IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs. Case No.

CEEBRAID-SIGNAL CORPORATION, BOCA EAST, LLC, CSC BOCA LIMITED PARTNERSHIP, CSC BOCA GP CORP., RICAR, LLC, CEEBRAID-SIGNAL INVESTMENT COMPANY, L.P., RICHARD SCHLESINGER, LESLIE SCHLESINGER, ADAM SCHLESINGER and JASON SCHLESINGER,

Defendants.
_____/

COMPLAINT FOR DECLARATORY JUDGMENT, CIVIL PENALTIES, ATTORNEY'S FEES AND COSTS

Plaintiff, **OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA** (hereinafter referred to as "Plaintiff"), sues Defendants, **CEEBRAID-SIGNAL CORPORATION, BOCA EAST, LLC, CSC BOCA LIMITED PARTNERSHIP, CSC BOCA GP CORP., RICAR, LLC, CEEBRAID-SIGNAL INVESTMENT COMPANY, L.P. RICHARD SCHLESINGER, LESLIE SCHLESINGER ADAM SCHLESINGER and JASON SCHLESINGER.**

JURISDICTION

1. This is an action for declaratory judgment, brought pursuant to Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II, Florida Statutes (2008).

2. This Court has jurisdiction pursuant to the provisions of said statute.

3. Plaintiff is an enforcing authority of Florida's Deceptive and Unfair Trade Practices Act (FDUTPA) as defined in Chapter 501, Part II, Florida Statutes, and is authorized to seek damages, injunctive and other statutory relief pursuant to this part.

4. The statutory violations alleged herein occurred in or affected more than one judicial circuit in the State of Florida. Venue is proper in the Fifteenth Judicial Circuit as the principal place of business of the Defendant entities is Palm Beach County, Florida.

5. Plaintiff has conducted an investigation, and the head of the enforcing authority, Attorney General Bill McCollum has determined that an enforcement action serves the public interest. A copy of said determination is attached and incorporated herein as Exhibit A.

6. Defendants, at all times material hereto, provided goods or services as defined within Section 501.203(8), Florida Statutes (2008).

7. Defendants, at all times material hereto, solicited consumers within the definitions of Section 501.203(7), Florida Statutes (2008).

8. Defendants, at all times material hereto, were engaged in a trade or commerce within the definition of Section 501.203(8), Florida Statutes (2008).

DEFENDANTS

9. Defendant Cecbraid-Signal Corporation, a Florida corporation, controls Boca East, LLC and is the developer in fact of the 204 unit residential condominium project called Eden Condominium No. One and Eden Condominium No. Two at 300 W. Palmetto Park Road and 301 S.W. 1st Street, Boca Raton, Palm Beach County, Florida. See letters dated May 27, 2009 and June 17, 2009 from counsel to the City of Boca Raton attached hereto as Exhibits B and C.

10. Defendant Boca East, LLC, a Delaware limited liability company, has been publicly represented in the prospectus or offering circular distributed to the public and prospective purchasers pursuant to F.S. § 718.504 to be the developer of the 204 unit residential condominium project called Eden Condominium No. One and Eden Condominium No. Two at 300 W. Palmetto Park Road and 301 S.W. 1st Street, Boca Raton, Palm Beach County, Florida. On May 15, 2009, the City of Boca Raton terminated Boca East, LLC's building permit for the said 204 unit residential condominium project called Eden Condominium No. One and Eden Condominium No. Two.

11. Defendant CSC Boca Limited Partnership, a Delaware limited partnership, is the sole member of Defendant Boca East, LLC.

12. Defendant CSC Boca GP Corp., a Delaware corporation, is the general partner of Defendant CSC Boca Limited Partnership.

13. Defendant Ricar, LLC, a Connecticut limited liability company, is a limited partner of Defendant CSC Boca Limited Partnership.

14. Defendant Ceebraid-Signal Investment Company, L.P., a Delaware limited partnership, is a limited partner of Defendant CSC Boca Limited Partnership.

15. Defendant Richard Schlesinger, a resident of Palm Beach, Florida, is a director of Ceebraid-Signal Corporation and, at all times material hereto, managed, controlled, participated and had knowledge of the day-to-day activities of Defendants Ceebraid-Signal Corporation and Boca East, LLC. Defendant Richard Schlesinger is a shareholder, owner, officer and/or director of Defendant Ceebraid-Signal Corporation and has an interest, financial or otherwise, in Defendant Boca East, LLC. On or about July 31, 2006, Defendant Richard Schlesinger

personally guaranteed the obligations of Defendant Boca East, LLC to its lender to complete, and pay the cost of completing, the "Eden Project" which project is hereinafter described. Said personal guaranty was issued in consideration of the lender's entering into an amendment of the construction loan agreement and promissory note of Defendant Boca East, LLC.

16. At all times material hereto, Defendant Richard Schlesinger knew of and controlled the activities of Defendants Ceebraid-Signal Corporation and Boca East, LLC. Defendant Richard Schlesinger had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts or omissions of the officers, employees, agents, and representatives of the Defendants Ceebraid-Signal Corporation and Boca East, LLC as described below, were unfair or deceptive and/or prohibited by law.

17. Defendant Adam Schlesinger, a resident of Delray Beach, Florida, is the manager of Boca East, LLC, the registered agent of CSC Boca Limited Partnership and the president of CSC Boca GP Corp. Defendant Adam Schlesinger is a director of Ceebraid-Signal Corporation and, at all times material hereto, managed, controlled, participated and had knowledge of the day-to-day activities of Defendant Ceebraid-Signal Corporation and was a shareholder, owner, officer and/or director of Defendant Ceebraid-Signal Corporation. Defendant Adam Schlesinger had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts or omissions of the officers, employees, agents, and representatives of the Defendants Ceebraid-Signal Corporation and Boca East, LLC as described below, were unfair or deceptive and/or prohibited by law.

18. Defendants Leslie Schlesinger, a resident of Palm Beach, Florida, Adam Schlesinger and Jason Schlesinger are the personal guarantors, jointly and severally, of the construction financing granted by U.S. Bank, National Association in October of 2003 in the

amount of $54,570,000.00 to a trust whose beneficiary was Defendant Boca East, LLC. The proceeds of said financing putatively were to be used for the construction of said 204 unit residential condominium project called Eden Condominium No. One and Eden Condominium No. Two.

19. Defendant Jason Schlesinger, a resident of Stamford, Connecticut, is the vice president of Defendant Ceebraid-Signal Corporation.

20. At all times material hereto, Defendants Leslie Schlesinger, Adam Schlesinger and Jason Schlesinger knew of and controlled the activities of Defendants Ceebraid-Signal Corporation and Boca East, LLC. At all times material, Defendants Leslie Schlesinger, Adam Schlesinger and Jason Schlesinger had actual knowledge or knowledge fairly implied on the basis of objective circumstances, that the acts or omissions of the employees, agents, and representatives of Defendants Ceebraid-Signal Corporation and Boca East, LLC as described below, were unfair or deceptive and/or prohibited by law.

DECEPTIVE AND UNFAIR TRADE PRACTICES
CHAPTER 501, PART II FLORIDA STATUTES

21. Plaintiff adopts, incorporates herein and re-alleges paragraphs 1 through 20 as if fully set forth hereinafter.

22. Chapter 501.204(1), Florida Statutes, declares that unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

23. Beginning on a date unknown but continuing at least to December 8, 2006, Defendants engaged in various willful deceptive and unfair trade practices, as hereinafter set forth, in violation of Chapter 501, Part II, Florida Statutes (2008).

The Proposed Project

24. Boca East, LLC was represented publicly in the prospectus given to prospective purchasers to be the developer of the 204 unit Eden Condominium No. One and Eden Condominium No. Two (hereinafter referred to as the "Eden Project"). Boca East, LLC was organized in Delaware in January of 2002 and registered to do business in Florida on or about February 27, 2002, ostensibly to renovate and convert existing apartment buildings in Boca Raton into the Eden Project residential condominium. However, in advertisements, the Defendants described Ceebraid-Signal Corporation as the developer and promoted that Ceebraid-Signal Corporation had been developing premier residential properties for scores of years.

25. In conjunction with the proposed development of the Eden Project, the Defendants secured construction financing in the principal face amount of $54,570,000.00 as aforesaid.

26. Construction of all units in the four buildings and of the common amenities/recreational facilities at the Eden Project has not been completed as of the date of this Complaint putatively due, in whole or in part, to a lack of funds. During 2003, 2004, 2005 and 2006, Boca East, LLC executed agreements for the sale of units in said Eden Condominium No. One and Eden Condominium No. Two.

27. As a result of the Defendants' deceptive acts or practices as hereinafter set forth, consumers have suffered. Only one of the four buildings in the Eden Project has been completed to date. The completed building in the Eden Project received an occupancy permit from the City of Boca Raton in 2006. Thereafter, the transfers to buyers of twenty–seven units in the building were closed, with the new owners taking occupancy of said units, but the common amenities/recreational facilities for these units have not been completed. The owners of said

twenty-seven units have been forced to live in an environment that resembles a construction zone, not the luxurious community with common amenities/recreational facilities represented by the Defendants in sales and marketing materials. The unit owners have been "living surrounded by piles of cement, dust and board-covered windows", a local reporter wrote in April of 2008, with two concrete shells instead of luxury buildings, one partially completed building and no common amenities/recreational facilities. One unit owner has been quoted by the media that "they feel like hostages" and that "we've been trapped four years". The unit owners have also suffered significant financial damage as their units are unsalable and otherwise of minimal value in such environment.

Disclosure Requirements

28. In conjunction with marketing and offering for sale of units at the Eden Project, the Defendants prepared a prospectus pursuant to F.S. § 718.504.

29. F.S. § 718.504 requires developers of residential condominiums with more than 20 units to submit to the Department of Business and Professional Regulation a prospectus, or offering circular, a copy of which must be given to each prospective purchaser.

30. Subsection 23 of F.S. § 718.504 requires the prospectus to disclose the "identity of the developer and chief operating officer or principal directing the creation and sale of the condominium and a statement of its and his or her experience in this field."

31. The Interstate Land Sales Full Disclosure Act (ILSA), 15 U.S.C. §1701 et seq., applies to the sale of condominiums with 25 or more units but a project is exempt if the condominium is already constructed or the sales contract obligates the developer/seller to construct the building within two years from the date of the sales contract.

32. ILSA, 24 C.F.R. §1710.208, requires extensive information about developers as follows:

> a. Name, address, IRS number and if entity, the interest of each principal and identity of the officers and directors.
> b. Whether the developer, its parent, subsidiaries or any other principals, officers or directors directly or indirectly are involved in any other project, and if so identify same.
> c. State the principals of the developer and the principals of the ultimate parent.
> d. For corporations, submit articles of incorporation, certificate of good standing and certificate of registration as foreign corporation, if applicable.
> e. For other forms of entity, submit articles of partnership or association and all other documents relating to the organization.

33. ILSA, 24 C.F.R. § 1701(b), defines parent corporation as that entity which ultimately controls even though the control may arise through any series or chain of other subsidiaries or entities. ILSA, 24 C.F.R. § 1701(b), also establishes that principal means any person or entity holding at least 10 percent financial or ownership interest in the developer directly or through any series or chain of subsidiaries or other entities.

34. ILSA, 15 U.S.C. § 1702(a), exempts a project if the sales contract obligates the developer/seller to construct the building within two years from the date of the sales contract.

35. If a Florida developer is not exempt from ILSA and violates the disclosure requirements of ILSA, there is a per se violation of FDUTPA.

Illusory Obligations of Developers

36. As a matter of Florida law, "if the developer remains exposed to damages for breach which are sufficient to constitute a substantial economic risk under the circumstances, the developer's obligation is real rather than illusory." Hardwick Properties, Inc. v. Newbern, 711 So.2d 35, 39. Thus, if the developer's building obligation is real, the exemption from ILSA obtains but if the developer's building obligation is illusory, the exemption from ILSA does not apply.

37. The U.S. Department of Housing and Urban Development has stated that purchase contracts that permit the seller to breach virtually at will are viewed as unenforceable because the construction obligation is not an obligation in reality. *Supplemental Information to Part 1710: Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act.*

38. The U.S. Department of Housing and Urban Development has stated that a pre-sale clause conditioning the sale of a unit on a certain percentage of sales of other units is permissible. 24 C.F.R. § 1710.5. Nonetheless, a seller's unilateral right to cancel the contract based on a lack of sufficient sales after the purchase contract is signed renders the seller's obligation illusory if the buyer's remedy is only the return of the deposit. Jankus v. Edge Investors, L.P., 619 F.Supp.2d 1328, 2009 WL 961154 at *10 (S.D. Fla. 2009)

Unconscionability

39. For a contract to be unconscionable under Florida law it must be both procedurally and substantively unconscionable. Prieto v. Healthcare & Ret. Corp. of America, 919 So.2d 531 (3rd DCA, 2005) Procedural unconscionability relates to the bargaining power of the parties and generally the manner by which the contract is made while substantive unconscionability assesses whether contract terms are so "outrageously unfair" as to "shock the judicial conscience." Frantz v. Shedden, 974 So.2d 1193 (2nd DCA, 2008) A contract of adhesion "is a strong indicator that the contract is procedurally unconscionable because it suggests an absence of meaningful choice." VoiceStream Wireless Corp. v. U.S. Communs., Inc, 912 So.2d 34 (4th DCA, 2005)

Boca East, LLC's Prospectus and Unit Purchase Agreement

40. In the prospectus for the Eden Project, the Defendants disclose the identity of the developer and state the experience as follows:

> "Boca East, LLC, a Florida (sic) limited liability company is the Developer of the Condominium. Being a relatively newly formed entity, it has no prior experience in the area of condominium or other real estate development. Mr. Adam Schlesinger is the primary person involved in the marketing and development of the Condominium and has approximately eight (8) years experience in the areas of real estate marketing and development, including involvement in the development and sale of condominiums, such as Il Lugano, a Condominium, and Brazilian Court Hotel and Condominium, each in Palm Beach, Florida.
>
> The information provided above as to Mr. Adam Schlesinger is given solely for the purpose of complying with Section 718.504(22), (sic) Florida Statutes, and is not intended to create personal liability on the part of Mr. Adam Schlesinger."

This disclosure does not comply with the disclosure requirements of ILSA pursuant to 24 C.F.R. §1710.208 and 24 C.F.R. § 1701(b). This disclosure is not accurate as required by F.S. § 718.504(23) as to the true identity of the developer since Cecbraid-Signal Corporation's involvement and control were not disclosed to prospective purchasers.

41. The Defendants' Unit Purchase Agreement for purchasers identified the seller as Boca East, LLC and contained the following language:

> "8. Completion Date; Presale Contingency. Seller agrees to substantially complete construction of the Unit . . . by a date no later than two (2) years following the date Buyer signs this Agreement, *subject, however, only to delays caused by matters which are legally recognized as defenses to contract actions in the jurisdiction where the building is being erected. . . . Seller shall have the right to cancel this Agreement and cause Buyer's deposit to be refunded in the event the Seller does not enter into binding contracts to sell at least sixty five percent (65%) of the units* in the Condominium." (emphasis added)

Furthermore, the Unit Purchase Agreement in paragraph 16, sub-headed "Default" read as follows:

> "If Seller fails to perform any of Seller's obligations under this Agreement, Seller will be in 'default'. ... Buyer will have such rights as may be available in equity and/or under applicable law. ... if the default alleged by Buyer is

> with respect to Seller's substantial completion obligation . . . Seller shall not be entitled to the curative period ... to extend Seller's completion obligation in a manner which would not be permitted if the exemption of this sale from the Interstate Land Sales Full Disclosure Act pursuant to 15 U.S.C. §1702(a)(2) is to apply."

42. The foregoing contract language is intended by the Defendants to establish the exemption from the Interstate Land Sales Full Disclosure Act (ILSA), 15 U.S.C. §1701 et seq. and obviate compliance with the developer disclosure requirements of ILSA. The unilateral right of Boca East as seller to cancel the contract based on a lack of sufficient sales after the purchase contract is signed renders the seller's obligation illusory since the buyer's remedy is solely the return of the deposit.

43. The Defendants' Unit Purchase Agreement in substance states that the seller agrees to substantially complete construction of the unit by a date no later than two (2) years following the date buyer signs the agreement but construction delays beyond the two year period are permitted if the delays are due to matters legally recognized as defenses to contract actions in the jurisdiction where the building is being erected (i.e. Florida). The Defendants' two year construction obligation, for exemption from ILSA, 15 U.S.C. §1701 et seq., is illusory as the construction delay defense is not limited to the doctrine of impossibility of performance. Plaza Court, L.P., v. Baker-Chaput and O'Brien, 2009 WL 1809921 (5th DCA, June 26, 2009)

44. The Defendants prepared their prospectus and Unit Purchase Agreement and otherwise conducted themselves toward buyers as herein set forth in a manner so as to evade compliance with ILSA. Thus, the Defendants are not entitled to any exemption under 15 U.S.C. §1702(a)(2). Gentry v. Cottages-Stuart, LLLP, 602 F. Supp. 1239 (S.D. Fla. 2009)

Issue for Declaratory Judgment

45. The issue whether or not a construction project is exempt from ILSA depends on whether the developer's obligation to construct the residential condominium within the two year period from the date of the sales contract is illusory.

46. The Defendants' Unit Purchase Agreement elevates form over substance. The Agreement had words regarding delays caused by matters which are legally recognized as defenses and the buyers' having such rights as may be available in equity and at law under applicable Florida law. Nonetheless, the buyers' remedy does not expose any of the Defendants to substantial economic risk in favor of the buyers due to Boca East's being without funds either to complete construction or pay damages.

47. The Defendants' claimed exemption from ILSA disclosure requirements is based on the wording in the sales contract to complete construction within two years. The Defendants' two year construction obligation, for exemption from ILSA, 15 U.S.C. §1701 et seq., is illusory as the construction delay defense is not limited to the doctrine of impossibility of performance.

48. The two year construction obligation is illusory since the seller, Boca East, LLC, was not exposed to substantial economic risk as it had no funds to pay damages to consumers and/or had the pre-sale right to cancel the contract with a return of the deposit.

49. A seller who has no funds to pay damages to consumers or to finish construction is judgment proof as to the buyers, and thus the contractual two year construction obligation is illusory and ILSA applies.

50. Defendants provided inaccurate information in Boca East's prospectus concerning Ceebraid-Signal Corporation, the newly created entity (Boca East, LLC) and Adam Schlesinger's experience in developing prior projects. This information omits discussion of the

many development projects that the Schlesinger Defendants have been involved in through Ceebraid-Signal Corporation, in addition to the two projects mentioned in the prospectus.

51. The exemption from ILSA is important as the claimed ILSA exemption permits minimal information about developers to be disclosed to prospective purchasers under Florida law, F.S. § 718.504. Nonetheless, a claimed ILSA exemption does not obviate the statutory mandate that a developer is required to provide true and accurate information pursuant to F.S. § 718.504.

52. The Defendants' exposure to substantial economic risk is nonexistent, even if buyers have contractual remedies at law (damages) and in equity (specific performance) as Boca East, LLC does not have funds to complete construction or to pay damages.

53. The Defendants' Eden Project would not be exempt from ILSA if the two year construction obligation is deemed to be illusory.

54. The obligation to construct the Eden Project is illusory as the buyers' contractual remedy, although addressing ILSA exemption language, is unconscionable when the circumstances are considered, i.e. Boca East, LLC is a single asset entity that is judgment proof in its liability to buyers for the failure to complete the Eden Project as represented since the true developer, Ceebraid-Signal Corporation, was not publicly disclosed to prospective purchasers in the prospectus.

55. As heretofore set forth, the Defendants' two year construction obligation is illusory. Furthermore, the Defendants are not entitled to any exemption from ILSA as their prospectus, Unit Purchase Agreement and conduct toward buyers as heretofore set forth constitute evasion of compliance with ILSA.

56. As a result of the foregoing and as specifically heretofore set forth, the Defendants have engaged in deceptive acts or practices as aforesaid in violation of the provisions of Chapter 501, Part II, of the Florida Statutes.

57. An actual controversy exists as aforesaid for determination by the Court as to whether the Defendants violated ILSA, thereby effecting a per se violation of FDUTPA.

WHEREFORE, Plaintiff requests this Honorable Court to:

A. Adjudge and Declare that the Defendants' construction obligation was illusory, thereby effecting a violation of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §1701 et seq., and a per se violation of Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II.

B. Adjudge and Declare that the Defendants are not entitled to any exemption from Interstate Land Sales Full Disclosure Act, 15 U.S.C. §1701 et seq., as their prospectus, Unit Purchase Agreement and conduct toward buyers as herein set forth constitute evasion of compliance with Interstate Land Sales Full Disclosure Act, thereby effecting a violation of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. §1701 et seq., and a per se violation of Florida's Deceptive and Unfair Trade Practices Act, Chapter 501, Part II.

C. Assess against the Defendants herein civil penalties in the amount of Ten Thousand Dollars ($10,000.00) for each act or practice found to be in violation of Chapter 501, Part II, Florida Statutes (2008).

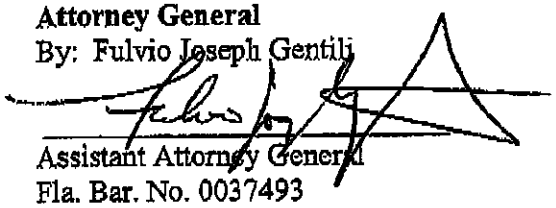
D. Award reasonable attorneys fees pursuant to F.S. 501.2075.

E. Grant such other relief as this Honorable Court deems just and proper.

Dated this 3rd day of September, 2009

Respectfully Submitted

BILL McCOLLUM
Attorney General
By: Fulvio Joseph Gentili



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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR PALM BEACH COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL, DEPARTMENT OF LEGAL AFFAIRS, STATE OF FLORIDA,

Plaintiff,

vs.

CEEBRAID-SIGNAL CORPORATION, BOCA EAST, LLC, CSC BOCA LIMITED PARTNERSHIP, CSC BOCA GP CORP., RICAR, LLC, CEEBRAID-SIGNAL INVESTMENT COMPANY, L.P., RICHARD SCHLESINGER, LESLIE SCHLESINGER, ADAM SCHLESINGER and JASON SCHLESINGER,

Defendants.
_____/

DETERMINATION OF PUBLIC INTEREST

NOW COMES, BILL McCOLLUM, ATTORNEY GENERAL, STATE OF FLORIDA, and states:

1. Pursuant to Section 20.11, Florida Statutes (2008), I am the head of the Department of Legal Affairs, State of Florida (hereinafter referred to as the Department).

2. In this matter, the Department seeks a declaration and actual damages on behalf of one or more consumers caused by an act or practice performed in violation of Chapter 501, Part II, Florida Statutes (2008).

3. I have reviewed this matter and I have determined that an enforcement action serves the public interest.

BILL McCOLLUM
ATTORNEY GENERAL
STATE OF FLORIDA

Dated: 8/12/09

EXHIBIT A

SIEMON & LARSEN, P.A.

Mizner Park
433 Plaza Real, Suite 339, Boca Raton, Florida 33432
Telephone (561) 368-3808 - Facsimile (561) 368-4008
E-Mail - info@siemonlarsen.com

May 27, 2009

Honorable Susan Whelchel
City Council Members
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432-3795

Dear Mayor Whelchel and Members of the City Council:

We are special counsel for Boca East, LLC, a special purpose entity controlled by Ceebraid Signal Corp. ("Developer") with regard to that certain property located at 201 W. Palmetto Park Road commonly referred to as "Eden" and we understand that the Manager will be "reporting" on the status of Eden at today's City Council meeting. As most of you know, the Developer acquired the property for the purpose of substantially upgrading the apartments and converting the property to condominium ownership. The Eden project was well-received by the City and the market, however, the project was the victim of a "perfect storm" of problems with only one of the four buildings completely renovated. Those problems included the demise of the project's general contractor, three hurricanes, material and labor shortages resulting from these hurricanes, the collapse of the South Florida condominium market, and the credit crunch.

After exhausting all other options, the Developer proposed to change the project back to a rental property and complete the planned renovations. In order to preserve the previously issued building permits, the Developer proposed a permit extension agreement which provided for an amendment to the Eden site plan, modifications to the building permits and completion of construction on or before September 21, 2009. In consideration for the extension, the Developer agreed to post, in phases, a $1 million letter of credit to secure demolition and security in the event that the Eden project were abandoned, and to obtain amended site plan approval and modified building permits within certain established time frames. The City granted an amendment to the Eden site plan on July 10, 2008 and the Developer submitted for modifications to the building permits. In the meantime, the South Florida real estate economy continued to decline making it impossible for the Developer to close financing of completion of the project. The City has now declared the Developer in default of the extension agreement and terminated the permits.

The Developer's position is relatively simple and straightforward:

- the conditions required to cure the claimed default were:

EXHIBIT
B

- certain documentation relative to the modifications to the plans,
- a contractors agreement,
- payment of the "plan review fee" which the Developer calculated in good faith as $108,360

- each of the conditions was satisfied prior to 5:00 PM on May 14, 2009, the extended deadline for cure

- although the $250,000 Letter of Credit was not due under the Permit Extension Agreement Conditions until the modified building permits were approved, the Developer committed to deliver the Letter of Credit on May 18, 2009

- the City's Code provides that building permit fees are not due and owing until the building permits are approved

- the modified building permit fees were never approved and therefore only the plan review fees were due and owing

- the City's Code does not require that plan review fees (or building permit fees) be paid by certified check

- the amount of the check delivered to the City was sufficient to cover the plan review fees based on the following:

  - the Building Department calculated the plan review fees as $63,542.25 per building or $127,084.50 for both permits sought to be modified based on $2.4 million per building
  - during Mr. Schlesinger's meeting with Mike Fischera and Mike Berkman on May 14, 2009, the City's staff agreed that the cost of construction was more likely to be $1.5 per building or 62.5% of the amount the City staff initially used to calculate the amount of the plan review fee of $127,084.50
  - 62.5% of $127,084.50 is $79,427.82.
  - In an abundance of caution, the Developer submitted a check of $108,360, more than 35% greater than the estimated plan review fee

Recent Background Leading to "Default Notice"

The economic conditions in South Florida were devastating to the Developer and to those who had purchased units in the one building that was completed. Although the matter of disappointed expectations was properly a private matter between the Developer and its customers, those who purchased condominium units successfully made the project a matter of public discourse and consideration. During the review of the Building Permit Extension and the modified site plan, City officials made it clear that they wanted the problem solved and the

Developer ultimately resolved the issues and entered into contracts to repurchase all the units which had previously closed.

After several courtesy notices with regard to compliance with the time frames in the permit extension agreement, to which the Developer and its design consultants responded, the City issued a "Legal Notice of Default" on April 28, 2009 ("Notice"). The Notice recited the recent permitting history and indicated that certain "outstanding items listed below" had not been received by the City. The Notice, however, did not actually include a list of outstanding items. The Notice went on to state:

> .... Pursuant to paragraph 21 of the "Agreement" made and entered into on September 21, 2007, by and between the City of Boca Raton and Boca East, LLC, you are hereby notified that you have failed to comply with or satisfy one or more of the terms, provisions or requirements of the Agreement, including but not limited to, (all references are to paragraphs of the Agreement)
>
> > 4(k). Within 60 days after approval of the modified site design referred to above, the Developer shall obtain approval for all necessary amendments to the Permits as are required to implement the modified site design and revised project.
>
> All extensions of time approved by the City Manager under paragraph 10 of the Agreement, as well as any extension under paragraph 15, have expired. You therefore have 15 days from the receipt (or refusal) of delivery of this notice comply with the above cited term(s). Should you fail to cure this default by providing the outstanding plan review items to obtain approval of the amendment on or before 5:00 PM on May 13, 2009, the Agreement shall terminate without any further notice, and the Permits shall be deemed expired.

(Emphasis added).

Adam Schlesinger on behalf of the Developer wrote to Mr. Jorge Camejo as follows:

> Following our conversation on April 21st at approximately 5pm, you explained that you would speak with Mr. Brown and respond to my proposal articulated in my letter of April 21st letter; instead of a telephone call, email, or written response I am in receipt of your legal notice of default dated April 28th. Excluding your references to the dates of your courtesy letters, your description of the developer's alleged non-responsiveness is false.

> As late as Thursday, April 23rd, I personally submitted responses to the building department; I have copies of the submissions responding to the city comments for permit # 03-7646 and the $25 receipt as well. The architect and project manager can attest to the fact that they have records and receipts regarding re-submissions to the building department referencing responses for permit # 03-7645. The only outstanding issue relates to the notarized contractor agreement. Overlooking the developer's responses and re-submissions as well as withholding response to my proposal regarding the notarized general contractor agreement has cast unwarranted doubt on the developer's commitment to the project. The developer is in compliance; therefore with all due respect, I request that the city rescind the legal notice of default, and accept my proposal outline in my April 21st letter to you.

On May 7th, Mr. Camejo responded to the Developer's letter of April 28th:

> I am in receipt of the above referenced letter, dated April 28th.... The permitting fees for this re-submittal have not been paid. As a testament to our cooperation and desire to see this project move forward, the City accepted the plans for this latest revision without the benefit of a notarized general contractor agreement. The notarized agreement, which would include the contract amount, is what determines the fee that is normally collected at the time of submittal. Therefore the plan review fees for this latest round of substantial plan review activities conducted by the Building Division staff, as of this date have not been paid. Staff has been working on the plan review since the plans were initially submitted on September 23, 2008. We agreed to take in this application without the up-front payment of the fees because of the $750,000 in Letters of Credit that secure issues related to the project. However, I believe you have been given more than ample time and opportunity to provide this important piece of information and pay the fee as required.
>
> I am pleased to hear that you paid the $25.00 fee for the recent submission of information. However, it would be far more productive for you to provide a copy of the notarized contractor agreement and pay the more substantial plan review fee normally collected at the time of permit submittal so that we can proceed with our review of the revised project. In the meantime, the Notice of Default will remain in effect unless cured within the time frame

> required under the Permitting Agreement, on or before May 13, 2009.

Thereafter, on May 12, the Developer submitted the required contractor's agreement to the City. On May 13, at 12:17 PM, Jorge Camejo e-mailed Adam Schlesinger the following:

> The permit fees noted below have been calculated by staff based on the contract amount which you provided. Please be sure to pay the amount owed before 5pm today in order to meet the required deadline and respond to this e-mail regarding your anticipated turnaround time for submittal of the letter of the $250,000 Letter of Credit as required for issuance of the permit. I will follow up with a formal written confirmation but in the interest of time I wanted to give you the information as quickly as possible.

The noted fees, in addition to the plan review fees required to cure the Notice of Default, included change of contractor fees, building permit fees, electrical & low voltage fees, plumbing fees, mechanical fees and fire fees. Under the City's Codes, these fees are due and owing within thirty (30) days after building permits are approved. The Developer's application for modification of the existing building permits were never approved. In response, at 12:51 PM, Adam Schlesinger e-mailed Jorge Camejo the following:

> Following our conversation this morning, you accepted my response about additional days I need to organize and deliver the $250K LOC, now you e-mail me a fee more than 2x as much and demand that I deliver payment before 5pm or else forfeit the permits. The city's plan review fee is incorrect. I have left telephone messages for mike fischere [sic] and mike berkman. I confirmed to you that we are prepared to put up the LOC, but I need time to put it in place. If the plan review fee is correct and owed at this time then I need time to organize the payment as well. I have acted in good faith and I hope the city will do the same. I will go the building dpt to wait to see messrs fischera and berkman.

At 1:58 PM, Jorge Camejo e-mailed Adam Schlesinger as follows:

> If staff requires additional time to verify the calculation for the remaining permit fee then we would be willing to stay the deadline until tomorrow at 5pm to enable verification by staff. With regard to the Letter of Credit, I need you to tell me how much time you need in order to post the remaining Letter of Credit as required for the permit to be issued.

At 2:50PM, Schlesinger e-mailed Camejo with the following:

> I just spoke with Mike Fichera and we will meet tomorrow at 2pm and review the revisions and identify the contract value attributable to buildings "A" and "C' which I believe we are in agreement that the value is much less than the total value of the contract, and a credit of previous fees should be applied as well. I am waiting for confirmation regarding the LOC but I believe that Boca East LLC will deliver the LOC no later than Monday, May 18th. As soon as I receive confirmation I will confirm with you.

After a several phone conversations between Charlie Siemon and George Brown and the City Manager, Mr. Siemon e-mailed George Brown the following:

> I just want to confirm that in response to the City's notice, that Ceebraid wishes to comply with the permit agreement and we are working and Ceebraid are exploring in good faith every opportunity to get the permit issued as soon as possible. Adam Schlesinger is meeting with Mike Fischera this afternoon to address the amount of the permit fee and I hope very much that they can agree on a fee which the bank will be willing to fund. I know that it will take us at least until next week to secure the funding and as I stated on the phone, I respectfully request that the a [sic] default not be declared under the permit agreement so that we can work with the City to complete the project as soon as possible. Thanks again for your assistance.

Sometime after noon, the City Manager called Mr. Siemon on the phone to clarify the Developer's intentions and Mr. Siemon reiterated that the Developer's intentions were to pay the review fee as soon as the amount was determined, post the Letter of Credit and pull the building permits as soon as possible.

At 3:16 PM, Adam Schlesinger e-mailed Jorge Camejo and George Brown with the following report on the meeting with Fischera:

> I met with Messrs Fischera and Berkman and I have been directed to provide an estimate from the contractor breaking down the contract and specifically detailing the dollar value bldgs "a" and "c" and having Vander Ploeg prepare a signed and sealed analysis and re-submit it to Messrs Fischera and Berkamn. Mr. Berkman directed me to have Derek call him so Berkman can describe exactly what he wants to complete the fee estimate. Furthermore,

> we agreed that assuming the approximate cost to complete building "D" was $2.5mm then it would not be unreasonable to assume that the outstanding permit fees would be [based on] approximately $1.4mm for buildings "a" and "C." I have a message into Derek asking him to call MR. Berkman now. I will move this effort as fast as possible. Thank you for your cooperation. Adam Schlesinger

Shortly thereafter, before 3:32PM, Mr. Siemon received a call from Jorge Camejo advising that a fee of $350,000 is required to be paid by certified check by 5:00PM. On or before 5:00PM, Adam Schlesinger delivered a check in the amount of $108,360.00 to the City which was stamped and signed received on May 14, 2009 by Mike Fischera.

At 9:31 AM, the Department of Development Services faxed a letter to BOCA EAST. LLC which stated, in pertinent part:

> The time frame for curing this default by providing the outstanding plan review items to obtain approval of the amendment was on or before 5:00pm on May 13, 2009. Staff provided a one day extension to on or before 5:00pm on May 14, 2009, to allow you to submit additional information required by the City in order to determine the final required fees for processing the permit. Enclosed herein is your check number 3048, in the amount of $108,000 [sic], which has been determined by the City to be insufficient to cover the outstanding permit fee amount.
>
> The City finds that said default has not been satisfactorily cured. All extensions of time approved by the City Manager under paragraph 10 of the Agreement, as well as any extensions available under paragraph 15, have expired. Effective immediately, the Agreement of Building Permit Extension Conditions is hereby terminated without any further notice, and the Permits are expired.

Subsequent to this letter, the Developer and the City have exchanged additional letters reiterating their respective positions.

Conclusion

The Developer intends to take whatever steps are necessary to protect the project and to proceed with completion of the renovation as soon as possible. The City's actions have already made that challenge more difficult and the Developer will do whatever is necessary to protect the project. What is key, whether the project is completed by the existing Developer or another developer, is to have the completion of the project be "ready to go" in the eyes of a buyer, investor or lender. Unfortunately, from the Developer's perspective, the City Administration's

actions if they are not withdrawn are very likely to be counterproductive if the City's interest is really to see the project completed as soon as possible. The Developer remains committed to this project and is prepared to meet with the City to address any lingering concerns.

Very truly yours,

Charles L. Siemon

Cc: Leif Ahnell
George Brown
Jorge Camejo
Mike Fichera
Mike Berkman

PAGE, MRACHEK,
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June 17, 2009

Via Email

Ms. Diana Grub Frieser, (dfrieser@myboca.us)
City Attorney
City of Boca Raton
201 West Palmetto Park Road
Boca Raton, FL 33432

Re: Boca East, LLC; property located at 201 West Palmetto Park Road, Boca Raton, commonly referred to as "Eden"

Dear Ms. Frieser:

As we discussed by telephone today, our law firm represents Boca East, LLC, a special purpose entity controlled by Ceebraid Signal Corp. (the "Developer") with regard to that certain property located at 201 West Palmetto Park Road, commonly referred to as "Eden."

In response to a letter of May 27, 2009 to the Honorable Susan Whelchel and the City Council Members from Charles Siemon who also represents the Developer, the Developer received a notice of "Quasi-Judicial Public Hearing" setting a hearing before the City Council at 6:00 p.m. Thursday, June 23, 2009. We appreciate the opportunity to appear before the City Council and to explain to the Council why we believe that the permits in question should not have been terminated.

However, an important principal of the developer and the primary contact between the Developer and the City Staff, Adam Schlesinger, will be out of the country on June 23 on a long planned, prepaid vacation with his wife.

Accordingly, because of Mr. Schlesinger's critical role in most of the communications that unfortunately lead us to where we are today, I request a continuance until the next available meeting date which I understand is July 28, 2009. We are not asking for this continuance for purposes of gaining any type of advantage or to delay the resolution of this important issue which I am sure we would all like resolved as quickly as possible. However, again Mr. Schlesinger is such an important player, we really have no choice but to request a continuance.

EXHIBIT
C

I understand that the continuance will be at the discretion of the City Council and we only ask that in the interest of permitting us to present fully and completely our case, especially given the somewhat short notice of the hearing, to which we otherwise would have no objection, the hearing be continued to the next available meeting.

I thank you for your consideration and best wishes.

Sincerely,

L. Louis Mrachek

LLM/pw

FAX TRANSMISSION

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DATE: September 4, 2009

TO: Steve Platzek, Esquire

FROM: Fulvio Gentili, Esquire
Assistant Attorney General

FAX NO: (561) 750-2446

PAGES: 27- including the cover sheet

RE: OAG vs. Ceebraid-Signal Corporation,
Boca East, LLC, et al

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