

PJMD
27 new
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Hirsbrunner, Dawne

From: Blodgett, Bob
Sent: Wednesday, January 13, 2010 1:35 PM
To: Hirsbrunner, Dawne
Subject: FW: PJMD - Vermilion Creek Condos Property
Attachments: Forebearance-v06 (FULLY EXECUTED).pdf

pp



Bob Blodgett

Principal

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COUNT ON INSIGHT®

From: dan@gsvcolorado.com [mailto:dan@gsvcolorado.com]
Sent: Wednesday, January 13, 2010 1:02 PM
To: nasheldon@gmail.com; bill@emeraldislelandscaping.com; Don Leyn; Clint Waldron; bkeesen@aol.com
Cc: Dianne Miller; Matthew Ruhland; Vince Toenjes; Blodgett, Bob; Hirsbrunner, Dawne
Subject: PJMD - Vermilion Creek Condos Property

All:

Congratulations! As you may have already heard, the District was the successful bidder at the Arapahoe County Public Trustees sale this morning at the \$1.4MM that we bid. The bid amount does not mean that's what we paid for the property. It's only pertinent in our discussions now as that amount establishes the deficiency that the District could attempt to collect from the guarantors. The deficiency is \$530,473.05.

While we'll never know if Vermilion Creek Condos was really planning to put their company into bankruptcy, we were able to thwart any possibility of that by getting Jason Sherrill and his three partners to agree to a settlement with the District. This was done through the attached Forbearance and Conditional Release Agreement. Essentially, the District agreed to conditionally let the four of them (and their entity Short-Legged Tiger 2) off the hook on the \$530K deficiency, in return for their utmost cooperation with the District in NOT participating with the Fetters family in a proposed bankruptcy plan and a several other considerations. After working with Sherrill and his partners for over a month, I was able to get the Agreement signed by all parties yesterday. As a result, a 2pm meeting that was scheduled to occur yesterday with Sherrill and his partners, the Fetters family, and their attorneys, where Vermilion Creek Condos was supposedly going to be signing the necessary documents to effectuate the bankruptcy filing, was cancelled.

1/13/2010

We'll wait until 1/22/10 when we should be receiving a confirmation deed from the Public Trustee, and then we're in the clear. We can discuss at the meeting next Thursday what else could possibly occur with respect to anyone trying to unwind the deal, but it's extraordinarily unlikely.

Thanks to you all for allowing me to work on this for you. It's been a pleasure assisting the District with this bit of work. I look forward to explaining things further at the meeting next week. In the meantime, please let me know if you have any questions.

Thanks.

Daniel R. Sheldon, Principal
GRANT STREET VENTURES, LLC
9145 E Kenyon Avenue, Suite 320
Denver, Colorado 80237
Office: (303) 741-2500
Cell (303) 886-2838
Fax: (720) 222-8642
Email: dan@gsvcolorado.com

FORBEARANCE AND CONDITIONAL RELEASE AGREEMENT

THIS FORBEARANCE AND CONDITIONAL RELEASE AGREEMENT ("Agreement") is made and entered into as of January 12, 2010 (the "Effective Date"), by and among PARKER JORDAN METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("District"), JASON W. SHERRILL, individually ("Sherrill"), SHORTLEGGED-TIGER 2, LLC, a Colorado limited liability company ("ST2"), MICHAEL RICE, individually ("Rice"), ROBERT STRAIN, individually ("Strain"), and RICHARD FLANERY, individually ("Flanery"). Sherrill, ST2, Rice, Strain and Flanery are collectively referred to herein as the "Cooperating Obligors."

RECITALS:

WHEREAS, on or about December 3, 2009, the District acquired all right, title and interest of FIRST HORIZON HOME LOANS, a division of First Tennessee Bank National Association, a national banking association (successor by merger to First Horizon Home Loan Corporation, a Kansas corporation) ("Original Lender") in and to, and is now the owner of, that certain loan (the "Loan") evidenced by (i) that certain Acquisition and Development Loan Agreement dated as of September 15, 2005 executed by Borrower and Original Lender for loans not to exceed the maximum advance amount of \$3,818,000.00 (the "Loan Agreement") and (ii) that certain Promissory Note dated as of September 15, 2005, in the original principal amount of \$3,818,000.00 executed by VERMILION CREEK CONDOMINIUMS, LLC, a Colorado limited liability company ("Borrower") and payable to the order of Original Lender (the "Note").

WHEREAS, the Note is secured by a Deed of Trust (the "Deed of Trust") dated of even date with the Note, given by Borrower (as "Grantor" thereunder) to the Arapahoe County, Colorado Public Trustee (as the "Trustee" thereunder and referred to hereinafter as the "Public Trustee"), for the benefit of Original Lender (as the "Beneficiary" thereunder), recorded October 5, 2005 at Reception No. B5150527 in the Office of the Clerk and Recorder for Arapahoe County, Colorado ("Official Records"), covering certain property described on Exhibit A attached to the Deed of Trust (the "Property"). On or about December 3, 2009, the Original Lender assigned the Deed of Trust to the District pursuant to that certain Assignment of Deed of Trust recorded in the Official Records on December 3, 2009, at Reception No. B9131137.

WHEREAS, the Loan is guaranteed by the Cooperating Obligors and Victim of Progress, LLC, a Colorado limited liability company (each a "Guarantor" and collectively, the "Guarantors") pursuant to that certain Unlimited Guaranty of Payment and Performance, also dated as of September 15, 2005, signed by each of the Guarantors (the "Guaranty"). The District is the holder of the Guaranty.

WHEREAS, on October 6, 2008, Borrower, the Guarantors and the Original Lender entered into that certain Pre-Negotiation Agreement (the "Pre-Negotiation Agreement" and, along with the Loan Agreement, the Note, the Deed of Trust, the Guaranty and any financing

statement, all other evidences of indebtedness relating thereto, and all other collateral documents securing the Loan are referred to herein as the "Loan Documents").

WHEREAS, the Loan is in default and the Original Lender commenced foreclosure proceedings under the terms of the Deed of Trust with the Public Trustee as foreclosure number 2502-2009 (the "Foreclosure").

WHEREAS, on December 15, 2009, the District Court in and for Arapahoe County, Colorado ("Court"), issued its order in Case No. 2009-CV-205416 substituting the District as party plaintiff in place of Original Lender in the Foreclosure.

WHEREAS, on December 29, 2009, the Court issued its Order Authorizing Sale, which authorized the Arapahoe County Public Trustee, pursuant to the provisions of the Deed of Trust, to sell the Property.

WHEREAS, the date for the Public Trustee Sale (the "Public Sale") is January 13, 2010.

WHEREAS, the Cooperating Obligors have requested that District forbear certain rights under the Loan Documents and the Guaranty with respect to the Cooperating Obligors, and in connection with such request, on January 5, 2010, ST2 and the District executed a Ratification and Estoppel Agreement, and on January 11, 2010, Sherrill, Rice, Strain and Flanery executed, acknowledged and agreed to be bound to the terms thereof as if they had been an original party thereto (the "Ratification Agreement").

WHEREAS, although the District is under no obligation to do so, District is willing to forbear from exercising certain rights and remedies against the Cooperating Obligors, on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Incorporation of Recitals.** The foregoing Recitals hereby are incorporated and made part of this Agreement.

2. **Defined Terms.** All capitalized terms used but not defined herein shall have the meanings given them in the applicable Loan Document or the Ratification Agreement.

3. **Acknowledgement of Debt and Liability.** The Cooperating Obligors acknowledge and agree as follows:

a. the Loan is in default and is due and payable in accordance with the terms of the Loan Documents;

- b. the Borrower and all Guarantors are liable for payment of the Loan; and
- c. all terms, provisions, agreements, covenants, representations and warranties made in the Ratification Agreement are hereby incorporated by reference.
- d. the District is not obligated to extend any further credit in relation to the Loan.

4. **No Defenses.** The Cooperating Obligors acknowledge and agree that neither they nor, to the best of their knowledge, the Borrower, have or has any defenses to payment of all amounts due and owing under the Loan, and that they have no claims, demands or offsets against the District or the Original Lender relating directly or indirectly to either the Loan, or with respect to any actual or alleged actions or omissions of the District or the Original Lender, or their respective affiliates, shareholders, officers, directors, employees or agents, concerning any aspect of the Loan, including without limitation the origination, disbursement, administration or collection of the Loan, the District's acquisition of the Loan, the prosecution of the Foreclosure, or with respect to any other actual or alleged actions or omissions of the Original Lender or the District or such persons pertaining directly or indirectly to the relationship between the Borrower, Guarantor, Original Lender and/or the District. Each of the Cooperating Obligors hereby releases and forever discharges Original Lender, District and their respective shareholders, officers, directors, employees and agents from and against any such claims, demands or offsets, and with respect to any and all other claims, demands, liabilities or obligations relating directly or indirectly to the Loan (including the Foreclosure) and with respect to any other actual or alleged actions or omissions of Original Lender or District or any such persons pertaining directly or indirectly to the relationship between the Borrower and the Guarantors, on the one hand, and the Original Lender or District, as the case may be, on the other hand.

5. **Other Representations, Warranties and Covenants.** Each of the Cooperating Obligors further warrants, represents and covenants: (i) that, except with respect to the Foreclosure, it is not subject to any bankruptcy proceeding, assignment for the benefit of creditors or similar proceeding, (ii) that no lawsuit, action or other proceeding is pending or threatened against it before any court or governmental entity, (iii) that it enters into this Agreement voluntarily, without any type or manner of force or duress, (iv) that none of the Cooperating Obligors has any present intent to file a voluntary petition in bankruptcy; (v) that none of the Cooperating Obligors will cause, vote to authorize, assent to or take any other action, directly or indirectly, that results in the filing by Borrower of a petition in bankruptcy; (vi) that none of the Cooperating Obligors, nor to the best of their knowledge, the Borrower or any entity or person affiliated with the Borrower or any of its managers, members, officers or any other Guarantor, has any right to cure the Loan or rights of redemption following the Public Sale; and (vii) that none of the Cooperating Obligors will cause, vote to authorize, assent to or take any other action, directly or indirectly, to attempt to cure the Loan, exercise any rights of redemption, or otherwise interfere with the District's rights to complete the Foreclosure.

6. **Forbearance.** Provided that:
- a. All representations and warranties of the Cooperating Obligors set forth herein, including in Paragraph 5 above, are true and correct as of the date hereof and remain true and correct through the Release Date (as defined below); and
 - b. The Cooperating Obligors timely perform all obligations and covenants required of them under this Agreement, including those obligations and covenants set forth in Paragraph 5 above; and
 - c. Neither the Borrower nor any of the Cooperating Obligors files a voluntary petition in bankruptcy (and none of them has filed against it an involuntary petition in bankruptcy) for a period of one (1) year following the Public Sale; and
 - d. No lawsuit or other proceeding is filed against the District or the Original Lender by the Borrower or any of the Cooperating Obligors with respect to the Loan or the District's interest in and to the Property, Collateral or any amounts it may receive with respect to the payment of the Loan, for a period of three (3) years following the Public Sale (the "Release Date"); and
 - e. The Cooperating Obligors shall have paid to the District, within 10 days following receipt of an invoice or request therefor, all costs and fees incurred by the District (including its reasonable attorneys' fees) in connection with the drafting and negotiation of this Agreement, the Ratification Agreement and in prosecuting the Foreclosure. On or before 5:00 p.m., Friday, January 15, 2010, the Cooperating Obligors shall remit to the District the amount of \$12,500, in good funds (the "Deposit") toward the payment of the obligations set forth in this subparagraph e. The District shall be entitled, at such times as the District may determine, to apply the Deposit to any of its costs and fees, and shall provide reasonable supporting documentation of such costs and fees, whether promptly following the application of all or any portion of the Deposit or in any invoice. Promptly following the Release Date the District shall return any unapplied portion of the Deposit.
 - f. Either the District: (i) acquires title to the Property in connection with the Foreclosure, or (ii) is paid in full and has actually received all amounts due and owing under the Loan and the Loan Documents (and not limited to the amount of the District's bid in connection with the foreclosure) pursuant to the lawful exercise of the right of redemption by a person permitted to redeem pursuant to applicable law,

then, in such event, the District agrees to forbear from filing any legal action or instituting or enforcing any rights and remedies it may have against the Cooperating Obligors with respect to the Loan and the Guaranty. In relation to such forbearance:

- a. Except as expressly provided herein, this Agreement does not constitute a waiver or release by the District of Borrower's or any Guarantor's obligations related to the Loan, the Property, Collateral, the Loan Documents or the Foreclosure. Nor is this Agreement a novation, and the terms and conditions hereof shall be in addition and supplemental to all terms and conditions of the Loan Documents. In the event of any conflict or inconsistency between this Agreement and the terms of the Loan Documents, the terms of this Agreement shall be controlling, but the Loan Documents shall not otherwise be affected or the rights therein impaired.
- b. If the Cooperating Obligors are not in full and strict compliance with this Agreement, or if any of the conditions in this Paragraph 6 are not satisfied or met, then the District shall have no further obligations under this Agreement and shall entitle the District to immediately exercise any and all of its rights and remedies, including without limitation legal action against the Cooperating Obligors, and collection of all attorney fees and other costs to which the District may be entitled under the Loan Documents or applicable law. Each of The Cooperating Obligors agrees that the District has made no commitment, and that District is under no obligation whatsoever, to grant any additional extensions of time with respect to the District's exercise of any rights and remedies.
- c. Notwithstanding anything to the contrary contained in this Agreement, the District's forbearance hereunder shall not apply to the continued accrual of interest at the rate specified herein or any late fees or charges applicable to the Loans after the date hereof.

7. Reservation of Rights, Delays or Omissions. Nothing in this Agreement shall be construed as a waiver by the District of any event of default or default under any Loan Document now existing or that may accrue subsequent to the date of this Agreement, or otherwise impair any of District's rights in any of its Collateral. No delay or omission to exercise any right, power or remedy accruing to any Party under this Agreement, upon any breach or default of any other Party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting Party, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Additionally, notwithstanding anything to the contrary contained in this Agreement, the District's acceptance during the forbearance period of any monies and application thereof to the indebtedness under any Loan shall not be construed as a waiver by the District of any term or provision of this Agreement or of its rights or remedies, including but not limited to foreclosure upon the Property. Any such acceptance and application of funds shall be applied in a manner consistent with this Agreement and the Loan Documents.

8. District's Release of The Cooperating Obligors. Effective upon the Release Date, the District agrees that each of the Cooperating Obligors shall be released from any further

obligation under the Loan Documents and the Guaranty; and within thirty (30) days after written request from a Cooperating Obligor, the District shall deliver to the requesting Cooperating Obligor documentation evidencing such release.

9. **Cooperating Obligors' Release of the District.** Each of The Cooperating Obligors hereby discharge the District, its officers, employees, directors, shareholders, attorneys, agents, successors and assigns, from any and all claims and causes of actions, debts, suits, demands, deficiencies, and any and all liabilities and causes of action of whatever kind and description, whether at law, or in equity, which the Cooperating Obligors may have had, now has or may have in the future against the District, the Original Lender and such other persons, arising out of or in any way relating to the Loan, which have been or could have been asserted by Borrower, the Cooperating Obligors or any other Guarantor at any time up to the date of this Agreement.

10. **Governmental Immunity.** Nothing herein shall be construed as a waiver of the rights and privileges of the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S., as amended from time to time.

11. **Consultation with Counsel.** Each of the Parties represents that it has reviewed, understands and agrees to each and every term of this Agreement, and that it has received or had an opportunity to receive the advice of competent counsel before entering into this Agreement.

12. **Time of the Essence.** The Parties hereby acknowledge and agree that time is of the essence with respect to each and every term, condition, obligation and provision of this Agreement.

13. **Entire Agreement.** This Agreement, together with any documents executed and delivered in connection herewith or pursuant hereto, contains the entire and complete understanding of the Parties and supersedes all previous verbal and written agreements regarding the subject matter hereof; there are no other agreements, representations, or warranties not set forth herein, except for the Loan Documents, which shall remain in full force and effect.

14. **Amendment or Modification.** No amendment or modification of this Agreement shall be enforceable unless it is in writing, signed by the Party or Parties against whom enforcement is sought.

15. **Authority.** This Agreement has been duly executed and delivered by each of The Cooperating Obligors as its binding obligation, enforceable against them in accordance with its terms. Each individual executing and delivering this Agreement on behalf of a Party hereto, by signing below, represents and warrants that such individual is fully authorized to execute and deliver this Agreement on behalf of such Party.

16. **Further Assurances.** Each of the Parties agrees to cooperate, and to sign and deliver such other and further documents as may be reasonably required, to the extent necessary or appropriate to effectuate the terms, conditions and transactions contemplated by this

Agreement. Without limiting the foregoing obligations of the Cooperating Obligors, and in regard to the Vermilion Creek Metropolitan District ("VCMD"), the Cooperating Obligors agree to: (a) convey, transfer and/or assign to the District or its designee, promptly following the District's request therefor and for no additional consideration, any rights the Cooperating Obligors may have, individually or collectively, as property owners, contract purchasers, directors or otherwise; and (b) to the extent permitted by applicable law, perform such acts as the District may reasonably request regarding the governance, management, operation and activities of VCMD, including without limitation, exclusion of the Property from VCMD, resignation from positions with VCMD or its board of directors; provided, however, the Cooperating Obligors shall not be required to spend more than *de minimis* amounts of time or money in furtherance of its obligations under this Paragraph 16.

17. **Governing Law.** This Agreement shall be construed according to the laws of the State of Colorado and any applicable federal law.

18. **No Party Deemed the Drafter.** This Agreement is the result of negotiations between the Parties. The Agreement therefore shall not be construed against any particular Party because of the involvement of that Party or its counsel in its preparation.

19. **Survival.** Except as otherwise expressly provided in this Agreement, the agreements, releases, representations, warranties and acknowledgements contained herein shall survive the execution of this Agreement.

20. **Binding Effect.** This Agreement and the releases contained herein (if and when effective, according to their terms) shall be binding upon and inure to the benefit of the Parties and their respective successors, personal representatives, heirs and/or assigns; provided, however, that nothing contained in this Agreement shall preclude the District from assigning any Loan or any of the Loan Documents to any third party in the District's sole discretion during the Forbearance Period or thereafter.

21. **Duplicate Originals; Counterpart Signatures.** This Agreement shall be executed in two (2) originals, such that one (1) duplicate original may be delivered to The Cooperating Obligors (collectively), and one (1) duplicate original may be delivered to the District. This Agreement may be executed in any number of counterparts, and all such counterparts, when taken together, shall constitute a single agreement.

22. **WAIVER OF JURY TRIAL.** IT IS MUTUALLY AGREED AMONG EACH OF THE COOPERATING OBLIGORS AND THE DISTRICT THAT THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY AGAINST ANOTHER PARTY REGARDING ANY MATTER WHATSOEVER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS.

23. **Jurisdiction; Venue; and Attorney Fees.** The Parties further agree that any action of any kind brought by any Party to enforce the terms of this Agreement shall be brought

exclusively in the District Court of Arapahoe County, Colorado, and that each Party submits to the jurisdiction of such Court. In the event of any litigation or other proceeding to enforce this Agreement, the prevailing Party as determined under Colorado law shall be entitled to recover its reasonable attorney fees, court costs and expenses incurred in initiating or responding to such proceeding, in addition to any other relief to which such Party may be entitled.

24. **Pronouns/Gender.** Any pronouns used herein, whether masculine, feminine or neuter, shall be deemed to encompass all genders and shall be interpreted as the context so requires.

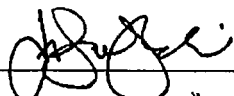
WHEREFORE, the Parties have signed this Agreement as of the date first written above.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the undersigned have executed this Forbearance and Conditional Release Agreement as the date first written above.

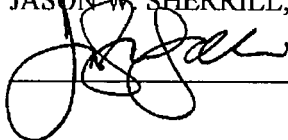
Shortlegged-Tiger 2, LLC, a Colorado limited liability company

Parker Jordan Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado

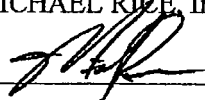
By: 
Name: JASON SHERRILL
Title: LLC MANAGER

By: _____
Name: _____
Title: _____

JASON W. SHERRILL, Individually



MICHAEL RICE, Individually



ROBERT STRAIN, Individually

RICHARD FLANERY, Individually

IN WITNESS WHEREOF, the undersigned have executed this Forbearance and Conditional Release Agreement as the date first written above.

Shortlegged-Tiger 2, LLC, a Colorado limited liability company

Parker Jordan Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
Name: _____
Title: _____

By: **Norman Sheldon**
Name: _____
Title: _____

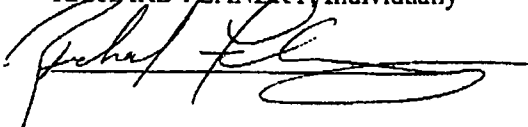
Digitally signed by Norman Sheldon
DN: cn=Norman Sheldon, o=Parker Jordan Metropolitan District, ou,
email=norman.sheldon@pjhd.com, c=US
Date: 2010.01.12 12:16:18 -0700

JASON W. SHERRILL, Individually

MICHAEL RICE, Individually

ROBERT STRAIN, Individually

RICHARD FLANERY, Individually



IN WITNESS WHEREOF, the undersigned have executed this Forbearance and Conditional Release Agreement as the date first written above.

Shortlegged-Tiger 2, LLC, a Colorado limited liability company

Parker Jordan Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

JASON W. SHERRILL, Individually

MICHAEL RICE, Individually

ROBERT STRAIN, Individually



RICHARD FLANERY, Individually
