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

TED BERNSTEIN, as Trustee Probate Division

of the Shirley Bernstein Trust Agreement Case No.: 502014CP003698XXXXSB

dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

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**Motion to Stop Sale Of 7020 Lions Head Lane PROPERTY**

COMES NOW, Eliot Ivan Bernstein (“Eliot”), individually and as a beneficiary of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and ELIOT IVAN BERNSTEIN as Trustee of the “ELIOT BERNSTEIN FAMILY TRUST dated May 20, 2008”, and Eliot as Guardians for his three minor children, as alleged beneficiaries of the “SHIRLEY BERNSTEIN TRUST dated May 20, 2008, as amended” and hereby files Pro Se this “Motion to Stop Sale of 7020 Lions Head Lane Property” and in support thereof states, as follows:

1. That Plaintiff Theodore Bernstein (“Ted”) is currently serving as a Successor Trustee to Shirley’s Trust since the passing of Simon Bernstein the Trustee. During this time Ted has breached fiduciary duties and breached the terms of the trust, including his duties to inform, account, maintain impartiality, refrain from self-dealing and more.
2. Currently there is a hearing to remove Ted as Trustee to address these issues, scheduled for April 23, 2015 in the Shirley Trust. Eliot believes the timing of the removal hearing and this hurry and rush to sell a real estate asset in a secret and undisclosed sale (only discovered by accident), his parents’ home in Saint Andrews Country Club, is not just a coincidence.
3. Everything Ted has done as trustee is unknown and a mystery to all interested persons, including failing to provide accountings for two years in Shirley’s trust, in violation of Probate Statutes and Rules and the only thing known are his repeated wrongful acts and failure to protect the true beneficiaries of the Shirley Trust causing continued waste, fraud and abuse of trust assets. The trustee is responsible to protect and maintain the assets of the trust. Due to the continuous breaches and lack of information provided to the beneficiaries it is unknown what the current state or value of the trust assets are in both the Simon and Shirley Trusts and whether the home needs to be sold at this time or just properly maintained for the right buyer at a realistic price. One thing is clear, Ted should not be part of any business transactions, financial decisions or binding contracts for any trusts or selling of assets at this time until it is determined if he is currently a legal valid Trustee.
4. Ted is currently relying on the realtor’s advice and an appraisal that appears to be far below estimated market value to accept the price offered, which is way below market value as shown herein. Ted’s realtor’s only concern is the quick commission he is expecting. This same realtor advised Ted to sell another property, a condo at the beach in the most prestigious building in Boca Raton at a ridiculously reduced price that was less than the original purchase price, ten years prior, in an up market, causing a major financial loss to the beneficiaries as further explained below. This same realtor claims to be an expert at home sales in Saint Andrews Country Club, however at this time Jon Poletto’s firm has the least amount of listings compared to two other preferred realtors in Saint Andrews at this time. It is alarming to wonder if this same realtor also advised Ted to let all the grass and landscaping die, let mold take over the outside tiles, dismantle a fountain in the front of the house and to show the house with an unmaintained pool in efforts to move the house quicker at a discounted price or if this is another straw man buyer as alleged with the Condo sale.
5. That Eliot and other beneficiaries cannot determine if they can purchase the family home of their parents because as of this date accountings of their inheritances remain incomplete or missing entirely as the Trustee and his attorneys have failed to properly account according to Probate Rules and Statutes.
6. That until such time that beneficiaries, who at this time are unknown due to prior Fraud on the Court and Fraud on the Beneficiaries by the Trustee’s former counsel, Robert Spallina, Esq. and Donald Tescher, Esq., are determined and are made aware of the true and total value of their inheritances through statutorily required accountings, they are unable to determine if they need to sell the property or if they can buy the property and thus the sale should be halted until all accountings are complete, all accounting objections resolved and the true and proper beneficiaries determined along with the resolution of ongoing criminal complaints against Ted, including for the sale of the Condo. Therefore, an Injunction to stop the sale is in order.
7. That to do the sale backwards, without determining if Ted is a legal and qualified Trustee, without certainty of the beneficiaries determined and accountings completed first, could result later in lengthy litigation by aggrieved beneficiaries to claw back the property from any buyer and for other relief.
8. There was a prior sale of a Condominium owned by Shirley’s Trust by the alleged Trustee in 2013 and the alleged Trustee has still failed to file with beneficiaries any of the transaction details of that sale, despite numerous requests, this self-dealing sale was devoid of any notice to beneficiaries prior to sale, so again no objections could be made. It appears a major loss to beneficiaries has resulted from the alleged illegal sale of this property as defined herein.
9. That the proceeds from the sale of the Condo were then distributed to improper parties by the alleged Trustee Ted, including to his own family, which had been considered predeceased for all purposes of dispositions and distributions of the Shirley Trust and further Ted made the distributions against the advice of his counsel according to statements made by his counsel Robert Spallina to Palm Beach County Sheriff Investigators. (Exhibit 1 – PB Sheriff Report)
10. That the Condominium was sold for $1,600,000.00 on April 18, 2013 and netted approximately $1,400,000.00 to beneficiaries according to statements made by Ted and his prior counsel SPALLINA to PB Sheriff Investigators due to $200,000.00 of unaccounted for closing costs.
11. Eliot has provided a current MLS Seller Report (Exhibit 2 - Condo Sellers Report) with a current estimated value of the Condo for $2,254,000.00 with an estimated range (AVM) up to $2,727,340.00. In two years, **the sale of the condominium has proven a loss to beneficiaries of approximately $900,000 to $1,300,000.00** from this firesale sale done by Ted. Further compounding the loss to beneficiaries is the fact that the proceeds were then distributed to improper beneficiaries, including Ted’s family, which again, Ted and his lineal descendants were wholly disinherited in the Shirley Trust and would have received none of the proceeds of the sale.
12. That now the litigation costs alone for this clawback and litigation regarding that sale will add several hundred thousand of costs to beneficiaries and massive cost to the court and the Sheriff department whose costs are also high already attempting to investigate and resolve the alleged civil and criminal aspects of this transaction, including an alleged fraudulently signed Tax document.
13. That the beneficiaries were not properly notified by the Trustee of the Condo sale transaction details before the sale and were given no chance to purchase the Condo or dispute the transaction.
14. Fast forward two years to this recent undisclosed attempted sale of the Primary Residence and again the alleged Trustee failed to give any notice to beneficiaries or the PR of the Estate or this Court of the pending sale on March 31, 2015 of the 7020 Lions Head Lane, Boca Raton, FL 33496. Eliot only found out days before the sale was to be complete by a Zillow Alert.
15. That upon learning of the pending sale Eliot filed a Lis Penden with this Court that he had given the Court in October of 2014 and the Court was in the process of considering to allow him to file and which he sent to the beneficiaries, realtor, this Court and the Trustee, and the short notice was disclosed at the March 26, 2015 hearing the following week and is what in part led to this Court postponing the potential sale until at least April 20th 2015 after time for the beneficiaries and Court to review the terms. Both Ted and his Counsel Alan B. Rose, Esq. were fully aware that the Court was deciding on the filing of the Lis Penden given to the Court in October 2014 and they tried to sneak a sale around the Court’s back, while failing to notify the buyer of the pending Lis Penden or seek Court approval for the transaction.
16. That the Court should take note that the sale contract was already signed on March 16, 2015 by the Trustee and absolutely no notice had been given to the beneficiaries, the Court or the PR of the Estate who was in custody of the Personal Property in the home that there was a pending sale and it appears without Eliot’s notice, no notice would have been given until after the fact and closing and that Personal Properties under custody of the PR of the Estate of Simon would have been part of the transaction.
17. The fact that no notice was given to the PR of this sale is especially nefarious because the Personal Property of Shirley’s Condo that belonged to Simon and was in the custody of the PR O’Connell of the Estate that was Ordered by this Court to be re-inventoried at the home due to the fact that the Trustee was not sure what happened to the Personal Properties when the Condo was sold as disclosed in a hearing. In a hearing before this Court it was alleged by the alleged Trustee Ted and his counsel Alan Rose that the Personal Properties were stored at the Primary Residence that was being sold “AS IS.” Had the sale been completed it appears the Personal Properties of Simon’s from Shirley’s Condo would have been moved or sold making it impossible to complete the Court Ordered inventorying that was ordered to take place at the residence address. That nothing from the Condo could be seen in the garages as told to the Court when Eliot and the PR went to the home to re-inventory.
18. That the Court in the March 26, 2015 hearing agreed that Eliot and his children should have been given ample notice and a right to determine if they wanted to purchase the property prior to any sale being entered into and been given time to review any transaction details, which were not provided until the March 26, 2015 hearing by the Trustee and his counsel, five days prior to the undisclosed sale.
19. That in order for Eliot and his children to now determine if they can afford to purchase or finance the family home they will need to have a complete accounting of both the Estates and Trusts of Shirley and Simon Bernstein to determine the value of their inheritances, which remains largely unknown at this time.
20. That the Trustee recently filed with the Court, a long overdue accounting of the Trust of Simon Bernstein on March 15, 2015 but the Court will note that there are unlisted and un-named assets with asset values simply stated as illiquid and no amount of the worth or even description given of the asset, leaving no way to account for the values at all for beneficiaries to determine their inheritances.
21. That the Trustee has claimed that accounting of Shirley’s Trust will not be completed until sometime after the intended sale date of the home and thus without this accounting information and knowledge of the value of their inheritance they cannot determine if they can purchase the home or even need to sell the home at this time and therefore, the sale of the home should be forbidden until a full and complete of accounting by the Trustee is proffered to beneficiaries on these grounds as well.
22. That the firesale price of the home appears in part to be due to the run down and dilapidated condition of the home that has occurred due to the failure of the Trustee to perform even basic maintenance on the home. (Exhibit 3 – Listing Pictures 2012 to 2015 Before and After)
23. That according to the PR of the Estate of Simon’s assistant, Joielle "Joy" A. Foglietta Esquire (“Joy”), who went to the home to complete the Court ordered re-inventorying of the home PRIOR to any sale and transfer of the Personal Property, she stated the inside of the home looked as if it had been left untouched since Simon died on September 13, 2012, again perhaps part of the “AS IS” condition the home was being sold in.
24. That according to Joy the Personal Properties from the Condo sale that the Trustee Ted and his counsel Alan Rose told the court and the PR of the estate who has custody over them, were safely stored in the Lions Head Lane home, now appear to be missing, or more aptly stolen, and virtually nothing was there from the 4,000 sq ft condominium. (See Exhibit 4 – 4 Car Garage Pictures)
25. The Court will recall that it issued an Order for re-inventorying of the items missing from the Condo and now it appears that the these items have been stolen and can never be reinventories and yet another Fraud on the Court, Fraud on the Beneficiaries and Fraud on the Creditor has occurred by the Fiduciary Ted and his Counsel Rose and a colossal waste of everyone’s time chasing down the lies told to this Court and everyone else.
26. That had the sale that was taking place without notice to the Court, the beneficiaries or interested parties taken place, the missing items would have disappeared with the sale and made it virtually impossible to comply with the Court Order to inventory the items at the 7020 Lions Head Lane home where they had been stated to be and where the Court Order was evaded by Ted and Rose for months.
27. The Trustee Ted claimed to the PR O’Connell and others that the boxes containing the Condo Personal Property were so numerous in the garages that it would cost a fortune to unpack and re-inventory, costing far more than the $500.00 apportioned by the Court. The PR was in the process of submitting a new Proposed Order for Re-Inventorying to increase the amount allocated by the Court to inventory due to the statements of the fiduciary and his counsel that they had boxed the items and now they would have to all be unpacked and at great expense.
28. That as the pictures in Exhibit 4 show, there were 3 empty garages and 1 with only 4-5 small boxes.
29. That the Trustee and his counsel were not planning notifying the beneficiaries or the Court or the PR of the sale and fully intended to notify parties after the sale was complete and the monies distributed, again any distributions would have been to improper parties, as beneficiaries remain unknown and this would have caused untold damages to beneficiaries in seeking redress and further litigation costs and claw back costs that could increase the cost of this underhanded firesale to everyone.
30. That the fiduciary Ted and his Counsel Alan Rose failed to seek Court approval to enter into the contract first despite the pending Lis Penden in the Court’s possession that they were fully aware of. What if the Court would have not approved the sale due to the Lis Penden or other reasons and this was determined after the sale? This sneaky attempt to sell the home was willful, reckless and wanton disregard for this Court and the beneficiaries by the fiduciary Ted and his Counsel, Alan B. Rose, Esq., both Officers of this Court under Your Honor’s tutelage and provides further clear and convincing evidence of the continued breaches of fiduciary duties and yet another reason to remove Ted and his counsel.
31. That it appears that the depilated condition the house was shown in has led in part to a steady and massive decline in listing prices since Simon died. Where Simon listed the home weeks before his death on September 13, 2012 at $3.2M with the same broker, John Poletto, who is now selling it in an up real estate market for the price of $1.1 M to his friend and insurance broker/client Ted.
32. That since 2012 the country has realized an up market in real estate prices and the only explanation for such dramatic valuation decrease is the “AS IS” condition the home has been left in to stage it for a firesale purchase to a straw buyer.
    1. PRICE CHANGES SINCE SIMON BERNSTEIN DEATH IN 2012

Current Selling Price According to Poletto Sales Contract

3/26 Pending Sale $1,100.00 (note the $300,000.00 loss according to Zillow in the Pending Sale Price versus the sales contract price of 1.1M in just weeks)

Note that the original sale price of the home was $894.00 in 1993 and a mass of improvements was done over time to the home and the sale contract price today is only $1.1M, about the value of the land alone.

Zillow Price History

Date Event Price $/sqft Source

03/19/15 Pending sale $1,395,000 $185 Nestler Polett...

10/23/14 Price change $1,395,000-12.5% $185 Nestler Polett...

07/12/14 Price change $1,595,000-5.9% $211 Nestler Polett...

12/18/13 Price change $1,695,000-5.6% $225 Nestler Polett...

08/11/13 Price change $1,795,000-10.0% $238 Nestler Polett...

01/31/13 Price change $1,995,000-16.8% $265 Nestler Polett...

01/29/13 Price change $2,399,000-4.0% $318 Nestler Polett...

12/21/12 Price change $2,499,000-3.8% $332 Nestler Polett...

10/05/12 Price change $2,599,000-18.8% $345 Nestler Polett...

08/12/12 Price change $3,200,000-7.2% $425 Nestler Polett...

02/01/12 Listed for sale $3,450,000+286% $458 Nestler Polett...

06/09/93 Sold $894,000 $118 Public Record

1. That it is hard to believe that the Realtor has shown the house in this condition and that the Trustee has allowed the condition of the property under his care to become so run down as to cause a massive price devaluation of the property. This devaluing appears to be with intent to set up a straw man buyer to come in and purchase the property for a low ball number, apply some quick fix remedies and then resell the property at a much higher value, thereby causing a massive loss and further damages to the beneficiaries. This is the same straw man scenario the Condo was sold for and now in two years the buyer of that property has made over a million dollars of profit on that purchase and the **beneficiaries have lost over a million dollars as stated earlier**.
2. That the Court has hearings to remove the Trustee Ted, who also has breach of fiduciary claims filed against him already in a stayed counter complaint in Shirley’s Trust case and if the sale is transacted and it is later determined that Ted was not a qualified or legal Trustee the sale of the home will additionally become a contentious litigation with buyer, seller, attorneys, title company and the beneficiaries. Demands for a claw back of the property may also be made under the circumstances.
3. That due to this highly probable litigation that would result if this were determined to have been a been a firesale and an illegal sale by an inappropriate fiduciary, despite whether the sale of the property were reasonably priced due to its current condition, the costs of the litigations and liabilities that would follow would make the price skyrocket to all parties involved. This is especially true if the buyer was not informed of any potential liabilities that existed at the time of sale!
4. In the Court’s own words at the March 26, 2015 hearing regarding Ted’s removal coming FIRST and prior to completing more transactions that may all be then reversed if he is removed with cause, Your Honor stated,

THE COURT: I'm not -- look, nothing is easy

16 here. It's not going to get easier until we can

17 get hearings where I can start to knock off some

18 of the issues, which is what I have been saying

19 now like a broken record.

20 At some point, either Eliot is going to be

21 sustained on his positions or he's going to be

22 overruled, but one way or the other, we can put

23 some of this stuff to rest. **The problem is we're**

**24 doing all of this business with some of the metes** [matters?]

**25 of the case still up in the air where I haven't**

**been able to adjudicate; the claims that Ted**

**2 should be removed; the claims that there's**

**3 wrongdoing beyond Spallina and Tescher, the trust**

**4 is not valid.** I mean, give me a chance to rule on

5 that, because once I rule on that, then the matter

6 is over with on those and you'll know one way or

7 the other what to do.

8 Do you understand what I'm saying? I think

9 we have hearing time coming up. Let's use that,

10 you know, prioritize hearings on this case. So as

11 soon as we can, I'll give it to you.

1. That the Court should take note that while the property is held in the Shirley Trust, the Trust has not been released from the Gross Estate as the Estate was reopened due to the prior Fraud on the Beneficiaries and Fraud on this Court caused by the Trustee Ted’s former counsel Donald Tescher, Esq. and Robert Spallina, Esq. who closed the Estate of Shirley using Simon POST MORTEM and Fraudulently Notarized and Forged Documents for six parties, to achieve the fraudulent closing.
2. That Tescher and Spallina then later resigned as Ted’s counsel and as Co-Personal Representatives and Co-Trustees after admitting to Palm Beach County Sheriff Officers and the beneficiaries that their law firm had intentionally and with scienter fraudulently altered a Shirley Trust document that was to benefit Ted’s family by reinserting them into an irrevocable trust with a defined beneficiary class where Ted and his lineal descendants were considered predeceased.
3. That the Appraisal submitted by Poletto to this Court is dated July 09, 2014, approximately 9 months ago, and the Sale is “AS IS” and that is because the Trustee has let the property deteriorate with no care, no street value and in effect abandoned both the real property and his Fiduciary duties and responsibilities to maintain the asset.
4. That Simon had listed the home for $3.2 Million dollars weeks before his death with John Poletto. That Eliot has obtained a recent MLS Sellers Report (Exhibit 5 - 7020 Lions Head Sellers Report) that shows the property value estimated between a low of $1,594,780.00 to a high $1,770,205.00. Again, the proposed sale price of $1,100,000.00 represents a major loss to beneficiaries and if like the Condo another $200,000.00 is lost in unidentified closing costs and commissions it becomes a greater loss. That none of the closing costs have been disclosed at this time either to beneficiaries, such as agent commissions, any lines of credits/mortgages, taxes, etc.
5. That it should be noted that Ted’s wife, Deborah Bernstein, who works for John Poletto’s firm, may be the real estate agent that is getting commissions on these properties, although since the transaction details have never been provided by the Trustee to the beneficiaries of the Condo or the Primary Home this remains unknown.
6. That while the home on the supplied appraisal is estimated at approx. $1,600,000.00 the explanation for the $500,000.00 loss on the proposed sale price below the LOWEST ESTIMATED PRICE is blamed on the fact that Spanish Tile was used throughout the entire house and the floor plan has a second story master suite which was alleged poor by John Poletto, who failed to mention the elevator to the suite.
7. That this seems like a massive loss of value due to simple flooring tastes and floor plan claims and Eliot feels after speaking with the Realtor who went to appraise the home with Poletto to evaluate the sale price he would market it for, it was determined that with a floor cleaning, a paint job, a new realtor and a few thousand dollars of improvements the house would regain this alleged cost reduction and again be far more profitable to market for a little improvement.
8. That from the appraisal submitted by Poletto, the condition of the tile from the time Simon listed it in 2012 where it is photographed in pristine condition and looks like a luxury hotel (which it was designed after), has been allowed apparently for two years to weather, fade and contain green and black mold all over it, which makes it appear to be in need of replacement and with a little cost to buff it back to luster, a buyer that likes Specially Imported High End Spanish Tile would purchase the home at a much higher value.
9. That Eliot had a second opinion by Realtor Paul Saperstein Re/Max 561.251.5296 whom he has never met, who visited the home and who met with Poletto to value the home for marketing. That the conclusion was clear, with a little fixing up the house could be listed between the est low of $1.6M from his appraised value and what Simon had it listed for at $3.2M and that arriving in the middle, the Zillow Estimate currently of $2.4M seemed feasible for him to list and sell the home. The sale price of $1.1M makes no sense when compared to the price Poletto had listed it with Simon or in comparison with the estimated low of the property today and represents a huge loss of approximately ONE to TWO MILLION DOLLARS to beneficiaries.
10. That there is an alleged Mortgage / Line of Credit on the home of which Eliot has been denied any access to the records to show when the Line was accessed and if it was Post Mortem, as the prior Co-Trustees initially stated to the beneficiaries that both the home and condo were both 100% debt free and then suddenly claimed they found a Line of Credit or Mortgage for approximately $500,000. When they later claimed there was a line of credit / mortgage on the home Eliot and his counsel were denied any accountings requested.
11. That the Line of Credit / Mortgage issues must also be resolved prior to any sale to confirm the legality of this line and if the sale were done first and later it is found this mortgage was improper this could again be to the detriment of beneficiaries and again cause another level of legal entanglements regarding the legality of the transaction.
12. That Eliot requests that the E&O insurance of the appraiser be made available to the beneficiaries.
13. That the most disturbing problems with the sale of the home as presented is that in the March 26, 2015 hearing, Mr. John Poletto testified that he had not disclosed the massive amount of litigation surrounding the house in the Probate Courts, nor the Lis Pendens that he was sent a copy of months earlier when Eliot presented it to the Court in October 2014 in order to get approval to file it and that he would do nothing to scare buyers away from the sale by disclosing these facts. This failure to disclose a major liability to the buyer could only lead to further litigation for all parties, especially to a buyer that the facts were intentionally and with scienter concealed from in violation of real estate disclosure rules.

WHEREFORE, Eliot requests that this Court enter an order;

* 1. to halt the sale of the 7020 Lions Head Lane, Boca Raton, FL 33496 home until full statutorily required accountings are provided to beneficiaries to determine if they would like to purchase or finance the home,
  2. to halt the sale of the 7020 Lions Head Lane, Boca Raton, FL 33496 home until such time that a new real estate agent could properly clean the home and fix the surroundings for listing at the market value of the home,
  3. to halt the sale until it is determined if Ted is now a qualified Trustee of the Trust of Shirley,
  4. to halt the sale until all transaction details regarding the sale are fully disclosed to the beneficiaries,
  5. to schedule an immediate hearing at the Court’s soonest available time to hear this matter in a timely matter to prevent the sale of the home,
  6. to institute a bond for the difference of the sale price and the price Simon listed the house for of approximately $2.4 M to cover any losses if the home was found to be improperly sold by a not legally valid alleged Trustee Ted, who is considered predeceased for all purposes of disposition of the Shirley Trust and to cover the litigation costs that would result. If Ted and Alan Rose are confident in the legality of the sale then this is a small insurance protection to everyone they may be endangering if it turns out sour.
  7. for legal fees of Eliot Bernstein Pro Se, and
  8. any other remedies, relief, damages and sanctions this Court finds appropriate.

Filed on Wednesday, April 15, 2015

Eliot Bernstein, Pro Se, Individually, as Beneficiary of the Shirley Trust, Trustee of the Eliot Bernstein Family Trust and as legal guardian on behalf of his three minor children as alleged beneficiaries.

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**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Wednesday, April 15, 2015.

Eliot Bernstein, Pro Se, Individually, as Beneficiary of the Shirley Trust, Trustee of the Eliot Bernstein Family Trust and as legal guardian on behalf of his three minor children as alleged beneficiaries.

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**SERVICE LIST**

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| --- | --- | --- | --- |
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EXHIBIT 1 – Palm Beach County Sheriff Report

EXHIBIT 2 – Condo sellers report

EXHIBIT 3 - Listing Pictures Before and After

exhibit 4 – garage pictures OF THE FOUR GARAGES

exhibit 5 – 7020 lions head lane sellers report