

C. The Trusts have a Second Mortgage on the Stewart Grove Property that would be Extinguished Without Due Process if Receiver's Motion [DE 128] is Granted

On May 2, 2024, the Receiver filed its Motion for Expedited Approval of Stewart Grove Property Sale [DE 128] requesting the Court on an expedited (a) approve a sale of the Stewart Property, as defined therein, for \$17.5 million to a buyer **free and clear of liens, claims and encumbrances through the closing date**, (b) approve the settlement agreement with the first

mortgage lender, and (c) approve the Receiver’s proposed process to resolve the lien claims against the Stewart Property. DE 128 at 2. Along with its motion, Receiver attached an “unopposed order”; to which the Trusts vehemently object. DE 128-14. As noted in the motion, the Trusts hold a second mortgage on the Stewart Grove Property. DE 128 at 9. Thus, the expedited approval of the sale that would result in a complete extinguishment of the Trusts perfected recorded liens without permitting the Trusts to an opportunity to object in violation of both the due process and takings clause of the Fifth Amendment of the United States Constitution. In order to protect its constitutional rights as well as its property rights, the Trusts also seek leave to intervene to file their objections to both the sale and process, and ultimately for the Court to lift the injunction so that it may pursue a foreclosure of its security interest in the Stewart Grove Property. Given the expedited request by the Receiver, once given leave to intervene, the Trusts request three (3) days to file their objection.

Under these circumstances, the Trusts must move expeditiously to enforce their rights or risk its collateral. Consequently, the Trusts respectfully request that the Court consent to *limited* relief to avoid further impairment of the Non-Party Movants’ collateral, and to protect its perfected liens on the Three Properties and the Stewart Grove Property, which the Receiver is specifically threatening to extinguish in its Motion for Expedited Approval of Stewart Grove Property Sale without providing the Trusts adequate notice or ability to participate as well as without just compensation. Thus, the Trusts request the Court grant it leave to intervene so that it may seek relief from the Stay Order to pursue foreclosure actions on the Three Properties and the Stewart Grove Property and to object to the sale of the Stewart Grove Property.

III. ARGUMENT

A. Movant's Right to Intervene

Rule 24(a) governs a non-party's ability to intervene in a case as of right. The rule provides, in pertinent part, that "[o]n a timely motion, the court must permit anyone to intervene who . . . claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest." Fed. R. Civ. P. 24(a)(2).

To prevail under Rule 24(a)(2), movant must establish that it satisfies four elements: "(1) its application to intervene is timely; (2) [it] has an interest relating to the property or transaction which is the subject of the action; (3) [it] is so situated that disposition of the action, as a practical matter, may impede or impair [its] ability to protect that interest; and (4) [its] interest is represented inadequately by the existing parties to the suit." *Chiles v. Thornburgh*, 865 F.2d 1197, 1213 (11th Cir. 1989). If the movant satisfies each of those four showings, "the district court must allow [it] to intervene." *Id.* at 1213; *Chen v. Walsh*, 2018 WL 11348600, at *1 (S.D. Fla. Dec. 21, 2018).

When analyzing the timeliness of a non-party's request to intervene, "[t]he requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interests of justice." *McDonald v. E.J. Lavino Co.*, 430 F.2d 1065, 1074 (5th Cir. 1970). When a request to intervene for the *limited purpose* of modifying or lifting a stay of litigation, the inquiry under Rule 24 should be "a flexible one" with a "practical analysis of the facts and circumstances." 6 JAMES WM. MOORE, ET AL., MOORE'S FEDERAL PRACTICE 24.031(B) (3D ED. 2008); *see also Public Serv. Co. of New Hampshire v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998) (noting elements of Rule 24 must be read

together and with a common sense view of the overall case) and 7C CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1904 (3d ed. 2008) (commenting that Rule 24 is not a “comprehensive inventory of the allowable instances for intervention” and that other considerations may require intervention).

The Trusts satisfy each of these elements and, therefore, are entitled to intervene as of right for the *limited* purpose of seeking to have the Court lift the injunction so it may enforce its rights to, *inter alia*, foreclose on its interest in the Property and so that they may object to the sale of the Stewart Grove Property on several grounds.

(1) Element 1: Timeliness

In determining whether a motion to intervene is timely, courts consider:

(1) the length of time during which the proposed intervenor knew or reasonable should have known of the interest in the case before moving to intervene; (2) the extent of prejudice to the existing parties as a result of the proposed intervenor’s failure to move for intervention as soon as it knew or reasonably should have known of its interest; (3) the extent of prejudice to the proposed intervenor if the motion is denied; and (4) the existence of unusual circumstances militating either for or against a determination that their motion was timely.

Georgia v. U.S. Army Corps of Eng’gs, 302 F.3d 1242, 1259 (11th Cir. 2002). Nevertheless, “[t]imeliness is not a word of exactitude or of precisely measurable dimensions. The requirement of timeliness must have accommodating flexibility toward both the court and the litigants if it is to be successfully employed to regulate intervention in the interest of justice.” *Id.* at 1259.

Here, Non-Party Movants timely moved to intervene since learning, albeit indirectly, of the commencement of this case and the Receiver’s appointment. The Trusts learned of the SEC’s commencement of this action anecdotally. Notably, the Stay Order is approximately three months old. Although the Trusts learned of the Order shortly after it was entered, because the Four Entities are *not* defendants it remains unsure as to whether the Stay Order applies. Since the Trusts learned

of this action and the encumbrances listed above, in January 2024, indicating that its collateral was in danger and that relief from Court may be needed to protect it, the Trusts moved expeditiously to move for relief. In fact, the Trusts have been in communications with the Receiver concerning these properties since the Receiver was appointed.

As it relates to the second prong, there is no prejudice to any party if the Trusts are allowed to intervene. To the contrary, the SEC will benefit from allowing the intervention and an order taking the Three Properties out of the Receivership as they will be able to conserve resources and minimize litigation. The SEC does not have a collateral or any interest in any of the Three Properties, and Defendants, to the extent they have an interest, will be able to assert such interest in the foreclosure action. Conversely, if the Trusts' motion is denied, they will risk losing their collateral and be left without recourse on its loans to the Four Entities. Moreover, the Trusts will have to wait for months and likely years as the statute of limitations slowly ticks away, and the Three Properties get further encumbered by being subjected to additional liens, potential tax liens, municipal fines and ultimate condemnation.

Moreover, due to UC SPE, UC Restaurant, and UC Residential II's failure to comply with the terms of their leases including failing to pay rent, it is in danger of being evicted from the 3170 Property and the Plaza Property, which would ultimately result in the Trusts outright loss of its security interest in these properties. Consequently, there will be no prejudice to the Parties if intervention is allowed and the relief requested is granted, yet severe prejudice will occur to the Trusts if it is not permitted to safeguard its collateral. Accordingly, Non-Party Movants have substantial property rights and economic interests to protect and has moved timely to protect these interests. Consequently, the facts demonstrate that Non-Party Movants have proceeded to seek

intervention in a good faith, diligent and responsible manner and will be severely prejudice if not allowed to protect its right in the Three Properties.

As to the Motion for *Expedited* Approval of Stewart Grove Property Sale, the Trusts are moving to intervene a mere days after the motion was filed.

(2) Elements 2 and 3: A Direct, Substantial, Legally Protectable Interest That May be Impaired by Disposition of the Action

Intervention must be supported by a direct, substantial, legally protectable interest in the proceeding—a movant must be at least “real part[y] in interest in the transaction which is the subject of the proceedings. *Chiles*, 865 F.2d at 1213–14 (citation and internal quotation marks omitted); *see, e.g., Chen*, 2018 WL 11348600, at *1-3 (granting motion to intervene and appoint receiver where proposed intervener would suffer prejudice if intervention not granted). That is, “an intervenor’s interest must be a particularized interest rather than a general grievance.” *Chiles*, 865 F.2d at 1212. The movant’s interest “need not, however, be of a legal nature identical to that of the claims asserted in the main action.” *Id.* at 1214 (citation and internal quotation marks omitted). A court’s “inquiry on this issue is a flexible one, which focuses on the particular facts and circumstances surrounding each motion for intervention.” *Id.* Further, and under circuit precedent, “. . . [a]ll that is required under Rule 24(a)(2) is that the would-be intervener **be practically disadvantaged by his exclusion from the proceedings.**” *Salvors, Inc. v. Unidentified Wrecked & Abandoned Vessel*, 861 F.3d 1278, 1295 (11th Cir. 2017) (citation omitted) (emphases added).

Intervention is not only limited to “those seeking to intervene as a full-fledged party” – “courts are able to permit intervention to address discrete issues within a case.” *Abreu v. Pfizer, Inc.*, 21-62122-CIV, 2022 WL 2341427, at *5 (S.D. Fla. Fed. 3, 2022), report and recommendation

adopted (Mar. 22, 2022) (citing *Boca Raton Cmty. Hosp., Inc. v. Tenet Healthcare Corp.*, 271 F.R.D. 530, 535 (S.D. Fla. 2010) (granting intervention for the limited purpose of modifying a protective order)); *see also Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 472–73 (9th Cir. 1992) (rejecting the argument that an intervenor must have a claim relating to the merits of the action).

First, a mortgagee who is a lawful holder of a secured note on which a mortgagor defaulted has a right to foreclose on the mortgagor's property. *See Zipperer v. City of Fort Myers*, 41 F.3d 619, 623 (11th Cir.1995). A mortgagee, therefore, "has a constitutionally protected property interest in his mortgage." *Id.* Further, a "borrower . . . [has a duty to] protect the lender's interest in the collateral." *See Hamilton v. Suntrust Mortg. Inc.*, 6 F.3d 1300, 1303 (S.D. Fla. 2014). "If the borrower fails to do so, the lender has the option of . . . passing the cost on to the borrower." *Id.* As mortgagee, the Trusts have substantial and protectable property and economic interests that the Stay Order affects. As mentioned above, the Trusts hold mortgages on the Three Properties as well as the Stewart Grove Property that have been defaulted on and its collateral property is subject to waste should they not be allowed to intervene and obtain relief from this Court's Stay Order. Furthermore, its lien on the Stewart Grove Property is subject to extinguishment without due process if it is not allowed to intervene. Essentially, the Receiver, who stands in the shoes of the borrower and has no greater rights than the borrower, is asking the Court void the Trusts' security interest without even identifying a single legal theory³ that would serve to void such interest or proving any facts that would support such a theory.

³ Moreover, this Court likely would not have subject matter jurisdiction over an action to determine the priority over the liens of the properties at issue under which the priority of liens is normally administered as there is no Federal question and diversity is unlikely to be met. Accordingly, through an "expedited motion" [DE 128], the Receiver is requesting this Court sidestep the due process universally used to address priority over competing liens (a state law

As this Court is aware, the SEC argued at the last status conference that it would likely object to intervenors joining this lawsuit because of the large number of potential creditors that would intervene and its effect would be to delay the matter. Essentially, the SEC wants to protect its interest in expediency and conservation of resources. Unfortunately, the protection of such interest is at the expense of the Trusts' fundamental constitutional rights. There is no authority undersigned could find that holds that fundamental constitutional rights under the 5th Amendment must be weighed against the SEC's interest in expediency and conservation of resources; or as is being argued here, that the government can extinguish property rights, as the Receiver requests, when it is convenient or in its interest. Accordingly, the objection to intervention ignores the fundamental protections afforded to all under the Fifth Amendment of the United States Constitution, which provides that no one may be deprived of property without due process. The Trusts clearly have a property interest in the Three Properties and the Stewart Grove Property by virtue of the mortgages referenced above. In essence, the SEC is asking this Court to subject a mortgagee to an ex parte freeze order and bar the mortgagee from seeking any relief from such order or protecting its property interests while such property goes to waste indefinitely. Because the Fifth Amendment protects the Trusts' property from deprivation of their interests without due process, they should be permitted to intervene. Notably, the SEC's interests in expediency and conservation of resources can easily be assuaged by allowing relief from the Stay Order for the sole purpose of commencing or continuing foreclosure actions to which the SEC will not be a necessary party or have to spend any resources in defending. Therefore, if the relief requested is

foreclosure) in an ad hoc legal proceeding over which the Court lacks subject matter jurisdiction adjudicating the rights of non-parties over whom the court lacks personal jurisdiction.

granted, the Trusts' constitutional rights will be protected while the SEC's concerns will be addressed.

As with the Three Properties, the Trusts also hold a mortgage interest in the Stewart Grove Properties. Because the Receiver is seeking to outright extinguish this interest without due process or just compensation through its Motion for *Expedited* Approval of Stewart Grove Property Sale, the Trusts have a direct, substantial, legally protectable interest in the Stewart Grove Properties that will be impaired (in fact destroyed) if they are allowed to intervene. Consequently, the Trusts have a right to intervene to protect its interests.

(3) Element 4: Adequate Representation

The last, “. . . inadequate representation requirement is satisfied if the [proposed intervenor] shows that representation of his interest may be inadequate and that the burden of making that showing should be treated as minimal.” *Chiles*, 865 F.2d at 1214. If the movant's interest is “not identical” to that of one of the parties, the movant “should be allowed to intervene unless it is clear that [an existing party] will provide adequate representation.” *Id.* (citation omitted). “Any doubt concerning the propriety of allowing intervention should be resolved in favor of the proposed intervenor . . . because it allows the court to resolve all related disputes in a single action.” *Fed. Sav. & Loan Ins. Corp. v. Falls Chase Special Taxing District*, 983 F.2d 211, 216 (11th Cir. 1993).

No party in this case represents the Trusts' property rights or economic interests. Neither the SEC, Receiver, nor any party-defendant has informed Non-Party Movants of an intention to protect Non-Party Movants or their collateral. In fact, although the Three Properties may be subject to the Receivership, there has been no action by the Receiver to safeguard the Three Properties or address the construction liens, litigation, encumbrances, and municipal orders that affect them. Moreover, the Receiver has done nothing to satisfy UC Residential II's default of its

lease on the 3170 Property (the Dharma Studio, Inc., lease), including paying the rent owed. In fact, if these Three Properties are part of the Receivership, then the Receiver should make efforts to safeguard these properties and pay the outstanding debts, including the debts due to the Trusts and the Dharma Studio, Inc., landlord. However, this has not happened, and the Trusts have no reason to believe this will occur. Further, no party is likely to advance funds necessary to cure the Four Entities' defaults, secure the collateral, address the municipal safety concerns, and prevent further liens. Moreover, the SEC has no interest in protecting the rights of the Trusts or allowing the Trusts to protect their rights in this action. Similarly, as to the Stewart Grove Property, no party has an interest in protecting the Trusts' interests. In fact, the Receiver is seeking to extinguish the Trusts' mortgage interest without due process or just compensation. As such, Non-Party Movants' interests are not adequately represented in this case and their corresponding need for intervention is obvious and evident. Thus, an order that makes clear that the Three Properties are not subject of the Stay Order and allows the Trusts to foreclose on the Three Properties and the Stewart Grove Property will address the SEC's concerns of conservation of resources while at the same time protect the Trusts' property rights.

B. Movant's Right for Permissive Intervention

Even if Non-Party Movants do not satisfy the elements of Rule 24(a) for intervention as a matter of right with respect to the Stay Order, its requested intervention should nonetheless be granted because it satisfies the requirements for permissive intervention under Rule 24(b). Rule 24(b) provides that “[o]n a timely motion, the court must permit anyone to intervene who . . . has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b)(1)(B). Rule 24(b)(1)(B) “gives the district court discretion to permit intervention ‘when an applicant’s claim or defense and the main action have a question of law or fact in

common In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *Boca Raton Cmty. Hosp., Inc.*, 271 F. R. D. at 537 (quoting *ManaSota-88, Inc. v. Tidwell*, 896 F.2d 1318, 1323 (11th Cir. 1990)).

Here, Non-Party Movants have claims against the Four Entities for defaulting on the mortgages due to non-payment, for allowing unwarranted encumbrances and committing waste. The Four Entities are, or at the very least were previously managed by Rishi Kapoor, who is a party-defendant against whom the SEC has asserted claims and whom the SEC claims engaged in a fraudulent real estate development scheme and the corresponding misappropriation of millions of dollars from investors. The underlying facts pertaining to the breaches by the Four Entities will likely be in common with some of the facts supporting the SEC’s claims as the Trusts are likely victims of Mr. Kapoor’s fraud. Based upon the commonality of facts and the clear prejudice Non-Party Movants will suffer if they are not permitted to intervene for the requested *limited* purpose. Finally, although Non-Party Movants have demonstrated their right to intervene under Rule 24(b), the relief will not interfere with the SEC’s ability to pursue its claims against Rishi Kapoor or any other party-defendant, because the Trusts are only seeking leave to be able to obtain relief from the Stay Order to address their rights in a real estate transaction that is not the subject of the SEC’s complaint.

C. The Facts and Principles of Equity and Fairness Support Movant’s Request to Have the Injunction Lifted to Enforce Its Contractual Rights

The Trusts are mindful that equitable principles govern receivership proceedings. Nevertheless, it is obvious that their interests are not being protected and that the Stay Order is an obstacle to asserting their interests and preventing waste of the Three Properties and protecting its

collateral rights to the Stewart Grove Property. Should the Trust proceed with a foreclosure of any of these properties without leave of court, they expect that Defendant Kapoor and the Receiver will claim the Trusts are in contempt of the Stay Order. Should the Trusts not be granted leave of court, their collateral will be subjected to additional intervening liens and further waste and their security lien on the Stewart Grove Property will be extinguished without due process. The Four Entities are not paying their debts relating to the Three Properties, nor are they stewarding the properties to prevent waste. If these practices continue, it will result in further liens, penalties, and encumbrances some which, depending on their nature, could result in the Trusts losing their priority interest, diminishing the protection of their collateral, or being subordinated to another creditor such as the State of Florida. Worse, public safety is implicated as the Four Entities are permitting dangerous conditions to develop on the Three Properties and doing nothing to redress those conditions. Additionally, the Four Entities' wasteful actions are causing the Three Properties to lose value.

As identified in detail above, the Four Entities have breached their obligations to the Trusts by: (i) failing to make *any* payment on the mortgages; (ii) defaulting on the mortgages by not making payment on the corresponding notes upon maturity; (iii) defaulting on the leasehold obligations on the 3170 Property and the Plaza Property and (iv) encumbering the Property with liens, litigation, and municipal encumbrances. These defaults show its lack of care towards the Three Properties and are diminishing their value. Similarly, if the Trusts are not allowed to intervene, its lien on the Stewart Grove Property will be extinguished without due process and without just compensation.

These undisputed facts, along with basic notions of equity and fairness, demonstrate a legitimate need for the Trusts to seek relief from the injunction and pursue enforcement of their

rights and remedies. Thus, equity dictates the Court lift the injunction for this limited purpose, and not make the Trusts wait until the disposition of this case to protect their collateral, which could be years from now and could even result in the statute of limitations elapsing on its claims.

IV. CONCLUSION

For the reasons stated herein, the Court should grant the Motion to allow the Trusts to intervene and receive relief from the Stay Order so that they may enforce their rights and remedies under the mortgages encumbering the Three Properties and prevent further waste and object to the sale of the Stewart Grove Property.

WHEREFORE, Martin I. Halpern, as trustee of the Martin I. Halpern Trust and as Trustee of the Halpern Family Trust respectfully requests the Court to: (i) grant their Motion to Intervene for the Limited Purpose of Seeking Relief from the Court's Order Granting Plaintiff Securities and Exchange Commission's Expedited Motion for Appointment of Receiver, Asset Freeze, and Other Relief against the Company Defendants and to protect its interest in the Stewart Grove Property including filing objections to the Receiver's Expedited Motion to Approve Sale Free and Clear and Related Settlement Agreement and Lien Claims Process; (ii) enter an Order lifting the stay and allowing the Trusts to exercise their right to foreclose on the 3170 Mortgage, the Plaza Mortgage and the Condo Mortgage, permitting the Trusts to foreclose on the Three Properties and enforce all other rights and remedies afforded under these mortgages and applicable law; (iii) decreeing that the Three Properties are not subject to the Receivership or the Stay Order; (iv) alternatively, enter an Order requiring the Receiver to perform all financial obligations under the 3170 Mortgage, the Plaza Mortgage and the Condo Mortgage as well as the 3170 Lease and Plaza Leases, including but not limited to curing all monetary and non-monetary defaults forthwith, (v) enter an Order lifting the stay and allowing the Trusts to exercise their right to foreclose on the

Stewart Grove Property, permitting the Trusts to foreclose on the Stewart Grove Property and enforce all other rights and remedies afforded under its mortgage and applicable law; and (vi) enter all other orders that are necessary and just.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

The undersigned counsel hereby certifies that, on May 3, 2024, my office and Rob Hyman conferred verbally and in writing with the Receiver and its counsel, regarding the relief sought herein. Counsel for Receiver indicated it opposes the relief sought. On May 6, 2024, my office verbally conferred with counsel for Mr. Kapoor, who stated that his client did not oppose the relief sought and would approve the intervention. On May 6, 2024, my office and Rob Hyman conferred verbally with the SEC, who received a draft copy of this motion on May 3, 2024. During this conversation, the SEC confirmed that it reviewed motion, mentioned that it typically views requests for intervention skeptically but addresses them on a case-by-case basis, and stated that it would need more time to evaluate what is sought and decide whether to oppose or agree to the requested relief. Ultimately, the SEC indicated that it would oppose the motion.

VERIFICATION

Under penalty of perjury, I, Rob Hyman, as authorized representative of the Halpern Family Trust and the Martin Halpern Revocable Trust, state that I have read the foregoing motion and that the facts alleged therein are true and correct to the best of my knowledge and belief.



Rob Hyman

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ Mark F. Raymond

Mark F. Raymond, Esq.

Florida Bar No. 373397

Mark.Raymond@nelsonmullins.com

Francisco Armada

Fla. Bar No. 45291

Francisco.Armada@nelsonmullins.com

One Biscayne Tower

2 South Biscayne Blvd.

21st Floor

Miami, FL 33131

Telephone: 305.373.9411

Facsimile: 305.373.9443

*Attorneys for Martin I. Halpern, as Trustee of
the Martin I. Halpern Trust and the Halpern
Family Trust*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing document was served via CM/ECF on May 7, 2024 on the parties listed within CM/ECF.

/s/ Mark F. Raymond
Mark F. Raymond, Esq.

EXHIBIT 1

CFN: 20220440743 BOOK 33216 PAGE 1208
DATE:06/01/2022 09:32:22 AM
MTG DOC 8,400.00
INTANGIBLE 4,800.00
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

Prepared by and return to:

Rob Hyman, Esq.
110 SE 6th Street, Suite 1700
Fort Lauderdale, Florida
33301
954-780-8250

MORTGAGE

This Mortgage is made this 27th day of May 2022 by and between Urbin Commodore Residential II SPE, LLC, a Florida limited liability company, whose principal office is located at 299 Alhambra Circle, Suite 510, Coral Gables, Florida 33134, hereinafter called the “Mortgagor”, and The Halpern Family Trust, a Florida statutory trust (“HFT”), and the Martin I. Halpern Revocable Trust (“MIHRT”), a Florida statutory trust, whose addresses are c/o Rob Hyman, P.A. 110 SE 6th Street, Suite 1700, Fort Lauderdale, Florida 33301, hereinafter collectively the MIJRT and the HFT are the “Mortgagee”:

The terms “Mortgagor” and “Mortgagee” shall include heirs, personal representative, successors, legal representatives, and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires. All decisions of the Mortgagee must be made unanimously by HFT and MIHRT. HFT has advanced 75% of the Loan and MIHRT has advanced 25% of the Loan.

Mortgagor, for and in consideration of the aggregate sum named in the Promissory Note, a copy of which is attached hereto and made a part of hereof, the receipt of which is hereby acknowledged, does grant, bargain and sell to the said Mortgagee, his successors and assigns, in fee simple, the following described land, situate, lying and being in Miami-Dade County, Florida to-wit:

See Exhibit “A”

hereinafter the “Mortgaged Property.”

THIS MORTGAGE MAY NOT BE ASSUMED EXCEPT WITH MORTGAGEE’S PRIOR WRITTEN CONSENT (WHICH SHALL NOT BE UNREASONABLY WITHHELD) AND UPON THE SALE, TRANSFER, LEASE OPTION TO PURCHASE, AGREEMENT FOR DEED OR TRANSFER IN ANY OTHER MANNER THE NOTE SECURED HEREBY BECOMES DUE AND PAYABLE IN FULL.

And said Mortgagor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Provided always, that Mortgagor, as consideration for Mortgagee issuing the Loan, its

successors or assigns, shall pay unto the said Mortgagee, its successors or assigns, that certain Promissory Note (the "Promissory Note") of even date executed by Borrower and secured by Mortgagor, in the principal amount of \$2,400,000, and Mortgagor shall perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said Mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, all costs and expenses including reasonable attorney's fees that Mortgagee may incur in connecting money secured by this Mortgage, and also in enforcing this Mortgage by suit or otherwise, then this Mortgage and the estate hereby created shall cease and be null and void.

Mortgagor hereby covenants and agrees:

1. **Payment Obligations:** To secure pay of the principal and interest and other sums of money payable by virtue of said Promissory Note and this Mortgage, or either, promptly on the days respectively the same severally come due.

2. **Insurance:** Mortgagor will maintain all insurance policies that in Mortgagor's best judgment will insure the security of the Mortgaged Property. In the event any sum of money becomes payable under such policy, Mortgagee, its legal representative or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit Mortgagor to receive and use it or any part thereof for repair or replacement, without hereby waiving or impairing any equity, lien or right under or by virtue of this mortgage. In the event of loss Mortgagor shall give immediate notice to Mortgagee.

3. **Preservation of Mortgaged Property:** Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property, or any part thereof. In the event Mortgagee deems in its sole discretion that the Mortgaged Property is subject to waste, impairment, or deterioration, Mortgagee may take actions consistent with preserving the Mortgaged Property. Any such action shall not be deemed a waiver or Mortgagee's rights to enforce this Mortgage and/or to declare a Default of the Mortgage and/or loan documents.

4. **Discharge of Liens:** Mortgagor shall not permit another lien or mortgage to be placed ahead of this mortgage. Mortgagor shall take all necessary actions to remove any such superior lien from the Mortgaged Property. Mortgagee, at its sole option, may take all necessary actions to remove such liens from the Mortgaged Property. Any funds expended by Mortgagee in removing said liens will be considered an advance of funds to Mortgagor. Mortgagor will be required to repay any such advance within ten (10) days written notice by Mortgagee. Failure to repay such an advance after notice will constitute an Event of Default.

5. **Real Estate Taxes:** Mortgagor shall provide proof of payment of annual real estate taxes by March 15, for the preceding year's taxes. Failure of Mortgagor to pay the taxes by such date shall constitute an event of default. Mortgagee may, at its sole option, pay the taxes and the full amount of such payment by Mortgagee shall be added to the principal balance owed on the mortgage and shall accrue interest at the maximum rate allowable by law.

6. **Appointment of Receiver:** The Mortgagee may, at any time pending a suit upon this mortgage, apply to the court having jurisdiction thereof for the appointment of a receiver, and

such court shall forthwith appoint a receiver, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver, and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee. The rents, profits, income, issues, and revenues shall be applied by such receiver according to the lien of this mortgage.

7. **Event of Default:** If any of the sums of money due and owing to Mortgagee under the terms of the Promissory Note and this Mortgage, including but not limited to any advance made by Mortgagee for the payment of insurance or taxes, or an advance to preserve the Mortgaged Property and/or to remove a lien or other encumbrance, are not paid within 5 days after same become due and payable, or 10 days for repayment of any advance made by Mortgagee after notice, or if each of the stipulations, and agreements, conditions and covenants of the Promissory Note and this Mortgage, or either, are not fully performed or complied with, including by not limited to the timely payment of real estate taxes and/or the securing and maintaining insurance, said failure of performance by the Mortgagor will constitute an Event of Default of the loan. Thereafter, the aggregate sum owed on the Promissory Note shall become due and payable forthwith or thereafter at the option of Mortgagee, his successors, legal representatives, or assigns.

8. **Remedies of Mortgagee:** Upon an Event of Default by Mortgagor, Mortgagee shall be entitled to pursue all remedies in law and in equity, including but not limited to accelerating the outstanding indebtedness, filing suit in a court of law seeking damages for breach of the Promissory Note or any of the Loan Documents as described in the Note and this Mortgage, and at the election of Mortgagee, filing a foreclosure action against all real and personal property secured by this mortgage. Mortgagee may recover all reasonable attorney's fees and costs in any suit, action, or proceeding through and including any appeals or bankruptcy proceedings from Mortgagor. Mortgagor acknowledges that this Mortgage is a material inducement for Mortgagee to issue the Loan to Borrower and accepts this material inducement as sufficient consideration to give Mortgagee this Mortgage. Mortgagor waives any claim that Mortgagor did not receive sufficient consideration from Mortgagee in exchange for this Mortgage.

9. **Assignment of Rents and Leases:** Mortgagor hereby assigns all right, title and interest of Mortgage in and to all rents, royalties, issues, profits, revenues, income and other benefits of and from all or any part of the Mortgaged Property or any business conducted thereon by Mortgagor, without limitation, and all rights of Mortgagor to collect and receive the same to Mortgagee, provide, however, that permission is hereby given by Mortgagee to Mortgagor, so long as no Event of Default shall have occurred and be continuing, to collect and use such rents, royalties, issues, profits, revenues, income and other benefits as they become due and payable, but not in advance thereof, which permission shall terminate immediately without notice to Mortgagor upon the occurrence of, and during the continuance of, any Event of Default. Mortgagor further covenants that all rents and other income actually received by Mortgagor in respect of the Mortgaged Property, including, without limitation, expense reimbursements from tenants, business or rental interruption insurance, but excluding casualty insurance proceeds and condemnation proceeds, shall be used first to pay debt service and other amounts as coming due under the Loan Documents, then for operating expenses associated with the Mortgaged Property, and then, provided no Event of Default shall exist, for general operating purposes of Mortgagor.

10. **Security Agreement:** Mortgagor hereby grants to Mortgagee a secured interest in all equipment, improvements, fixtures and any other personal property and fixtures located on the Mortgaged Property. This Mortgage shall act as a security agreement and fixture filing for the purpose of creating and perfecting a security interest in all such personal property and fixtures. In addition to all rights and remedies specified in this Mortgage, Mortgagee shall have all the rights and remedies of a secured party under the Florida Uniform Commercial Code, as amended (the "UCC") and other applicable law.

11. **Mortgagee's Right to Preserve its Lien Rights:** Mortgagee is hereby irrevocably authorized, at Mortgagee's option, to institute and maintain any and all suits and proceedings as Mortgagee may deem advisable to prevent any impairment of the Mortgaged Property or the security of this Mortgage by any unlawful acts or omissions; to prevent the occurrence or continuance of any violation of this Mortgage or any of the Loan Documents; to foreclose this Mortgage after the occurrence of an event of default; to preserve and protect its interest in the Mortgaged Property; to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or invalid, if the enforcement of or compliance with such legislation, enactment, rule or order might impair the Mortgaged Property or the security of this Mortgage or be prejudicial to Mortgagee's interest.

12. **Choice of Law:** This Mortgage and the Note hereby secured shall be construed and enforced according to the laws of the State of Florida.

13. **Transfer of Title:** The principal sum secured hereby, along with any interest to be paid in accordance with the terms of the Note secured hereby, shall immediately become due and payable without notice, if a transfer of title to the premises by sale or otherwise is made without Mortgagee's written consent, while this mortgage remains a lien thereon, at the option of Mortgagee, his successors, legal representatives, or assigns.

14. **Waiver of Jury Trial:** MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS MORTGAGE, THE NOTE, THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WHETHER BASED ON CONTRACT, EQUITY, TORT OR ANY OTHER THEORY.

15. **Submission to Jurisdiction.** Mortgagor hereby irrevocably and unconditionally: (i) agrees that any legal action, suit or proceeding arising out of or relating to this Mortgage may be brought in the state court of Miami-Dade County, Florida; and (ii) submits to the exclusive jurisdiction of any such court in any such action, suit or proceeding. Final judgment against Borrower in any action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment.

16. **Waiver of Conditions:** All conditions to any agreement or obligation of Mortgagee under this Mortgage or any of the other Loan Documents are solely for the benefit of Mortgagee. Any or all such conditions may be waived or modified at any time or times by Mortgagee. No such

waiver or modification in any particular instance shall affect Mortgagee's discretion in dealing with any such condition in any other instance.

17. **Future Advances:** This Mortgage is given to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$25,000,000, plus interest thereon, and any disbursements made for the payment of taxes, levies, insurance, or other advances made to protect the priority of the lien granted hereby or the condition of the Mortgaged Property.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written:

[signatures on next page]

IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

WITNESSES:

URBIN COMMODORE RESIDENTIAL II SPE, LLC, a Florida limited liability company

Name: Jonathan D. ...

By: URBIN Coconut Grove Partners, LLC,
a Florida limited liability company,
its Manager

Name: Raymond Gonzalez

By: URBIN, LLC,
a Florida limited liability company,
its Manager

By: URBIN Founders Group, LLC,
a Florida limited liability company,
its Manager

By:
Name: Rishi Kapoor
Title: Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 26 day of May 2022, by Rishi Kapoor, as Manager of URBIN Founders Group, LLC, a Florida limited liability company, the Manager of URBIN, LLC, a Florida limited liability company, the Manager of URBIN Coconut Grove Partners, LLC, a Florida limited liability company, the Manager of URBIN Commodore Restaurant SPE, LLC, a Florida limited liability company on behalf of the companies. Said person is personally known to me or has produced a valid driver's license as identification.

Notary Public; State of Florida



Raymond Gonzalez
Comm. #HH116723
Expires: Apr. 13, 2025
Bonded Thru Aaron Notary

Exhibit "A"

Legal Description of the Premises

PARCEL 1: (Fee Simple) "3170 Commodore Plaza"

Lots 6 and 36, Block 1, of IRVING J. THOMAS COMPANY'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 18, Page 25, of the Public Records of Miami-Dade County, Florida.

LESS AND EXCEPT THEREFROM that portion of Lot 36 conveyed to the City of Miami for street and/or sidewalk purposes pursuant to that Deed recorded in Deed Book 4236, Page 289, of the Public Records of Miami-Dade County, Florida, described as follows:

Beginning at the most Southerly corner of Lot 36, in Block 1, of IRVING J. THOMAS COMPANY'S SUBDIVISION (also known as COMMODORE PLAZA), according to the Plat thereof, as recorded in Plat Book 18, Page 25, of the Public Records of Miami-Dade County, Florida; thence run North along the West line of said COMMODORE PLAZA for a distance of 17.0 feet to a point; thence run South 28°35' East for a distance of 12.54 feet more or less to a point on the Southeast line of said Lot 36; thence run Southwesterly along the Southeast line of said Lot 36 for a distance of 8.48 feet to the Point of Beginning.

All of said lands situate, lying and being in of Miami-Dade County, Florida.

PARCEL 2 (Leasehold Estate)

A Leasehold Estate as created by that certain Ground Lease by and between Dharma Studio, Inc., a Florida corporation (Ground Lessor), and Grouper Financial, Inc., a Florida corporation (Original Ground Lessee), dated December 31, 2019, as evidenced by Memorandum or Ground Lease recorded on June 23, 2020 in Official Records Book 31982, Page 556, as amended by Amended Memorandum of Ground Lease recorded February 3, 2022 in Official Records Book 32999, page 4877, of the Public Records of Miami-Dade County, Florida, and evidencing the assignment by Grouper Financial Inc., a Florida corporation to Urbin Commodore Residential II SPE, LLC, a Florida limited liability company; as further affected by Release of Real Property from Ground Lease filed February 3, 2022 in Official Records Book 32999, page 4882. Said Lease includes a purchase option, as described therein, as disclosed by that Memorandum of Ground Lease, encumbering the following described real property, to wit:

("3166 Commodore Plaza")

Lots 7 and 35, Block 1, of IRVING J. THOMAS COMPANY'S SUBDIVISION, according to the Plat thereof, as recorded in Plat Book 18, Page 25, of the Public Records of Miami-Dade County, Florida.

LESS AND EXCEPT THEREFROM that portion of Lot 35 conveyed to the City of Miami for street and/or sidewalk purposed pursuant to that Deed recorded in Deed Book 4236, Page 283, of the Public Records of Miami-Dade County, Florida, described as follows:

Beginning at the most Southerly corner of Lot 35, Block 1, of IRVING J. THOMAS COMPANY'S SUBDIVISION (also known as COMMODORE PLAZA), according to the Plat thereof, as recorded in Plat Book 18, Page 25, of the Public Records of Miami-Dade County, Florida; thence run North 45° West along the Southwesterly boundary of said IRVING J. THOMAS COMPANY'S SUBDIVISION for a distance of 18.75 feet to a point on the West line of said IRVING J. THOMAS COMPANY'S SUBDIVISION; thence run North for a distance of 8.66 feet more or less to the intersection of the Northwesterly line of said Lot 35; thence run Northeasterly along the Northwest line of said Lot 35 for a distance of 8.48 feet to a point; thence run South 28°35' East for a distance of 26.06 feet more or less to a point on the Southeasterly line of said Lot 35; thence run Southwesterly along the Southeasterly line of said Lot 35 for a distance of 7.37 feet to the Point of Beginning.

All of said lands situate, lying and being in of Miami-Dade County, Florida.

EXHIBIT 2

CFN: 20220440750 BOOK 33216 PAGE 1237
DATE:06/01/2022 09:32:22 AM
MTG DOC 2,467.50
INTANGIBLE 1,410.00
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

Prepared by and return to:

Rob Hyman, Esq.
110 SE 6th Street, Suite 1700
Fort Lauderdale, Florida
33301
954-780-8250

AMENDED AND RESTATED MORTGAGE

THIS MORTGAGE AMENDS, RESTATES, AND RENEWS THAT CERTAIN MORTGAGE DEED AND SECURITY AGREEMENT RECORDED OCTOBER 1, 2018 IN OFFICIAL RECORDS BOOK 31163, PAGE 474, WHICH MORTGAGE WAS MODIFIED BY THAT CERTAIN MORTGAGE AND LOAN DOCUMENT MODIFICATION AND SPREADER AGREEMENT RECORDED JULY 5, 2019 IN OFFICIAL RECORDS BOOK 31510, PAGE 494 (COLLECTIVELY, THE "EXISTING MORTGAGE"). THE EXISTING MORTGAGE WAS ASSIGNED TO THE MORTGAGEE DEFINED HEREIN BY VIRTUE OF THAT CERTAIN ASSIGNMENT OF MORTGAGE RECORDED CONCURRENTLY HERewith. THE EXISTING MORTGAGE SECURES A LOAN IN THE AGGREGATE AMOUNT OF \$9,345,000 FOR WHICH DOCUMENTARY STAMPS AND INTANGIBLE TAXES IN THE AMOUNT OF \$32,707.50 AND INTANGIBLE TAXES IN THE AMOUNT OF \$18,690.00 WERE PAID AND EVIDENCE OF PAYMENT IS SET FORTH ON THE EXISTING MORTGAGE. THE OUTSTANDING PRINCIPAL BALANCE OF THE EXISTING MORTGAGE IS \$8,795,000.00. ACCORDINGLY, DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$2,467.50 AND INTANGIBLE TAXES IN THE AMOUNT OF \$1,410.00 ARE BEING PAID IN CONNECTION HERewith IN ACCORDANCE WITH SECTION 201.09(1) AND 199.143(1), F.S. AND RULE 12B-4.052 (10) & (12)(B), F.A.C.

[intentionally blank]

This Amended and Restated Mortgage is made this 27th day of May 2022 by and between Urbin Commodore SPE, LLC, a Florida limited liability company, whose principal office is located at 299 Alhambra Circle, Suite 510, Coral Gables, Florida 33134, and Urbin Commodore Restaurant SPE, LLC, a Florida limited liability company, whose principal office is located at 299 Alhambra Circle, Suite 510, Coral Gables, Florida 33134, collectively hereinafter called the “Mortgagor”, and The Halpern Family Trust, a Florida statutory trust (“HFT”), and the Martin I. Halpern Revocable Trust (“MIJRT”), a Florida statutory trust, whose addresses are c/o Rob Hyman, 110 SE 6th Street, Suite 1700, Fort Lauderdale, Florida 33301, hereinafter collectively the MIJRT and the HFT are the “Mortgagee”:

The terms “Mortgagor” and “Mortgagee” shall include heirs, personal representative, successors, legal representatives and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires. All decisions of the Mortgagee must be made unanimously by HFT and MIJRT. HFT has advanced 75% of the Loan and MIJRT has advanced 25% of the Loan.

Mortgagor, for and in consideration of the aggregate sum named in the Promissory Note, a copy of which is attached hereto and made a part of hereof, the receipt of which is hereby acknowledged, does grant, bargain and sell to the said Mortgagee, his successors and assigns, in fee simple, the following described land, situate, lying and being in Miami-Dade County, Florida to-wit:

See Exhibit “A”

hereinafter the “Mortgaged Property.”

THIS MORTGAGE MAY NOT BE ASSUMED EXCEPT WITH MORTGAGEE’S PRIOR WRITTEN CONSENT (WHICH SHALL NOT BE UNREASONABLY WITHHELD) AND UPON THE SALE, TRANSFER, LEASE OPTION TO PURCHASE, AGREEMENT FOR DEED OR TRANSFER IN ANY OTHER MANNER THE NOTE SECURED HEREBY BECOMES DUE AND PAYABLE IN FULL.

And said Mortgagor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Provided always, that Mortgagor, as consideration for Mortgagee issuing the Loan, its successors or assigns, shall pay unto the said Mortgagee, its successors or assigns, that certain Amended and Restated Promissory Note (the “Promissory Note”) of even date executed by Borrower and secured by Mortgagor, in the principal amount of \$9,500,000.00, and Mortgagor shall perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said Mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, all costs and expenses including reasonable attorney’s fees that Mortgagee may incur in connecting money secured by this Mortgage, and also in enforcing this Mortgage by suit or otherwise, then this Mortgage and the estate hereby created shall cease and be null and void.

Mortgagor hereby covenants and agrees:

1. **Payment Obligations:** To secure pay of the principal and interest and other sums of money payable by virtue of said Promissory Note and this Mortgage, or either, promptly on the days respectively the same severally come due.

2. **Insurance:** Mortgagor will maintain all insurance policies that in Mortgagor's best judgment will insure the security of the Mortgaged Property. In the event any sum of money becomes payable under such policy, Mortgagee, its legal representative or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit Mortgagor to receive and use it or any part thereof for repair or replacement, without hereby waiving or impairing any equity, lien or right under or by virtue of this mortgage. In the event of loss Mortgagor shall give immediate notice to Mortgagee.

3. **Preservation of Mortgaged Property:** Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property, or any part thereof. In the event Mortgagee deems in its sole discretion that the Mortgaged Property is subject to waste, impairment, or deterioration, Mortgagee may take actions consistent with preserving the Mortgaged Property. Any such action shall not be deemed a waiver or Mortgagee's rights to enforce this Mortgage and/or to declare a Default of the Mortgage and/or loan documents.

4. **Discharge of Liens:** Mortgagor shall not permit another lien or mortgage to be placed ahead of this mortgage. Mortgagor shall take all necessary actions to remove any such superior lien from the Mortgaged Property. Mortgagee, at its sole option, may take all necessary actions to remove such liens from the Mortgaged Property. Any funds expended by Mortgagee in removing said liens will be considered an advance of funds to Mortgagor. Mortgagor will be required to repay any such advance within ten (10) days written notice by Mortgagee. Failure to repay such an advance after notice will constitute an Event of Default.

5. **Real Estate Taxes:** Mortgagor shall provide proof of payment of annual real estate taxes by March 15, for the preceding year's taxes. Failure of Mortgagor to pay the taxes by such date shall constitute an event of default. Mortgagee may, at its sole option, pay the taxes and the full amount of such payment by Mortgagee shall be added to the principal balance owed on the mortgage and shall accrue interest at the maximum rate allowable by law.

6. **Appointment of Receiver:** The Mortgagee may, at any time pending a suit upon this mortgage, apply to the court having jurisdiction thereof for the appointment of a receiver, and such court shall forthwith appoint a receiver, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver, and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee. The rents, profits, income, issues, and revenues shall be applied by such receiver according to the lien of this mortgage.

7. **Event of Default:** If any of the sums of money due and owing to Mortgagee under the terms of the Promissory Note and this Mortgage, including but not limited to any advance made by Mortgagee for the payment of insurance or taxes, or an advance to preserve the Mortgaged Property and/or to remove a lien or other encumbrance, are not paid within 5 days after same become due and payable, or 10 days for repayment of any advance made by Mortgagee after notice,

or if each of the stipulations, and agreements, conditions and covenants of the Promissory Note and this Mortgage, or either, are not fully performed or complied with, including by not limited to the timely payment of real estate taxes and/or the securing and maintaining insurance, said failure of performance by the Mortgagor will constitute an Event of Default of the loan. Thereafter, the aggregate sum owed on the Promissory Note shall become due and payable forthwith or thereafter at the option of Mortgagee, his successors, legal representatives, or assigns.

8. **Remedies of Mortgagee:** Upon an Event of Default by Mortgagor, Mortgagee shall be entitled to pursue all remedies in law and in equity, including but not limited to accelerating the outstanding indebtedness, filing suit in a court of law seeking damages for breach of the Promissory Note or any of the Loan Documents as described in the Note and this Mortgage, and at the election of Mortgagee, filing a foreclosure action against all real and personal property secured by this mortgage. Mortgagee may recover all reasonable attorney's fees and costs in any suit, action, or proceeding through and including any appeals or bankruptcy proceedings from Mortgagor. Mortgagor acknowledges that this Mortgage is a material inducement for Mortgagee to issue the Loan to Borrower and accepts this material inducement as sufficient consideration to give Mortgagee this Mortgage. Mortgagor waives any claim that Mortgagor did not receive sufficient consideration from Mortgagee in exchange for this Mortgage.

9. **Assignment of Rents and Leases:** Mortgagor hereby assigns all right, title and interest of Mortgage in and to all rents, royalties, issues, profits, revenues, income and other benefits of and from all or any part of the Mortgaged Property or any business conducted thereon by Mortgagor, without limitation, and all rights of Mortgagor to collect and receive the same to Mortgagee, provide, however, that permission is hereby given by Mortgagee to Mortgagor, so long as no Event of Default shall have occurred and be continuing, to collect and use such rents, royalties, issues, profits, revenues, income and other benefits as they become due and payable, but not in advance thereof, which permission shall terminate immediately without notice to Mortgagor upon the occurrence of, and during the continuance of, any Event of Default. Mortgagor further covenants that all rents and other income actually received by Mortgagor in respect of the Mortgaged Property, including, without limitation, expense reimbursements from tenants, business or rental interruption insurance, but excluding casualty insurance proceeds and condemnation proceeds, shall be used first to pay debt service and other amounts as coming due under the Loan Documents, then for operating expenses associated with the Mortgaged Property, and then, provided no Event of Default shall exist, for general operating purposes of Mortgagor.

10. **Security Agreement:** Mortgagor hereby grants to Mortgagee a secured interest in all equipment, improvements, fixtures and any other personal property and fixtures located on the Mortgaged Property. This Mortgage shall act as a security agreement and fixture filing for the purpose of creating and perfecting a security interest in all such personal property and fixtures. In addition to all rights and remedies specified in this Mortgage, Mortgagee shall have all the rights and remedies of a secured party under the Florida Uniform Commercial Code, as amended (the "UCC") and other applicable law.

11. **Mortgagee's Right to Preserve its Lien Rights:** Mortgagee is hereby irrevocably authorized, at Mortgagee's option, to institute and maintain any and all suits and proceedings as Mortgagee may deem advisable to prevent any impairment of the Mortgaged Property or the

security of this Mortgage by any unlawful acts or omissions; to prevent the occurrence or continuance of any violation of this Mortgage or any of the Loan Documents; to foreclose this Mortgage after the occurrence of an event of default; to preserve and protect its interest in the Mortgaged Property; to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or invalid, if the enforcement of or compliance with such legislation, enactment, rule or order might impair the Mortgaged Property or the security of this Mortgage or be prejudicial to Mortgagee's interest.

12. **Choice of Law:** This Mortgage and the Note hereby secured shall be construed and enforced according to the laws of the State of Florida.

13. **Transfer of Title:** The principal sum secured hereby, along with any interest to be paid in accordance with the terms of the Note secured hereby, shall immediately become due and payable without notice, if a transfer of title to the premises by sale or otherwise is made without Mortgagee's written consent, while this mortgage remains a lien thereon, at the option of Mortgagee, his successors, legal representatives, or assigns.

14. **Waiver of Jury Trial:** MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS MORTGAGE, THE NOTE, THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WHETHER BASED ON CONTRACT, EQUITY, TORT OR ANY OTHER THEORY.

15. **Submission to Jurisdiction.** Mortgagor hereby irrevocably and unconditionally: (i) agrees that any legal action, suit or proceeding arising out of or relating to this Mortgage may be brought in the state court of Miami-Dade County, Florida; and (ii) submits to the exclusive jurisdiction of any such court in any such action, suit or proceeding. Final judgment against Borrower in any action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment.

16. **Waiver of Conditions:** All conditions to any agreement or obligation of Mortgagee under this Mortgage or any of the other Loan Documents are solely for the benefit of Mortgagee. Any or all such conditions may be waived or modified at any time or times by Mortgagee. No such waiver or modification in any particular instance shall affect Mortgagee's discretion in dealing with any such condition in any other instance.

17. **Future Advances:** This Mortgage is given to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$25,000,000, plus interest thereon, and any disbursements made for the payment of taxes, levies, insurance, or other advances made to protect the priority of the lien granted hereby or the condition of the Mortgaged Property.

IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written:

[signatures on next page]

IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

WITNESSES:

URBIN COMMODORE

LLC, a Florida limited liability company

Name: Jonathan D. ...

By: URBIN Coconut Grove Partners, LLC,
a Florida limited liability company,
its Manager

Name: Raymond Gonzalez

By: URBIN, LLC,
a Florida limited liability company,
its Manager

By: URBIN Founders Group, LLC,
a Florida limited liability company,
its Manager

By:
Name: Rishi Kapoor
Title: Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization this 26 day of May 2022, by Rishi Kapoor, as Manager of URBIN Founders Group, LLC, a Florida limited liability company, the Manager of URBIN, LLC, a Florida limited liability company, the Manager of URBIN Coconut Grove Partners, LLC, a Florida limited liability company, the Manager of URBIN Commodore ~~Restaurant~~ SPE, LLC, a Florida limited liability company on behalf of the companies. Said person is personally known to me or has produced a valid driver's license as identification.

Notary Public; State of Florida

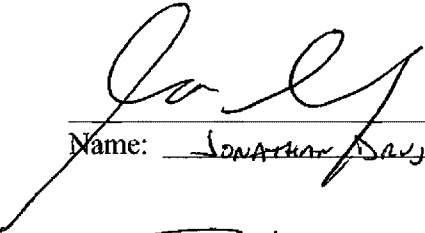


Raymond Gonzalez
Comm. #HH116723
Expires: Apr. 13, 2025
Bonded Thru Aaron Notary


IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

WITNESSES:

**URBIN COMMODORE RESTAURANT
SPE, LLC**, a Florida limited liability
company



Name: Jonathan Daviau

By: URBIN Coconut Grove Partners, LLC,
a Florida limited liability company,
its Manager


Name: Raymond Gonzalez

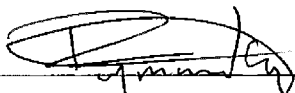
By: URBIN, LLC,
a Florida limited liability company,
its Manager

By: URBIN Founders Group, LLC,
a Florida limited liability company,
its Manager

By: 
Name: Rishi Kapoor
Title: Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of physical presence or online notarization this 26 day of May 2022, by Rishi Kapoor, as Manager of URBIN Founders Group, LLC, a Florida limited liability company, the Manager of URBIN, LLC, a Florida limited liability company, the Manager of URBIN Coconut Grove Partners, LLC, a Florida limited liability company, the Manager of URBIN Commodore Restaurant SPE, LLC, a Florida limited liability company on behalf of the companies. Said person is personally known to me or has produced a valid driver's license as identification.


Notary Public; State of Florida



Raymond Gonzalez
Comm. #HH116723
Expires: Apr. 13, 2025
Bonded Thru Aaron Notary

Exhibit "A"

Legal Description of the Premises

Parcel 1:

The improvements located on the following described land:

Lots 13, 14, 15, 27, 28 and 29, Block 1, Commodore Plaza, according to the plat thereof, as recorded in Plat Book 18, Page 25, of the Public Records of Miami-Dade County, Florida.

Parcel 2:

Lessee's interest in that certain Lease by and between TB 3138 Commodore Investments, LLC, a Florida limited liability company, Lessor, and Urbin Commodore SPE, LLC, a Florida limited liability company, Lessee, dated September 28, 2018, memorialized by that certain Memorandum of Lease, dated September 28, 2018, recorded October 1, 2018 in Official Records Book 31162, Page 4299, of the Public Records of Miami-Dade County, Florida.

Lots 13, 14, 15, 27, 28 and 29, Block 1, Commodore Plaza, according to the plat thereof, as recorded in Plat Book 18, Page 25, of the Public Records of Miami-Dade County, Florida, less and except and not including the improvements located thereof.

Parcel 3:

The Improvements located on the following described land:

Lots 12 and 30, Block 1, Irving J. Thomas Company's Subdivision in the Town of Coconut Grove, according to the map or plat thereof, as recorded in Plat Book 18, Page(s) 25, of the Public Records of Miami-Dade County, Florida.

Parcel 4:

Lessee's interest in that certain Ground Lease by and between TB 3120 Commodore Investments, LLC, a Florida limited liability company (Ground Lessor), and URBIN Commodore Restaurant SPE, LLC, a Florida limited liability company (Ground Lessee), dated June 28, 2019, and memorialized by that Memorandum of Ground Lease, dated June 28, 2019, recorded on July 5, 2019 in Official Records Book 31510, Page 513, of the Public Records of Miami - Dade County, Florida, in and to the following described land:

Lots 12 and 30, Block 1, Irving J. Thomas Company's Subdivision in the Town of Coconut Grove, according to the map or plat thereof, as recorded in Plat Book 18, Page(s) 25, of the Public Records of Miami-Dade County, Florida, Less and except, and not including the improvements located thereon.

EXHIBIT 3

CFN: 20220440747 BOOK 33216 PAGE 1224
DATE:06/01/2022 09:32:22 AM
MTG DOC 3,762.50
INTANGIBLE 2,150.00
HARVEY RUVIN, CLERK OF COURT, MIA-DADE CTY

Prepared by and return to:

Rob Hyman, Esq.
110 SE 6th Street, Suite 1700
Fort Lauderdale, Florida
33301
954-780-8250

AMENDED AND RESTATED MORTGAGE

THIS MORTGAGE AMENDS, RESTATES, AND RENEWS THAT CERTAIN MORTGAGE, SECURITY AGREEMENT AND FIXTURE FILING RECORDED IN OFFICIAL RECORDS BOOK 31611, PAGE 1572, AS AMENDED BY THAT CERTAIN MORTGAGE MODIFICATION AND SPREADER AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 31877, PAGE 2388, AND BY THAT CERTAIN MORTGAGE MODIFICATION AGREEMENT RECORDED MARCH 30, 2021 IN OFFICIAL RECORDS BOOK 32422, PAGE 422, AS FURTHER MODIFIED BY THAT MORTGAGE MODIFICATION AGREEMENT RECORDED IN OFFICIAL RECORDS BOOK 32633, PAGE 1442, ALL OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY (COLLECTIVELY, THE "EXISTING MORTGAGE"). THE EXISTING MORTGAGE WAS ASSIGNED TO MORTGAGEE HEREIN BY VIRTUE OF THAT CERTAIN ASSIGNMENT OF NOTE AND MORTGAGE RECORDED HERewith. THE EXISTING MORTGAGE SECURES A LOAN IN THE PRINCIPAL AMOUNT OF UP TO \$6,150,000 AND DOCUMENTARY STAMPS TAXES IN THE AMOUNT OF \$21,525.00 AND NON-REOCCURRING INTANGIBLE TAXES IN THE AMOUNT OF \$12,300.00 WERE PAID AND EVIDENCE OF PAYMENT IS SET FORTH ON THE EXISTING MORTGAGE. THE OUTSTANDING PRINCIPAL BALANCE OF THE EXISTING MORTGAGE IS \$3,025,000. ACCORDINGLY, DOCUMENTARY STAMP TAXES IN THE AMOUNT OF \$3,762.50 AND INTANGIBLE TAXES IN THE AMOUNT OF \$2,150.00 ARE BEING PAID IN CONNECTION HERewith IN ACCORDANCE WITH SECTION 201.09(1) AND 199.143(1), F.S. AND RULE 12B-4.052 (10) & (12)(B), F.A.C.

[intentionally blank]

This Amended and Restated Mortgage is made this 27th day of May 2022 by and between Urbin Commodore Residential SPE, LLC, a Florida limited liability company, whose principal office is located at 299 Alhambra Circle, Suite 510, Coral Gables, Florida 33134, hereinafter called the “Mortgagor”, and The Halpern Family Trust, a Florida statutory trust (“HFT”), and the Martin I. Halpern Revocable Trust (“MIHRT”), a Florida statutory trust, whose addresses are c/o Rob Hyman, 110 SE 6th Street, Suite 1700, Fort Lauderdale, Florida 33301, hereinafter collectively the MIHRT and the HFT are the “Mortgagee”:

The terms “Mortgagor” and “Mortgagee” shall include heirs, personal representative, successors, legal representatives and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires. All decisions of the Mortgagee must be made unanimously by HFT and MIHRT. HFT has advanced 75% of the Loan and MIHRT has advanced 25% of the Loan.

Mortgagor, for and in consideration of the aggregate sum named in the Promissory Note, a copy of which is attached hereto and made a part of hereof, the receipt of which is hereby acknowledged, does grant, bargain and sell to the said Mortgagee, his successors and assigns, in fee simple, the following described land, situate, lying and being in Miami-Dade County, Florida to-wit:

See Exhibit “A”

hereinafter the “Mortgaged Property.”

THIS MORTGAGE MAY NOT BE ASSUMED EXCEPT WITH MORTGAGEE’S PRIOR WRITTEN CONSENT (WHICH SHALL NOT BE UNREASONABLY WITHHELD) AND UPON THE SALE, TRANSFER, LEASE OPTION TO PURCHASE, AGREEMENT FOR DEED OR TRANSFER IN ANY OTHER MANNER THE NOTE SECURED HEREBY BECOMES DUE AND PAYABLE IN FULL.

And said Mortgagor does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Provided always, that Mortgagor, as consideration for Mortgagee issuing the Loan, its successors or assigns, shall pay unto the said Mortgagee, its successors or assigns, that certain Amended and Restated Promissory Note (the “Promissory Note”) of even date executed by Borrower and secured by Mortgagor, in the principal amount of \$4,100,000.00, and Mortgagor shall perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said Mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, all costs and expenses including reasonable attorney’s fees that Mortgagee may incur in connecting money secured by this Mortgage, and also in enforcing this Mortgage by suit or otherwise, then this Mortgage and the estate hereby created shall cease and be null and void.

Mortgagor hereby covenants and agrees:

1. **Payment Obligations:** To secure pay of the principal and interest and other sums of money payable by virtue of said Promissory Note and this Mortgage, or either, promptly on the days respectively the same severally come due.

2. **Insurance:** Mortgagor will maintain all insurance policies that in Mortgagor's best judgment will insure the security of the Mortgaged Property. In the event any sum of money becomes payable under such policy, Mortgagee, its legal representative or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit Mortgagor to receive and use it or any part thereof for repair or replacement, without hereby waiving or impairing any equity, lien or right under or by virtue of this mortgage. In the event of loss Mortgagor shall give immediate notice to Mortgagee.

3. **Preservation of Mortgaged Property:** Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property, or any part thereof. In the event Mortgagee deems in its sole discretion that the Mortgaged Property is subject to waste, impairment, or deterioration, Mortgagee may take actions consistent with preserving the Mortgaged Property. Any such action shall not be deemed a waiver or Mortgagee's rights to enforce this Mortgage and/or to declare a Default of the Mortgage and/or loan documents.

4. **Discharge of Liens:** Mortgagor shall not permit another lien or mortgage to be placed ahead of this mortgage. Mortgagor shall take all necessary actions to remove any such superior lien from the Mortgaged Property. Mortgagee, at its sole option, may take all necessary actions to remove such liens from the Mortgaged Property. Any funds expended by Mortgagee in removing said liens will be considered an advance of funds to Mortgagor. Mortgagor will be required to repay any such advance within ten (10) days written notice by Mortgagee. Failure to repay such an advance after notice will constitute an Event of Default.

5. **Real Estate Taxes:** Mortgagor shall provide proof of payment of annual real estate taxes by March 15, for the preceding year's taxes. Failure of Mortgagor to pay the taxes by such date shall constitute an event of default. Mortgagee may, at its sole option, pay the taxes and the full amount of such payment by Mortgagee shall be added to the principal balance owed on the mortgage and shall accrue interest at the maximum rate allowable by law.

6. **Appointment of Receiver:** The Mortgagee may, at any time pending a suit upon this mortgage, apply to the court having jurisdiction thereof for the appointment of a receiver, and such court shall forthwith appoint a receiver, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver, and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee. The rents, profits, income, issues, and revenues shall be applied by such receiver according to the lien of this mortgage.

7. **Event of Default:** If any of the sums of money due and owing to Mortgagee under the terms of the Promissory Note and this Mortgage, including but not limited to any advance made by Mortgagee for the payment of insurance or taxes, or an advance to preserve the Mortgaged Property and/or to remove a lien or other encumbrance, are not paid within 5 days after same become due and payable, or 10 days for repayment of any advance made by Mortgagee after notice,

or if each of the stipulations, and agreements, conditions and covenants of the Promissory Note and this Mortgage, or either, are not fully performed or complied with, including by not limited to the timely payment of real estate taxes and/or the securing and maintaining insurance, said failure of performance by the Mortgagor will constitute an Event of Default of the loan. Thereafter, the aggregate sum owed on the Promissory Note shall become due and payable forthwith or thereafter at the option of Mortgagee, his successors, legal representatives, or assigns.

8. **Remedies of Mortgagee:** Upon an Event of Default by Mortgagor, Mortgagee shall be entitled to pursue all remedies in law and in equity, including but not limited to accelerating the outstanding indebtedness, filing suit in a court of law seeking damages for breach of the Promissory Note or any of the Loan Documents as described in the Note and this Mortgage, and at the election of Mortgagee, filing a foreclosure action against all real and personal property secured by this mortgage. Mortgagee may recover all reasonable attorney's fees and costs in any suit, action, or proceeding through and including any appeals or bankruptcy proceedings from Mortgagor. Mortgagor acknowledges that this Mortgage is a material inducement for Mortgagee to issue the Loan to Borrower and accepts this material inducement as sufficient consideration to give Mortgagee this Mortgage. Mortgagor waives any claim that Mortgagor did not receive sufficient consideration from Mortgagee in exchange for this Mortgage.

9. **Assignment of Rents and Leases:** Mortgagor hereby assigns all right, title and interest of Mortgage in and to all rents, royalties, issues, profits, revenues, income and other benefits of and from all or any part of the Mortgaged Property or any business conducted thereon by Mortgagor, without limitation, and all rights of Mortgagor to collect and receive the same to Mortgagee, provide, however, that permission is hereby given by Mortgagee to Mortgagor, so long as no Event of Default shall have occurred and be continuing, to collect and use such rents, royalties, issues, profits, revenues, income and other benefits as they become due and payable, but not in advance thereof, which permission shall terminate immediately without notice to Mortgagor upon the occurrence of, and during the continuance of, any Event of Default. Mortgagor further covenants that all rents and other income actually received by Mortgagor in respect of the Mortgaged Property, including, without limitation, expense reimbursements from tenants, business or rental interruption insurance, but excluding casualty insurance proceeds and condemnation proceeds, shall be used first to pay debt service and other amounts as coming due under the Loan Documents, then for operating expenses associated with the Mortgaged Property, and then, provided no Event of Default shall exist, for general operating purposes of Mortgagor.

10. **Security Agreement:** Mortgagor hereby grants to Mortgagee a secured interest in all equipment, improvements, fixtures and any other personal property and fixtures located on the Mortgaged Property. This Mortgage shall act as a security agreement and fixture filing for the purpose of creating and perfecting a security interest in all such personal property and fixtures. In addition to all rights and remedies specified in this Mortgage, Mortgagee shall have all the rights and remedies of a secured party under the Florida Uniform Commercial Code, as amended (the "UCC") and other applicable law.

11. **Mortgagee's Right to Preserve its Lien Rights:** Mortgagee is hereby irrevocably authorized, at Mortgagee's option, to institute and maintain any and all suits and proceedings as Mortgagee may deem advisable to prevent any impairment of the Mortgaged Property or the

security of this Mortgage by any unlawful acts or omissions; to prevent the occurrence or continuance of any violation of this Mortgage or any of the Loan Documents; to foreclose this Mortgage after the occurrence of an event of default; to preserve and protect its interest in the Mortgaged Property; to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or invalid, if the enforcement of or compliance with such legislation, enactment, rule or order might impair the Mortgaged Property or the security of this Mortgage or be prejudicial to Mortgagee's interest.

12. **Choice of Law:** This Mortgage and the Note hereby secured shall be construed and enforced according to the laws of the State of Florida.

13. **Transfer of Title:** The principal sum secured hereby, along with any interest to be paid in accordance with the terms of the Note secured hereby, shall immediately become due and payable without notice, if a transfer of title to the premises by sale or otherwise is made without Mortgagee's written consent, while this mortgage remains a lien thereon, at the option of Mortgagee, his successors, legal representatives, or assigns.

14. **Waiver of Jury Trial:** MORTGAGOR HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY RELATING TO THIS MORTGAGE, THE NOTE, THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WHETHER BASED ON CONTRACT, EQUITY, TORT OR ANY OTHER THEORY.

15. **Submission to Jurisdiction.** Mortgagor hereby irrevocably and unconditionally: (i) agrees that any legal action, suit or proceeding arising out of or relating to this Mortgage may be brought in the state court of Miami-Dade County, Florida; and (ii) submits to the exclusive jurisdiction of any such court in any such action, suit or proceeding. Final judgment against Borrower in any action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment.

16. **Waiver of Conditions:** All conditions to any agreement or obligation of Mortgagee under this Mortgage or any of the other Loan Documents are solely for the benefit of Mortgagee. Any or all such conditions may be waived or modified at any time or times by Mortgagee. No such waiver or modification in any particular instance shall affect Mortgagee's discretion in dealing with any such condition in any other instance.

17. **Future Advances:** This Mortgage is given to secure not only existing indebtedness, but also future advances, whether such advances are obligatory or are to be made at the option of Mortgagee, or otherwise, as are made within twenty (20) years from the date hereof, to the same extent as if such future advances are made on the date of the execution of this Mortgage. The total amount of indebtedness that may be so secured may decrease to a zero amount from time to time, or may increase from time to time, but the total unpaid balance so secured at one time shall not exceed \$25,000,000, plus interest thereon, and any disbursements made for the payment of taxes, levies, insurance, or other advances made to protect the priority of the lien granted hereby or the condition of the Mortgaged Property.

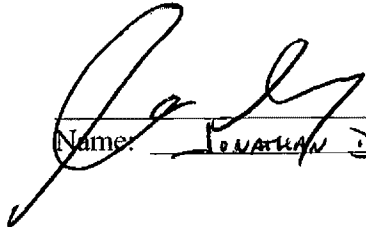
IN WITNESS WHEREOF, Mortgagor has caused this Mortgage to be executed as of the day and year first above written:

[signatures on next page]


IN WITNESS WHEREOF, the Mortgagor has duly executed this Mortgage the day and year first above written.

WITNESSES:

URBIN COMMODORE RESIDENTIAL
SPE, LLC, a Florida limited liability
company

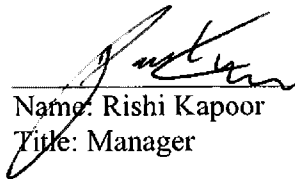

Name: Raymond Gonzalez

By: URBIN Coconut Grove Partners, LLC,
a Florida limited liability company,
its Manager


Name: Raymond Gonzalez

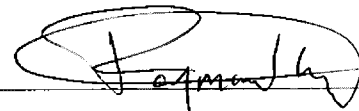
By: URBIN, LLC,
a Florida limited liability company,
its Manager

By: URBIN Founders Group, LLC,
a Florida limited liability company,
its Manager

By: 
Name: Rishi Kapoor
Title: Manager

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

The foregoing instrument was acknowledged before me by means of [X] physical presence or [] online notarization this 26 day of May 2022, by Rishi Kapoor, as Manager of URBIN Founders Group, LLC, a Florida limited liability company, the Manager of URBIN, LLC, a Florida limited liability company, the Manager of URBIN Coconut Grove Partners, LLC, a Florida limited liability company, the Manager of URBIN Commodore Residential SPE, LLC, a Florida limited liability company on behalf of the companies. Said person is personally known to me or has produced a valid driver's license as identification.


Notary Public; State of Florida



Raymond Gonzalez
Comm. #HH116723
Expires: Apr. 13, 2025
Bonded Thru Aaron Notary

Exhibit "A"

Legal Description of the Premises

Condominium Units Nos. 1C, 1I, 1J, 1K, 3A, 3B, 3C, 3D, 4A, 5A and 6E, of COMMODORE CENTRE, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 12761, Page 2219, of the Public Records of Miami-Dade County, Florida, and any amendments thereto, together with its undivided share in the common elements.

Condominium Units Nos. 4B, 4C, 4D, 4E, 4F, 4G, 4H, 5B, 5C, 5E, 5F, 6A, 6C, 6D, 6F and 6H, of COMMODORE CENTRE, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 12761, Page 2219, of the Public Records of Miami-Dade County, Florida, and any amendments thereto, together with its undivided share in the common elements.

Condominium Unit Nos. 5D and 6B, of COMMODORE CENTRE, A CONDOMINIUM, according to the Declaration of Condominium thereof, as recorded in Official Records Book 12761, Page 2219, of the Public Records of Miami-Dade County, Florida, and any amendments thereto, together with its undivided share in the common elements.