

1 PRESTON DUFAUCHARD  
California Corporations Commissioner  
2 ALAN S. WEINGER  
Acting Deputy Commissioner  
3 MARISA I. URTEAGA-WATKINS (SBN236398)  
4 Corporations Counsel  
1515 K Street, Suite 200  
5 Sacramento, California 95814  
6 Telephone: (916) 445-9626  
Fax: (916) 445-6985

7  
8 Attorneys for Complainant

9  
10 BEFORE THE DEPARTMENT OF CORPORATIONS  
11 OF THE STATE OF CALIFORNIA

12 In the Matter of the Accusation of THE ) File No.: 413-0391  
13 CALIFORNIA CORPORATIONS )  
COMMISSIONER, )  
14 ) **SETTLEMENT AGREEMENT**  
Complainant, )  
15 )  
16 v. )  
17 )  
OPTEUM FINANCIAL SERVICES, L.L.C. )  
18 )  
Respondent. )  
19 \_\_\_\_\_)

20  
21 This Settlement Agreement is entered into between Orchid Island TRS, LLC, formerly known  
22 as Opteum Financial Services, LLC (“Opteum”), and the California Corporations Commissioner  
23 (“Commissioner”) (together, the “Parties”), and is made with respect to the following facts.

24 **RECITALS**

25  
26 A. Opteum is a residential mortgage lender and mortgage loan servicer licensed by the  
27 Commissioner pursuant to the California Residential Mortgage Lending Act (California Financial  
28 Code, § 50000 *et seq.*) (“CRMLA”). Opteum has its principal place of business located at 115 W.

1 Century Road, Paramus, NJ, 07652.

2 B. Bimini Mortgage Management, Inc., now known as Bimini Capital Management Inc.  
3 (“Bimini”) acquired Opteum on November 3, 2005. Opteum’s officers did not change as a result of  
4 the acquisition, and the slate of officers remained the same until May 2006 when Robert E. Cauley  
5 was appointed as Senior Executive Vice President and Co-Head of Capital Markets and G. Hunter  
6 Haas, IV was appointed as Senior Vice President & Director of Risk Management so that Mssrs.  
7 Cauley and Haas could act on Opteum’s behalf in connection with capital markets transactions given  
8 its increasing losses.

9 C. On December 21, 2006, the Opteum Board of Managers was created, consisting of  
10 Peter R. Norden, Jeffrey J. Zimmer and Robert E. Cauley as the sole members. On March 31, 2007,  
11 Jeffrey J. Zimmer and Robert E. Cauley were removed as Managers from the Board of Managers.  
12 Robert Filiberto and G. Hunter Haas, IV were each appointed as Managers to the Board of Managers.  
13 On June 28, 2007, Peter Norden and Robert Filiberto were removed as Managers of the Board of  
14 Managers. G. Hunter Haas, IV remains the sole member of the Board of Managers.

15 D. On June 29, 2007, J. Christopher Clifton was appointed as Secretary to facilitate  
16 execution of closing documents in connection with sale of Retail and Servicing divisions.

17 E. On or about June 30, 2007, Opteum ceased its mortgage lending and servicing  
18 operations. All loans in the pipeline as of that date were transferred to Metrocities Mortgage, LLC  
19 (“Metrocities”). All servicing rights related to California loans have been sold or transferred to third  
20 parties.

21 F. In July 2007, G. Hunter Haas, IV was appointed as President due to resignations of  
22 Peter Norden, Rick Floyd, Timothy O’Neill, Jeff Pancer, Grace Currid and Robert Filiberto. Robert  
23 E. Cauley was re-appointed as Senior Executive Vice President and dropped the Co-Head of Capital  
24 Markets title. J. Christopher Clifton was appointed as Senior Vice President, General Counsel &  
25 Secretary following resignation of RJ Seaward.

26 G. As Opteum was no longer engaged in mortgage lending or servicing activity and  
27 because it was winding down its business, audited financial statements for fiscal year 2007 were not  
28 prepared.

1 H. As Opteum was no longer engaged in mortgage lending or servicing activity and  
2 because it was winding down its business, it failed to complete and submit the Report of Principal  
3 Amount of Loans and Aggregate Amount of Loans Serviced (“Activity Report”); the Report on Non-  
4 traditional, Adjustable Rate and Mortgage Loan Products (“Non-traditional Report”); the Non-  
5 traditional, Adjustable Rate and Mortgage Loan Survey (“Survey”) (collectively the “2007 Reports”);  
6 or the audited financial statement for 2007.

7 I. On September 24, 2008, the Commissioner issued to Opteum a Notice of Intention to  
8 Issue Order Revoking Residential Mortgage Lender License; Accusation and accompanying  
9 documents (collectively, the “Notice”). Copies of the Notice are attached and incorporated herein as  
10 “Exhibit 1”.

11 J. Opteum issued an administrative hearing request in or about October 2008.

12 K. It is the intention of the Parties to resolve this matter without the necessity of an  
13 administrative hearing or any other litigation.

14  
15 NOW, THEREFORE, for good and valuable consideration, and the terms and conditions set  
16 forth herein, the Parties agree as follows:

17  
18 **TERMS AND CONDITIONS**

19 1. This Agreement is entered into for the purpose of judicial economy and expediency.

20 2. Opteum acknowledges its right to a hearing under the CRMLA in connection with the  
21 Commissioner’s Notice referenced herein, and it hereby waives the right to any appeal, or other right  
22 to review, if any, which may be afforded pursuant to the CRMLA, the California Administrative  
23 Procedure Act, the California Code of Civil Procedure, or any other provision of law, and by waiving  
24 such rights, it consents to the Agreement as final.

25 3. Each of the Parties represents, warrants, and agrees that it has received or been  
26 advised to seek independent legal advice from an attorney with respect to the advisability of  
27 executing this Agreement.  
28

1           4.       Section 50123 of the California Residential Mortgage Lending Act sets forth the  
2 license surrender process, which includes the filing of a plan for the withdrawal from regulated  
3 business. The plan must include a timetable for the disposition of the business and a closing audit,  
4 review or other agreed upon procedures performed by an independent certified public accountant.

5           5.       Despite the fact that Opteum did not conduct business after June 30, 2007, Opteum  
6 acknowledges that its Residential Mortgage Lender and Mortgage Loan Servicer License remained in  
7 effect during that time period and that it is responsible for the annual assessment of \$1,000 for fiscal  
8 year 2008/2009. Opteum also remained responsible for filing the Activity Report, Non-traditional  
9 Report and Survey. As with the 2007 Reports, Opteum has not completed and submitted the Activity  
10 Report, Non-traditional Report and Survey (collectively, "2008 Reports").

11           6.       Due to Opteum's failure to comply with the license surrender process (namely,  
12 providing a closing audit prepared by an independent certified public accountant), and to satisfy all  
13 filing and reporting obligations imposed upon Opteum as a licensee during 2007 and 2008 (i.e., the  
14 2007 Reports, 2008 Reports and audited financial statements for 2007), the Commissioner is unable  
15 to accept surrender of Opteum's license. The Parties have agreed that, as part of a complete and final  
16 resolution of the matters set forth in the Notice as well as the other issues noted herein, Opteum's  
17 Residential Mortgage Lender and Mortgage Loan Servicer license will be revoked in the form as  
18 attached as Exhibit 2.

19           7.       On or about May 15, 2008, the Commissioner assessed a penalty of \$1,000 for  
20 Opteum's failure to submit the 2007 Reports.

21           8.       On or about August 1, 2008, the Commissioner assessed a penalty of \$1,000 for  
22 Opteum's failure to submit the 2007 audited financial statement and independent auditor's report on  
23 internal controls.

24           9.       Opteum failed to complete the Post-License Amendment required to change its name  
25 from Opteum Financial Services, LLC to Orchid Island TRS, LLC. Opteum also failed to complete  
26 the Post-License Amendment required to gain approval of Robert Filiberto as its Senior Vice  
27 President and Co-Chief Operating Officer and G. Hunter Haas IV as its Senior Vice President and  
28 Co-Chief Operating Officer. Bimini Mortgage Management, Inc. also failed to complete an

1 Application for Authorization for a Change of Control Under the California Residential Mortgage  
2 Lending Act and a Post-License Amendment to report new officers as a result of the proposed change  
3 of control.

4 10. Opteum remits herewith \$3,000 to cover the \$1,000 assessment fee referred to in  
5 Paragraph 3, the \$1,000 penalty for failure to submit the 2007 Reports referred to in Paragraph 5, and  
6 the \$1,000 penalty for failure to submit audited financial statements referred to in Paragraph 6. The  
7 \$3,000 payment shall settle all of Opteum's financial obligations outstanding with the Commissioner.

8 11. The Commissioner reserves the right to bring any future actions against Opteum or  
9 any of its current and former officers, directors, employees, agents, affiliates, or successors for any  
10 and all future violations of the CRMLA. This Agreement shall not serve to exculpate Opteum or any  
11 of its current and former officers, directors, employees, agents, affiliates, or successors for any and all  
12 future violations of the CRMLA.

13 12. The Parties hereby acknowledge and agree that this Agreement is intended to  
14 constitute a full, final and complete resolution of the Commissioner's Notice referenced above in  
15 paragraph E. The Parties further acknowledge and agree that nothing contained in this Agreement  
16 shall operate to limit the Commissioner's ability to assist any other agencies with any administrative,  
17 civil or criminal prosecution brought by any such agency against Opteum based upon any of the  
18 activities alleged in this matter or otherwise. This Agreement shall not become effective until signed  
19 by Opteum and delivered by all Parties. Each of the Parties represents, warrants, and agrees that in  
20 executing this Agreement it has relied solely on the statements set forth herein and has placed no  
21 reliance on any statement, representation, or promise of any other party, or any other person or entity  
22 not expressly set forth herein, or upon the failure of any party or any other person or entity to make  
23 any statement, representation or disclosure of anything whatsoever. The Parties have included this  
24 clause: (1) to preclude any claim that any party was in any way fraudulently induced to execute this  
25 Agreement; and (2) to preclude the introduction of parol evidence to vary, interpret, supplement, or  
26 contradict the terms of this Agreement.

27 13. This Agreement, including the attached Exhibits, is the final written expression and  
28 the complete and exclusive statement of all the Agreements, conditions, promises, representations,

1 and covenants between the Parties with respect to the subject matter hereof, and supercedes all prior  
2 or contemporaneous Agreements, negotiations, representations, understandings, and discussions  
3 between and among the Parties, their respective representatives, and any other person or entity.

4 14. In that the Parties have had the opportunity to draft, review and edit the language of  
5 this Agreement, no presumption for or against any party arising out of drafting all or any part of this  
6 Agreement will be applied in any action relating to, connected, to, or involving this Agreement.  
7 Accordingly, the Parties waive the benefit of California Civil Code section 1654 and any successor or  
8 amended statute, providing that in cases of uncertainty, language of a contract should be interpreted  
9 most strongly against the party who caused the uncertainty to exist.

10 15. This Agreement shall not become effective until signed by Opteum and delivered by  
11 all Parties. The Commissioner shall file this Agreement with the Office of Administrative Hearings  
12 five (5) business days after execution by all Parties.

13 16. This Agreement may be executed in any number of counterparts by the Parties and when  
14 each party has signed and delivered at least one such counterpart to the other party, each counterpart  
15 shall be deemed an original and taken together shall constitute one and the same Agreement.

16 17. No amendment, change or modification of this Agreement shall be valid or binding to  
17 any extent unless it is in writing and signed by all of the Parties affected by it.

18 18. The headings to the paragraphs of this Agreement are inserted for convenience only and  
19 will not be deemed a part hereof or affect the construction or interpretation of the provisions hereof.  
20 This Agreement shall be construed and enforced in accordance with and governed by California law.

21 19. Each party covenants that they possess all necessary capacity  
22 and authority to sign and enter into this Agreement. Each party warrants and represents that such party  
23 is fully entitled and duly authorized to enter into and deliver this Agreement. In particular, and without  
24 limiting the generality of the foregoing, each party warrants and represents that it is fully entitled to  
25 enter into the covenants, and undertake the obligations set forth herein.

26 20. Opteum acknowledges that this Agreement is a public record.

27 21. The Parties each represent and acknowledge that it is executing this Agreement  
28 completely voluntarily and without any duress or undue influence of any kind from any source.

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22. Notice shall be provided to each party at the following addresses:

If to Respondent to:

Harvey Weiner, Esq.  
Weiner, Brodsky, Sidman, Kider, PC.  
1300 19th Street NW 5th Floor  
Washington DC 20036

If to the Commissioner to:

Marisa I. Urteaga-Watkins, Esq.  
Department of Corporations  
1515 K Street, Suite 200  
Sacramento CA 95814

23. Each signator hereto covenants that he/she possesses all necessary capacity and authority to sign and enter into this Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto have approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated: September 28, 2009      PRESTON DuFAUCHARD  
California Corporations Commissioner

By \_\_\_\_\_

ALAN S. WEINGER  
Deputy Commissioner  
Enforcement Division

ORCHID ISLAND TRS, LLC

Dated: 11/2/2009      By \_\_\_\_\_