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REPLY TO CORAL GABLES OFFICE

November 17, 2010

VIA HAND DELIVERY

FCC Unit

Miami-Dade County Courthouse

73 West Flagler Street, Room 1900

Miami, Florida 33130

**RE: SOUTHERN SKYWAY PROPERTY, INC. VS. BRICKELL BAY ENTERTAINMENT
 AND DEVELOPMENT COMPANY, ET AL.
 CASE NO.: 2007-07524 CA 50**

HELENE J. BROWN

STEPHANIE M. CHAISSAN

B. MICHAEL CLARK, JR.

VINCENT B. FLOR

TIFFANY M. HURWITZ

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GEORG KETELHOHN

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OF COUNSEL

H. HUGH McCONNELL, P.A

To Whom It May Concern:

Please be advised that the undersigned is hereby requesting the scheduling of a hearing on Southern Skyway Property, Inc.'s Amended Motion to Reset Foreclosure Sale and Transfer Case Back to Division 09 ("Motion"), or in the alternative, an Initial Case Management Conference regarding the above-referenced matter. A copy of the Motion is enclosed herein. Please provide a copy of the hearing or conference notice to all of the parties of record in the self-addressed, stamped envelopes enclosed herewith.

Should you have any questions, please do not hesitate to contact me at the address and telephone number listed above.

Respectfully,

SIEGFRIED, RIVERA, LERNER,
 DE LA TORRE & SOBEL, P.A.

Stephanie M. Chaissan

Stephanie M. Chaissan

SMC/jmb

Enclosures

cc: Counsel of record

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IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 2007-07524 CA 50

SOUTHERN SKYWAY PROPERTY, INC.,
a Florida Corporation, and MARBELLA
MARINA, INC., a Florida Corporation,

Plaintiffs,

v.

BRICKELL BAY ENTERTAINMENT
AND DEVELOPMENT COMPANY,
a Florida Corporation, JUAN A. BARROSO PINO,
MILDRED GIDNEY, IRIS RADERMAN,
JENNIDER WEINER, DELSIE LIPTON,
FELICE LIPTON, IRIS OSBORN, JAMES REISS,
MICHAEL BARATZ, HARVEY A. SHULMAN,
BARRY KENDALL, GAIL LANE CORNBLUM,
JOHN ALDERMAN, RICHARD JACOBS,
LIPTON, LIPTON AND RADERMAN,
BERMAN MORTGAGE GROUP,
a Florida Corporation, YALE SAMOLE and
SUSAN SAMOLE,

Defendants.

**SOUTHERN SKYWAY PROPERTY, INC., AMENDED MOTION TO RESET
FORECLOSURE SALE AND TRANSFER CASE BACK TO DIVISION 09**

COMES NOW the Plaintiff, SOUTHERN SKYWAY PROPERTY, INC. ("SOUTHERN"), by and through undersigned counsel and pursuant to the Florida Rules of Civil Procedure, hereby files this Amended Motion to Reset Foreclosure Sale and Transfer Case Back to Division 09, and in support thereof, states as follows:

1. On or about January 11, 2008, SOUTHERN filed its Amended Complaint in this action in Division 09 seeking to foreclose on the Leasehold Mortgage and Security Agreement entered into between SOUTHERN and Defendant, BRICKELL BAY ENTERTAINMENT AND DEVELOPMENT COMPANY ("BRICKELL BAY"), dated September 17, 2003.

2. On or about July 2, 2010, after a trial on this matter had been completed, a Final Judgment in favor of SOUTHERN and against BRICKELL BAY was entered and a foreclosure sale was set for September 16, 2010. A true and correct copy of the Final Judgment is attached hereto and incorporated herein as **Exhibit "A."**

3. Notice of the foreclosure sale was properly published from August 30, 2010, through September 12, 2010.

4. On or about September 15, 2010, the day before of the foreclosure sale, counsel for BRICKELL BAY served on undersigned counsel BRICKELL BAY'S Suggestion of Bankruptcy, which was filed with this Court on September 16, 2010. BRICKELL BAY'S Voluntary Petition for bankruptcy was filed in the United States Bankruptcy Court for the Southern District of Florida on September 15, 2010, under Case No. 10-37660-AJC.

5. The Voluntary Petition operated as an automatic stay of the above-captioned action and the foreclosure sale scheduled for September 16, 2010, did not take place. Accordingly, BRICKELL Bay is still in possession of the marina that is the subject matter of this case.

6. On or about September 30, 2010, SOUTHERN, as a secured creditor of BRICKELL BAY, filed a Motion to Dismiss Case or, in the Alternative, for Relief from the Automatic Stay ("Motion to Dismiss") with the Bankruptcy Court.

7. On or about October 15, 2010, the Bankruptcy Court entered an Order granting in part SOUTHERN'S Motion to Dismiss, granting SOUTHERN full and complete relief from the automatic stay in order to resume and complete this action and the foreclosure sale. A true and correct copy of the bankruptcy Court's Order is attached hereto and incorporated herein as **Exhibit "B."**

8. Due to the cancellation of the sale on September 16, 2010, SOUTHERN remains unpaid while BRICKELL BAY continues to enjoy the full benefit of the subject marina.

9. SOUTHERN has a significant and compelling interest in proceeding forward with the foreclosure sale without further costs or delays as it is entitled to a coreclosure sale of the subject marina pursuant to the Final Judgment attached hereto as **Exhibit "A."**

10. The automatic stay has been lifted so as to allow SOUTHERN to proceed with the foreclosure sale.

11. The Final Judgment provided that this Court retained jurisdiction of this cause and the parties in order to enter further orders as are necessary and proper.

12. Additionally, this case should be transferred from Division 50 back to Division 09.

13. Due to the fact that this case involves a mortgage foreclosure and was filed prior to December 31, 2008, this matter was transferred to Division 50 pursuant to Administrative Order No. 10-06.

14. However, undersigned counsel does not believe that this case is within the ambit of cases intended to be transferred under Administrative Order No. 10-06.

15. This case involves a complex commercial mortgage foreclosure of a marina, and does not involve a residential foreclosure.

16. Moreover, the Honorable Judge Bagley has presided over this case for over three (3) years, including the trial on the merits, and entered the Final Judgment attached hereto as **Exhibit "A."** The interests of judicial economy would be best served by transferring this case back to Division 09 for the hearing of any additional post-judgment matters.

WHEREFORE, Plaintiff, SOUTHERN SKYWAY PROPERTY, INC., respectfully requests this Court enter an Order resetting the foreclosure sale on the subject marina, transferring this matter back to Division 09, and granting all such other and further relief as it deems necessary.


CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail and electronic mail this 17 day of November, 2010, to: See attached Service List.

Respectfully submitted,

SIEGFRIED, RIVERA, LERNER,
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By: _____


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IN THE CIRCUIT COURT OF THE
11TH JUDICIAL CIRCUIT, IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 07-07524 CA 09

FORECLOSURE

SOUTHERN SKYWAY PROPERTY, INC.,
a Florida Corporation, and MARBELLA
MARINA, INC., a Florida Corporation,

Plaintiffs,

v.

BRICKELL BAY ENTERTAINMENT
AND DEVELOPMENT COMPANY,
a Florida Corporation, JUAN A. BARROSO PINO,
MILDRED GIDNEY, IRIS RADERMAN,
JENNIDER WEINER, DELSIE LIPTON,
FELICE LIPTON, IRIS OSBORN, JAMES REISS,
MICHAEL BARATZ, HARVEY A. SHULMAN,
BARRY KENDALL, GAIL LANE CORNBLUM,
JOHN ALDERMAN, RICHARD JACOBS,
LIPTON, LIPTON AND RADERMAN,
BERMAN MORTGAGE GROUP,
a Florida Corporation, YALE SAMOLE and
SUSAN SAMOLE,

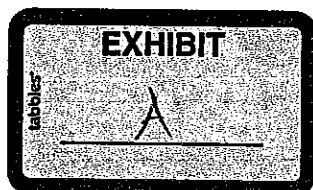
Defendants.

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FINAL JUDGMENT

THIS ACTION was tried before the Court on April 19, 20 and 21, 2010, on the Plaintiff's, SOUTHERN SKYWAY PROPERTY, INC. ("SOUTHERN"), Amended Complaint and the Defendant's, BRICKELL BAY ENTERTAINMENT AND DEVELOPMENT COMPANY ("BRICKELL BAY"), Counterclaim. This case involves the sale and assignment of leasehold rights and personal property for the operation of the marina located at The Four Ambassadors, A Condominium, (the "Marina") from SOUTHERN to BRICKELL BAY. BRICKELL BAY claims that it was misled by SOUTHERN in connection with the number of useable slips contained in the Marina and the permissibility of liveaboards. The Court, having reviewed the evidence,



heard arguments of counsel, reviewed the record, and being otherwise duly advised in the premises, finds as follows:

FINDINGS OF FACT

1. On February 5, 2003, SOUTHERN and Brickell Bay Entertainment Company entered into a Marina Purchase Agreement for the sale of SOUTHERN'S rights to operate the Marina, together with SOUTHERN'S rights under Sovereignty Submerged Land Lease Number 130000726 ("Lease") between the Internal Improvement Trust Fund of the State of Florida and SOUTHERN, certain boat slip leases/licenses for the Marina and all personal property and fixtures, exclusive of the bayfront walkway, related to the operation of the Marina, at a lump sum purchase price of Two Million and 00/100 Dollars (\$2,000,000.00). The Marina Purchase Agreement attached and incorporated a copy of the original Lease between the Internal Improvement Trust Fund of the State of Florida and SOUTHERN.

2. The Marina Purchase Agreement provided that the Marina was to be sold "as is," "where is," and "with all faults," and that Brickell Bay Entertainment Company had a right to investigate and inspect the Marina prior to closing on the purchase of same. Additionally, the Marina Purchase Agreement contained an integration clause stating that the Marina Purchase Agreement constituted the entire agreement between the parties and superseded all prior discussions, understandings and agreements of any nature whatsoever between the parties.

3. Brickell Bay Entertainment Company assigned all of its rights, title and interest in and to the Marina Purchase Agreement to BRICKELL BAY on September 10, 2003. Defendant, JUAN A. BARROSO PINO ("BARROSO"), is the principal of both Brickell Bay Entertainment Company and BRICKELL BAY. This case was previously dismissed as to BARROSO in his individual capacity.

4. MARBELLA MARINA, INC. was also previously dismissed from this law suit as a plaintiff, as it was not seeking any relief herein.

5. SOUTHERN and BRICKELL BAY are both sophisticated business entities.

6. BARROSO, on behalf of BRICKELL BAY, admits that he read the Lease attached to and incorporated into the Marina Purchase Agreement prior to BRICKELL BAY purchasing the Marina.

7. The Lease provides that SOUTHERN is permitted to operate the Marina over submerged state lands in accordance with the terms and conditions of the Lease. The Lease specifically states that the Marina is to be operated "without liveaboards" and that the "lessee hereby agrees to prohibit any mooring, on either a temporary or permanent basis, to the waterward face of the "L" dock and the two "T" docks."

8. SOUTHERN provided BRICKELL BAY with a letter dated March 16, 2004, from the Florida Department of Environmental Protection ("DEP") to BARROSO stating that it was in compliance with the Lease prior to BRICKELL BAY closing on the purchase of the Marina. BRICKELL BAY claims that the failure to disclose a prior violation of the Lease from the DEP in February 2003 was material. However, the violation did not establish anything that BARROSO did not otherwise know, namely, that liveaboards and mooring to the waterward face of the "L" dock and the two "T" docks were prohibited.

9. All representations made by SOUTHERN in the Marina Purchase Agreement regarding the number of slips contained within the Marina and the number of dock leases assigned to BRICKELL BAY were consistent with SOUTHERN'S prior usage of all thirty-six (36) slips in the Marina, including the end pier slips.

10. Any alleged or potential misrepresentations regarding the number of rentable slips, the usage of the end pier slips or the permissibility of liveaboards could have been timely rebutted by the performance of the due diligence authorized under the Marina Purchase Agreement, especially since BARROSO was in direct contact with the DEP prior to the closing on the Marina.

11. A misrepresentation is not actionable where its truth might have been discovered by the exercise of ordinary diligence. See *David v. Davenport*, 656 So. 2d 952 (Fla. 3d DCA 1995). There is no exception to this rule where the parties to a transaction are equally sophisticated and have an equal opportunity to discover a defect. See *Wasser v. Sasoni*, 652 SO. 2d 411, 412 (Fla. 3d DCA 1995).

12. A purchaser who brings an action against the seller based on alleged misrepresentations must take reasonable steps to ascertain material facts relating to the property and to discover facts if they are reasonably ascertainable. See *Nelson v. Wiggs*, 699 So. 2d 258, 261 (Fla. 3d DCA 1997). A buyer of property is "required to investigate any information furnished by the seller that a reasonable person in the buyer's position would investigate." *Nelson*, 699 So. 2d at 260-1.

13. BRICKELL BAY could have discovered that mooring to the waterward face of the "L" dock and the two "T" docks, along with liveboards, was not permitted by the Lease. In fact, BARROSO admits that he knew of these prohibitions, as he had received and read the Lease prior to BRICKELL BAY closing on the purchase of the Marina.

14. Notwithstanding any alleged misrepresentations, and with the knowledge of the Lease prohibitions, BRICKELL BAY proceeded to close on the purchase of the Marina on September 17, 2003.

15. On September 10, 2003, SOUTHERN and BRICKELL BAY executed a Promissory Note whereby SOUTHERN loaned BRICKELL BAY the sum of \$1,400,000.00 ("Note"). The Note is secured by the Leasehold Mortgage and Security Agreement ("Mortgage") entered into by the parties on September 12, 2003.

16. On September 17, 2003, SOUTHERN assigned all of its rights, duties and liabilities under the Lease, together with its use rights in the Marina, the dock slip leases/licenses in effect at the time, all of its personal property and fixtures located within the

Marina, and a portion of its Developer's Rights relating to the operation of the Marina, to BRICKELL BAY pursuant to an Assignment and Consent to Transfer ("Assignment").

17. Together with the assignment of SOUTHERN'S personal property located within the Marina, SOUTHERN executed a Bill of Sale in favor of BRICKELL BAY on September 17, 2003, whereby SOUTHERN granted, bargained, sold, transferred and delivered to BRICKELL BAY all of its rights, title and interest in and to all of the personal property located within the boundaries of the Marina.

18. Pursuant to the Mortgage, SOUTHERN obtained a first priority security interest in BRICKELL BAY'S leasehold interest and rights under the Lease, use rights to the Marina, leases/licenses for the docks in the Marina, the portion of the Developer's Rights relating to the operation of the Marina assigned to BRICKELL BAY, and all personal property and fixtures related to and used in connection with the operation of the Marina, among other security interests set forth in the Mortgage.

19. SOUTHERN perfected its security interest in the rights described above in Paragraph 18 by filing a UCC-1 Financing Statement ("UCC") with the Secretary of State for the State of Florida and recording same in the Public Records of Miami-Dade County, Florida.

20. The Note required BRICKELL BAY to make interest-only payments at seven percent (7%) interest for twenty-four (24) months, followed by a balloon payment of the principal balance due on October 17, 2005. To date, BRICKELL BAY has paid interest-only payments in the sum of Two Hundred Five Thousand Three Hundred Ninety-One and 75/100 Dollars (\$205,391.75). No payments have been made since April 2006. While in default, the Note bears interest at the rate of eighteen percent (18%) per annum.

21. Subsequent to the date the final payment was due under the Mortgage and Note, BRICKELL BAY requested a reduction of the principal amount allegedly because of the prohibition against docking of vessels at the waterward face of the "L" dock and two "T" docks.

22. SOUTHERN denies any alleged misrepresentations. Nevertheless, the parties reached an agreement to resolve their dispute, and on April 4, 2006, a novation of the Note was executed by BARROSO, on behalf of BRICKELL BAY, and by Gary Goldbloom, on behalf of SOUTHERN.

23. The novation extended the interest-only payments through May 17, 2006 and reduced the unpaid principal balance due under the Note from \$1,400,000.00 to \$1,175,000.00, which amount was due on May 31, 2006, and which remains unpaid.

24. Further, the novation provided that BRICKELL BAY would remit to SOUTHERN a late/delay fee in an amount equal to one percent (1%) of the unpaid principal balance of \$1,175,000.00, together with attorneys' fees in the amount of \$2,603.55, by May 31, 2006.

25. The Court finds that the novation agreement is binding on SOUTHERN and BRICKELL BAY.

26. BARROSO, on behalf of BRICKELL BAY, claims that BRICKELL BAY is entitled to a set off in the approximate amount of \$172,000.00 for improvements BRICKELL BAY was allegedly forced to make to the Marina. However, BRICKELL BAY failed to meet its burden of proof on this issue at trial, as no evidence was presented to substantiate its claims that any alleged payments were related to the Marina.

27. In addition to non-payment under the Note, BRICKELL BAY is indebted to DEP in the amount of Thirty-Six Thousand One Hundred Seventeen and 44/100 Dollars (\$36,117.44) due to its failure to remit the required annual lease fees under the Lease to DEP from 2006 to the present. Payment of this amount is secured by the Mortgage. BRICKELL BAY has also failed to submit required wet slip certifications to DEP since 2004.

28. BRICKELL BAY has also erected unauthorized and unapproved structures above sovereignty submerged lands, and as a result, received several Uniform Civil Violation Notices from the Miami-Dade County Department of Environmental Recourses Management ("DERM")

for failure to comply with the Marine Facilities Annual Operating Permit ("Permit") issued by DERM and with Miami-Dade County ordinances. BRICKELL BAY and DERM have entered into a Consent Agreement regarding these violations, however, DERM has refused to issue a Permit for the year 2009-2010, and the Marina is currently being operated without a Permit. Payment, if any, for the correction of these violations is secured by the Mortgage.

29. BRICKELL BAY is also indebted to Miami-Dade County, Florida, in the amount of Thirty Thousand Two Hundred Thirty-Two and 29/100 Dollars (\$30,232.29), as of April 29, 2010, for its failure to remit real property taxes for the years 2007, 2008, and 2009. Payment of this amount is secured by the Mortgage.

30. The Marina is further encumbered by a second position mortgage in favor of BERMAN MORTGAGE CORPORATION, which is also in foreclosure. The Court has taken judicial notice that BERMAN MORTGAGE GROUP has obtained a final judgment against BRICKELL BAY and that a sale of the Marina is scheduled for May 13, 2010. SOUTHERN and M.A.M.C. INCORPORATED, on behalf of Defendants, MILDRED GIDNEY, IRIS RADERMAN, JENNIDER WEINER, DELSIE LIPTON, FELICE LIPTON, IRIS OSBORN, JAMES REISS, MICHAEL BARATZ, HARVEY A. SHULMAN, BARRY KENDALL, GAIL LANE CORNBLUM, JOHN ALDERMAN, RICHARD JACOBS, LIPTON, LIPTON AND RADERMAN, BERMAN MORTGAGE GROUP, a Florida Corporation (collectively referred to herein as the "LENDERS"), have entered into a Stipulation regarding the priority of their respective interests in the Marina, which Stipulation was filed with this Court on or about April 16, 2010.

31. SOUTHERN and Defendants YALE and SUSAN SAMOLE (collectively referred to herein as the "SAMOLES") also entered into a Stipulation regarding the priority of their respective interests in the Marina, which Stipulation was filed with this Court on or about April 19, 2010.

BASED UPON THE EVIDENCE PRESENTED AND THE FOREGOING FINDINGS, IT
IS HEREBY ORDERED AND ADJUDGED THAT:

32. There is due and owing to SOUTHERN the following:

Principal balloon payment due under the Note, as modified by the novation agreement	\$1,175,000.00
Interest on principal amount from May 31, 2006, though April 30, 2010 (per diem rate of \$300.85)	\$429,614.78
1% late/delay fees, pursuant to the novation	\$11,750.00
Attorneys' fees, pursuant to the novation	\$2,603.55
TOTAL AMOUNT DUE	\$1,618,968.33

33. The total amount referenced in Paragraph 32 shall bear interest from this day forward at the default interest rate of eighteen percent (18%) per annum, as specified in the Note. The Court reserves jurisdiction to award additional attorneys' fees and costs.

34. SOUTHERN, whose address is 201 Alhambra Circle, Suite 514, Coral Gables, Florida 33134, holds a lien for the total amount specified in Paragraph 32 herein. SOUTHERN'S lien is superior in dignity to any right, title, interest or claim of any of the Defendants and all persons, corporations, or other entities claiming by, through, or under any of the Defendants, or any of them, and the Marina will be sold free and clear of all claims of any of the Defendants. SOUTHERN'S interest in the Marina is superior in dignity to any right, title, interest or claim of the LENDERS, and all persons, corporations, or other entities claiming by, through, or under the LENDERS or any of them, and the LENDERS' interest in the Marina is inferior and subordinate to that of SOUTHERN. SOUTHERN'S interest in the Marina is also superior in dignity to any right, title, interest or claim of Defendants YALE and SUSAN SAMOLE, and all persons, corporations, or other entities claiming by, through, or under the SAMOLES or

any of them, and the SAMOLES' interest in the Marina is inferior and subordinate to that of SOUTHERN.


35. SOUTHERN'S lien encumbers, and SOUTHERN is further entitled to recovery of, the following described property and secured rights, which were assigned to BRICKELL BAY pursuant to the Assignment and Consent to Transfer and secured by the Leasehold Mortgage and Security Agreement entered into between the parties (hereinafter, the "Secured Rights"):

- a. the subject Marina located in Miami-Dade County, Florida, and more particularly described as:

A parcel of sovereignty submerged land in Section 38, Township 54 South, Range 41 East, in Biscayne Bay, Miami Dade County, containing 57,725 square feet, more or less.

Folio Number: 01 02100301051.

- b. all of BRICKELL BAY'S leasehold rights and interests under and in accordance with the State of Florida Sovereignty Submerged Lands Lease # 130000726 in regards to those submerged lands in Biscayne Bay, in Section 38, Township 54 South, Range 41 East, in the City of Miami, Miami-Dade County, Florida;
- c. all of BRICKELL BAY'S use rights in and to the Marina;
- d. all of BRICKELL BAY'S rights and interests in any and all dock slip leases and/or licenses for the use and enjoyment of docks within the Marina, including all security and electricity deposits thereunder;
- e. all personal property and fixtures relating to, used in connection with or arising from the operation of the Marina; and
- f. BRICKELL BAY'S limited rights as Developer under the Declaration of Condominium of The Four Ambassadors, A Condominium, recorded in Official Records Book 14531, at Page 1404, of the Public Records of Miami-Dade County, Florida, and all amendments thereto, and as Declarant under the Declaration of Covenants, Restrictions and Easements for the Four Ambassadors Master Association, Inc., recorded in Official Records Book 11121, at Page 1502, of the Public Records of Miami-Dade County, Florida, and all amendments thereto, solely relating to the Marina; and
- g. all of BRICKELL BAY'S interests and/or rights in and to all of the property, appurtenances, and rights described in the Mortgage and granted to BRICKELL BAY under same.

36. If the total amount due, as referenced in Paragraph 32, with interest at the rate described in Paragraph 33, and all costs, advances and attorneys' fees accrued subsequent to this Final Judgment, are not paid, the Clerk of the Court shall be authorized to sell the subject Marina and the Secured Rights at public sale on 9-16-10, 2010, to the  highest bidder for cash, except as described in Paragraph 37, at **SALE DATE AUTHORIZED**

Room 908, 140 West Flagler Street, Miami, Florida, at ~~8~~ 9:00 a.m., or

www.miamidade.realforeclosure.com, the Clerk's website for on-line auctions at 9:00 a.m.,

after first giving notice as required by Section 45.031, Florida Statutes.

37. SOUTHERN shall advance all subsequent costs of this action, and any amounts described in Paragraphs 27, 28 and 29, and shall be reimbursed for them by the Clerk of the Court if SOUTHERN is not the purchaser of the Marina and Secured Rights for sale. If SOUTHERN is the purchaser, the Clerk shall credit SOUTHERN'S bid with the total amount, with interest, costs, advances and attorneys' fees accrued subsequent to this Final Judgment or subsequently determined by this Court, or such part of it, as is necessary to pay the bid in full. If, prior to the sale contemplated in Paragraph 36 hereof, SOUTHERN is required to advance any monies to protect its leasehold lien, SOUTHERN, or its attorney, shall so certify to the Clerk of this Court, and the amount found due to SOUTHERN shall be increased by the amount of such advances. The Clerk shall receive the service charge imposed by Section 45.021, Florida Statutes, for services in making, recording and certifying the sale and title that shall be assessed as costs.

38. On filing of the Certificate of Title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of SOUTHERN'S costs and advances; second, documentary stamps affixed to the Certificate; third, SOUTHERN'S attorneys' fees;

fourth, the total amount due to SOUTHERN, less the items paid, plus interest at the rate prescribed in Paragraph 33 from this date to the date of the sale. During the sixty (60) days after the Clerk issues the certificate of disbursements, the Clerk shall hold the surplus pending further Order of this Court.

39. On filing of the Certificate of Sale, BRICKELL BAY'S right of redemption as proscribed by Section 45.0315, Florida Statutes, shall be terminated.

40. On filing of the Certificate of Title, Defendant, BRICKELL BAY ENTERTAINMENT AND DEVELOPMENT COMPANY, and all persons or entities claiming under or against BRICKELL BAY since the filing of SOUTHERN'S UCC, shall be foreclosed of all estate or claim in the Marina and the Secured Rights and the purchaser at the sale shall be let into possession of the Marina and all property therein.

41. NOTICE PURSUANT TO AMENDMENT TO SECTION 45.031, FLORIDA STATUTES. IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT.

IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO THESE FUNDS YOURSELF, YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE CLERK OF THE COURT, 140 WEST FLAGLER STREET, ROOM 908, MIAMI, FLORIDA (TELEPHONE NUMBER: (305) 375-5943), WITHIN TEN (10) DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

42. SOUTHERN'S security interest in the Marina and the Secured Rights was duly perfected on October 3, 2003, when SOUTHERN caused its UCC to be recorded with the Florida Secretary of State under File No. 20030511685X and in Official Records Book 21711, at Page 1545, of the Public Records of Miami-Dade County, Florida.

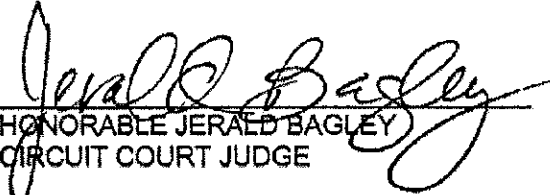
43. The above sale procedures shall constitute a public disposition of the Secured Rights and all property subject to SOUTHERN'S UCC filing, pursuant to Section 21 of the Mortgage and Sections 679.609 and 679.610, Florida Statutes. A Transfer Statement of such Secured Rights and personal property shall be recorded in the Public Records of Miami-Dade County, Florida.

44. On the filing of the Transfer Statement, BRICKELL BAY and all persons claiming by, through, or under BRICKELL BAY, and all persons having liens subsequent to SOUTHERN'S Mortgage, and all persons claiming to have acquired any estate or interest in the Marina and/or Secured Rights subsequent to the filing of SOUTHERN'S Mortgage with the Clerk of Miami-Dade County, Florida, shall be forever barred and foreclosed from all equity of redemption in and to the Marina, the Secured Rights, any and all personal property located within the boundaries of the Marina, and every part and parts thereof, and from all estate or claim in the Marina, the Secured Rights and any and all personal property, and the purchaser at the sale shall be let into possession of the Marina and all property therein.

45. The Court finds that SOUTHERN is entitled to an award of its reasonable attorneys' fees and costs, and the Court shall retain jurisdiction to determine the amount of same.

46. Jurisdiction of this action is retained to enter further orders as are proper including, without limitations, writs of assistance/possession and deficiency judgments. No writ of possession shall issue except upon further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 2 day of
July 2010.


HONORABLE JERALD BAGLEY
CIRCUIT COURT JUDGE

Copies provided to:

Hello De La Torre, Esquire, and Stephanie M. Chalssan, Esquire
Siegfried Rivera Lerner De La Torre and Sobel P.A.
Gregory A. Martin, Esquire
Law Offices of Gregory Martin
Daniel Jones, Esquire
Law Offices of Daniel E. Jonas, P.A.
James D. Gassenheimer, Esquire, and Ariadna Hernandez, Esquire
Berger Singerman

**COPY HAND DELIVERED
TO PLTF'S ATTY
IN LIEU OF MAILING**

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ORDERED in the Southern District of Florida on October 15, 2010.

A. Jay Cristol, Judge
United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division

In re:

BRICKELL BAY ENTERTAINMENT
AND DEVELOPMENT COMPANY,

Case No. 10-37660-AJC
Chapter 11

Debtor.
_____ /

**ORDER GRANTING IN PART SECURED CREDITOR, SOUTHERN SKYWAY
PROPERTY, INC.'S EMERGENCY MOTION TO DISMISS CASE OR, IN THE
ALTERNATIVE, FOR RELIEF FROM THE AUTOMATIC STAY**

THIS MATTER having come before the Court on October 14, 2010 upon Secured Creditor, Southern Skyway Property, Inc's. ("Southern") Emergency Motion to Dismiss Case or, in the Alternative, for Relief from the Automatic Stay (the, "Motion"), the Court having reviewed the Motion, the Court file, having heard argument of counsel for Southern and the United States Trustee, noting that the Debtor failed to appear at said hearing, noting that applicable notice requirements have been met, it is

ORDERED:

1. The Motion is granted in part as follows: based upon the statements set forth on the record, Southern is granted full and complete relief from the automatic stay to resume and



complete Southern's state court action to foreclosure the subject marina as more particularly described in the Motion and for injunctive relief in the matter styled, *Southern Skyway Property, Inc., etc. v. Brickell Bay Entertainment and Development Company, et al.*, 11th Judicial Circuit, Miami-Dade County, Florida, Case No. 07-07524 CA 09 (the, "State Court Case") through the setting and conducting of a foreclosure sale, and the issuance of any and all certificates of sale and title to the successful bidder.

2. Southern shall schedule a status hearing in this case at least ten (10) days prior to the foreclosure sale in the State Court Case.

3. This Order shall be effective immediately. The 14 day stay provided by Fed. R. Bankr.P. 4001(a)(3) is hereby waived.

Submitted By:

Jeffrey S. Berlowitz, Esq.
Siegfried, Rivera, Lerner,
De La Torre & Sobel, P.A.
201 Alhambra Circle, Suite 1102
Coral Gables, Florida 33134
Phone: (305) 442-3334
Fax: (305) 443-3292
Email: jberlowitz@siegfriedlaw.com

Attorney Berlowitz is directed to mail a conformed copy of this Order, immediately upon receipt, to all interested parties and file a certificate of service.