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3 **2. A Bulk Sale Value is Not an Appropriate Valuation in the Context of the Pending**  
4 **Plan**

5 The purpose of both the injunction sought and the Debtor's pending plan of  
6 reorganization are to permit the Debtor to maximize the value of its assets through an orderly  
7 sale of the condominium units. Therefore in both of those contexts the appropriate valuation is  
8 not a bulk sale value, but rather an aggregate of the value for which the units can be sold,  
9 discounted to present value. This is required by the last sentence of Code § 506(a) and the  
10 rationale of *Rash*.

11 Under either of the appraisals received in evidence, the discounted present value of  
12 the units, when sold in an orderly fashion, is sufficient to adequately protect the entire judgment  
13 debt of Coronado City Views. Consequently either for the period of time for which the  
14 preliminary injunction is sought or for the period of the injunction contained in the pending  
15 plan, there exists adequate protection for the judgment debt of Coronado City Views.

16 **3. The Balance of Hardships Favor the Debtor**

17 The Court finds and concludes that the Debtor will suffer irreparable injury if a  
18 preliminary injunction is not granted, that the granting of the injunction will cause little to no  
19 hardship to Defendant Coronado City Views, and therefore that the balance of hardships tip  
20 strongly in favor of the Debtor. The evidence presented by Coronado City Views establishes  
21 that if an injunction is not granted, it would cause a "fire sale" bulk sale of the condominium  
22 project, and that such a sale in today's market would not yield enough to pay the full amount of  
23 its judgment lien. This would leave nothing for the substantial body of unsecured creditors in  
24 this case, which are in the range of \$400,000. This detrimental effect on the unsecured creditors  
25 in this bankruptcy case is of paramount concern to the Bankruptcy Court, and there does not  
26 appear to be any other source of recovery for these unsecured creditors. The same result is  
27 likely to follow even under the Warner appraisal once costs of sale are included along with the  
28 accrual of interest during the time that it would take to arrange such a bulk sale. Such a result

1 constitutes irreparable harm to the Debtor and its unsecured creditors.

2           On the other hand, there is no evidence of significant harm to Coronado City  
3 Views as a result of the delay in collecting its judgment. The real harm is the time value of  
4 money, but that is adequately compensated for by the continued accrual of interest on the  
5 judgment and the fact that the amount of the judgment, together with accrued interest, remains  
6 adequately secured by both the Debtor's property and the property owned by the individuals  
7 Wright and Keesling. Because this harm can be fully compensated by the payment of additional  
8 interest, it is not irreparable. The only other potential harm supported by any evidence is the  
9 risk that Wright and Keesling could dispose of assets beyond the reach of Coronado City Views.  
10 This is not any harm, however, so long as the value of the Debtor's property is sufficient to  
11 cover the amount of the judgment debt plus accrued interest. In any event, this risk can be  
12 largely alleviated by conditioning the injunction upon Wright and Keesling abiding by the same  
13 limitations that would apply to them if they had filed individual Chapter 11 cases. The Court  
14 will therefore condition its Preliminary Injunction upon the requirement that Wright and  
15 Keesling not engage in any transactions out of the ordinary course of business, absent approval  
16 of this Court after notice to Coronado City Views and opportunity for hearing.

17 **4. Bankruptcy Case and Plan Were Filed in Good Faith**

18           Coronado City Views challenges the good faith of the Debtor in filing the  
19 bankruptcy case, seeking the injunction and filing the plan of reorganization. The good faith  
20 filing requirement is not defined by the Bankruptcy Code, but rather by case law. In the context  
21 of a Chapter 11 case that is filed in lieu of a supersedeas bond, it has been defined by the Ninth  
22 Circuit in *In re Marsch*, 36 F.3d 825 (9th Cir. 1994). The preponderance of the evidence here  
23 demonstrates that the *Marsch* good faith standards are satisfied. The Debtor clearly does not  
24 have the financial means to pay the judgment, absent an injunction permitting the condominium  
25 units to be sold in a reasonable period of time. It is certainly clear that enforcement of the  
26 judgment poses grave danger to the Debtor's business. The evidence also does not support a  
27 conclusion that the combination of the liquid (or readily liquidated) assets of the Debtor and the  
28 individuals Wright and Keesling could either pay the judgment or obtain a supersedeas bond.

1 At most, their combined liquid assets would be sufficient only to pay a fraction of the judgment,  
2 and there is certainly not the amount that would be required by a bonding company to issue a  
3 supersedeas bond. Consequently the failure to grant the injunctive relief would likely result in  
4 the additional bankruptcies of Wright and Keesling, which would be to the benefit of no one  
5 except perhaps the bankruptcy lawyers involved.

6 Finally, the Debtor's pre- and post-petition efforts and success in selling  
7 condominium units, the prompt filing of a plan, and the filing of a plan that calls for the prompt  
8 sale and the funding of a reserve fund sufficient to cover the judgment, all demonstrate the  
9 Debtor's good faith in pursuing this Chapter 11 case. Based on the evidence received,  
10 particularly including the record of sales to date since the certificate of occupancy was issued,  
11 the Court finds and concludes that the Debtor has a substantial likelihood of success in  
12 confirming this plan and performing it according to its terms once confirmed.

13 **Conclusion**

14 In summary, the Court finds and concludes that the Debtor has a substantial  
15 likelihood of success on the merits, that the balance of hardships tips sharply in favor of the  
16 Debtor, that the harm to the Debtor if an injunction is not granted will be irreparable, and that  
17 public policy supports the granting of the injunctive relief.

18 Counsel are requested to agree on a form of order for the injunctive relief,  
19 including but limited to the restrictions on out-of-the-ordinary course transactions by Wright  
20 and Keesling.

21 DATED AND SIGNED ABOVE

22 Copy of the foregoing e-mailed  
23 this 27th day of January, 2009, to:

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/s/ Pat Denk  
Judicial Assistant

SIGNED