

IN THE CIRCUIT COURT OF THE
SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY,
FLORIDA

CASE NO.: 12-034121 (04)

MARGARET J. SMITH as Managing General Partner
of P&S ASSOCIATES, GENERAL PARTNERSHIP, a
Florida limited partnership, and S&P ASSOCIATES,
GENERAL PARTNERSHIP, a Florida limited
partnership; P&S ASSOCIATES, GENERAL
PARTNERSHIP, a Florida limited partnership;
and S&P ASSOCIATES, GENERAL PARTNERSHIP,
a Florida limited partnership,

Plaintiffs,

v.

JANET A. HOOKER CHARITABLE
TRUST, a charitable trust, *et al.*,

Defendants.

JOINT MOTION TO SUBSTITUTE PARTY

Philip J. Von Kahle (the "Conservator"), as Conservator for P&S Associates, General Partnership ("P&S") and S&P Associates, General Partnership ("S&P") (together, the "Partnerships"), and Margaret J. Smith, as former court-approved Managing General Partner of the Partnerships ("Smith"), by and through undersigned counsel, pursuant Florida Rule of Civil Procedure 1.260 file this Agreed Motion to Substitute Party (the "Motion"), and in support thereof states as follows:

1. On December 10, 2012, Smith, as Managing General Partner of the Partnerships, commenced the instant action on behalf of the Partnerships. The Partnerships themselves are also named plaintiffs in the instant action.

2. On January 17, 2013, this Court entered its *Order Appointing Conservator* (the "Conservator Order") in that certain related case styled *Matthew Carone, et. al. v. Michael D. Sullivan, individually*, Case No. 12-24051 (07) (the "Conservator Lawsuit").

3. The Conservator Order provides, among other things, that Philip J. Von Kahle was appointed to serve as Conservator over the Partnerships. The Conservator Order also deemed any dispute over Smith's election as Managing General Partner moot.

4. Florida Rule of Civil Procedure 1.260(c) provides: "In case of any transfer of interest, the action may be continued by or against the original party, unless the court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party."

5. The Conservator Order resulted in the type of "transfer of interest" which justifies the substitution of a party. *Musicians Exchange Downtown Café, Inc. v. Mercedes City Center, Inc.*, 613 So.2d 134, 135 (Fla. 4th DCA 1993).

6. On May 20, 2013, the Conservator filed his Conservator's Litigation Status Report recommending, among other things, that the instant lawsuit be advanced in the best interests of the Partnerships.

7. On June 28, 2013, this Court approved the Conservator's Litigation Status Report and authorized the Conservator to advance this matter in the best interests of the Partnerships.

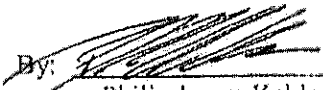
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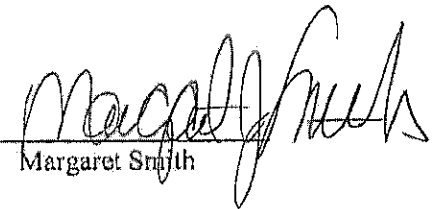
8. Accordingly, this Court ought to authorize the replacement of Smith with Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership, as a party plaintiff, pursuant to Fla. R. Civ. P. 1.260.

9. Smith joins in support of the relief sought in this Motion.


WHEREFORE, the Conservator requests that the Court enter an Order replacing Smith with Philip J. Von Kahle, as Conservator of P&S Associates, General Partnership and S&P Associates, General Partnership, as a party plaintiff in the instant action pursuant to Fla. R. Civ. P. 1.260, directing the Clerk to revise the docket to reflect such change, and granting such other relief as the Court deems just and proper.

Dated: August 27, 2013

By: 
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Conservator

By: 
Margaret Smith

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SERVICE LIST
Smith v. Hooker
CASE NO.: 12-034121

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