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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re)	CASE NO. 12-02052 RJF (Chapter 7)
)	[RELATED TO DOCKET NO. 220]
AMANDA D. TUCKER,)	
)	MOTION FOR RECONSIDERATION OF
)	FEBRUARY 11, 2014 ORDER DENYING
Debtor.)	DEBTOR'S MOTION (1) TO SET ASIDE
)	AND VACATE MAY 23, 2013 "ORDER
)	GRANTING TRUSTEE'S MOTION TO
)	APPROVE SETTLEMENT AND RELEASE
)	AGREEMENT WITH LCP-MAUI, LLC," (2)
)	TO SET ASIDE AND VACATE MAY 24,
)	2013 "STIPULATED ORDER
)	TERMINATING THE AUTOMATIC STAY
)	(PROPERTY OF THE ESTATE)," (3) TO
)	REIMPOSE STAY, ENJOINING THE
)	FORECLOSURE PROCEEDINGS IN CIVIL
)	NO. 12-1-0462(3) IN THE CIRCUIT COURT
)	OF THE SECOND CIRCUIT, STATE OF
)	HAWAII, AND (4) FOR AN ORDER
)	DIRECTING THE STATE COURT-
)	APPOINTED RECEIVER TO TURN OVER
)	TO THE ESTATE TRUSTEE FUNDS OF
)	THE ESTATE, BASED ON BANKRUPTCY
)	FRAUD WAGED AGAINST THE COURT,
)	THE ESTATE TRUSTEE, AND THE
)	DEBTOR; (5) FOR LEAVE TO CONDUCT
)	FURTHER DISCOVERY; AND (6) FOR AN
)	AWARD OF ATTORNEYS' FEES AND
)	COSTS

MOTION FOR RECONSIDERATION OF FEBRUARY 11, 2014 ORDER DENYING DEBTOR'S MOTION (1) TO SET ASIDE AND VACATE MAY 23, 2013 "ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT AND RELEASE AGREEMENT WITH LCP-MAUI, LLC," (2) TO SET ASIDE AND VACATE MAY 24, 2013 "STIPULATED ORDER TERMINATING THE AUTOMATIC STAY (PROPERTY OF THE ESTATE)," (3) TO REIMPOSE STAY, ENJOINING THE FORECLOSURE PROCEEDINGS IN CIVIL NO. 12-1-0462(3) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, STATE OF HAWAII, AND (4) FOR AN ORDER DIRECTING THE STATE COURT- APPOINTED RECEIVER TO TURN OVER TO THE ESTATE TRUSTEE FUNDS OF THE ESTATE, BASED ON BANKRUPTCY FRAUD WAGED AGAINST THE COURT, THE ESTATE TRUSTEE, AND THE DEBTOR; (5) FOR LEAVE TO CONDUCT FURTHER DISCOVERY; AND (6) FOR AN AWARD OF ATTORNEYS' FEES AND COSTS

COMES NOW Debtor AMANDA DAWN TUCKER, by and through her undersigned attorneys, and hereby moves this Honorable Court for the above-referenced relief, for the reasons set forth in the accompanying Memorandum in Support of Motion, and the records and files in this case.

This Motion is made pursuant Bankruptcy Rules 9023 and 9024, and the record and files in this action.

DATED: Honolulu, Hawaii, February 25, 2014.

/s/ Gary Victor Dubin

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re)	CASE NO. 12-02052 RJF (Chapter 7)
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**MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION OF
FEBRUARY 11, 2014 ORDER DENYING DEBTOR'S MOTION (1) TO SET ASIDE
AND VACATE MAY 23, 2013 "ORDER GRANTING TRUSTEE'S MOTION TO
APPROVE SETTLEMENT AND RELEASE AGREEMENT WITH LCP-MAUI, LLC," (2)
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THE AUTOMATIC STAY (PROPERTY OF THE ESTATE)," (3) TO REIMPOSE STAY,
ENJOINING THE FORECLOSURE PROCEEDINGS IN CIVIL NO. 12-1-0462(3) IN
THE CIRCUIT COURT OF THE SECOND CIRCUIT, STATE OF HAWAII, AND (4)
FOR AN ORDER DIRECTING THE STATE COURT- APPOINTED RECEIVER TO
TURN OVER TO THE ESTATE TRUSTEE FUNDS OF THE ESTATE, BASED ON
BANKRUPTCY FRAUD WAGED AGAINST THE COURT, THE ESTATE TRUSTEE,
AND THE DEBTOR; (5) FOR LEAVE TO CONDUCT FURTHER DISCOVERY; AND
(6) FOR AN AWARD OF ATTORNEYS' FEES AND COSTS**

A. Background

This Voluntary Chapter 7 Bankruptcy was filed on October 17, 2012. The Debtor's principal assets constitute several parcels of real property located on the Island of Maui, with mortgage indebtedness claimed to now exceed \$7,000,000 and purportedly in arrears, accruing late charges, attorneys' fees and interest for several years at a default rate of 14%, otherwise possessing potentially substantial equity unless sold at a foreclosure forced sale.

The Debtor's lender was The Bank of Lincolnwood, which failed and was taken over by the F.D.I.C. on June 5, 2009, within months of the Debtor's alleged payment defaults.

Subsequently, an entity entitled "2010-2 SFR Venture LLC ('SFR')," claiming to be the assignee of the F.D.I.C. as to the Debtor's subject loans, filed a foreclosure action against the Debtor on May 4, 2012 in the Circuit Court of the Second Circuit ("Foreclosure Case"), halted several months later by the Debtor's Chapter 7 Petition filed in this Bankruptcy Court.

Thereafter, an entity entitled "LCP-Maui, LLC ('LCP')," claiming in turn to be the assignee of SFR, through the sworn Declaration of its purported representative of LCP, Mr. Jacob Mutz, set forth in Exhibit 1 to Debtor's prior Rule 60(b) Motion (Doc. No. 204, earlier Doc. No. 127), claiming in turn to be the Manager of the Manager of LCP entitled "AGFLEP Lending LLC ('AGFLEP')," represented to this Court "under penalty of perjury" that:

1. "LCP is the mortgagee and creditor" of the Debtor (Mutz Declaration, paragraph 3; and
2. "Debtor is in default from February 1, 2009, in payment of amounts owed under the First Note and Second Note and Mortgages" (Mutz Declaration, paragraph 10.

Supposedly at the time relying upon these two sworn representations of Mr. Mutz, this Court on May 23, 2013 granted the "Trustee's Motion To Approve Settlement And Release Agreement With LCP-Maui, LLC," as set forth in Exhibit 2 to Debtor's prior Rule 60(b) Motion (Doc. No. 204, earlier Doc. No. 151), and that same day, also in reliance thereon, approved the "Stipulated Order Terminating The Automatic Stay (Property Of The Estate)," as set forth in Exhibit 3 to Debtor's prior Rule 60(b) Motion (Doc. No. 204, earlier Doc. No. 154), thus returning the Debtor to the Second Circuit Court Foreclosure Calendar.

The Debtor in her prior Rule 60(b) Motion provided this Court with voluminous evidence (1) that LCP-Maui was not the owner of Debtor's loan, but a relatively impoverished loan sub-servicer, (2) that the Debtor was not in default of paying the subject loans whatsoever according to the sworn testimony of her lender's President,

the Chief Executive Officer of the Bank of Lincolnwood at the time, (3) and that this Court and its Trustee lacked the power *jurisdictionally* to sell off and to cancel the Debtor's defenses to foreclosure, which defenses she otherwise shares with the Trustee as a matter of law, as explained in her prior Rule 60(b) Motion, leaving her otherwise hopelessly powerless to defend the companion foreclosure action in the Second Circuit Court of the State of Hawaii, in which proceedings the Honorable Joseph E. Cardoza, compounding error, relied upon this Court's erroneous findings of fact and conclusions of law to the contrary when this Court approved said Settlement Agreement.

B. The Court's Manifest Errors Committed at the January 27, 2014 Hearing

Nevertheless, this Court denied the Debtor's prior Rule 60(b) Motion on the following grounds, recorded orally at the January 27, 2014 hearing (Doc. No. 218), finding:

1. THE COURT: "The benefit to the Estate is the same regardless . . . even if the wrong creditor was giving the consideration to the Estate . . . [and] the information from the F.D.I.C. was I understand corrected a few days later¹ . . . [and] seemed to be consistent with the notion that this particular creditor did in fact hold the note."²

¹ It is especially troubling in this regard that this Court ignored Rule 803(a)(1)(A) and (a)(2)(A) and (B) of the Federal Rules of Evidence by equating a written admission against interest made voluntarily by the F.D.I.C. representative in charge of the loan with his later contested retraction made without any corroborating documentation and merely in his obvious self-interest.

² The Court seems completely unaware of the policy of the F.D.I.C. and quasi-federal agencies like Fannie Mae and Freddie Mac to encourage the submission of false declarations in Court, making it appear that sub-sub loan services own loans to avoid the bad publicity of federal agencies and quasi-federal agencies foreclosing on homeowners.

2. THE COURT: "At the hearing on the settlement, I said that I had read Dr. Tucker's Declaration and heard her descriptions of what happened and that accepting everything she said is true [that she was not in default], I thought that the settlement should still be approved."

On the other hand, LCP-Maui's attorney at the January 27, 2014, hearing argued only that the Debtor supposedly was vigorously allowed to contest the foreclosure in State Court.

That was completely false as Dr. Tucker, thanks to this Court's erroneous and now embarrassingly flatly contradictory findings, the State Court, as shown in the Official Transcript of the State Court hearing filed and authenticated in this case (Doc. No. 217-1), completely relied upon this Court's aforesaid findings of fact finding that the Debtor was in default (even though this Court now states that it agreed with Dr. Tucker that she was not in default and that this Court accepted that fact as true, accepted what she had earlier said was true, now corroborated by the Bank Chief Executive Officer).

Even worse illogic, the State Court relied upon this Court's earlier conclusion of law, equally erroneous, this Court concluding that the Debtor had lost her defenses to foreclosure and approved their being traded away *via* her Trustee with the approval of this Court as a result of said settlement, when as a matter of law that is absolutely not

Should this Court subsequently decide that it has an aversion to receiving perjured Declarations in evidence in its proceedings, please accept this offer of proof to provide such information, which however it appears that this Court apparently considers to be irrelevant, concluding that nothing matters except what is supposedly in the best interests of the Estate even if Dr. Tucker was never in default and even if the somewhat recognized paper trail of admitted confusion supports the claim that LCP-Maui never owned any asset of the Estate, this Court willing it seems to take the money of even a crook and a perjurer if it benefits the Estate. But does it?

true, a central point raised in the Debtor's prior Rule 60(b) Motion which this Court completely ignored.

This Court at the January 27, 2014 hearing, first of all, contradicted its own findings in its own May 23, 2013 "Order Granting Trustee's Motion To Approve Settlement and Release Agreement with LCP-Maui LLC" (Doc. 151), set forth in Exhibit 1 attached hereto of which this Court may and should take judicial notice, earlier finding the Debtor in default on her loans.

Equally outrageous, the State Court similarly erroneously in its January 29, 2014 "Findings of Fact, Conclusions of Law, and Order Granting LCP-Maui, LLC's Renewed Motion for Summary Judgment and for Decree of Foreclosure Filed June 17, 2013," set forth in Exhibit 2 attached hereto of which this Court may and should also take judicial notice, found Dr. Tucker in default, in reliance upon this Court's earlier, parroted erroneous findings, now astonishingly contradicted by this Court's own later recorded findings of fact at the January 27, 2014 hearing.

Debtor believes that this Court committed manifest error, moreover, as if an afterthought at the January 27, 2014 hearing, by continually attempting to justify the unjustifiable, claiming that the settlement was in the best interests of the Estate.

But who is the Estate? Has the Court forgotten that the only beneficial interest in the assets of the Estate is Dr. Tucker herself, plus the State Department of Taxation and the Internal Revenue Service having the only filed substantial claims up to the time the Debtor's prior Rule 60(b) Motion was filed, whereas the IRS representative curiously has not even been apparently made aware of these proceedings, not being on the service list.

How is it in the best interests of the Estate (Dr. Tucker and the tax authorities) to declare her one day in default and the next day not in default, and meanwhile to trade away her defenses to foreclosure for a \$100,000 payment to the Trustee so that he can pay himself and pay his ever present counsel in bankruptcy after bankruptcy in this Court (some term it a "bankruptcy ring") out of Dr. Tucker's own monies generated from her own property rentals, and then subject her to the loss of millions of dollars in equity in her properties through a forced foreclosure sale and potentially a multi-million dollar deficiency judgment on top of all that, were she not awarded a discharge?

The relief requested is urgently needed, as the Honorable Joseph E. Cardoza on Wednesday, December 18, 2013, orally granted LCP's motion for summary judgment in the Foreclosure Action based upon this Bankruptcy Court's earlier erroneous findings procured by LCP's earlier fraudulent filings here, which has now been entered as a written order, appointing a Commissioner to forced sell off at forced sale auction prices all of her properties.

This Court should even act *sua sponte* and *immediately* before the hearing of this Motion to stop this aggravated and absurd, automatically reversible on appeal, indefensible travesty of justice. And so also should the Office of the United States Trustee, lest this Court become a haven for federally sponsored crooks.

C. Why Reconsideration Is Mandatory as a Matter of Federal Law

There is no "motion for reconsideration" -- by that express nomenclature at least -- provided for anywhere in the Federal Rules of Civil Procedure or the Federal Bankruptcy Rules, only by inference in and to FRCP Rule 59(e) and by express words in Bankruptcy Rule 9023 and in Local Bankruptcy Rule 9024-1.

Recognizing the understandable need for flexibility, however, in allowing some intelligent method for calling to a court's attention and for its reviewing decisional errors, without first subjecting the parties and our already case-clogged appellate courts to otherwise potentially unnecessary, wasteful, and expensive appellate proceedings and delay, federal courts have always freely permitted and encouraged such motions in clear cases of manifest error, and FRCP Rule 59(e) incorporated in the Bankruptcy Rules is designed for that very purpose.

For instance, in the well known *Wright and Miller Treatise on Federal Practice and Procedure*, 11 Fed. Prac. & Proc. Civ.2d, Section 2810.1 (rev. 1995), four separate and independent grounds for proper Rule 59(e) consideration are identified, the first – manifest error as her, as has been fully identified above:

First, the movant may demonstrate that the motion is necessary to correct manifest errors of law or fact upon which the judgment is based.

Second, the motion may be granted so that the moving party may present newly discovered or previously unavailable evidence.

Third, the motion will be granted if necessary to prevent manifest injustice. Serious misconduct of counsel may justify relief under this theory.

Fourth, a Rule 59(e) motion may be justified by an intervening change in controlling law.

The federal case law, recognizing the obvious, that none of us are always if ever infallible -- neither judges, nor law clerks, and certainly not attorneys -- amply demonstrates that there is room in American law for judicial changes of mind.

Thus, in *Atlantic States Legal Foundation, Inc. v. Karg Bros., Inc.*, 841 F. Supp. 51, 54, 55 (N.D. N.Y. 1993), Chief Judge McAvoy granted reconsideration, “the court

believing that its earlier ruling was in error,” having been based, that Court freely admitted, upon its “misunderstanding” of the applicable law.

And, as explained by analogy, for instance, by the United States Court of Appeals for the First Circuit in F.D.I.C. v. World University, Inc., 978 F.2d 10, 16 (1st Cir. 1992), “Rule 59(e) motions are ‘aimed at *re* consideration, not initial consideration” (citations omitted), and as such, by their very nature -- as the name of the motion itself more than implies -- they are addressed to matters *already heard and litigated*.

That does not mean, of course, that motions for reconsideration allow Movants to merely reargue a case – and that is not what the undersigned counsel are attempting to do here, as the reasoning of this Court in remanding the case was not known by the parties before final briefing of the issues before the January 27, 2014 hearing – for, as explained succinctly by the United States District Court for the District of New York in Motor Vehicles Manufacturers Association of the United States, Inc. v. New York State Department of Environmental Conservation, 831 F. Supp. 57, 60-61 (N.D. N.Y. 1993), there is a difference between *reargument* and the *correction* of manifest error:

Nonetheless, a motion for reconsideration under Rule 59(e) is not simply a second opportunity for the movant to advance arguments already rejected, or to present evidence which was available but not previously introduced. Rather, the movant must come forward and specifically identify those matters which it believes the Court has overlooked and why such matters would render the Court’s prior decision erroneous. Absent such a showing, the Court should not reconsider its earlier ruling. In the instant case Defendants have made an appropriate showing. The record before the Court supports reconsideration at this time, and for the reasons expressed below, the judgment previously entered is hereby vacated [“because there are material questions of fact remaining”].

To suggest to the contrary, that a federal court lacks the power in an appropriate case as obviously here, to correct its own contradictory mistakes is not only offensive to sound judicial policy, but not the law anywhere.

Going back to the origin, for instance, of FRCP Rule 59(e), as the United States Supreme Court in White v. New Hampshire Department of Employment Security, 455 U.S. 445, 450, researched and explained:

Rule 59(e) was added to the Federal Rules of Civil Procedure in 1946. Its draftsmen had a clear and narrow aim. According to the accompanying Advisory Committee Report, the Rule was adopted to “mak[e] clear that the district court possesses the power” to rectify its own mistakes in the period immediately following the entry of judgment.

And, for example, as the Hawaii Supreme Court held in Chun v. Board of Trustees of the Employees’ Retirement System of the State of Hawaii, 92 Haw. 432, 441, 992 P.2d 127 (2000), adopting the federal approach, the “law of the case . . . does not preclude the court from reconsidering an earlier ruling if the court feels that the ruling was probably erroneous and more harm would be done by adhering to the earlier rule than from the delay incident to a reconsideration and possible change in the rule of law to be applied,” and that “so long as a trial court retains jurisdiction, it ‘always has the power to reexamine, modify, vacate, correct and reverse its prior rulings and orders.’”

D. Conclusion

For all of the above reasons, this Court should forthwith and with no further equivocation restore justice in this Court and grant Debtor’s Motion for Reconsideration of February 25, 2014 Order Denying Debtor’s Motion (1) To Set Aside And Vacate May 23, 2013 “Order Granting Trustee’s Motion To Approve Settlement And Release Agreement With LCP-Maui, LLC,” (2) To Set Aside And Vacate May 24, 2013

“Stipulated Order Terminating The Automatic Stay (Property Of The Estate),” (3) To Reimpose Stay, Enjoining The Foreclosure Proceedings In Civil No. 12-1-0462(3) In The Circuit Court Of The Second Circuit, State Of Hawaii, and (4) For An Order Directing The State Court-Appointed Receiver To Turn Over To The Estate Trustee Funds Of The Estate, Based On Bankruptcy Fraud Waged Against The Court, The Estate Trustee, And The Debtor; (5) For Leave To Conduct Further Discovery; and (6) For An Award Of Attorneys’ Fees And Costs In Its Entirety.

DATED: Honolulu, Hawaii, February 25, 2014.

/s/ Gary Victor Dubin

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EXHIBIT 1

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**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

AMANDA D. TUCKER,

Debtor.

CASE NO. 12-02052
(Chapter 7)

**ORDER GRANTING TRUSTEE'S
MOTION TO APPROVE
SETTLEMENT AND RELEASE
AGREEMENT WITH LCP-MAUI,
LLC; EXHIBIT "1"**

HEARING

Date: May 22, 2013

Time: 10:30 a.m.

Judge: Honorable Robert J. Faris

Related Docket No. 125

**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE
SETTLEMENT AND RELEASE AGREEMENT
WITH LCP-MAUI, LLC**

The Trustee's Motion To Approve Settlement and Release Agreement with LCP-Maui, LLC (the "Motion") filed by DANE S. FIELD (the "Trustee"), Chapter 7 Trustee of the Estate (the "Debtor's Estate") of AMANDA D. TUCKER aka AMANDA D. TUCKER-MEUSE ("Debtor"), the above-named Debtor; was heard before this Court on May 22, 2013, upon due service having been made. Simon Klevansky, Esq., and Alika Piper, Esq., appeared for the Trustee. Susan Tius, Esq. appeared for LCP-Maui, LLC, a Florida Limited Liability Company ("LCP"). The Debtor appeared telephonically. The Court reviewed the Motion and documents filed in support and opposition to the Motion, and the records and files in this case and considered the arguments of counsel at the hearing.

NOW, THEREFORE, after due deliberation and for good cause shown and for the reasons stated in open Court,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334.

B. Determination of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. Proper, timely, adequate, and sufficient notice of the Motion and of the proposed relief described therein was given, and such notice was reasonable and appropriate under the circumstances and comports in all regards with the requirements of due process, Section 102(1) of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure. No other or further notice of the Motion, the hearing, or the entry of this Order is required.

D. The Settlement and Release Agreement (the "Agreement"), entered between the Trustee and LCP, a copy of which is attached as Exhibit "1", is in the best interest of the Debtor's Estate and represents the Trustee's sound business judgment. The Agreement falls above the low end of the range of reasonable outcomes, avoids the costs and delay associated with litigating disputes, provides significant value to the Debtor's Estate, serves the paramount interest of creditors, and was negotiated at arms-length and in good faith between the Trustee and LCP. The consideration under the Agreement constitutes reasonably equivalent value and fair consideration and the Agreement is fair, equitable, and reasonable.

E. The matters contemplated by the Agreement reflect the Trustee's exercise of sound business judgment, are fair and reasonable, presenting the best outcome for the Debtor's Estate, and are made in good faith.

F. LCP is not an "insider" of the Debtor within the meaning of Section 101(31) of the Bankruptcy Code, and LCP is unrelated to the Trustee and Debtor. There is no fraud or collusion between LCP and the Trustee.

G. Accordingly, there exists good and sufficient business justification to consummate the matters contemplated by the Agreement pursuant to Rules 4001 and 9019 of the Federal Rules of Bankruptcy Procedure.

H. Based upon the evidence presented and the record in Debtor's case, this Court hereby finds that LCP is relying on this Order, the releases of claims under the Agreement, and the relief provided hereby and the continuing validity of the foregoing, in LCP's giving of the consideration provided under the Agreement. The consideration provided by LCP under the Agreement constitutes at least reasonably equivalent value and fair consideration under the Bankruptcy Code.

I. Any objections to the approval of the Agreement, and the matters contemplated thereby, have been withdrawn, resolved or overruled.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED and all objections, to the extent not otherwise resolved, are hereby overruled.

2. The Agreement and all of the terms and conditions thereof are hereby APPROVED.

3. The terms and conditions of, and the matters contemplated by the Agreement between the Trustee and LCP are hereby authorized and approved in all respects, and the Trustee is authorized to: (a) make, enter into, execute and perform his obligations under the Agreement, and any agreement, instrument or document contemplated by the Agreement; and (b) take such other further actions as are contemplated by the Agreement to fulfill the Debtor Estate's obligations thereunder or as may be necessary to effectuate the terms of this Order.

4. The Agreement and all matters contemplated thereby, including this Order, shall be binding upon and inure to the benefit of the Debtor's Estate and LCP and their respective designees, nominees successors and assigns, and shall be binding in all respects upon any affected third parties, notwithstanding any subsequent conversion of this case to a

case under any other Chapter of the Bankruptcy Code or dismissal of the case.

5. This Court hereafter shall and does retain exclusive jurisdiction: (a) to interpret, construe, enforce and implement the terms and provisions of the Agreement and this Order and any and all disputes that may arise under the Agreement or this Order as between the Parties; provided, however, that in the event that this Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this clause, or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.



/s/ Robert J. Faris
United States Bankruptcy Judge

Dated: May 23, 2013

In re Amanda D. Tucker, Debtor, Case No. 12-02052, United States Bankruptcy Court, District of Hawaii; ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT AND RELEASE AGREEMENT WITH LCP-MAUI, LLC

EXHIBIT “1”

SETTLEMENT AND RELEASE AGREEMENT

BY AND BETWEEN

**DANE S. FIELD, BANKRUPTCY TRUSTEE OF
THE ESTATE OF AMANDA D.TUCKER**

AND

LCP-MAUI, LLC, A FLORIDA LIMITED LIABILITY COMPANY

DATED AS OF APRIL 24, 2013

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SCHEDULE

Schedule 1 Real Property

EXHIBITS

Exhibit A Form of Approval Order
Exhibit B Form of Stipulation
Exhibit C Form of Stipulated Order Terminating the Automatic Stay

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "Agreement") is made and entered into as this 24th day of April, 2013 by and between Dane S. Field, Trustee of the estate of Amanda D. Tucker, in the case entitled In re Amanda Tucker, Case No. 12-02052, United States Bankruptcy Court for the District of Hawaii, and not individually (the "Trustee"), and LCP – Maui LLC, a Florida limited liability company, or its designee (the "Lender"). Each of the foregoing is a "Party" and collectively are the "Parties."

WHEREAS, the Trustee is the duly appointed bankruptcy trustee of the bankruptcy estate of Amanda D. Tucker (the "Debtor") in the bankruptcy case entitled In re Amanda Tucker, Case No. 12-02052, United States Bankruptcy Court for the District of Hawaii (the "Bankruptcy Case");

WHEREAS, the Lender is the lender to the Debtor under a Promissory Note and a Revolving Credit Note, both dated December 14, 2006, evidencing debts owed by Debtor in the respective original principal amounts of \$3,115,000.00 and \$720,000.00 originally payable to the Bank of Lincolnwood, assigned by Federal Deposit Insurance Corporation as Receiver for Bank of Lincolnwood to 2010-2 SFR Venture, LLC ("SFR"), and assigned by SFR to Lender, eight separate Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement documents, all dated December 15, 2006, and recorded in the State of Hawaii Bureau of Conveyances on January 18, 2007 (collectively "Mortgages") and all other loan documents currently held by Lender (collectively "Loan Documents") ;

WHEREAS, the Mortgages are liens against the real, personal and other property described as "collateral" in the Mortgages (collectively "Real Property"), including the real property described in Schedule "1" attached hereto and made a part hereof; and

WHEREAS, the Parties have negotiated in good faith regarding their respective rights, claims and defenses and each recognizes the uncertainties and costs of litigation in asserting and defending their respective rights, claims and defenses. The Parties now desire to resolve, compromise, and settle all claims and controversies between them.

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. (a) Definitions. As used in this Agreement, the following terms have the meanings specified in this Section 1.1.(a).

"Approval Order" means an order substantially in the form of Exhibit "A" approving this Settlement Agreement and Release.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Hawaii.

"Business Day" means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in Honolulu, Hawaii.

"Deficiency Claim" shall mean the unsatisfied claim of the Lender after the foreclosure of the Mortgages.

"Debtor's Estate" means the estate of the Debtor in the Bankruptcy Case.

"Liability" means any debt, obligation or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation or liability is immediately due and payable.

"Petition Date" means October 17, 2012.

"Real Property" means that real, personal and other property described as "collateral" in the Mortgages, including the real property described in Schedule "1" attached hereto, and incorporated herein by this reference.

"Rent Receipts" mean the payments received by or on behalf of the Trustee after commencement of the Bankruptcy Case under rental agreements with tenants on the Real Property and prior to the date of Appointment of Foreclosure Commissioner/Receiver.

(b) Each of the terms set forth below shall have the meaning ascribed thereto in the following Section:

<u>Definition</u>	<u>Location</u>
<u>"363 Settlement Agreement"</u>	§2.6
<u>"Agreement"</u>	Preamble
<u>"Appointment of Foreclosure Commissioner/Receiver"</u>	§2.5
<u>"Bankruptcy Case"</u>	Preamble
<u>"Commissioner"</u>	§2.5
<u>"Debtor"</u>	Preamble
<u>"Excluded Claims"</u>	§4.2
<u>"Lender"</u>	Preamble
<u>"Loan Documents"</u>	Preamble
<u>"Mortgages"</u>	Preamble
<u>"Net Rent Receipts"</u>	§3.1
<u>"Receiver"</u>	§2.5
<u>"Settlement Amount"</u>	§2.1
<u>"SFR"</u>	Preamble
<u>"Stipulation"</u>	§2.3
<u>"Released Claims"</u>	§4.1
<u>"Trustee"</u>	Preamble

Section 1.2. Construction. The terms “hereby,” “hereto,” “hereunder” and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The term “including,” when used herein without the qualifier, “without limitation,” shall mean “including, without limitation.” Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The word “or” shall not be construed to be exclusive. Provisions shall apply, when appropriate, to successive events and transactions. Unless otherwise indicated, references to Articles, Sections, Schedules and Exhibits refer to Articles, Sections, Schedules and Exhibits of and to this Agreement.

ARTICLE II SETTLEMENT OF CLAIMS

Section 2.1. Settlement of Claims Against Lender. Upon the terms and subject to the satisfaction of the conditions contained in Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of this Agreement, the Lender shall pay to Trustee, ONE HUNDRED THOUSAND DOLLARS AND NO/100 (\$100,000) (“Settlement Amount”) on such terms and conditions and in the manner set forth herein.

Section 2.2. Claims Settled. The claims of Trustee settled herein include all claims, defenses and causes of action of the Trustee and Debtor’s Estate against the Lender, regardless of whether or not such claims, defenses and causes of action have been asserted by the Trustee or Debtor’s Estate, and all rights of indemnity and the following to the extent such constitute Lender’s collateral under the Loan Documents-- warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, possessed by the Trustee or Debtor’s Estate (regardless of whether such rights are currently exercisable).

Section 2.3. Acknowledgment of Lender’s Claim. Trustee acknowledges, agrees to and agrees to stipulate to the following, as more fully set forth in Exhibit “B” attached hereto and made a part hereof (“Stipulation”):

- (i) The Loan Documents create valid first and second liens against the Real Property and other collateral described therein, including leases and rents collected or held pursuant to the Loan Documents,
- (ii) Debtor is in default under the terms of the Loan Documents and the Lender is entitled to foreclose on the security interest created by the Loan Documents,
- (iii) The amount owed under the Loan Documents, including default interest under the Loan Documents as of April 24, 2013 is \$6,370,622.32, with per diem interest thereafter at \$1,483.57 and all amounts are secured under the Loan Documents,

- (iv) Lender is entitled under the Loan Documents to appointment of a receiver and/or a commissioner in any foreclosure proceeding, and
- (v) Trustee waives any defenses, affirmative claims and/or counterclaims, rights for reconsideration and/or rights of appeal from any findings of facts, conclusions of laws, orders and judgments determining matters which Trustee acknowledges, agrees and stipulates to herein.

Section 2.4. Relief from Automatic Stay. Upon approval of this Agreement by the Bankruptcy Court, the automatic stay shall be terminated as to the Real Property so as to allow the Lender to proceed with foreclosure of the Mortgages in the state court and exercise of any rights and remedies under applicable nonbankruptcy law with respect to the Loan Documents and the Real Property. Provided however, the Bankruptcy Court may approve the 363 Settlement Agreement with the consent of the Internal Revenue Service prior to the approval of any foreclosure sale of the Real Property in state court. The parties agree upon approval of this Agreement by the Bankruptcy Court to the entry of the Stipulated Order Granting Relief from Automatic Stay, substantially in the form attached hereto as Exhibit "C".

Section 2.5. Trustee's Agreement to Operate and Oversee Real Property. The Trustee agrees by and through his agents to oversee the management of the Real Property and the collection of rents for the Real Property until the earlier of (i) 90 days after the entry of the Approval Order, (ii) the appointment of a commissioner ("Commissioner") or receiver ("Receiver") in State Court foreclosure proceedings for the Real Property (the earlier of such an appointment of a Commissioner or Receiver hereinafter referred to as "Appointment of Foreclosure Commissioner/Receiver") and the appointed Commissioner and/or Receiver begins to collect rents and manage the Real Property or (iii) the approval of the 363 Settlement Agreement and the transfer of the Real Property by the Trustee pursuant thereto. The Trustee shall turn over to the Lender, all Net Rent Receipts in excess of the Settlement Amount.

Section 2.6. 363 Settlement Agreement. In the event the Trustee and Lender agree upon a Settlement and Release Agreement (a "363 Settlement Agreement") under which Trustee agrees to sell and transfer the Real Property to Lender, the Trustee shall seek approval of such 363 Settlement Agreement with the Bankruptcy Court. Upon approval of the 363 Settlement Agreement by the Bankruptcy Court, this agreement shall be deemed to be superseded by the terms and conditions of the 363 Settlement Agreement approved by the Bankruptcy Court.

ARTICLE III SETTLEMENT AMOUNT

Section 3.1. Settlement Amount. The \$100,000 Settlement Amount shall be paid to the Trustee as follows:

(a) First, from the Net Rent Receipts held by the Trustee (i) on the date of the Appointment of Foreclosure Commissioner/Receiver or (ii) ninety (90) days after entry of the Approval Order, whichever occurs first;

(b) Next, from proceeds received by the Lender from a Commissioner or Receiver appointed in the foreclosure proceeding for the Real Property within three (3) business

days after receipt by the Lender, provided further that Lender agrees to direct the payment of such proceeds otherwise receivable by the Lender directly to the Trustee; and

(c) Finally, the balance, if any, from the proceeds received by the Lender upon the first resale of any of the Real Property acquired through foreclosure.

All Net Rent Receipts held by the Trustee in excess of the Settlement Amount shall be turned over to the Lender as of the earlier of the date of the Appointment of Foreclosure Commissioner/Receiver, or ninety (90) days after entry of the Approval Order or as thereafter received by the Trustee.

The “Net Rent Receipts” means all Rent Receipts from the Real Property collected or held by the Trustee, and net of any and all liabilities incurred by the Trustee, after commencement of the case, in managing the Real Property and collecting the Rent Receipts, until Appointment of Foreclosure Commissioner/Receiver, including, but not limited to, among such liabilities,

- (i) management fees due, respectively, to Moffett Properties, and to Mary Rose Toner;
- (ii) real property taxes (upon the Real Properties);
- (iii) general excise taxes (upon the Rent Receipts);
- (iv) insurance;
- (v) utilities; and
- (vi) expenses for care of the pool, landscaping, and other maintenance and repair of the Real Property, or any of them;
- (vii) insurance premium advanced in the sum of \$3,173 payable to Lender to reimburse the Lender from funds Lender advanced in December 2012 for insurance coverage for the Real Property; and.
- (viii) bank fees incurred on rents collected until the earlier of the Appointment of a Foreclosure Commissioner/Receiver or ninety (90) days after entry of the Approval Order;

Excluding however, the following liabilities,

- (i) Trustee’s fees;
- (ii) Trustee’s attorneys fees;
- (iii) Trustee’s accountant fees; and

- (iv) all Liability not necessary or appropriate for the care, preservation and maintenance of the Real Property and other collateral under the Loan Documents.

ARTICLE IV MUTUAL RELEASE

Section 4.1. Released Claims. Subject to the exceptions stated below, Trustee, on his own behalf and as the representative of the Debtor's Estate, on the one hand and Lender, on the other, in consideration of the performance of the mutual promises provided in this Agreement, do hereby release, remise and forever discharge each other of and from any and all manner of actions, causes and causes of action, suits, debts, sums of money, accounts, bonds, bills, covenants, controversies, agreements, promises, trespasses, damages, judgments, executions, claims and demands, whatsoever, in law or in equity, whether presently known or unknown, whether material, immaterial, contingent, potential or direct, and whether arising in tort, in contract, by statute, at common law, or otherwise, which Trustee and/or the Debtor's Estate has, has had or may have against Lender and which Lender has, has had or may have against the Trustee which arise out of, relate to, are connected with or in any way pertain to the following:

- (a) any counterclaim or defense of the Trustee and/or Debtor's Estate to the Lender's enforcement of the Loan Documents;

- (b) any other claim of the Trustee and/or Debtor's Estate or the Lender against the other, except for the Excluded Claims; and

- (c) claims arising under, based upon or related to any actions by the Parties since the Petition Date, any rights or claims under section 506(c) of the Bankruptcy Code, and any "equities of the case" claims or other equitable claims under sections 105(a) or 552(b) of the Bankruptcy. Section 4.1(a), (b), and (c) are hereinafter collectively referred to as "Released Claims".

Section 4.2. Excluded Claims. Notwithstanding the foregoing, the Trustee and Lender understand and expressly agree that Released Claims shall not include the following, which are specifically reserved:

- (a) the claims of the Lender and the Trustee under the terms of this Agreement, including the claim of the Trustee to the Settlement Amount in accordance with this Agreement;

- (b) the claims of Lender and any stipulated liability of the Trustee and/or Debtor's Estate under the Loan Documents;

- (c) the right and claim of the Lender to enforce the Loan Documents, including the right to foreclose the Mortgages;

- (d) any claim arising under this Agreement including any right of the Lender to the balance owed to the Lender by the Trustee for the Net Rent Receipts;

(e) any Deficiency Claim against the Debtor's Estate resulting from the foreclosure of the Mortgages and other Loan Documents by the Lender; and

(f) pre-petition claims of the Lender to the Real Property and personal property which are described as collateral in the Loan Documents.

hereinafter collectively referred to as "Excluded Claims".

Section 4.3. Complete Bar. Execution of this Mutual Release is a complete and final bar to all Released Claims; and this Mutual Release forever and finally compromises, settles and terminates all of the Released Claims whether known or unknown, contingent or uncertain, suspected or unsuspected.

Section 4.4. Covenant Not to Sue. The Trustee and Lender agree not to at any time hereafter assert any Released Claims.

Section 4.5. Parties to Mutual Release Defined. Unless otherwise expressly stated in this Article IV the terms "Trustee" and "Lender" shall MEAN and be deemed to INCLUDE all of the following: the named parties; their respective members, principals, stockholders, officers, directors, partners, employees, agents, realtors, attorneys, accountants, insurers, indemnitors, adjusters and representatives; their respective heirs, executors, administrators, personal representatives, corporate representatives, predecessors, assignors, successors, successors in trust, successor trustees, trustees, trustees in bankruptcy, receivers, guardians, legal representatives, and assigns; their respective general or limited partners or joint venturers; their respective parent, subsidiary and affiliate corporations and entities; and all persons, entities or parties claiming by, through or under them.

ARTICLE V

COVENANTS OF THE PARTIES

Section 5.1. Conduct of Business. During the period commencing on the date of this Agreement and continuing through the earlier date of Appointment of Foreclosure Commissioner/Receiver, or ninety (90) days from entry of the Approval Order or the earlier of the termination of this Agreement in accordance with its terms, the Trustee shall confer regularly with the Lender concerning material operational matters and concerning the status of the Real Property. In this regard, the following additional covenants shall apply:

(a) Rent Deposits. So long as the Trustee is managing the Real Property, the Trustee shall return to any vacating tenant the tenant's security deposit, assuming the tenant is current in meeting rent obligations and the premises are left in good condition, in accordance with ordinary business practice, from such security deposit held by the rental managing agent;

(b) Repairs to the Real Property by Trustee. The Trustee may and shall maintain and, as needed, repair the Real Property, until the date of Appointment of Foreclosure Commissioner/Receiver, or ninety (90) days from entry of the Approval Order, whichever is earlier, in accordance with ordinary business practice, and the expense incurred thereby shall be a charge against the Lender's interest in the Rent Receipts. If there is a disagreement between the Trustee and Lender as to the necessity or propriety of any contemplated maintenance or

repairs, the issue shall be decided by the Bankruptcy Court; provided, however, that the Trustee shall in any event be entitled in his discretion to incur any such expenses hereunder as safety, health or law requires;

(c) Rehabilitation to the Real Property by Lender. Lender, in its capacity as secured creditor, and at its own expense, may undertake rehabilitation of the Real Property, provided, however, that the expense the Lender thereby incurs shall not give the Lender an administrative claim against the Debtor's Estate or otherwise constitute an administrative liability of the Debtor's Estate;

(d) Lender's Access to Managers. The Lender may confer with the Trustee's managers, Moffett Properties, and Mary Rose Toner, in preparation for the attendant management transition;

(e) Terminating Automatic Stay. Trustee shall seek approval of this Agreement by the Bankruptcy Court and further agrees to support and facilitate the termination of the automatic stay as to the Real Property and Loan Documents so as to allow the Lender to proceed with foreclosure of the Mortgages in state court and exercise of any rights and remedies under applicable nonbankruptcy law with respect to the Real Property and Loan Documents;

(f) Abandonment of Real Property. Upon the earlier of the Appointment of Foreclosure Commissioner/Receiver or ninety (90) days after entry of the Approval Order, the Real Property shall be deemed abandoned under Bankruptcy Code §524; and

(g) Lender's Deficiency Claim in the Bankruptcy Case: Lender shall be permitted to proceed with foreclosure of the Mortgages in state court and Lender retains the Deficiency Claim as an unsecured claim in the Bankruptcy Case.

Section 5.2. Access to and Delivery of Information; Maintenance of Records.

(a) Between the date of this Agreement and the date of Appointment of Foreclosure Commissioner/Receiver, the Trustee shall, during ordinary business hours, upon reasonable notice furnish the Lender with such financial and operating data and other information as is reasonably available without expense to Trustee, as the Lender and the Lender's representatives may from time to time reasonably request.

Section 5.3. Further Assurances. Subject to the terms and conditions of this Agreement and until the complete liquidation of the Debtor's Estate, or the earlier termination of this Agreement, the Trustee and the Lender shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable legal requirements to abide by the terms of this Agreement.

Section 5.4. Transition on Appointment of Foreclosure Commissioner/Receiver.

(a) After the Appointment of Foreclosure Commissioner/Receiver, the Trustee will make all necessary arrangements to transition the management of the Real Property and other collateral under the Loan Documents to the Commissioner or Receiver.

(b) After the Appointment of Foreclosure Commissioner/Receiver, if the Trustee receives any payment, refund or other amount which is covered by the Lender's Loan Documents or is otherwise properly due and owing to the Lender, the Trustee shall promptly remit, or shall cause to be remitted, such amount to the Commissioner or Receiver or to the Lender.

ARTICLE VI TERMINATION

Section 6.1. Termination. This Agreement may be terminated at any time prior to the Appointment of Foreclosure Commissioner/Receiver by:

- (a) mutual written consent of the Trustee and the Lender ;
- (b) the Lender or the Trustee, if the Bankruptcy Court enters an order permitting or approving a sale of all or a material part of the Real Property; and
- (c) the Lender or the Trustee, on or after May 31, 2013, if the Approval Order has not been entered by the Bankruptcy Court on the docket of the Bankruptcy Case;

Section 6.2. Procedure and Effect of Termination. In the event of termination of this Agreement and abandonment of the transactions contemplated hereby, written notice thereof shall forthwith be given by the terminating party to the other party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the parties hereto *provided, however*, that no party shall be relieved of any Liability arising from any intentional breach by such party of any provision of this Agreement.

Section 6.3. Extension; Waiver. At any time, the Trustee, on the one hand, or the Lender, on the other hand, may: (a) extend the time for the performance of any of the obligations or acts of the Lender (in the case of an agreed extension by the Trustee) or the Trustee (in the case of an agreed extension by the Lender); (b) waive any inaccuracies in the representations and warranties of the Lender (in the case of a waiver by the Trustee) or the Trustee (in the case of a waiver by the Lender) contained herein or in any document delivered pursuant hereto; (c) waive compliance with any of the agreements of the Lender (in the case of a waiver by the Trustee) or the Trustee (in the case of a waiver by the Lender) contained herein; or (d) waive any condition to its obligations hereunder. Any agreement on the part of the Trustee, on the one hand, or the Lender, on the other hand, to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of the Trustee or the Lender, as applicable.

ARTICLE VII MISCELLANEOUS PROVISIONS

Section 7.1. Amendment and Modification. This Agreement may be amended, modified or supplemented only by the mutual written agreement of the Trustee and the Lender.

Section 7.2. Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may

be waived by the party or parties entitled to the benefits thereof only by a written instrument signed by the party or parties granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, or condition shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

Section 7.3. Survival. The parties hereto agree that the representations and warranties contained in this Agreement shall not survive performance of the parties obligations hereunder, and none of the parties nor any of their respective officers, directors, representatives, employees, advisors or agents shall have any Liability to the other after performance of the parties obligations hereunder for any breach thereof (it being understood that nothing in this Agreement shall impact any remedy available to any party hereto in the event of fraud).

Section 7.4. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express), two business days after delivery to such courier; (c) if sent by facsimile transmission before 5:00 p.m. in Hawaii, when transmitted and receipt is confirmed; (d) if sent by facsimile transmission after 5:00 p.m. in Hawaii and receipt is confirmed, on the following Business Day; (e) if sent by electronic mail transmission before 5:00 p.m. in Hawaii, upon receipt; (f) if sent by electronic mail transmission after 5:00 p.m. in Hawaii, on the following Business Day; and (g) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

(a) If to the Trustee, to:

Simon Klevansky
Alikea L. Piper
Davies Pacific Center
841 Bishop Street, Suite 1707
Honolulu, Hawaii 96813
Tel: (808) 237-5541
Fax: (808) 237-5757
Email: sklevansky@kplawhawaii.com;
apiper@kplawhawaii.com

(b) If to the Lender, to:

Susan Tius
Stephen K.C. Mau
Rush Moore LLP
737 Bishop Street, Suite 2400
Honolulu, Hawaii 96813
Tel: (808) 521-0406
Fax: (808) 521-0497
Email: stius@rmhawaii.com
smau@rmhawaii.com

Section 7.5. Assignment. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; *provided, however*, that: (a) subject to clause (b), neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any party hereto, including by operation of law without the prior written consent of the other party hereto; and (b) this Agreement shall be assignable by the Lender, without the prior written consent of the Trustee, so long as the Lender shall continue to remain obligated hereunder. Any assignment of this Agreement or any of the rights, interests or obligations hereunder in contravention of this paragraph shall be null and void and shall not bind or be recognized by the Trustee or the Lender.

Section 7.6. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible.

Section 7.7. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii, without giving effect to the principles of conflicts of laws thereof.

Section 7.8. Submission to Jurisdiction. Unless and to the extent otherwise specifically provided herein, the parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute or proceeding brought in such courts or any defense of inconvenient forum in connection therewith.

Section 7.9. Counterparts. This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties hereto in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Facsimile and electronically transmitted signatures shall be deemed to be, and shall be legally effective as, original signatures for all purposes of this Agreement.

Section 7.10. Incorporation of Schedules and Exhibits. All Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

Section 7.11. Entire Agreement. This Agreement (including all Schedules and all Exhibits), and the Transaction Documents, constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings, written and oral, among the parties with respect thereto.

Section 7.12. Remedies. The parties hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, each party or its respective successors or assigns may, in addition to any other rights and remedies existing in their favor, apply to the Bankruptcy Court or any other court of competent jurisdiction for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement.

Section 7.13. Headings. The descriptive headings contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 7.14. Bankruptcy Court Approval. This Agreement is subject to and shall not become effective or binding on the Trustee or the Debtor's Estate until and unless it is executed by all parties and a final unstayed order is entered by the Bankruptcy Court on or by May 31, 2013 approving all of the terms and conditions set forth in this Agreement.

[The remainder of this page is intentionally left blank.]

[The immediately following page is the signature page hereof.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written by their respective officers thereunto duly authorized.

**DANE S. FIELD, Bankruptcy Trustee of the Estate of
Amanda D. Tucker, and not individually**

By: _____
Name:

LCP - MAUI, LLC

AGFLEP LENDING, LLC, as Manager
of LCP – Maui, LLC
a Florida limited liability company

By: _____
Name: Jacob Mutz
Title: Its Manager

SCHEDULE “1”

SCHEDULE "1" – LIST OF REAL PROPERTY

Property Address	Tax Map Key No.
336 Front Street, Lahaina, Hawaii	2-4-6-005-022
1291 Uluniu Street, Kihei, Hawaii	2-3-9-008-020
341/347 Lani Place, Kihei, Hawaii	2-3-4-033-066
1543 Halama Street, Kihei, Hawaii	2-3-9-010-031
2074 Waikahe, Wailuku, Hawaii	2-3-4-017-054
43 Nonohe Place, Paia, Hawaii	2-3-8-001-063
150/170 Kee Road, Makawao, Hawaii	2-2-4-003-010
79 Ulumau Place, Paia, Hawaii	2-2-6-006-050

EXHIBIT "A"

(TO BE SUBMITTED)

EXHIBIT “B”

RUSH MOORE LLP
A Limited Liability Law Partnership

SUSAN TIUS 2873
NATHANIEL A. HIGA 9064
737 Bishop Street, Suite 2400
Pacific Guardian Center, Mauka Tower
Honolulu, Hawaii 96813-3862
Telephone No.: (808) 521-0406
Facsimile No. (808) 521-0497
E-mail: Stius@rmhawaii.com

Attorneys for LCP - MAUI, LLC

UNITED STATES BANKRUPTCY COURT

DISTRICT OF HAWAII

In re) Case No. 12-02052
) (Chapter 7)
AMANDA D. TUCKER,)
) SETTLEMENT STIPULATION AND
Debtor.) ORDER
_____)

SETTLEMENT STIPULATION AND ORDER

Dane S. Field (the "Trustee"), Bankruptcy Trustee of the Estate of Amanda D. Tucker, Case No. 12-02052, United States Bankruptcy Court for the District of Hawaii, and LCP-Maui, LLC, a Florida Limited Liability Company ("LCP-Maui, LLC") stipulate and agree as part of the Settlement and Release Agreement between the parties, executed concurrently herewith, as follows:

EXHIBIT "B"

1. LCP-Maui, LLC is the lender and Amanda D. Tucker (“Borrower”) is the borrower under that certain Promissory Note in the original principal amount of \$3,115,000 dated December 14, 2006, and that certain Revolving Credit Note in the original principal amount of \$720,000.00, both originally payable to the Bank of Lincolnwood, and assigned by Federal Deposit Insurance Corporation as Receiver for Bank of Lincolnwood to 2010-2 SFR Venture, LLC (“SFR”), and further assigned by SFR to LCP-Maui, LLC, eight separate Mortgage, Assignment of Leases and Rents, Security Agreement and Financing Statement documents, all dated December 15, 2006, and recorded in the State of Hawaii Bureau of Conveyances on January 18, 2007 (collectively “**Mortgages**”) and all other loan documents related to said loans that are currently held by LCP-Maui, LLC (collectively “**Loan Documents**”).

2. On October 17, 2012, the Borrower commenced this Chapter 7 bankruptcy proceeding and the Trustee was duly appointed as bankruptcy trustee of the Borrower’s bankruptcy estate (the “Debtor’s Estate”).

3. At the time of the bankruptcy filing, to the exclusion of the Borrower, all rights, title and interest of the Borrower under the Loan Documents and to the property that is the subject of the Mortgages became property of the Debtor’s Estate, pursuant under 11 U.S.C. §541(a)(1), and the Trustee has the authority to act for and on behalf of the Debtor’s Estate and to bind the Debtor’s

Estate, pursuant to 11 U.S.C. §323. Accordingly, the Trustee's agreements contained herein are intended to and do bind the Debtor's Estate, in respect of the subject matter of this stipulation.

4. The Mortgages constitute valid first and second liens against the following real property and other collateral described in the Mortgages, including leases and rents collected or held pursuant to the Loan Documents:

- a. 1543 Halama Street, Kihei, Hawaii 96753
(TMK NO. (2) 3-9-010-031-0000)
- b. 336 Front Street, Lahaina, Hawaii 96761
(TMK NO. (2) 4-6-005-022-0000)
- c. 150-170 Kee Road, Makawao, Hawaii 96768
(TMK NO. (2) 2-4-003-010-0000)
- d. 341 Lani Place, Wailuku, Hawaii 96793
(TMK NO. (2) 3-4-033-066-0000)
- e. 1291 Uluniu Road, Kihei, Hawaii 96753
(TMK NO. (2) 3-9-008-020-0000)
- f. 2066-2074 Waikahe Place, Wailuku, Hawaii, 96793
(TMK NO. (2) 3-4-017-054-0000)
- g. 79 Ulumau Place, Paia, Hawaii 96779
(TMK NO. (2) 2-6-006-050-0000)
- h. 43 Nonohe Place, Paia, Hawaii 96779
(TMK NO. (2) 3-8-001-063-0000).

5. The Trustee acknowledges and agrees that Borrower has failed to repay the loans as required under the Loan Documents ("**Payment Default**").

6. Trustee acknowledges and agrees that the Payment Default constitutes an event of default under the Loan Documents beyond any applicable grace or cure period, and as a result thereof, (i) an event of default occurred and has continued as a result of which the Debtor's Estate is obligated under the Loan Documents to pay LCP-Maui, LLC all amounts due in respect of the loan and the Loan Documents; (ii) no portion of the loan has been forgiven; (iii) Trustee hereby waives and releases, on his own behalf and on behalf of the Debtor's Estate, any defenses or counterclaims in connection with the Payment Default or otherwise in respect of the loan or the Loan Documents to the extent the same may exist; (iv) Trustee waives, on his own behalf and on behalf of the Debtor's Estate, any rights for reconsideration and/or rights of appeal to any findings of facts, conclusions of laws, orders and judgments determining matters which Trustee acknowledges, agrees to and has stipulated to herein; (v) LCP-Maui, LLC is entitled to exercise any and all rights and remedies provided to lender under the Loan Documents, at law or in equity, as a result of the Payment Default; and (vi) from and after the Payment Default, default interest, late fees, and attorney's fees have continuously accrued and shall continuously accrue with respect to the loan.

7. The amount owed under the Loan Documents including default interest under the Loan Documents as of April 24, 2013 is \$6,370,622.32 with per

diem interest thereafter of \$1,483.57, and all amounts are secured under the Loan Documents.

8. Any objection (i) to LCP Maui, LLC substituting as plaintiff in place of SFR in that certain litigation pending in the Circuit Court of the Second Circuit of the State of Hawaii, captioned *2010 SFR Venture, LLC v. Amanda D. Tucker, et al.*, Civil No. 12-1-0462(1) (the “**Foreclosure Case**”); and (ii) to the appointment of a receiver in the Foreclosure Case over the property that is subject to the Mortgages and/or any property subject to a security interest in favor of the lender under the Loan Documents, are hereby waived.

9. This Stipulation and the covenants and conditions contained herein shall apply to, be binding on, and inure to the benefit of the heirs, administrators, executors, legal representatives, assignees and successors-in-interest of the Parties hereto.

10. Borrower has received notice of this stipulation and has had an opportunity to assert in the Bankruptcy Court any position she may have with regards to the provisions hereof.

DATED: Honolulu, Hawaii, _____.

DANE S. FIELD, Bankruptcy Trustee of the
Estate of Amanda D. Tucker, and not individually

[Signatures continue on next page.]

DATED: _____.

LCP - MAUI, LLC
AGFLEP LENDING, LLC, as Manager of LCP –
Maui, LLC, a Florida limited liability company

By: _____
Name: Jacob Mutz
Title: Its Manager

In re Amanda D. Tucker, Debtor, Case No. 12-02052, United States Bankruptcy Court, District
of Hawaii; SETTLEMENT STIPULATION AND ORDER

EXHIBIT “C”

RUSH MOORE LLP
A Limited Liability Law Partnership

SUSAN TIUS 2873
NATHANIEL HIGA 9064
737 Bishop Street, Suite 2400
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Attorneys for Creditor LCP-Maui, LLC

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII**

In re

AMANDA D. TUCKER,

Debtor.

**CASE NO. 12-02052
(Chapter 7)**

**STIPULATED ORDER
TERMINATING THE AUTOMATIC
STAY (PROPERTY OF THE
ESTATE)**

Judge: Honorable Robert J. Faris

**STIPULATED ORDER TERMINATING THE AUTOMATIC STAY
(PROPERTY OF THE ESTATE)**

THIS STIPULATED ORDER is made by and between Trustee DANE S. FIELD (the "Trustee"), the duly appointed bankruptcy trustee of the estate of Amanda D. Tucker (the "Debtor") and Creditor LCP-MAUI, LLC ("LCP") with reference to the following facts:

EXHIBIT "C"

A. LCP is the current holder of a Promissory Note and a Revolving Credit Note, both dated December 14, 2006, evidencing debts owed by the Debtor in the respective original principal amounts of \$3,115,000.00 ("First Note") and \$720,000.00 ("Second Note") (collectively the "Notes"). The Notes were originally payable to the Bank of Lincolnwood. The First Note and Second Note have affixed to them an Allonge made by the Federal Deposit Insurance Corporation as Receiver for Bank of Lincolnwood ("FDIC as Receiver") indorsing the Notes to SFR, and an Allonge made by SFR indorsing the Notes to LCP.

B. As security for the Notes, the Debtor executed eight separate Mortgages, Assignments of Leases and Rents, and Security Agreement and Financing Statement documents, all dated December 15, 2006, and recorded in the State of Hawaii Bureau of Conveyances on January 18, 2007 (collectively the "Mortgages"). The Mortgages evidence liens upon the following real properties: 2066-2080 Waikahe Place, Wailuku, Hawaii 96793; 43 Nonohe Place, Paia, Hawaii 96779; 79 Ulumau Place, Paia, Hawaii 96779; 1543 Halama Street, Kihei, Hawaii 96753; 336 Front Street Lahaina, Hawaii 96761; 150-170 Kee Road, Makawao, Hawaii 96768; 341 / 347 Lani Place, Wailuku, Hawaii 96793; and 1291 Uluniu Road, Kihei, Hawaii 96753 (collectively the "Properties").

C. The Mortgages also evidence liens upon other property designated as "Collateral," including but not limited to, improvements and fixtures,

personal property, rents, leases, insurance, and other property, which are more fully described in the Mortgages.

D. The Debtor has defaulted on her obligations under the Notes and Mortgages by failing to pay the amounts owed when due. The Notes and Mortgages are the subject of a foreclosure action pending in the Circuit Court of the Second Circuit, State of Hawaii, designated as Case No. 12-01-0462.

E. On October 17, 2012, the Debtor commenced this Chapter 7 bankruptcy proceeding by filing a voluntary bankruptcy petition and the Trustee was appointed.

F. The parties are entering into this Stipulation to set forth the terms of LCP's relief from stay with respect to the Property and Collateral described herein as more fully set forth in the Settlement and Release Agreement dated April 24, 2013 by and between the Trustee and LCP.

Based on the foregoing,

IT IS HEREBY ORDERED THAT:

1. The automatic stay under 11 U.S.C. §362(a) is TERMINATED and LCP, its predecessors, successors, transferees, and assigns, may exercise any rights, interests and remedies under applicable nonbankruptcy law with respect to the Property and the Collateral.

2. No deficiency or other money judgment shall be entered against the Debtor without further order of this Court.

3. If the subject Property or Collateral is sold and the proceeds exceed the amount of the secured claim(s), LCP must turn over the surplus proceeds to the Trustee.

4. This order will remain effective despite the conversion of the case to one under another chapter.

5. The fourteen-day stay period provided under Fed. R. Bankr. P. 4001(a)(3) shall not apply to this Order.

DATED: Honolulu, Hawaii, _____.

SUSAN TIUS
NATHANIEL HIGA
Attorneys for Creditor LCP-Maui, LLC

SIMON KLEVANSKY
ALIKA L. PIPER
Attorneys for Trustee Dane S. Field

APPROVED AND SO ORDERED:

In re Amanda D. Tucker, Debtor, Case No. 12-02052, United States Bankruptcy Court, District of Hawaii;
STIPULATED ORDER TERMINATING THE AUTOMATIC STAY (PROPERTY OF THE ESTATE)

EXHIBIT 2

STARN • O'TOOLE • MARCUS & FISHER
A Law Corporation

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Attorneys for
LCP-MAUI, LLC

FILED

2014 JAN 29 AM 11:21

D. PELLAZAR, CLERK
SECOND CIRCUIT COURT
STATE OF HAWAII

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

LCP-MAUI, LLC

Plaintiff,

vs.

AMANDA D. TUCKER AKA AMANDA
DAWN TUCKER AKA AMANDA D.
TUCKER-MEUSE; UNITED STATES OF
AMERICA; DIRECTOR OF TAXATION,
STATE OF HAWAII; VIC ZAPIEN; DUSTIN
P. MEUSE; and DOES 1 through 20 inclusive,

Defendants.

CIVIL NO. 12-1-0462 (3)
(Foreclosure)

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING LCP-
MAUI, LLC'S RENEWED MOTION FOR
SUMMARY JUDGMENT AND FOR
DECREE OF FORECLOSURE FILED JUNE
17, 2013; CERTIFICATE OF SERVICE

Original Hearing Date:

Dated: August 14, 2013

Time: 8:30 a.m.

Judge: Honorable Joseph E. Cardoza

Second Hearing Date:

Dated: October 16, 2013

Time: 8:30 a.m.

Judge: Honorable Joseph E. Cardoza

Final Hearing Date:

Date: December 18, 2013

Time: 8:30 a.m.

Judge: Honorable Joseph E. Cardoza

No trial date set.

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
LCP-MAUI, LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT AND
FOR DECREE OF FORECLOSURE FILED JUNE 17, 2013**

On August 14, 2013, the Honorable Joseph E. Cardoza first heard LCP-MAUI, LLC's ("*LCP-Maui*") Renewed Motion for Summary Judgment and for Interlocutory Decree of Foreclosure ("*Motion*") filed June 17, 2013. The hearing was continued to October 16, 2013, and then again to December 18, 2013 at 8:30 a.m., to allow Defendant Amanda D. Tucker ("*Defendant Tucker*") to conduct discovery.

At the December 18, 2013 hearing, Sharon V. Lovejoy, Esq., appeared on behalf of LCP-Maui, and Daniel J. O'Meara, Esq., appeared on behalf of Defendant Tucker. At the earlier hearings Sharon V. Lovejoy, Esq., appeared on behalf of LCP-Maui, and Gary V. Dubin, Esq., appeared on behalf of Defendant Tucker. No other persons or parties appeared at the hearings.

Based on the evidence presented and the records and files in this case, the Court makes the following findings of fact and conclusions of law, and order granting the Motion, having determined that the requirements of Rule 56 of the Hawaii Rules of Civil Procedure have been met and that summary judgment in favor of LCP-Maui is appropriate, and there being no further basis for continuance.

FINDINGS OF FACT

The Court finds as follows:

1. On or about December 14, 2006, Defendant Amanda D. Tucker executed and delivered to the Bank of Lincolnwood: (1) a promissory note in the amount of \$3,115,000.00; and (2) a revolving credit note in the amount of \$720,000 (collectively, the "*Notes*"), the terms of which Notes provided a promise by Defendant Tucker to pay the Bank of Lincolnwood the payments specified therein, subject to the terms and conditions stated therein, together with any

late charges, additional interest, attorneys' fees, costs and other expenses incurred by the lender in the event of a default and any enforcement of the Notes. The Notes each have an interest rate of 9% per annum, with a default interest rate of 14% per annum. Copies of the Notes are attached as Exhibits A-1 and A-2 to the Motion.

2. On or about December 15, 2006, Tucker executed and delivered eight separate Mortgages, Assignments of Leases and Rents, and Security Agreement and Financing Statement documents in favor of the Bank of Lincolnwood ("**Mortgages**") to secure full payment of all amounts due under the Notes and the performance by Tucker of all obligations of borrower under the Notes and other documents specified in the Mortgages, which Mortgages are recorded in the Bureau of Conveyances of the State of Hawaii on January 18, 2007 as Document Nos. 2007-010271 thru 2007-010278. Copies of the Mortgages are attached as Exhibits B-1 – B-8 to the Motion. The properties to which the Mortgages attach include Defendant Tucker's fee simple interest in the following real properties and related collateral described in the Mortgages (collectively, the "**Mortgaged Property**"):

- (1) 1543 Halama Street, Kihei, Hawaii 96753 (TMK No. (2) 3-9-010-031-0000) ("Halama Street Property");
- (2) 336 Front Street, Lahaina, Hawaii 96761 (TMK No. (2) 4-6-005-022-0000) ("Front Street Property");
- (3) 150-170 Kee Road, Makawao, Hawaii 96768 (TMK No. (2) 2-4-003-010-0000) ("Kee Road Property");
- (4) 341 Lani Place, Wailuku, Hawaii 96793 (TMK No. (2) 3-4-033-066-0000) ("Lani Place Property");
- (5) 1291 Uluniu Road, Kihei, Hawaii 96753 (TMK No. (2) 3-9-008-020-0000) ("Uluniu Road Property");
- (6) 2066-2074 Waikahe Place, Wailuku, Hawaii 96793 (TMK No. (2) 3-4-017-054-0000) ("Waikahe Place Property");

- (7) 79 Ulumau Place, Paia, Hawaii 96779 (TMK No. (2) 2-6-006-050-0000) (“Ulumau Place Property; and
- (8) 43 Nonohe Place, Paia, Hawaii 96779 (TMK No. (2) 3-8-001-063-0000) (“Nonohe Place Property”).

3. The Mortgages evidence liens on the Mortgaged Property, including the real estate and other property designated as collateral in the Mortgages, including but not limited to, improvements and fixtures, personal property, intangibles, rents, leases, service agreements, plans and reports, loan proceeds, insurance, awards, betterments, and other property. The liens are valid, senior and superior to every party defendant’s interest (who has appeared in the case) in the Mortgaged Property (except as to any priority lien pursuant to statute).

4. In 2011, the Federal Deposit Insurance Company (“**FDIC**”), as receiver for the Bank of Lincolnwood, executed and delivered to 2010-2 SFR VENTURE, LLC (“**SFR**”), allonges to the Notes, and executed and delivered eight separate Corporate Assignments of Mortgages under which the FDIC assigned all of its rights, title and interests in and to the Notes and Mortgages to SFR. Copies of these Corporate Assignments of Mortgages are attached as Exhibits C-1 – C-8 to the Motion, and are recorded in the Bureau of Conveyances for the State of Hawaii as Document Nos. 2011-183389 thru 96.

5. On or about October 31, 2012, SFR executed and delivered to LCP-Maui allonges to the Notes, and executed and delivered eight separate Corporate Assignments of Mortgages under which SFR assigned all of its rights, title and interests in and to the Notes and Mortgages to LCP-Maui. Copies of these Corporate Assignments of Mortgages are attached as Exhibits D-1 through D-8 to the Motion, and are recorded in the Bureau of Conveyances for the State of Hawaii as Document Nos. A-47660407 thru 14.

6. On or about December 22, 2012, SFR further executed and delivered to LCP-Maui a Loan Assignment assigning any remaining rights, title and interests of SFR in and to the Notes and Mortgages. A copy of said Loan Assignment is attached as Exhibit J to the Motion.

7. Defendant Tucker has failed to pay, perform and observe her obligations under the Notes and Mortgages by failure to pay amounts when and as due and owing, despite demand from the lender, and has thus defaulted in the payment, performance and observance of her obligations.

8. As a result of Defendant Tucker's defaults, the entire unpaid aggregate amount of the principal obligation of the Notes and Mortgages, together with interest, advances and charges, became immediately due and payable.

9. Defendant Tucker further failed to make payment of real property taxes as and when required for the Mortgaged Property, which nonpayment is a further default under the Notes, and resulted in the imposition of penalties by the applicable governmental authority of 10% per late installment, and the imposition of interest at the rate of 1% per month on the delinquent taxes and penalties.

10. LCP-Maui exercised its right to make protective advances in the amount of \$94,327.22 for payment of the delinquent taxes, penalties, and interest, on the Mortgaged Property. Receipts for payments of the taxes are attached as Exhibit G to the Motion.

11. As further presented by the Mutz Declaration, LCP-Maui has also advanced \$3,173.00 for insurance related to the Mortgaged Property.

12. On or about May 23, 2013, the United States Bankruptcy Court for the District of Hawaii ("**Bankruptcy Court**") in the bankruptcy matter filed by Defendant Tucker known as *In re Amanda Tucker*, Case No. 12-02052 ("**Tucker Bankruptcy Case**"), entered an Order approving a Settlement Agreement dated as of April 24, 2013 by and between Dane S. Filed as Trustee of the

estate of Amanda D. Tucker, and LCP-Maui, which included, *inter alia*, recognition of LCP-Maui's status as the creditor and mortgagee under the Notes and Mortgages, Defendant Tucker's defaults under the Notes and Mortgages, that the Mortgages create valid first and second liens against the Mortgaged Property, and that as of April 24, 2013 Defendant Tucker owed LCP-Maui \$6,370,622.32 with per diem interest thereafter accruing at the rate of \$1,483.57 per day. A copy of the Bankruptcy Court Order is attached as Exhibit L to the Motion.

13. On May 24, 2013, the Bankruptcy Court entered an Order Terminating the Automatic Stay in the Tucker Bankruptcy Case, which Order granted relief from the automatic stay and authorized LCP-Maui to pursue its rights in this foreclosure proceeding, and stated that no deficiency judgment is to enter without further order of the Bankruptcy Court.

14. Defendant Tucker owes to LCP-Maui on the Notes as of June 10, 2013 based on the default interest rate as set forth in the Notes, as follows:

A. First Note and Mortgages

Principle Balance:	\$3,094,899.97
Unpaid Interest Due up to 6/22/09:	\$ 150,495.31
Late Charges Due as of 6/22/09:	\$ 4,743.50
- Default-Interest Due (6/23/09 – 6/10/13):	\$1,742,772.56
Escrow/Impound Overdraft (through 12/27/12):	\$ 160,458.54
Total FCL/Bank Fees Due (through 12/27/12):	\$ 17,764.78
Property Insurance Paid by LCP-Maui	\$ 3,173.00
Property Taxes Paid by LCP-Maui (12/29/12)	\$ 94,327.22
Total	\$5,268,634.88

B. Second Note and Mortgages

Principle Balance:	\$ 720,000.00
Unpaid Interest Due up to 6/22/09:	\$ 30,960.00
Late Charges Due as of 6/22/09:	\$ 1,359.00
Default Interest Due (6/23/09 – 6/10/13):	\$ 405,440.00
FCL/Bank Fees Due (through 12/27/12):	\$ 13,956.33
Total	\$1,171,715.33

C. Additional per diem interest thereafter of \$1,483.57 to the date of payment of the indebtedness;

D. Additional late charges, advances and interest on advances to the date of payment of the indebtedness; and

C. Expenses and attorneys' fees incurred in this action by Plaintiff.

15. Copies of the payment histories for the Notes are attached as Exhibits H-1 and H-2 to the Motion; LCP-Maui has not received any other or different payments on the Notes.

16. If any of the foregoing findings of fact shall be deemed a conclusion of law, the Court intends that every such finding be construed as a conclusion of law.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter.

2. The mortgage liens and security interest of LCP-Maui under the above-described documents, including the Notes and the Mortgages, are valid first and second liens, senior and superior to each and every party defendant's interest (who has appeared in this case) in the Mortgaged Property.

3. LCP-Maui is entitled to have the Mortgages foreclosed, the Mortgaged Properties as described therein sold in the manner provided by law, and the sale proceeds applied to the amount owed to LCP-Maui under the Notes and Mortgages.

4. LCP-Maui is entitled to a deficiency judgment under the Notes and Mortgages for the difference between the amount owed to LCP-Maui under the Notes and Mortgages, and the foreclosure sale proceeds applied thereto; provided, however, that a deficiency judgment shall not be entered against Defendant Tucker unless and until authorized by the Bankruptcy Court or otherwise permitted under bankruptcy law.

5. Defendant Tucker is not entitled to prevail on any matter asserted as a defense or affirmative defense against LCP-Maui and/or has not presented any genuine issue of material fact in opposition to LCP-Maui's Motion and/or in support of such defenses or affirmative defenses.

6. Defendant Tucker has failed to satisfy the requirements for a further continuance under Rule 56(f) or otherwise.

7. If any of the foregoing conclusions of law shall be deemed a finding of fact, the Court intends that every such conclusion be construed as a finding of fact.

**ORDER GRANTING LCP-MAUI, LLC'S RENEWED MOTION
FOR SUMMARY JUDGMENT AND FOR
INTERLOCUTORY DECREE OF FORECLOSURE FILED JUNE 17, 2013**

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court, having reviewed the subject Motion and being duly advised of the record and file herein and for good cause appearing, hereby GRANTS LCP Maui, LLC's Renewed Motion for Summary Judgment and for Interlocutory Decree of Foreclosure filed June 17, 2013.

2. George W. Van Buren, whose address is 745 Fort Street, Suite 1950, Honolulu, HI 96813, and whose telephone number is 808-599-3800, is hereby appointed a Commissioner of this Court to take possession of and sell the Mortgaged Property, to serve without bond and at a reasonable fee to be determined by the Court. The Commissioner's fees and costs shall be deemed to be secured by the Notes and Mortgages described above.

3. The Commissioner is hereby authorized and directed to:

a. Take possession of the Mortgaged Property and dispose of the Mortgaged Property as herein directed;

b. Demand and collect all rent due and owing from any tenant of the Mortgaged Property;

c. Publish notice of the sale of the Mortgaged Property in a newspaper having a general circulation in the county in which said property is located. The Notice shall be published once in each week for three consecutive weeks, the first notice to be published not later than the third week following the date of this Order;

d. Sell the Mortgaged Property, either separately, in bulk, or in parts, in its "as is", "where is" condition, without warranties of any nature, express or implied, by private sale or public sale, without an upset price, to the highest bidder at a public auction, which the Commissioner may postpone from time to time as necessary in accordance with law, to be conducted no sooner than fourteen (14) days after the third notice of the sale, with ten percent (10%) of the sale price payable to the Commissioner in cash, certified or cashier's check at the time of auction, which amount shall be subject to forfeiture if the purchaser fails to close the purchase as ordered by this Court, and the balance payable to the Commissioner in cash, certified or cashier's check concurrently with delivery of documents transferring title to the Mortgaged Property to the purchaser, the sale being subject to confirmation by this Court, and free and clear of any and all claims, rights, title and interest of all parties who have appeared in this action and all persons claiming by, through or under them (except as to any priority lien pursuant to statute who shall be paid in accordance with their priority);

e. LCP Maui shall be entitled to credit bid the amount owed to it as determined herein, without any requirement of a down payment and with the balance of the purchase price paid by way of offset;

f. File a report with this Court after the sale of the Mortgaged Property;

g. Execute and deliver documents transferring title to the Mortgaged Property to the purchaser, or its designee, within thirty-five (35) days after confirmation of the sale by this Court; and

h. After payment of all reasonable and necessary expenses of said sale, as provided by the Court, disburse and make application of all sale proceeds so far as the same may be necessary for the payment of all amounts due and owing to LCP Maui pursuant to this order and as may further be determined by this Court.

4. The Court may, in its discretion, reopen the foreclosure auctions and accept bids in Court at the confirmation hearing; if any such bidding shall be allowed, it shall be on the condition that the initial opening bid be at least five percent (5%) higher than the highest bid received at the Receiver's sale.

5. The cost of drafting documents transferring title to the Mortgaged Property to the purchasers (or their designees), notary fees, escrow fees, conveyance taxes, recordation fees, consent fees, and title insurance shall be payable by the purchasers thereof.

6. Purchasers shall be responsible for securing possession of the purchased property as of the date of closing.

7. Two motions to dismiss named defendants Dustin P. Meuse and Vic Zapien are currently pending before this Court. As those named parties have not yet appeared in this action and have not yet been dismissed, this Order does not affect their interests, if any, in the Mortgaged Property.

8. Pursuant to Rule 54(b) of the Hawaii Rules of Civil Procedure, this Court expressly determines and directs that this Order is a final judgment, as there is no just reason for delay.


9. The Court reserves jurisdiction to determine the amount of attorney's fees and costs payable to LCP Maui, and all other matters not herein determined.

DATED: Wailuku, Hawaii _____

JAN 24 2014

/S/ JOSEPH E. CARDOZA (SEAL)
JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:



GARY V. DUBIN, ESQ.
FREDERICK J. ARENSMEYER
Counsel for Defendant
AMANDA TUCKER



DAMIEN A. ELEFANTE
Attorney for Defendant
DIRECTOR OF TAXATION, STATE OF HAWAII

DUSTIN P. MEUSE
Defendant (subject to pending motion to dismiss)

LCP-Maui, LLC v. Amanda D. Tucker, et al., CIVIL NO. 12-1-0462 (3), Second Circuit Court,
State of Hawaii; FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER GRANTING
LCP-MAUI, LLC'S RENEWED MOTION FOR SUMMARY JUDGMENT AND FOR DECREE
OF FORECLOSURE FILED JUNE 17, 2013

IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

STATE OF HAWAII

LCP-MAUI, LLC

Plaintiff,

vs.

AMANDA D. TUCKER AKA AMANDA
DAWN TUCKER AKA AMANDA D.
TUCKER-MEUSE; UNITED STATES OF
AMERICA; DIRECTOR OF TAXATION,
STATE OF HAWAII; VIC ZAPIEN; DUSTIN
P. MEUSE; and DOES 1 through 20 inclusive,

Defendants.

CIVIL NO. 12-1-0462 (3)
(Foreclosure)

CERTIFICATE OF SERVICE

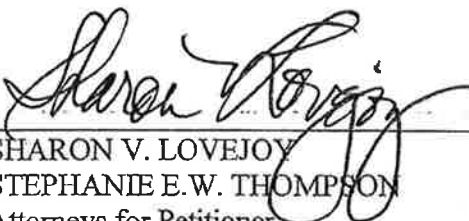
CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, copy of the foregoing document will be
duly served as indicated upon the following parties at their last known address:

	E-MAIL	MAIL	HAND DELIVERY
GARY V. DUBIN, ESQ. FREDERICK J. ARENSMEYER Dubin Law Offices 55 Merchant Street, Suite 3100 Honolulu, Hawaii 96813 Appearing Counsel for Defendant AMANDA TUCKER	X	X	
SIMON KLEVANSKY ALIKA L. PIPER Klevansky Piper LLP Davies Pacific Center 841 Bishop Street, Suite 1707 Honolulu, Hawaii 96813 Attorneys for Trustee DANE S. FIELD	X	X	

	E-MAIL	MAIL	HAND DELIVERY
DAMIEN A. ELEFANTE Deputy Attorney General Hale Auhau Building 425 Queen Street Honolulu, Hawaii 96813 Attorney for Defendant DIRECTOR OF TAXATION, STATE OF HAWAII	X	X	
DUSTIN P. MEUSE c/o Suzanne Branson 145 West Kane St. Kahului, HI 96732 Defendant	X	X	
GEORGE VAN BUREN 745 Fort Street Mall, Suite 1950 Honolulu, Hawaii 96813 Commissioner	X	X	

DATED: Honolulu, Hawaii, JAN 13 2016


 SHARON V. LOVEJOY
 STEPHANIE E.W. THOMPSON
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 LCP-MAUI, LLC

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Appearing Attorneys for
Debtor Amanda Dawn Tucker

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF HAWAII

In re)	CASE NO. 12-02052 RJF (Chapter 7)
)	[RELATED TO DOCKET NO. 204]
AMANDA D. TUCKER,)	CERTIFICATE OF SERVICE OF
)	DEBTOR'S FEBRUARY 25, 2014 FILED
Debtor.)	MOTION; EXHIBIT "A"
_____)	

CERTIFICATE OF SERVICE OF DEBTOR'S FEBRUARY 25, 2014 FILED MOTION

I hereby certify that on February 25, 2014, the Debtor electronically filed using the Court's CM/ECF system, thereby served upon the persons set forth in Exhibit "A", the following Motion:

MOTION FOR RECONSIDERATION OF FEBRUARY 11, 2014 ORDER DENYING DEBTOR'S MOTION (1) TO SET ASIDE AND VACATE MAY 23, 2013 "ORDER GRANTING TRUSTEE'S MOTION TO APPROVE SETTLEMENT AND RELEASE AGREEMENT WITH LCP-MAUI, LLC," (2) TO SET ASIDE AND VACATE MAY 24, 2013 "STIPULATED ORDER TERMINATING THE AUTOMATIC STAY (PROPERTY OF THE ESTATE)," (3) TO REIMPOSE STAY, ENJOINING THE FORECLOSURE PROCEEDINGS IN CIVIL NO. 12-1-0462(3) IN THE CIRCUIT COURT OF THE SECOND CIRCUIT, STATE OF HAWAII, AND (4) FOR AN ORDER DIRECTING THE STATE COURT- APPOINTED RECEIVER TO TURN OVER TO THE ESTATE TRUSTEE FUNDS OF THE ESTATE, BASED ON BANKRUPTCY FRAUD WAGED AGAINST THE COURT, THE ESTATE TRUSTEE, AND THE DEBTOR; (5) FOR LEAVE TO CONDUCT FURTHER DISCOVERY; AND (6) FOR AN AWARD OF ATTORNEYS' FEES AND COSTS.

I hereby further certify that on February 25, 2014, the aforementioned Motion was mailed to the following person thereby also served:

Peter K. Matsumoto
P.O. Box 26479
Honolulu, Hawaii 96825

DATED: Honolulu, Hawaii, February 25, 2014.

/s/ Gary Victor Dubin

GARY VICTOR DUBIN
FREDERICK J. ARENSMEYER
DANIEL J. O'MEARA
Attorneys for Defendant
Amanda Dawn Tucker

EXHIBIT "A"

File a Motion:12-02052 Amanda Dawn Tucker

Type: bk

Chapter: 7 v

Office: 1 (Honolulu)

Assets: y

Judge: rjf

Case Flag: ASSET,
NODISCH, DebtEd,
727OBJ, Assets**United States Bankruptcy Court****District of Hawaii**

Notice of Electronic Filing

The following transaction was received from Gary Victor Dubin entered on 2/25/2014 at 11:41 PM HST and filed on 2/25/2014

Case Name: Amanda Dawn Tucker**Case Number:** 12-02052**Document Number:** 222**Docket Text:**

Motion to Reconsider (related document(s): [220] Order on Motion For Relief From Judgment or Order) . Filed by Gary Victor Dubin on behalf of Amanda Dawn Tucker. (Attachments: # (1) Memorandum in Support of Motion for Reconsideration # (2) Exhibit(s) 1 # (3) Exhibit(s) 2) (Dubin, Gary)

The following document(s) are associated with this transaction:

Document description:Main Document**Original filename:**12-02052-0011aa,recon motion bk,2,25,14.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1018307671 [Date=2/25/2014]

[FileNumber=3040416-0

] [357c96f6ccb2b36f905d2ca43631c547edd0bf6b90bcc791cc1843916ae9e902052dab6101b4c2de7d9619737863ce21802b984b8d2f0b5f1707bb85bb5dec4d]]

Document description:Memorandum in Support of Motion for Reconsideration**Original filename:**C:\fakepath\12-02052-0012a,recon memo bk,2,25,14.pdf**Electronic document Stamp:**

[STAMP bkecfStamp_ID=1018307671 [Date=2/25/2014]

[FileNumber=3040416-1

]

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Document description:Exhibit(s) 1

Original filename:C:\fakepath\12-02052-0012b,exhibit 1,2,25,14.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=2/25/2014]

[FileNumber=3040416-2

]

[aefb443d5fa630c66de7e139a28c342124a117f9a82947bb45549ec4465d95ed84b76601bcff43faf6f6d93e811ce397adc8568e559b7c59ed50faf87d6aea63]]

Document description:Exhibit(s) 2

Original filename:C:\fakepath\12-02052-0012c,exhibit 2,2,25,14.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=1018307671 [Date=2/25/2014]

[FileNumber=3040416-3

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[a934feb305ea28d29cc7396ba73070ad594a698fa1dbe19e5c69528458556af364460d27ca2be5a7d7e47f9940f55202954da1949721082ae07abde5bc3b3349]]

12-02052 Notice will be electronically mailed to:

Frederick J. Arensmeyer on behalf of Debtor Amanda Dawn Tucker
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Alika L. Piper on behalf of Trustee Dane S. Field
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Susan Tius on behalf of Creditor LCP - Maui, LLC
Stius@rmhawaii.com

12-02052 Notice will not be electronically mailed to:

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Honolulu, HI 96825