

Hon. Robert E. Thomas (ret.)  
JAMS  
500 N. State College Blvd.  
14<sup>th</sup> Floor  
Orange, CA 92868  
Telephone: (714) 939-1300  
Fax: (714) 939-8710

**ARBITRATION PROCEEDING**  
**JUDICIAL ARBITRATION AND MEDIATION SERVICE**

GATEWAY & 4<sup>TH</sup>, LLC, a California limited liability company, and INTRACORP, LOS ANGELES, L.L.C., a Washington limited liability company,

JAMS ARBITRATION No.1200027669  
Arbitrator: Hon. Robert E. Thomas (Ret.)

Claimants,

**RULING**

v.

**OF ARBITRATOR**

PACIFIC CITYHOME, LLC, a Delaware limited liability company, CITYHOME PARTNERS, LLC, a Delaware limited liability company; and DOES 1-10,

Respondents.

All parties herein have submitted this dispute for binding arbitration pursuant to the JAMS Comprehensive Rules. The Hon. Robert E. Thomas [Ret.] was selected as the Arbitrator. The Arbitrator having been selected, a telephonic hearing was conducted on April 24, 2009. Claimants move for injunctive relief to enjoin the April 27, 2009 UCC sale sought by Respondents. Claimants are represented by Daniel S. Miller and Louis R. Miller of the Law

1 Office of Miller Barondess LLP, Respondent opposes the injunctive relief sought by Claimants.  
2 Respondents are represented by Brooks R. Brown, Anthony M. Feeherly and Brian Mukherjee  
3 of the Law Office of Goodwin Procter LLP. This Arbitrator now rules that Claimants' motion  
4 for injunctive relief is granted and further that no bond is required. The Arbitrator makes the  
5 following Ruling and provides a STATEMENT OF REASONS for such ruling. The Statement  
6 of Reasons provided herein shall not be deemed a part of the Ruling.

7  
8 **STATEMENT OF REASONS:**

9  
10 The relief requested by Claimant seeks to enjoin the April 27, 2009 UCC sale of Long  
11 Beach's ownership interests in Gateway's limited liability corporation. There has been no  
12 default in the payment of the financial obligation of Claimants to Respondents or California  
13 National Bank, the senior lien holder of The Gateway on 4<sup>th</sup> Project. [PROJECT] The senior  
14 loan is not in default.

15 The Respondents assertion of default concern the scheduled sales of the unit constructed  
16 for sale as condominiums. The parties to the PROJECT selected a number of units to be sold to  
17 insure that their financial interests were protected.

18 There is no dispute about the unique circumstances that have disrupted the financial  
19 markets of the world. This disruption has impacted the ability to meet the sales quota agreed to  
20 by the parties to this project. The sales quota [QUOTA] anticipated a set sales price and set  
21 number of units to be sold on or before pre-selected dates. Nor is there any dispute about the  
22 PROJECT concerns real estate that is unique.

23 Claimants have presented evidence to this arbitrator that Claimants are also like to  
24 succeed on their equitable claims. The defense of impossibility of selling of these units is  
25 supported by the evidence presented in the declarations to Claimants motion. Civil Code  
26 Section 1596 requires that the object of a contract must be possible to be performed. The object  
27 of the contract is set forth in the agreement between Claimants and Respondents. There is a set  
28 QUOTA. It is clear that the set QUOTA cannot be achieved during these financial conditions.

1 The quote from former Federal Reserve Chairman Alan Greenspan in his testimony  
2 before Congress on October 23, 2009 is appropriate in ruling on the requested relief.

3 **"We are in the midst of a once-in-a-century tsunami."**

4 The JAMS Comprehensive Rules, Section 24 (e) provides this arbitrator with the  
5 authority to grant the relief sought by Claimants.  
6

7  
8 To permit this sale to go forward would result in the loss of Claimants financial interest  
9 in the PROJECT. Claimants will suffer irreparable harm by the loss of the property and their  
10 equity in the PROJECT. The imposition of this stay will preserve the status quo. The  
11 adjudication of the dispute between Claimants and Respondents can proceed at an expedited  
12 schedule to address concerns with changing market conditions for Claimants and Respondents.  
13 The balancing of the equities lies in favor of Claimants. This arbitrator exercises his discretion  
14 in not requiring the posting of a bond.

15 **RULING:**

16 The Arbitrator having considered the briefs and oral argument, now rules that Claimants'  
17 motion for injunctive relief is granted. Respondents' sale set for April 27, 2009 is enjoined and  
18 shall not proceed. This arbitrator further rules that no bond shall be required.

19  
20 Date: April 24, 2009

*Robert E. Thomas*

21 Hon. Robert E. Thomas [ret.]

22 Arbitrator  
23  
24  
25  
26  
27  
28

**PROOF OF SERVICE**

**JAMS REF. #:** 1210027669  
**CASE NAME:** Gateway & 4th, LLC, et al. vs. Pacific CityHome, LLC, et al.

I, Dara Fairchild, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is JAMS, Inc., 500 N. State College Blvd., Suite 600, Orange, California, 92868.

On April 24, 2009, I served the attached **RULING ON CLAIMANTS' MOTION FOR INJUNCTIVE RELIEF** on the interested parties in the within action by the method described below, addressed as set forth on the attached page:

I deposited true copies of the document described above enclosed in a sealed envelope in the mail at Orange, California, with postage thereon fully prepaid.


BY U.S. MAIL I deposited true copies of the document described above enclosed in a sealed envelope in the mail at Orange, California, with postage thereon fully prepaid.

BY U.S. MAIL [certified] I deposited true copies of the document described above enclosed in a sealed envelope by certified mail at Orange, California, with postage thereon fully prepaid.

BY FAX I caused such documents to be faxed to the above-mentioned address(es).

VIA E-MAIL

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 24, 2009 at Orange, California.

  
Dara Fairchild

**SERVICE LIST**

**JAMS REF. #: 1210027669**

**CASE NAME: Gateway & 4th, LLC, et al. vs. Pacific CityHome, LLC, et al.**

**Daniel S. Miller Esq.  
Miller Barondess LLP  
1999 Avenue of the Stars  
Suite 1000  
Los Angeles, CA 90067  
Tel: 310-522-5230  
Fax: 310-552-8400**

**Louis R. Miller Esq.  
Miller Barondess LLP  
1999 Avenue of the Stars  
Suite 1000  
Los Angeles, CA 90067  
Tel: 310-552-4400  
Fax: 310-552-8400**

**Anthony M. Feeherry Esq.  
Goodwin Procter LLP  
Exchange Place  
53 State St.  
Boston, MA 02109 USA  
Tel: 617-570-1390  
Fax: 617-523-1231**

**Brian Mukherjee Esq.  
Goodwin Procter LLP  
Exchange Place  
53 State St.  
Boston, MA 02109 USA  
Tel: 617-570-1477  
Fax: 617-523-1231**

**Brooks R. Brown Esq.  
Goodwin Procter LLP  
10250 Constellation Blvd.  
21st Floor  
Los Angeles, CA 90067 USA  
Tel: 310-788-5188  
Fax: 310-286-0992**