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6
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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**

10 United States Securities and Exchange
11 Commission,

12 Plaintiff,

13 v.
14

15 Jonathan Larmore, et al.,

16 Defendants, and

17 Michelle Larmore, Marcia Larmore,
18 CSL Investments, LLC,
19 MML Investments, LLC,
20 Spike Holdings, LLC,
and JMMAL Investments, LLC,

21 Relief Defendants.
22

Case No. 23-CV-02470-PHX-DLR

**RECEIVER’S MOTION FOR
ORDERS (I) APPROVING (A) THE
ENGAGEMENT AND
COMPENSATION OF MARCUS &
MILLICHAP REAL ESTATE
INVESTMENT SERVICES AS
BROKER FOR THE SALE OF THE
REAL PROPERTY OWNED BY
WALCENT ELK/IN, LLC, AND (B)
THE SALE AND AUCTION
PROCEDURES FOR THE SALE OF
THE PROPERTY; (II) APPROVING
THE SALE OF THE PROPERTY
AFTER AUCTION, FREE AND
CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND
INTERESTS; AND (III) GRANTING
RELATED RELIEF**

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27 ¹ Admitted *pro hac vice*.

28 ² Admitted *pro hac vice*.

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622 F.2d 1363 (9th Cir. 1980) 8

Other Authorities

2 Ralph E. Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed. 1992) 8

1 Allen D. Applbaum as receiver for ArciTerra Companies, LLC and related entities (the
2 “Receiver”), by and through his counsel, Archer & Greiner, P.C., hereby respectfully moves
3 this Court for orders (A) approving (i) the Receiver’s engagement and compensation of Marcus
4 & Millichap Real Estate Investment Services (“Marcus & Millichap”) as broker for the sale of
5 a multi-use retail center known as the “Northfield Plaza Shopping Center” located at 2719-
6 2733 Emerson Drive, Elkhart, Indiana, 46514 (the “Property”) owned by Walcent Elk/IN, LLC
7 (“Walcent Elk”), a Receivership Entity, and (ii) the proposed sale and auction procedures (the
8 “Sale Procedures”) for the sale of the Property; (B) approving the sale of the Property to the
9 bidder who submits the highest and best offer for the Property at the auction, free and clear of
10 all liens, claims, encumbrances and interests; and (C) granting related relief as follows:

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12
13 **I. Preliminary Statement**

14
15 1. On December 21, 2023 and May 6, 2024, the Court appointed the Receiver
16 pursuant to the *Order Appointing Temporary Receiver and Temporarily Freezing Assets and*
17 *Imposing Litigation Injunction* [ECF No. 77] and *Order Appointing Receiver Freezing Assets,*
18 *and Imposing Litigation Injunction* [ECF No. 154] (the “Receivership Order”).³ Since his
19 appointment, the Receiver and his retained professionals have, among other things, assumed
20 control of the Receivership Entities and Receivership Assets, conducted preliminary
21 investigations into the claims and liens asserted against Receivership Assets, negotiated
22 standstill and forbearance stipulations with parties asserting liens and other interests in
23 Receivership Assets, and conducted other activities required by the Receivership Order to
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25

26
27 ³ Capitalized, undefined terms shall have the meanings ascribed to them in the Receivership
28 Order.

1 administer the Receivership Estate.⁴

2 2. By this Motion, the Receiver seeks approval of his engagement of Marcus &
3 Millichap and the proposed Sale Procedures for the sale of the Property through a public online
4 auction process. The Property has been, and will continue to be, extensively marketed by
5 Marcus & Millichap through the proposed auction date and will be listed for sale on the
6 RealINSIGHT Marketplace Auction Platform at <https://rimarketplace.com> (the “Marketplace
7 Auction Platform”). The Marketplace Auction Platform is a commercial online real estate
8 auction site with one of the highest sale rates in the real estate industry, utilizing cutting-edge
9 technology and a dedicated marketing team to bring the most diverse and competitive buyer
10 pool to its listings. The Court previously approved the Receiver’s sale of real property under
11 similar sale and auction procedures using the Marketplace Auction Platform. See *Order (I)*
12 *Approving (A) The Engagement and Compensation of Marcus & Millichap Real Estate*
13 *Investment Services as Broker for the Sale of the Real Properties Owned by ATA Mercado St.*
14 *Augustine FL, LLC and ATA Palencia St. Augustine FL, LLC, and (B) the Auction and Sale*
15 *Procedures for the Sale of those Properties; and (II) Granting Related Relief* [ECF No. 172].
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20 3. At the auction, the Receiver will select the highest and best offer for the Property
21 and enter into an asset purchase agreement (the “Purchase Agreement”), substantially in the
22 form annexed as Exhibit B to the Declaration of Randall Coxworth (the “Coxworth
23 Declaration”) attached hereto as Exhibit 1. The Purchase Agreement provides for the sale of
24 the Property on an “as is, where is” basis, with no representations or warranties from the
25
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27 ⁴ On August 20, 2024, the Receiver filed the *ArciTerra Receiver’s Second Status Report*
28 [ECF No. 205].

1 Receiver or the Receivership Entities and is solely contingent on approval of this Motion and
2 the Receiver's ability to deliver insurable title.

3
4 4. At the time of the Receiver's appointment, the Property was subject to a Phased
5 Funding Note with Standard Insurance Company ("Lender") dated May 11, 2022 (the "Note"),
6 evidencing a loan made to Walcent Elk and Jonathan Larmore, in the original principal amount
7 of \$1,500,000, serviced by StanCorp Mortgage Investors, LLC (the "Administrative
8 Representative"), and identified by the Lender as Loan No. WC202006 (the "Loan"). The Loan
9 is secured by a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated
10 May 11, 2022 (the "Mortgage"). The amount outstanding on the Loan is approximately
11 \$1,175,000.
12

13
14 5. The Receiver and Marcus & Millichap have established a minimal reserve price
15 for the Property of \$1 million (the "Reserve Price"). The Receiver has negotiated an agreement
16 with the Administrative Representative which provides for at least \$100,000 to the
17 Receivership Estate. Specifically, the proceeds of any sale (the "Sale Proceeds") will first be
18 applied to closing costs and commissions due to Marcus & Millichap and then \$100,000 to the
19 Receivership Estate. The Receivership Estate will then be entitled to 30% of all proceeds over
20 the Reserve Price. The Administrative Representative will receive Sale Proceeds up to the
21 undisputed amount of its claim, with any Sale Proceeds above the claim amount going to the
22 Receivership Estate.
23

24
25 6. The Receiver respectfully requests that the Court grant this Motion by entering
26 orders (a) approving (i) the Receiver's engagement of Marcus & Millichap and payment of its
27 commission at the closing of the sale, and (ii) the proposed Sale Procedures, (b) upon
28

1 completion of the auction, approving the sale of the Property to the bidder submitting the
2 highest and best offer for the Property and (c) providing additional relief.

3 **II. Background**

4 **A. The Receivership Order and Appointment of the Receiver**

5
6 7. On November 28, 2023, the Securities and Exchange Commission filed its
7 Complaint [ECF 1] against Jonathan Larmore ("Larmore"); ArciTerra Companies, LLC
8 ("ArciTerra"); ArciTerra Note Advisors II, LLC; ArciTerra Note Advisors III, LLC; ArciTerra
9 Strategic Retail Advisor, LLC; and Cole Capital Funds, LLC (all together, the "Defendants").
10 Michelle Larmore; Marcia Larmore; CSL Investments, LLC; MML Investments, LLC; Spike
11 Holdings, LLC and JMMAL Investments, LLC were named as relief defendants.
12

13 8. On December 21, 2023, the Court entered the Receivership Order, which
14 appointed the Receiver to, among other things, (a) perform the duties specified in the
15 Receivership Order; (b) ascertain the financial condition of the Receivership Entities and all of
16 the Receivership Assets (as defined in the Receivership Order); (c) oversee and manage the
17 Receivership Entities and the Receivership Assets; and (d) propose for Court approval a fair
18 and equitable distribution of the Receivership Assets.
19
20

21 9. Paragraph 6(N) of the Receivership Order provides that the Receiver shall have
22 the power and duty to:

23 Sell, assign, transfer or otherwise dispose of any assets of the Receivership
24 Entities either directly or through one or more Retained Personnel, subject to
25 approval by this Court with respect to any material assets[.]

26 **B. The Property**

27 10. The Property is a multi-use retail center known as the "Northfield Plaza Shopping
28

1 Center” located at 2719-2733 Emerson Drive, Elkhart, Indiana, 46514. The Property consists
2 of 18,550 square feet of retail space. The Property is located two miles east of Elkhart
3 Municipal Airport and has a strong tenant mix with several national tenants including,
4 GameStop and Cato Fashions.
5

6 C. Marcus & Millichap Marketing and Engagement Terms

7 11. Since the Receiver’s appointment, he and his professionals engaged in extensive
8 diligence and discussions with Marcus & Millichap about marketing and selling the Property.
9 As a result of these discussions, the Receiver agreed to engage Marcus & Millichap and a
10 marketing and sale strategy in accordance with the terms set forth in that certain Exclusive
11 Representation Agreement (the “M&M Agreement”), a copy of which is annexed as Exhibit A
12 to the Coxworth Declaration.
13

14 12. Pursuant to the M&M Agreement, Marcus & Millichap will market the Property
15 through various channels up to the auction, including targeting of buyers through its top retail
16 team and its auction database of multi-tenant retail investors. As part of its engagement, Marcus
17 & Millichap will purchase reports, including a Phase I Environmental Report, a Property
18 Condition Report, and title reports for prospective bidders to conduct their necessary due
19 diligence, which must be completed prior to the auction. During the marketing and due
20 diligence period, Marcus & Millichap will respond to questions from prospective bidders about
21 the auction process and terms of sale, and assist the Receiver in vetting prospective bidders’
22 financial ability to consummate any proposed sale transaction.
23
24
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26 13. At the auction, bidders will bid on the Property and the proposed Sale Procedures
27 require all prevailing bidders to pay for all transfer taxes and closing costs, including the fee
28

1 payable to the Marketplace Auction Platform, which is the greater of five percent (5%) of the
2 winning bid or \$25,000 (the “Platform Fee”). As part of the M&M Agreement, the Marketplace
3 Auction Platform has agreed to rebate 40% of the Platform Fee to the Receivership Estate upon
4 closing of the sales. For its services, Marcus & Millichap will be entitled to a listing fee of 5%
5 of the final sale price. To the extent the successful purchaser’s broker is entitled to a co-
6 brokerage fee, Marcus & Millichap will be responsible for paying such fee.
7

8 D. The Secured Loans

9
10 14. Pursuant to the Note dated May 11, 2022, Walcent Elk and Jonathan Larmore
11 borrowed \$1,500,000 from Standard. On May 11, 2022, Walcent Elk, Jonathan Larmore and
12 Lender executed the Mortgage on the Property. The Note and Mortgage are serviced by the
13 Administrative Representative.
14

15 15. Upon his appointment and thereafter, the Receiver and his counsel engaged with
16 the Administrative Representative regarding the Property, resulting in a Forbearance
17 Agreement dated March 22, 2024, and an agreement to proceed with a sale to close on or before
18 January 31, 2025, in accordance with the procedures set forth in this Motion.
19

20 **III. Relief Requested**

21 16. By this Motion, the Receiver seeks entry of two Orders that provide for:

- 22 a. The approval of (i) the Receiver’s engagement and compensation of Marcus &
23 Millichap, pursuant to the terms of the M&M Agreement, and (ii) the Sale
24 Procedures, approving the notice of auction and sale, scheduling an auction to be
25 conducted by the Marketplace Auction Platform (the “Auction”) and setting a
26 sale hearing date after the Auction (the “Sale Hearing”) to consider the final
27 approval of the sale of the Property (the “Sale Procedures Order”), in the form
28 attached hereto as Exhibit 2; and
- b. The approval of the sale of the Property to the bidder offering the highest and

1 best bid at the Auction (the “Sale Order”), and approval of the allocation of sale
2 proceeds in the form attached hereto as Exhibit 3.

3 **IV. Basis for Relief Requested**

4 A. Authorization to Sell the Property

5 17. The Court’s power to supervise an equity receivership and to determine the
6 appropriate actions to be taken in the administration of the receivership is extremely broad. *See*
7 *Securities and Exchange Com’n v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005)
8 (quoting *Securities and Exchange Com’n v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986)). “The
9 power of a district court to impose a receivership or grant other forms of ancillary relief does
10 not in the first instance depend on a statutory grant of power from the securities laws. Rather,
11 the authority derives from the inherent power of a court of equity to fashion effective relief.”
12 *Securities and Exchange Com’n v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). A court
13 imposing a receivership assumes custody and control of all assets and property of the
14 receivership, and it has broad equitable authority to issue all orders necessary for the proper
15 administration of the receivership estate. *See Securities and Exchange Com’n v. Credit Bancorp*
16 *Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002).

17 18. It is well within the Court’s broad authority to approve the auction and Sale
18 Procedures set forth herein. “The power of sale necessarily follows the power to take
19 possession and control of and to preserve property.” *Securities and Exchange Com’n v.*
20 *American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *abrogated on other grounds*
21 *by Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 93-94 (1998) (quoting 2 Ralph E. Clark,
22 *Treatise on Law & Practice of Receivers* § 482 (3d ed. 1992)); *see also Gockstetter v. Williams*,

1 9 F.2d 354, 357 (9th Cir. 1925) (“In authorizing the sale of property by receivers, courts of
2 equity are vested with broad discretion as to price and terms”).

3
4 19. In addition to the equitable powers vested in this Court, this Court is conferred
5 with the statutory authority to authorize the sale of the Property. Sales of assets by federal
6 receivers are governed by sections 2001, 2002, and 2004 of Title 28 of the United States Code.
7 Section 2001 governs sales of real property and section 2004 governs sales of personal property,
8 while section 2002 sets forth the procedures for the noticing of sales.

9
10 20. Section 2001(a) sets forth the requirements for a receiver’s sale of real estate
11 pursuant to a public auction process as requested by this Motion:

12 Any realty or interest therein sold under any order or decree of any court of the
13 United States shall be sold as a whole or in separate parcels at public sale at the
14 courthouse of the county, parish, or city in which the greater part of the property is
15 located, or upon the premises or some parcel thereof located therein, as the court
directs. Such sale shall be upon such terms and conditions as the court directs.

16 21. Section 2002 provides that notice of sales of real estate must be published:

17 A public sale of realty or interest therein under any order, judgment or decree of any
18 court of the United States shall not be made without notice published once a week
19 for at least four weeks prior to the sale in at least one newspaper regularly issued and
20 of general circulation in the county, state, or judicial district of the United States
wherein the realty is situated.

21 22. The notice “shall be substantially in such form and contain such description of
22 the property by reference or otherwise as the court approves.” *Id.*

23
24 23. Here, the Receiver proposes to sell the Property, which consists of real property,
25 through the Marketplace Auction Platform and as prescribed by the Court in the Sale
26 Procedures Order. The Sale Procedures propose an Auction commencing on October 28, 2024
27 and ending on October 30, 2024, and the Receiver requests that the Court schedule the Sale
28

1 Hearing shortly thereafter. The Receiver will cause notice of the Auction and Sale Hearing to
2 be published for four consecutive weeks in a local publication, the The Elkhart Truth. In
3 addition to publishing notice, Marcus & Millichap will continue marketing the Property across
4 multiple platforms, including in the Business Journals Marketplace, Wealth Management Real
5 Estate, CRE Push and Shopping Center Business, in a manner consistent with ordinary custom
6 and practice in the industry. Once the Auction is completed, the Receiver will proceed with
7 the Sale Hearing before the Court at which time he will announce the winner of the Auction
8 and request approval of the sale to such prevailing bidder.
9
10

11 24. The Receiver believes, in his reasonable business judgment, that selling the
12 Property in accordance with the process set forth in this Motion and the public auction through
13 the Marketplace Auction Platform will yield the highest and best offers for the Property.
14

15 B. Approval of the Engagement and Compensation of Marcus & Millichap

16 25. The Receiver also seeks approval of his engagement of Marcus & Millichap to
17 market and solicit offers for the Property and broker the sale through the Marketplace Auction
18 Platform. Pursuant to paragraph 6(I) of the Receivership Order, the Receiver may engage and
19 employ professionals, including brokers, as necessary to assist in carrying out his duties.
20

21 26. Marcus & Millichap is a nationally-recognized commercial brokerage firm with
22 significant expertise brokering and selling properties comparable to the Property. For the
23 Property, Marcus & Millichap has created high quality marketing materials that showcase the
24 impressive physical structures and profitability history of the center. Once prospective bidders
25 sign a confidentiality agreement, they can receive access to a data room which will provide an
26 in-depth review of all pertinent information on the Property. Marcus & Millichap will continue
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1 to market and solicit bids by advertising in industry journals and specifically targeting buyers
2 reasonably believed to be interested in purchasing the Property. In addition, as stated above,
3 Marcus & Millichap will cause to be published the notice of the Auction and Sale Hearing in a
4 local publication, The Elkhart Truth. Through these efforts, the Property will be exposed to a
5 targeted marketing list of active bidders including owners and operators of similar shopping
6 centers, private equity and other financial funds.
7

8
9 27. Pursuant to the M&M Agreement, Marcus & Millichap is entitled to receive a
10 commission of five percent (5%) of the gross purchase price on account of their services (the
11 “M&M Commission”). The Receiver requests authority to pay the M&M Commission upon
12 the closing of the sale of the Property from the proceeds thereof.
13

14 28. Marcus & Millichap has represented to the Receiver that it does not hold any
15 interest materially adverse to any of the Receivership Entities. A Declaration of
16 Disinterestedness was recently filed by Marcus & Millichap in this case in connection with the
17 Receiver’s efforts to sell the Morningstar at Arcadia facility owned by Glenrosa 32, LLC [ECF
18 139], which is adopted herein by reference. The Court previously approved the engagement of
19 Marcus & Millichap under similar terms to market and sell properties owned by other
20 Receivership Entities. See *Order (I) Approving (A) The Engagement and Compensation of*
21 *Marcus & Millichap Real Estate Investment Services as Broker for the Sale of the Real*
22 *Properties Owned by ATA Mercado St. Augustine FL, LLC and ATA Palencia St. Augustine*
23 *FL, LLC, and (B) the Auction and Sale Procedures for the Sale of those Properties; and (II)*
24 *Granting Related Relief* [ECF No. 172].
25
26

27 29. Accordingly, the Receiver submits that Marcus & Millichap is best suited for
28

1 marketing and brokering the sale of the Property and that the engagement of Marcus &
2 Millichap on the terms and conditions set forth herein and in the M&M Agreement is necessary
3 and appropriate, in the best interests of the Receivership Estate, and should be granted.
4

5 C. Approval of the Sale Procedures

6 30. The Receiver proposes to sell the Property for the highest and best price at a
7 public Auction in accordance with the Sale Procedures to be approved by the Sale Procedures
8 Order. Through the Sale Procedures, the Receiver, with the assistance of Marcus & Millichap,
9 intends to market-test the value of the Property to determine the highest and best offers for the
10 Property.
11

12 31. The following are the key terms of the proposed Sale Procedures,⁵ subject to entry
13 of the Sale Procedures Order:
14

- 15 a. Auction Place and Time. There will be a public Auction held through the
16 Marketplace Auction Platform at <https://rimarketplace.com> beginning on
17 October 28, 2024 at 12:00 Noon (ET) and ending on October 30, 2024 at 12:00
18 Noon (ET).
- 19 b. Qualification to Bid. Any bidder interested in purchasing the Property must
20 register to bid with the Marketplace Auction Platform at
21 <https://rimarketplace.com> and submit financial information, including proof of
22 funds. Bidders who register and provide sufficient information and proof of
23 funds will receive an email confirming eligibility to bid.
- 24 c. Bidding at Auction and Selection of Successful Bidders. Bidders will bid on the
25 Property and, upon the conclusion of the Auction and attaining the Reserve Price,
26 the Receiver will accept the bids from the bidders who submit the highest and
27 best offer for the Property (the "Successful Bidder").
- 28 d. Execution of Purchase Agreement. The Successful Bidders will be required to
execute the Purchase Agreement, substantially in the form annexed to the

5 The proposed Sale Procedures are attached as Exhibit A to the Sale Procedures Order.

1 Coxworth Declaration as Exhibit B, within two hours of being selected as the
2 Successful Bidder.

- 3 e. Submission of Non-Refundable Deposit. No later than twenty-four hours after
4 conclusion of the Auction, the Successful Bidder shall submit a non-refundable
5 deposit of ten percent (10%) of the purchase price (the “Deposit”) to be held in
6 escrow pending entry of the Sale Order and closing on the sale.
- 7 f. Platform Fee. The Successful Bidder shall be obligated to pay the Platform Fee
8 due upon closing of the sales.
- 9 g. Due Diligence. All bidders who execute confidentiality agreements will be
10 permitted to conduct due diligence on the Property, including via a review of the
11 due diligence materials prepared by Marcus & Millichap, prior to the Auction.
12 Due diligence materials will be made available by the Marketplace Auction
13 Platform.
- 14 h. No Contingencies. The sale to the Successful Bidder shall not be subject to any
15 contingencies, including without limitation, for financing, due diligence, or
16 inspection.
- 17 i. As Is/Where Is Purchase. The sale to the Successful Bidder shall be on an “AS-
18 IS, WHERE-IS” basis, with no representations or warranties made by the
19 Receiver, his professionals, or the Receivership Entities.

20 32. At the Sale Hearing, the Receiver will request the Court approve the sale of the
21 Property to the Successful Bidder who shall be required to close no later than thirty-five (35)
22 days following entry of the Sale Order.

23 33. The Receiver requests approval of these Sale Procedures as they will help to
24 achieve the “primary purpose of [an] equity receivership;” that is, “to promote orderly and
25 efficient administration of the estate . . . for the benefit of creditors.” *Hardy*, 803 F.2d at 1037.

26 D. Sale Free and Clear of Liens, Claims, Encumbrances and Interests

27 34. While not expressly provided for statutorily, an order approving the sale of assets
28 by a federal receiver may provide for the sale of property free and clear of liens, claims,

1 encumbrances and other interests with all such interests attaching to the proceeds of the sale.
2 *Securities and Exchange Com'n v. Cap. Cove Bancorp LLC*, 2015 WL 9701154, at *4 (C.D.
3 Cal. Oct. 13, 2015); *Regions Bank v. Egyptian Concrete Co.*, 2009 WL 4431133, at *7 (E.D.
4 Mo. Dec. 1, 2009) (“[I]t has long been recognized that under appropriate circumstances, a
5 federal court presiding over a receivership may authorize the assets of the receivership to be
6 sold free and clear of liens and related claims”); *Quilling v. Trade Partners, Inc.*, 2007 WL
7 296211 (W.D. Mich. Jan. 09, 2007) (approving receiver’s sale of property free and clear of all
8 liens and encumbrances); *see also Seaboard Natl. Bank v. Rogers Milk Prod. Co.*, 21 F.2d 414,
9 416 (2d Cir. 1927); *Securities and Exchange Com'n v. Princeton Econ. Int’l Ltd.*, 2008 WL
10 7826694, *5 (S.D.N.Y. Sept. 30, 2008).

13
14 35. The Receiver proposes to sell the Property to the Successful Bidder in accordance
15 with the Sale Procedures, free and clear of all liens, claims, encumbrances and other interests
16 (collectively, “Liens and Encumbrances”) with such Liens and Encumbrances attaching to the
17 proceeds of the sale in the same order of priority.

18
19 36. The Purchase Price is expected to provide sufficient funds to allow for the
20 satisfaction of the Lender’s claims, and the Receiver proposes to pay the undisputed amounts
21 due and owing to the Lender on the sale of the Property. Lender has agreed to a full satisfaction
22 of its Note and release of its Mortgage upon a closing of a sale in accordance with the terms set
23 forth in this Motion. To the extent other Liens and Encumbrances exist, the Receiver requests
24 authority to close the sale of the Property, free and clear of all Liens and Encumbrances, and
25 for those Liens and Encumbrances to attach to the sale proceeds, which shall be placed in a
26 segregated receivership account pending further order of the Court or written agreement among
27
28

1 the parties.

2 E. Proposed Form and Manner of Notice of the Sale

3 37. To provide all interested parties with notice of the Auction and Sale Hearing and
4 an opportunity to object to the proposed sale, the Receiver requests approval of notice and
5 objection procedures as set forth in the Sale Procedures Order. The Receiver proposes to serve,
6 within five (5) days of entry of the Sale Procedures Order, the form of notice of the sale,
7 attached as Exhibit B to the Sale Procedures Order (the "Sale Notice") by United States first
8 class mail on (a) all known creditors of Walcent Elk at the address set forth in the Receivership
9 Entities' books and records or as updated pursuant to a request by a creditor or by returned mail
10 from the post office with a forwarding address; (b) Administrative Representative, Lender and
11 any party known or reasonably believed to have asserted any Lien and Encumbrance or other
12 interest in the Property; (c) all parties to pending litigation against Walcent Elk (as of the date
13 of entry of the Sale Procedures Order); (d) any party known or reasonably believed to have
14 expressed an interest in acquiring the Property; (e) the Securities and Exchange Commission,
15 the United States Attorney for the Southern District of New York, the Internal Revenue Service
16 and all local governmental units; and (f) such additional persons and entities deemed
17 appropriate by the Receiver.
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22 38. The Sale Notice will also be made available, within five (5) days of entry of the
23 Sale Procedures Order, on the Receiver's website at <http://www.arciterrareceivership.com>. In
24 addition, within five (5) days of entry of the Sale Procedures Order, the Receiver will cause
25 Marcus & Millichap to publish notice of the Auction and his intent to sell the Property for four
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1 weeks and in accordance with 28 U.S.C. § 2002, in *The Elkhart Truth*, a publication of wide
2 circulation in Elkhart, Indiana where the Property is located.

3
4 39. The Receiver submits that the notice to be provided and the method of service
5 proposed herein constitutes good and adequate notice of the sale, and complies with sections
6 2001 and 2002 of Title 28. Accordingly, the Receiver requests that this Court approve the
7 notice procedures and that no other or further notice of the sale is required.

8
9 **V. Conclusion**

10 40. No prior motion for the relief sought herein has been made to any court.

11 41. Given the authorities set forth herein, request is made to waive any requirement
12 to file a separate memorandum of law. *See* LRCiv 7.2(b).

13 WHEREFORE, the Receiver respectfully requests that this Court (a) enter the Sale
14 Procedures Order approving the M&M Agreement and the Sale Procedures; (b) enter the Sale
15 Order approving the sale of the Property to the bidder offering the highest and best bid at the
16 Auction; and (c) grant such other relief as is just and equitable.

17
18 Dated: September 24, 2024

ARCHER & GREINER, P.C.

19
20
21 By: 

Allen G. Kadish¹

Harrison H.D. Breakstone²

1211 Avenue of the Americas

New York, New York 10036

Tel: (212) 682-4940

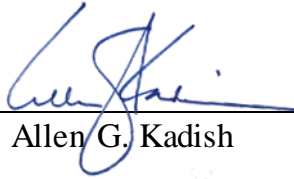
Email: akadish@archerlaw.com

hbreakstone@archerlaw.com

22
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24
25
26 *Counsel for Allen D. Applbaum as Receiver*

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2024, I electronically transmitted the foregoing document with the Clerk of the Court using the CM/ECF systems, which will provide electronic mail notice to all counsel of record.


Allen G. Kadish

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INDEX TO EXHIBITS

Exhibit 1 – Coxworth Declaration

Exhibit A – M&M Agreement

Exhibit B – Purchase Agreement

Exhibit 2 – Sale Procedures Order

Exhibit A – Sale Procedures

Exhibit B – Notice of Auction and Sale

Exhibit 3 – Sale Order

Exhibit A – Successful Bidder Asset Purchase Agreement

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EXHIBIT 1

COXWORTH DECLARATION

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States Securities and Exchange
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

Michelle Larmore, Marcia Larmore,
CSL Investments, LLC,
MML Investments, LLC,
Spike Holdings, LLC,
and JMMAL Investments, LLC,

Relief Defendants.

Case No. 23-CV-02470-PHX-DLR

**DECLARATION OF RANDALL
COXWORTH IN SUPPORT OF
RECEIVER’S MOTION FOR
ORDERS (I) APPROVING (A) THE
ENGAGEMENT AND
COMPENSATION OF MARCUS &
MILLICHAP REAL ESTATE
INVESTMENT SERVICES AS
BROKER FOR THE SALE OF THE
REAL PROPERTY OWNED BY
WALCENT ELK/IN, LLC AND (B)
THE SALE AND AUCTION
PROCEDURES FOR THE SALE OF
THE PROPERTY; (II) APPROVING
THE SALE OF THE PROPERTY
AFTER AUCTION, FREE AND
CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND
INTERESTS; AND (III) GRANTING
RELATED RELIEF**

RANDALL COXWORTH hereby declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, to the best of his knowledge, information and belief:

1. I am a partner at the firm of StoneTurn Group, LLP (“StoneTurn”) and submit this Declaration in support of the Motion of Allen D. Applbaum as receiver for ArciTerra Companies, LLC and related entities (the “Receiver”) for orders (A) approving (i) the Receiver’s engagement and compensation of Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”) as broker for the sale of a multi-use retail center located in Elkhart, Indiana (the “Property”) owned by Receivership Entity, Walcent Elk/IN, LLC (“Walcent Elk”), and (ii) the proposed sale and auction procedures (the “Sale”

1 Procedures”) for the sale of the Property; (B) approving the sale of the Property to the
2 bidder who submits the highest and best offer for the Property at the auction, free and clear
3 of all liens, claims, encumbrances and interests; and (C) granting related relief (the
4 “Motion”).

5 2. I am a Certified Construction Manager and Auditor, who specializes in
6 program and project management services, including strategic delivery, risk identification,
7 contract control assessments, and process performance reviews. My experience also
8 includes capital project financial analyses, financial restructuring, rescue financing and
9 forbearance services across various real estate asset classes. I have a B.A. and M.B.A. and
10 have been in practice as a construction and real estate professional and consultant for over
11 twenty-five years. I have led the real estate efforts at StoneTurn on behalf of the Receiver
12 and worked closely with the Receiver and Receiver’s counsel. I submit this Declaration in
13 support of the Motion and adopt the statements made therein as if set forth herein.
14
15

16 3. On December 21, 2023 and May 6, 2024, the Court entered the *Order*
17 *Appointing Temporary Receiver and Temporarily Freezing Assets and Imposing Litigation*
18 *Injunction* [ECF No. 77] and the *Order Appointing Receiver Freezing Assets, and Imposing*
19 *Litigation Injunction* [ECF No. 154] (the “Receivership Order”), which among other
20 things, appointed the Receiver and approved the engagement of StoneTurn and Archer &
21 Greiner, P.C. as retained professionals for the Receiver in this case.
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24 4. Since his appointment, the Receiver and his team of professionals have
25 investigated and evaluated the financial affairs of the Receivership Estate, including its
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1 numerous real estate holdings. The Receiver has undertaken significant efforts to stabilize
2 the many properties within the Receivership Estate, including the Property.

3 5. Shortly after the Receiver's appointment, I engaged in discussions with
4 StanCorp Mortgage Investors, LLC, as administrative representative (the "Administrative
5 Representative"), for Standard Insurance Company (the "Lender") holder of a mortgage on
6 the Property securing a loan made in May 2011, with current balances of approximately
7 \$1,175,000.00. The Receiver's team entered into discussions with the Administrative
8 Representative and I have maintained frequent communications with them regarding the
9 status of the Property.
10

11 6. After analysis, the Receiver and his team of professionals ultimately
12 determined that the best course of action was to market and sell the Property. Upon making
13 that determination, the Receiver considered potential brokers and ultimately selected
14 Marcus & Millichap to broker and sell the Property. Marcus & Millichap is a nationally-
15 recognized commercial brokerage firm with significant expertise brokering and selling
16 properties comparable to the Property.
17

18 7. For the Property, Marcus & Millichap created high quality marketing
19 materials that showcase the impressive physical structures and profitability history of each
20 center. Once prospective bidders sign a confidentiality agreement, they can receive access
21 to a data room which will provide an in-depth review of all pertinent information on the
22 Property. Marcus & Millichap will continue to market and solicit bids by advertising in
23 industry journals and specifically targeting buyers reasonably believed to be interested in
24 purchasing the Property. In addition, Marcus & Millichap will cause to be published the
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1 notice of the auction and sale hearing in The Elkhart Truth. Through these efforts, the
2 Property will be exposed to a targeted marketing list of active bidders including owners
3 and operators of similar shopping centers, private equity and other financial funds.

4 8. The Receiver then negotiated the terms of the Marcus & Millichap Exclusive
5 Representation Agreement (the "M&M Agreement"), which is subject to Court approval
6 through the Motion. A copy of the M&M Agreement is attached hereto as Exhibit A. The
7 Court previously approved the Receiver's sale of real property under similar sale and
8 auction procedures using the Marketplace Auction Platform. See *Order (I) Approving (A)*
9 *The Engagement and Compensation of Marcus & Millichap Real Estate Investment*
10 *Services as Broker for the Sale of the Real Properties Owned by ATA Mercado St.*
11 *Augustine FL, LLC and ATA Palencia St. Augustine FL, LLC, and (B) the Auction and Sale*
12 *Procedures for the Sale of those Properties; and (II) Granting Related Relief* [ECF No.
13 172].
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17 9. Prior to execution of the M&M Agreement, Marcus & Millichap informed
18 the Receiver of the absence of any material conflict. A Marcus & Millichap Declaration
19 of Disinterestedness was recently filed in this case in connection with the Receiver's efforts
20 to sell the Morningstar at Arcadia facility [ECF No. 139].
21

22 10. Pursuant to the M&M Agreement for the sale of the Property, Marcus and
23 Millichap is entitled to commissions equal to five percent of the ultimate sale price for the
24 Property, which commission will be paid at closing of the sale. If the successful
25 purchaser's broker is entitled to a co-brokerage fee, Marcus & Millichap will be
26 responsible for paying such fee.
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1 11. In connection with the engagement of Marcus & Millichap, it was
2 determined that conducting an auction through the RealINSIGHT Marketplace Auction
3 Platform (<https://rimarketplace.com>) (the “Marketplace Auction Platform”), would lead to
4 the highest and best offer for the Property. The Marketplace Auction Platform is a
5 commercial online real estate auction site with one of the highest sale rates in the real estate
6 industry, utilizing cutting-edge technology and a dedicated marketing team to bring the
7 most diverse and competitive buyer pool to its listings.
8

9 12. At the auction, the proposed Sale Procedures require all prevailing bidders to
10 agree to pay all transfer taxes and closing costs, including the fee payable to the
11 Marketplace Auction Platform, which is the greater of five percent (5%) of the winning bid
12 or \$25,000 (the “Platform Fee”). As part of the M&M Agreement, the Marketplace
13 Auction Platform has agreed to rebate 40% of the Platform Fee to the Receivership Estate
14 upon closing of the sales if the sale price is in excess of \$1.0 million.
15
16

17 13. Upon conclusion of the auction, the Receiver will select the highest and best
18 offer for the Property that meets or exceeds the \$1 million reserve price for the Property
19 and enter into an asset purchase agreement (the “Purchase Agreement”), substantially in
20 the form annexed hereto as Exhibit B. The Purchase Agreement provides for the sale of
21 the Property on an “as is, where is” basis, with no representations or warranties from the
22 Receiver or the Receivership Entities and is solely contingent on approval of this Motion
23 and the Receiver’s ability to deliver insurable title.
24

25 14. The Receiver has negotiated an agreement with StanCorp Mortgage
26 Investors, LLC, as administrative representative (the “Administrative Representative”),
27
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1 that provides for at least \$100,000 to the Receivership Estate. Specifically, the proceeds
2 of any sale will first be applied to closing costs and commissions due to Marcus &
3 Millichap and then \$100,000 to the Receivership Estate (plus 30% of all proceeds over the
4 Reserve Price). Lastly, the Administrative Representative will receive all remaining sale
5 proceeds on account of the undisputed claims of the Lender to satisfy and release their
6
7 undisputed claims.

8 15. I declare under penalty of perjury that the foregoing is true and correct.

9 Dated: San Diego, California
10 September 17, 2024

Randall Coxworth

Randall Coxworth

INDEX TO EXHIBITS

Exhibit A – M&M Agreement

Exhibit B - Proposed Asset Purchase Agreement

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Exhibit A

Marcus & Millichap Engagement Agreement

Marcus & Millichap

Real Estate Investment Services

Allen D. Applbaum
as Receiver in the matter of *Securities and*
Exchange Commission v. Jonathan Larmore, et al.,
Case No. 2:23-cv-02470-PHX-DLR in the United
States District Court for the District of Arizona
17 State Street, 2nd Floor
New York, New York 10004

June 28th, 2024

Re: Exclusive Representation Agreement for Auction Sales

Dear Mr. Applbaum:

Marcus & Millichap Real Estate Investment Services, Inc. (including its subsidiary and affiliated entities, "**Marcus & Millichap**") (any references to "we," "us," "our," or similar terms will refer to Marcus & Millichap) is pleased to enter into this Exclusive Representation Agreement for Auction Sales (this "**Agreement**") with : **Allen D. Applbaum as Receiver in the matter of *Securities and Exchange Commission v. Jonathan Larmore, et al., Case No. 2:23-cv-02470-PHX-DLR in the United States District Court for the District of Arizona*** ("**Seller**") (any references to "you," "your," or similar terms will refer to Seller) in connection with the sale of real property located at 2719-2733 Emerson Drive, Elkhart, IN 46514 Parcel ID 20-02-29-104-016.000-027 (the "**Property**"). You and Marcus & Millichap may be referred to in this Agreement individually as a "**Party**" or collectively as "**Parties.**"

1. **Court Approval.** The Seller's and Marcus & Millichap's respective obligations under this Agreement are subject to approval and order of the United States District Court for the District of Arizona (the "**Court**"). In the event that the approval is denied by the Court this Representation Agreement shall automatically be deemed null and void, and the parties hereto shall be relieved of all further obligations and liability with respect to the subject matter of this Agreement. The parties acknowledges that the Receiver "acts" pursuant to this Agreement on behalf of the receivership estate in accordance with that certain *Order Appointing Receiver, Freezing Assets, and Imposing Litigation Injunction*, of the Court dated May 6, 2024 [Docket No. 154].

2. **Term.** This Agreement will commence effective as of June 28th, 2024 (the "**Commencement Date**") and continue for a period of 120 days through and including midnight on October 26th, 2024 (such time being the "**Term**").

3. **Engagement.** Subject to Court approval, you hereby engage us and grant to us, for the Term, the exclusive and irrevocable right and authority to list, market, and sell the Property. You agree to promptly refer and provide to us all inquiries of anyone interested in the Property, including but not limited

to any letters of intent, purchase and sale agreements, or any other documents material to the sale of the Property which you might receive.

3.1. During the Term, the Property will be listed and marketed for sale by auction on the RealINSIGHT Marketplace auction platform (the “**Auction Platform**”) also known as CWFS-REDS LLC (“**REDS**”) at the Reserve Price and terms set forth below. As an auction sale, this Property will be listed and advertised on the Auction Platform’s websites. Potential purchasers will have the opportunity to download and review disclosures and other due diligence information about the Property directly from the Auction Platform. Potential purchasers who are interested in purchasing the Property will place bids through the Auction Platform. You will set a Reserve Price, as specified below. If the Auction Platform does not receive any bids equal to or in excess of the Reserve Price, you will be under no obligation to sell your Property to the highest bidding purchaser. If the Auction Platform receives bids equal to or in excess of the Reserve Price, then the highest bidding purchaser will be awarded the contract to purchase your Property. Please understand, if the Auction Platform receives bids in excess of the Reserve Price, you may be obligated, subject to Court approval as stated above, to sell the Property to the highest bidding purchaser and failure or refusal to complete the sale after may have legal consequences, including but not limited to having to pay our commission and the Platform Fee.

3.2. You authorize us to market the Property for sale as we deem appropriate, subject to Court approval. In so doing, we will rely on information provided by you and your agents, representatives, or advisors, but we will have no duty to--and will not--verify any such information. You agree to indemnify us and hold us harmless from any and all liability, damages, losses, causes of action, or other claims (including attorneys’ fees and other defense costs) arising from or asserted by a third party in connection with a material breach of Section 6.

3.3. We will not have authority to bind you to any contract. We will not be responsible for performing any due diligence or other investigation of the Property or of any potential buyer, or for providing professional advice with respect to any legal, tax, engineering, construction, or hazardous materials issues. We make no representation or warranty as to the accuracy or completeness of any information or records communicated to you or to any potential buyers. You and any potential buyers will be solely and exclusively responsible for conducting all such due diligence and investigations, confirming the accuracy and completeness of any information or records provided to you, and procuring such professional advice with respect to any legal, tax, engineering, construction, and hazardous materials issues, as you deem necessary. You understand there are many ways in which property may be listed, marketed, and sold. You represent you have completed all investigations and due diligence you deem necessary and have determined of your own volition that listing your Property for sale through the Auction Platform is your desired method. In making this decision, you have not relied on any information provided to you by Marcus & Millichap, and you either have consulted legal and other professional advice or have had the opportunity to do so and chosen not to in making this decision.

3.4. You agree we and our representatives will have the right to enter on the Property with prospective buyers, at reasonable hours, subject to the rights of any tenants or occupants thereof, and without unduly disturbing such tenants or occupants, to allow for the inspection of the

interior and exterior of the Property, and to make available to prospective buyers all financial data concerning the Property. We agree to indemnify and hold you harmless from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any prospective purchasers) or the Property that arise in connection with our entry upon the Property to the extent caused by our negligence or willful misconduct.

4. **Reserve Price.** You authorize us to offer the Property for sale on the Auction Platform at the following unpublished reserve price of:

One Million dollars (\$1,000,000) (the “ Reserve Price ”) [2719-2733 Emerson Drive, Elkhart, IN 46514] [(Parcel ID: 20-02-29-104-016.000-027)]
--

5. **Commission and Platform Fees.**

5.1. In consideration of the services to be rendered by us, you agree to pay us a commission equal to Five percent (5%) of the sales price of the Property, subject to approval and order of the Court, if:

5.1.1. The Property is sold, exchanged, or conveyed during the Term, by you or any other person or entity; or

5.1.2. A sale, exchange, or conveyance of the Property is made during the Term or within ninety (90) days after the expiration of the Term, to a person or entity with whom we have actually negotiated, to whose attention we have brought the Property (beyond general advertising or viewing on an MLS service or similar), or who was introduced to you by us as a prospective purchaser (collectively, each a “**Prospective Purchaser**”), provided that (i) the name of any such person or entity has been submitted to you prior to expiration of the Term by delivery of a letter of intent, contract, or written offer to purchase the Property, or (ii) written notice has been given to you of the name of the Prospective Purchaser within fifteen (15) calendar days after expiration of the Term. With respect to a sale, exchange or conveyance to any Prospective Purchaser, we will conclusively be deemed to be the procuring cause. The term “Prospective Purchaser” includes also any partnership, joint venture, corporation, trust, or other similar entity which a person or entity who qualifies as a Prospective Purchaser--as defined above--represents or in which it holds an ownership or beneficial interest.

5.1.3. In either instance above, the commission must be paid no later than at closing of the transaction or transfer of title, whichever occurs first, and we will be entitled to make demand of any escrow holder or closing attorney for payment from the proceeds of the transaction.

5.2. 4.2 Additionally, if an event set forth in 4.1 do not occur, in consideration of the services to be rendered by us, you agree to pay us a commission, subject to approval and order of the Court, as follows:

5.2.1. If, during the Term, you terminate an executed offer, letter of intent, or contract, or you otherwise cause the transaction not to close, for any reason other than (a) denial by the Court of an order approving the sale or (b) as a result of a breach of the buyer's obligations in the purchase and sale agreement, you agree to pay us a commission equal to Five percent (5%) of the sales price of the Property identified in that offer or contract; or

5.2.2. In either instance above, the commission will become due and owing to us on the earliest date on which an event occurs which triggers the obligation to pay the commission.

5.3. Except in the event one or more occurrences outlined in Sections 4.1 and 4.2, above, occur, in which case the entire commission will become due and owing to Marcus & Millichap, you and Marcus & Millichap each agree if, after a contract for the purchase and sale of the Property has been executed, the sale of the Property is not completed, you may choose one of the following options: (a) renew this Agreement with a new Term commencing on the date the purchase and sale agreement is terminated and re-list your Property for sale through the Auction Platform on the same terms and conditions set forth herein, with all rights of both Parties reserved with regard to the Agreement and its original Term, or (b) if you collect or retain any deposit or monetary sum in connection with the termination of the purchase and sale agreement, you agree to pay us an amount equal to one-half of any deposit or any other monetary sum, damages, penalties, compensation or consideration (including liquidated damages) retained, received, or collected by you or otherwise paid to you (net of costs of collection, including litigation), by suit or otherwise, resulting, stemming, or arising from said purchase and sale contract or this Agreement, if and when said amounts are made available to you and, on said payment to us, this Agreement will terminate. However, with regard to option (b), above, the amount due to us will not exceed the amount of the commission to which we would have been entitled had the transaction closed.

5.4. In the event of a sale, exchange, or conveyance of the Property, the applicable commission set forth above must be paid to us at closing.

5.5. In addition to the commission for our services, there is an additional charge by REDS for the use of the Auction Platform in the form of a platform fee in an amount equal to Five percent (5%) of the highest bidding buyer's offer, or a minimum of Twenty Five Thousand dollars (\$25,000), whichever is greater (the "**Platform Fee**"). The Platform Fee will be added to the highest bidding buyer's offer and will be paid by that buyer at closing of the sale. REDS agrees to rebate back to Seller 40% of the platform fee collected if the winning bid is equal to or greater than \$1,000,000. You agree to incorporate the Platform Fee into any purchase and sale agreement used in connection with the sale of the Property through the Auction Platform. You hereby authorize us to receive this payment. Notwithstanding anything contained herein to the contrary, if the Property is not sold, you will be solely responsible to immediately pay REDS the full Platform Fee (as calculated below), subject to approval and order of the Court, if any of the following events occur:

5.5.1. You terminate an executed offer, letter of intent, or contract, or you otherwise cause the transaction not to close (for any reason other than as a result of a material breach of the buyer's obligations or failure of a closing condition not resulting

from your default, or for failure to obtain Court approval), in which case you shall immediately pay REDS the Platform Fee; or

5.5.2. A sale, exchange, or conveyance of the Property is made during the Term or within one hundred eighty (180) days after the expiration of the Term, to a Prospective Purchaser or other person who gained access to the Auction Platform during the Term for purposes of reviewing information related to the Property, provided that (i) the name of any such person or entity has been submitted to you prior to expiration of the Term by delivery of a letter of intent, contract, or written offer to purchase the Property, or (ii) written notice has been given to you of the name of the Prospective Purchaser within fifteen (15) calendar days after expiration of the Term, in which case you shall pay to REDS the Platform Fee based on the purchase price for such sale, exchange, or conveyance at closing of the sale.

5.5.3. In any of the three instances above, the Platform Fee must be paid by you and will be owing to REDS as of the earliest date on which an event occurs which triggers the obligation to pay the Platform Fee. Unless you receive instructions from REDS otherwise, we will receive the Platform Fee on behalf of REDS and deliver such Platform Fee to REDS.

5.6. Your obligations to pay commissions and Platform Fees will survive termination of this Agreement.

6. **Seller Obligations and Representations.** You agree to provide all material information, in your role as the “Receiver”, in your possession and control necessary to allow us to satisfy our duties under this Agreement and as may be requested for any buyer to make its determination to purchase the Property, including but not limited to records relating to the Property, its tenant(s), and its financial performance. You represent and warrant that, to your knowledge, any information you provide will be true, accurate, and complete; you have not knowingly provided and will not knowingly provide any incomplete, inaccurate, or misleading information; and you have not withheld and will not withhold any material information. You agree to assist us as may reasonably be necessary to allow for the marketing and sale of the Property.

6.1. You represent and warrant that you have been appointed as the “Receiver”, and, as a result are authorized to sell the Property, and you are fully authorized to engage us to sell the Property as well as to execute any agreement for the sale of the Property, subject to approval of the Court. You further represent and warrant there exists no right of first refusal, option to purchase, encumbrance, cloud on title, or any other similar encumbrance actually known to you which might preclude, prevent, or interfere with the closing of the sale of the Property to the highest bidding purchaser at auction.

6.2. It is your sole responsibility, subject to approval of the Court, to evaluate any offers, letters of intent, purchase and sale agreements, or other contracts you might execute in connection with the listing, marketing, and sale of the Property, as well as to evaluate any potential purchasers of the Property. We may communicate to you information, records, or communications provided to us or as we may locate or discover, and we may provide to you form, sample, or template contracts,

but we cannot certify, represent, or warrant to you the truthfulness, completeness, or accuracy of any information provided to you in connection with the sale of the Property, or that any contract provided to you is satisfactory to your particular needs and interests. All decisions to sell the Property, engage in any negotiations, or enter into any contract with any potential buyers are yours, subject to approval of the Court. You are advised to seek any legal, financial, tax, or other advice as may be beneficial to you in making those decisions.

6.3. You must disclose to us any material defect actually known to you concerning the Property, its tenant(s) or its financial performance. This includes, but is not limited to, any physical defects affecting the property such as environmental concerns, hazardous materials, and violations of applicable codes or regulations, as well as other information such as a tenant's known inability to pay rent or intent to terminate its lease, among other things. What is material is often defined from the buyer's perspective, so any information which may assist the buyer in making its decision to purchase the Property may be material and should be disclosed. You also agree and hereby authorize us to disclose to potential buyers any defect known to us which we believe to be material.

7. **Dual Agency.** You recognize we represent other sellers and buyers who may have interests similar to or competing with yours. You agree we may represent sellers of other properties as well as potential buyers of both your Property and other properties, simultaneously as we represent you, in any transaction relating to the Property or any other transaction. You hereby acknowledge and consent to any such simultaneous representation by us and agree that regardless of the relationship between you and Marcus & Millichap, our representation of other sellers or of any buyers does not constitute a breach of any duty to you. Marcus & Millichap may accept a commission from other sellers or buyers in connection with any transaction in which it represents those other sellers or buyers. In the event any conflict of interest between you and any other client of Marcus & Millichap becomes known to us, we will inform you of the conflict immediately.

7.1. You agree also Marcus & Millichap is affiliated with other entities and numerous real estate licensees throughout the United States. Many licensees associated with Marcus & Millichap or its affiliated entities are licensed under different Brokers of Record than the Broker of Record representing you.

7.1.1. The particular Broker of Record representing you in this transaction is licensed in the state in which this Property is located. Each state has particular disclosures that must be made to clients of real estate brokers. The disclosures required by the state in which this Property is located are attached hereto as **Exhibit A** and are incorporated herein by this reference. By signing this Agreement, you acknowledge receipt of the disclosures required by the state in which this Property is located and you confirm you have read, understood, and agreed to those disclosures and our representation of you in light of those disclosures.

7.1.2. Other licenses who are affiliated with Marcus & Millichap under a different Broker of Record than the Broker of Record representing you are "**Affiliated Brokers.**" You acknowledge and agree that the representation of any potential buyer by any Affiliated Broker in connection with the purchase of your Property will not create in a dual agency

relationship so long as the Affiliated Brokers representing the buyer are licensed under a different Broker of Record than the Broker of Record under whom the licensees representing you are licensed. In such instances, the Affiliated Brokers who represent the potential buyer(s) of your Property will owe duties of loyalty, confidentiality, and trust exclusively to their own clients; while the licensees who represent you will owe duties of loyalty, confidentiality, and trust exclusively to you. Marcus & Millichap licensees representing you will not, without your written consent, disclose your confidential information to potential buyers, and Marcus & Millichap licensees representing potential buyers likewise will not, without the buyer(s)'s written consent, disclose the buyers' confidential information to you.

8. **Co-Brokerage.** You agree we are authorized to cooperate with other brokers, either within or from outside Marcus & Millichap or its affiliated entities, including other brokers who may assist with our representation of you as the Seller as well as other brokers who may represent potential buyers of your Property. Such other brokers are "**Cooperating Brokers.**" We may, but are not required to, share our commission with Cooperating Brokers but, in any event, absent written agreement to the contrary, neither you nor Marcus & Millichap will be required to pay any commission to a Cooperating Broker.

9. **Limitation of Liability.** Except for either parties' gross negligence or willful misconduct, neither party shall be liable for any consequential or punitive damages arising out of or relating to this Agreement.

10. **Compliance with Laws.** You and Marcus & Millichap each agree to comply with all applicable laws, regulations, codes, and ordinances. You and Marcus & Millichap each agree the Property will be offered for sale and will be sold without regard to race, color, religious creed, sex, ancestry, age, national origin, disability, familial status, or any other protected class of persons under federal, state, or local law.

11. **Miscellaneous.** This Agreement constitutes the entire agreement between you and Marcus & Millichap and supersedes all prior discussions, negotiations, promises, and agreements, whether oral or written, on the subject matters hereof. No amendment, alteration, or withdrawal of this agreement will be valid or binding unless made in writing and signed by both Parties. This Agreement shall be binding upon the successors and assignees of the Parties. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which it is given. This Agreement may be executed by the Parties in one or more counterparts, may be executed electronically, and may be transmitted by facsimile, e-mail, or other electronic means, and all such executed counterparts shall constitute one agreement and, taken together, shall have the same force and effect as an original. This Agreement will be governed by and interpreted in accordance with the laws of the state of Arizona. In the event any term or provision of this Agreement is held illegal, unenforceable, or inoperative as a matter of law, the remaining terms and provisions of this Agreement will not be affected thereby and will remain in full force and effect.

YOU UNDERSTAND AND ACKNOWLEDGE MARCUS & MILLICHAP IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL, OR TAX ADVICE AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM YOUR OWN LEGAL

COUNSEL, ACCOUNTANTS, OR TAX PROFESSIONALS. YOU UNDERSTAND THERE ARE MANY WAYS TO LIST, MARKET, AND SALE PROPERTY, AND YOU HAVE COMPLETED YOUR OWN INVESTIGATIONS AND DUE DILIGENCE, AND CONSULTED YOUR OWN LEGAL OR OTHER PROFESSIONAL ADVISORS TO DETERMINE THAT LISTING YOUR PROPERTY FOR SALE THROUGH THE AUCTION PLATFORM IS YOUR DESIRED METHOD. IN MAKING THAT DETERMINATION, YOU HAVE NOT RELIED ON ANY INFORMATION PROVIDED TO YOU OR REPRESENTATION MADE BY MARCUS & MILLICHAP.

12. **Authority.** Subject to approval by the Court, the signatories each warrant they are duly empowered and fully authorized to enter into this Agreement, binding themselves, the Party for whom they are signing, and all associated entities, hereto.

13. **Intentionally Omitted.**

14. **Third Party Beneficiary.** The Parties agree that REDS is intended to be, and shall have the rights of, a third party beneficiary under Section 4.2 and 13 of this Agreement and shall have the right to enforce the related provisions of Section 4.2 and 13 of this Agreement as if it were a party hereto; provided however, in enforcing either such provision REDS shall not be subject to any other terms of this Agreement, including, but not limited to, Section 8.

We look forward to working with you in the sale of this Property. If you agree, please execute the acknowledgement below and return your executed agreement to me, whereupon this Agreement will constitute our final, binding agreement with respect to the subject matter hereof.

Very Truly Yours,

Marcus & Millichap

Signed:  _____


By: Josh Caruana _____

Title: First Vice President, District Manage _____

Date: 7/10/2024 | 10:29:19 PDT _____

Having read, understood, and agreed to the foregoing, Seller hereby executes this Agreement with intent to be bound thereby:

Seller's Name: : Allen D. Applbaum as Receiver in the matter of Securities and Exchange Commission v. Jonathan Larmore, et al., Case No. 2:23-cv-02470-PHX-DLR in the United States District Court for the District of Arizona

Signed:  _____

By: Allen D. Applbaum _____

Title: Receiver _____

Date: 7/3/2024 _____

Exhibit B

Proposed Asset Purchase Agreement

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ACKNOWLEDGMENT OF OFFEROR

The undersigned understands and acknowledges that this document entitled “ASSET PURCHASE AGREEMENT” constitutes a bid, being submitted by the undersigned to Seller identified therein, for Seller’s consideration, may be accepted or rejected in the sole discretion of Seller, and may be further subject to court approval. The undersigned specifically acknowledges that this bid was made in connection with a reserve auction, and that a binding contract between the undersigned and Seller will not be created unless and until Seller indicates its acceptance of this bid by executing the attached Asset Purchase Agreement and delivering a copy thereof to the undersigned by facsimile, e-mail, U.S. Mail, overnight or express mail.

OFFEROR:

Address: _____

[company name]

By: _____

Name: _____

Title: _____

Date: _____

ASSET PURCHASE AGREEMENT

(AUCTION)

([INSERT PROPERTY NAME (NON-OPERATING ASSET)])

This Asset Purchase Agreement (this “**Agreement**”) is entered into as of _____, 2024 (the “**Effective Date**”) by and between [INSERT NAME OF BUYER], a _____ limited liability company, and its permitted assigns (“**Buyer**”), and [INSERT NAME OF ENTITY] (the “**Seller**”), by Allen D. Applbaum as Receiver in the matter of Securities and Exchange Commission v. Jonathan Larmore, et al., Case No. 2:23-cv-02470-PHX-DLR in the United States District Court for the District of Arizona (the “**Receiver**”).

WITNESSETH

WHEREAS, the Receiver has been appointed as receiver for Jonathan M. Larmore, ArciTerra Companies, LLC and related entities, including Seller (collectively, the “**Receivership Estates**”) pursuant to that certain Order Appointing Receiver and Freezing Assets and Imposing Litigation Injunction dated May 6, 2024 (the “**Receivership Order**”) issued by the United States District Court for the District of Arizona (the “**Court**”), Case No. 23-CV-02470-PHX-DLR; and

WHEREAS, pursuant to the Receivership Order, the Receiver is authorized to take and have complete and exclusive control, possession, and custody of all of Seller’s rights, title, and interests in the Seller’s property; and

WHEREAS, Seller is the owner of that certain real property located at [INSERT PROPERTY ADDRESS] (the “**Real Property**”), together with any buildings and improvements thereon, more particularly described on **Schedule A-1** annexed hereto and made a part hereof, and related personal property as described on **Schedule A-2** (the “**Personal Property**”) and together with the Real Property and the Intangible Property, as hereinafter defined, collectively the “**Property**”), comprising a retail center known as “[INSERT DEFINED NAME]” (the “**Center**”); and

WHEREAS, the Receiver has determined that it is in the best interests of the Receivership Estates and their beneficiaries to consummate the transactions provided for herein, subject to approval by the Court, and Buyer desires to purchase the Property pursuant to those terms and conditions and this Agreement.

NOW, THEREFORE, in consideration of the premises and the respective undertakings of Seller and Buyer hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which consideration are hereby acknowledged, it is hereby agreed as follows:

I.
DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

“**Agreement**” has the meaning set forth in the introductory paragraph.

“**Auction**” shall mean the on-line auction as approved by the Court in the Bidding Procedures Order and conducted on the auction website, *marketplace.realinisight.com* (the “**Website**”), during which the Receiver will consider and determine the highest and best offer for the purchase of the Property.

“**Bidding Procedures Order**” shall mean such Order entered by the Court on _____, 2024 that, *inter alia*: (i) schedules the Auction and Sale Hearing, and (ii) approves bidding procedures for bidders to submit offers for the Property at the Auction.

“**Buyer**” has the meaning set forth in the Preamble to the Agreement.

“**Broker**” shall mean Marcus and Millichap Real Estate Investment Services.

“**Closing**” has the meaning set forth in Section 5.1 of the Agreement.

“**Closing Date**” has the meaning set forth in Section 5.1 of the Agreement.

“**Contracts**” means all leases of furniture, fixtures and equipment, and all contracts, concessionaire and vendor agreements (if applicable), leases, and agreements relating to the ownership, maintenance and/or operation of the Center and/or the Property, copies of which are provided to Buyer with the Due Diligence Materials, together with, as applicable and to the extent in Seller’s actual possession (a) all related written warranties and guaranties, and (b) all other contracts, leases, and agreements entered into by Seller after the Effective Date as permitted pursuant to Section 7.1.

“**Court**” means the United States District Court for the District of Arizona.

“**Due Diligence Materials**” means the Contracts, Real Estate Agreements, and any other data, documents or other information supplied by the Receiver, the Receivership Estate, the Broker and their representatives to Buyer in connection with Buyer’s purchase and inspection of the Property.

“**Earnest Money**” has the meaning set forth in Section 3.2 of the Agreement.

“**Encumbrances**” means liens, mortgages, pledges, security interests, restrictions, judgments, prior assignments, liabilities, obligations, encumbrances, charges, tenancies, licenses, covenants, successor or transferee liabilities and claims of any and all nature and description whatsoever.

“**Excluded Assets**” means the Excluded Documents, cash, cash equivalents, checks and other funds, including, without limitation, Seller’s Accounts Receivable (other than the proration of rent for the Current Month, as set forth in Article XI below), notes, securities and other evidence of indebtedness held at the Center as of the Closing Date, balances on deposit to the credit of Seller with banking institutions (all of which shall be retained by Seller), those Contracts listed in the Service Contract Termination Notice, personal property of tenants in the Center and improvements made by such tenants to the extent the applicable Lease vests ownership of the same in such tenant, and the Center name and website domain (if applicable).

“**Excluded Documents**” means all (a) the corporate minute books and stock registers of

Seller, (b) internal memoranda, correspondence, analyses, documents or reports prepared by or for Seller or its Affiliates in connection with the sale of the Property, including, without limitation, tax returns or financial statements of Seller (exclusive of operating statements and the general ledger of the Center and any supporting information which shall be available for review by Buyer) for or in connection with its ownership or operation of the Center and Property, and (c) communications between Seller or any Affiliate and their respective attorneys.

“Intangible Property” means all (a) local telephone and facsimile exchange numbers identified exclusively with the Center, (b) transferable certificates (including the certificates of occupancy for the Real Property), licenses, permits and warranties (specifically including all construction and equipment warranties and guarantees) now in effect with respect to the Property, at no cost to Seller, (c) all general intangibles relating to design, development, operation and use of the Center, all rights and work product under construction, service, consulting, engineering, architectural, design and construction agreements (including any warranties contained therein) and other Contracts, and plans and specifications of any portion of the Center, and all development rights and goodwill related to any portion of the Property, (d) the Intellectual Property Rights, and (e) all other intangible property used by Seller exclusively in connection with the ownership and operation of the Center, but excluding the Excluded Assets.

“Intellectual Property Rights” means all patents, copyrights, trade secrets, trademarks, trade names, service marks, confidential information and other know-how owned by Seller or its Affiliates or used by Seller or its Affiliates specifically and solely in managing the Center, including but not limited to (a) marketing and management intangibles, (b) all proprietary manuals, instructions, policies, procedures and directives issued by Seller or its Affiliates to its employees at the Center, and (c) Proprietary Marks, and excluding as to all of the foregoing those which are generally relating to the Receivership Entities and their business outside the Center or contain the name “ArciTerra” or a version thereof.

“Leases” means those unexpired leases, occupancy or other written agreements entered into with tenants or occupants of the Center, and all amendments, modifications, supplements, renewals, and extensions thereof in the actual possession or control of Seller, copies of which have been provided to Buyer.

“Licenses” shall mean licenses, permits, approvals, entitlements, and other governmental authorizations (including, but not limited to, certificates of occupancy, certificates of need, insurance commission approvals, or other approvals, if applicable) issued by a governmental or administrative agency or authority (whether federal, state or local) in Seller’s possession or control in connection with the ownership, operation, planning, development, construction, use, or maintenance of the Center.

“Parties” refers to the Buyer and Seller together.

“Permitted Encumbrances” has the meaning given thereto in Section 6.2.

“Platform Fee” means the greater of Five Percent (5%) of the Purchase Price or \$25,000.00. The Platform Fee is _____ and No/100 U.S. Dollars (\$_____.00).

“**Proprietary Marks**” means all Center-specific trademarks, service marks, trade names, trade dress, symbols, logos, slogans, designs, insignia, emblems, devices, distinctive designs of signs, or any other source identifying feature, or combinations thereof, which are used to identify the Center or Seller’s, or its Affiliates’, services at the Center, or which are used in connection with the operation of the Center, if any, excluding any of the foregoing generally relating to the Receivership Entities and their business outside the Center or containing the name “ArciTerra” or a version thereof.

“**Real Property**” has the meaning set forth in in the Preamble to the Agreement.

“**Receivership Estates**” has the meaning set forth in the Preamble to the Agreement.

“**Reserve Price**” has the meaning set forth in the Addendum to Asset Purchase Agreement attached hereto and made a part hereof.

“**Sale Hearing**” means the hearing date scheduled by the Court to consider and approve the sale of the Property and entry of the Sale Order.

“**Sale Motion**” means that certain motion filed by the Receiver on behalf of the Receivership Estates and Seller seeking entry of the Bidding Procedures Order and Sale Order.

“**Sale Order**” means an Order of the Court authorizing and approving, *inter alia*, the sale of the Property to Buyer on the terms and conditions set forth herein, free and clear of all Encumbrances.

“**Seller**” has the meaning set forth in the introductory paragraph of the Agreement.

II.

AUCTION PROCESS; PURCHASE AND SALE

2.1 Purchased Assets. Subject to the terms and conditions hereof including approval of this Agreement by the Court, Seller shall sell, assign, transfer and convey to Buyer, free and clear of all Encumbrances other than Permitted Encumbrances, Seller’s right, title and interest in and to the Property, including:

2.1.1 The Real Property, together with all rights, easements, tenements, and appurtenances pertaining to or inuring to the benefit of Seller or the Real Property;

2.1.2 All improvements, structures and fixtures owned by Seller and placed, constructed on or installed on the Real Property (including buildings, structures, fixtures, and other permanent improvements located thereon or therein, including, without limitation, walkways, driveways, parking lots, plumbing, lighting, electrical, mechanical and HVAC systems, components, equipment and fixtures installed thereon, and all rights, benefits and privileges appurtenant thereto, collectively, the “**Improvements**”);

2.1.3 The Leases, with the collected rents prorated through the date of Closing and the credit for security deposits thereon pursuant to Section 11.1.3 herein;

2.1.4 All records, surveys, title notes, title policies, repair histories, equipment and other warranties, termite bonds and reports, environmental studies, leasing information, financial records, architectural and engineering plans, and other instruments and items which relate to the Land,

the Improvements or the Leases, which are in the present possession or control of the Seller (the “**Records**”); and

2.1.5 All Personal Property, Contracts and other Intangible Property, except for those Contracts listed on Exhibit A (the “**Excluded Contracts**”).

2.2 Assumption of the Contracts. Buyer or its assignee shall, on and as of the Closing Date, at its sole cost and expense, assume and agree to pay all sums and perform, fulfill and comply with all other covenants and obligations which are to be paid, performed and complied with by Seller under the Contracts, except for the Excluded Contracts, which first arise or accrue on and after the Closing Date.

2.3 Assumption of the Leases. Buyer or its assignee shall, on and as of the Closing Date, at its sole cost and expense, assume and agree to perform, fulfill and comply with all covenants and obligations which are to be performed and complied with by Seller under the Leases which first arise or accrue on and after the Closing Date.

2.4 Auction Sale/Process. Seller may select the winning bid the Auction in its sole and absolute discretion. No obligation to sell shall be binding on Seller unless and until this Agreement is counter-signed by Seller. Seller may rescind any oral acceptance of a winning bid prior to the execution and delivery of this Agreement to Buyer for any reason, including but not limited to, the receipt of a subsequent higher bid or offer to purchase whether such higher bid or offer to purchase was received pursuant to the Terms and Conditions (defined in Section 2.4.1, below) or otherwise.

2.4.1 Auction Terms and Conditions. Buyer represents and warrants that it has received, read and accepts all terms and conditions pertaining to the sale of the Property (the “**Terms and Conditions**”), which have been made available on the Website, and which Terms and Conditions are incorporated herein by reference. In the event of any conflict or inconsistency between the Terms and Conditions and this Agreement, this Agreement shall control and prevail in all respects.

III.

PURCHASE PRICE AND EARNEST MONEY

3.1 Purchase Price. The purchase price (the “**Purchase Price**”) for the Property shall be the highest and best sale price for the Property established at the conclusion of the Auction (subject to the provisions of Section 2.4 of this Agreement) and shall be subject to the Reserve Price. The Purchase Price as determined at the Auction is: _____ and 00/100 Dollars (\$_____.00). The Purchase Price shall be payable by wire transfer in immediately available funds to the Title Company for disbursement to Seller or as Seller directs at Closing. The Buyer must also pay the Platform Fee as directed on the Website.

3.2 Earnest Money. An earnest money deposit in the amount of ten percent (10%) of the Purchase Price, or _____ and 00/100 Dollars (\$_____.00) (the “**Earnest Money**”) shall be deposited by wire transfer in escrow with Chicago Title NCS California, 3780 Kilroy Airport Way, Suite 100, Long Beach, CA 90806; attention Jody Kelly, 213-330-3027, Jody.Kelly@ctt.com (the “**Title Company**”) no later than one (1) day following the Auction (even if the sale is subject to confirmation).

3.3 Transfer Taxes. All transfer taxes (including, without limitation, real estate transfer taxes) shall be paid by Buyer at Closing.

3.4 Allocation of Purchase Price. Seller and Buyer have agreed upon an allocation of the Purchase (the “**Allocated Purchase Price**”), among the Real Property, Personal Property and Intangible Property, as set forth on Exhibit B.

IV.

SALE SUBJECT TO APPROVAL OF THE COURT

4.1 Sale Motion. In connection with the transactions contemplated by this Agreement, the Receiver shall accept only the “highest and best” offer for the Property (in Receiver’s discretion and as approved in the Auction). The Parties acknowledge it is a condition precedent to the Closing that Receiver obtain approval of the sale from the Court. Upon execution of this Agreement by each of the Parties and receipt of the Earnest Money as set forth in section 3.2, the Receiver, on behalf of the Receivership Estates and Seller, shall seek entry of the Sale Order approving this Agreement by the Court.

4.2 Intentionally Omitted.

4.3 Consent to Court Jurisdiction. By executing this Agreement, Buyer shall have deemed to have consented to the Court’s jurisdiction. The Court shall be the exclusive forum for any disputes arising in connection with this Agreement and any other agreements relating to purchase of the Property.

4.4 Intentionally Omitted.

4.5 Intentionally Omitted.

4.6 No Contingencies. There is no contingency of any kind or nature that will permit the Buyer to withdraw its bid and receive a return of the Earnest Money other than (a) the Court’s denial of the Sale Motion or (b) the Receiver’s inability to deliver insurable title to the Real Property (the “**Excluded Contingencies**”). The Receiver shall have the right in his sole and absolute option to adjourn the Closing in order to obtain approval of the Sale Motion and remedy any defect to title. The failure to Close for any reason whatsoever, except the Excluded Contingencies, will result in the Receiver retaining the Earnest Money and the termination of the Buyer’s right to acquire the Property. The Buyer shall have no recourse to any other property or assets of the Receiver and the Receivership Estate, which shall be exempt from levy, execution or other enforcement procedure for the satisfaction of Buyer’s remedies. The provisions of this section will survive the Closing.

4.7 Sale Free and Clear of Encumbrances. Except to the extent specifically provided for in this Agreement, the Sale Order shall provide that the Property shall be sold and conveyed to the Buyer at the Closing free and clear of any and all Encumbrances, except for Permitted Encumbrances.

V.

CLOSING

5.1 Time and Place of Closing. The closing of the purchase and sale of the Property (the “**Closing**”) pursuant to this Agreement shall take place within thirty-five (35) days immediately

following the entry of the Sale Order (the “**Closing Date**”), it being expressly understood by the Parties that time is of the essence. Failure to consummate the Closing shall not result in the termination of this Agreement or relieve Buyer of any obligation hereunder. Notwithstanding the actual time of Closing on the Closing Date, the Closing shall be deemed, for accounting and financial reporting purposes, to have occurred as of 12:00:01 a.m. on the Closing Date. The Closing shall be held by remote escrow through the office of the Title Company, or at such other location as may be acceptable to the Parties.

5.2 Seller’s Deliveries at Closing. At the Closing, the Seller shall cause to be delivered to the Title Company (unless otherwise noted herein) the items, documents and instruments in the form specified herein, each being duly executed and acknowledged, and in recordable form, where required:

5.2.1.1. A receiver’s deed (the “**Deed**”) conveying fee simple title to the Property to Buyer, free and clear of all Encumbrances excepting only the Permitted Encumbrances, in the form of Exhibit C attached to this Agreement and made a part hereof;

5.2.1.2. An Assignment and Assumption of the Leases (the “**Lease Assignment**”), in the form of Exhibit D attached to this Agreement and made a part hereof, assigning and conveying to Buyer, at no cost or expense to Seller, and without representation or warranty, all of Seller’s right, title and interest in the Leases;

5.2.1.3. A Bill of Sale, in the form and substance reasonably acceptable to Buyer and Seller, executed by Seller, assigning, conveying and transferring to Buyer the Personal Property (the “**Bill of Sale**”), in the form of Exhibit E attached to this Agreement and made a part hereof;

5.2.1.4. An Assignment and Assumption of Intangible Property, in the form and substance reasonably acceptable to Buyer and Seller, executed by Seller, assigning and conveying to Buyer, at no cost or expense to Seller, and without representation or warranty, all of Seller’s right, title and interest in the Intangible Property (“**Assignment of Intangibles**”), in the form of Exhibit F attached to this Agreement and made a part hereof;

5.2.1.5. An Assignment and Assumption of Contracts, in the form and substance reasonably acceptable to Buyer and Seller, executed by Seller, assigning and conveying to Buyer, at no cost or expense to Seller, and without representation or warranty, all of Seller’s right, title and interest in the Contracts (“**Assignment of Contracts**”), in the form of Exhibit G attached to this Agreement and made a part hereof;

5.2.1.6. The Title Company's standard form of owner's affidavit dated as of the Closing Date, provided that any representation made therein shall be to the Receiver’s actual knowledge only (without investigation) and that such affidavit shall contain no surviving indemnity obligations (other than, if any, in connection with loss resulting from an inaccuracy in any representation in such affidavit resulting from a failure by the Receiver to disclose information of which it was actually aware);

5.2.1.7. An affidavit stating that Seller is not a “foreign person” within the meaning of Section 1445(0)(3) of the Internal Revenue Code of 1986, in the form of Exhibit H attached to this Agreement and made a part hereof;

5.2.1.8. Customary documents sufficient to cause the Title Company to issue its policy of title insurance without exception for any lien or claim for brokerage services as of the Closing Date, subject only to the Permitted Encumbrances, including customary and recordable discharges of monetary liens to be satisfied out of Closing proceeds;

5.2.1.9. Counterparts of a closing statement (the “**Closing Statement**”) summarizing all adjustments in respect of the Purchase Price made at the Closing;

5.2.1.10. Requisite notices to the tenant under any Lease as may be required under such Lease, advising of the change in identity and address of the Landlord thereunder;

5.2.1.11. The Sale Order;

5.2.1.12. A rent roll dated as of the Closing Date containing the name of each tenant under each Lease, the space rented, the rent and other charges payable, and any security deposit or advance payments or refundable fees;

5.2.1.13. Any and all other documents described in this Agreement, required by law, or otherwise customary, necessary or appropriate to consummate and evidence the transaction contemplated hereby; and

5.2.1.14. All keys to the Property, if applicable, which are in the possession or control of Seller (which will be available at the Center).

5.3 Buyer’s Deliveries at Closing. At the Closing, the Buyer shall cause to be delivered to Seller or the Title Company:

5.3.1.1. The Purchase Price, less the Earnest Money deposited;

5.3.1.2. Counterparts of the following documents, duly executed by Buyer: (i) Closing Statement; (ii) Lease Assignment;(iii) Assignment of Intangibles; and (iv) Assignment of Contracts;

5.3.1.3. A copy of resolutions, consents or other evidence satisfactory to Seller which authorize the transactions contemplated by this Agreement and the execution of this Agreement and the documents, instruments and agreements to be executed and delivered by Buyer pursuant hereto, together with, if necessary, proof as to the authority of the person(s) executing and delivering this Agreement and such documents, instruments and agreements on behalf of Buyer; and

5.3.1.4. Any and all other documents described in this Agreement, required by law, or otherwise necessary or appropriate to consummate and evidence the transaction contemplated hereby.

VI.

PROPERTY CONVEYED “AS-IS”

6.1 No Representations or Warranties. The Receiver, his Broker and their representatives and professionals have not made and do not make any representations or warranties as to the physical (including without limitation environmental) condition, expenses, operations, value of the Property,

or any other matter or thing affecting or related to the Property or this sale, which might be pertinent to the purchase of the Property. Buyer hereby expressly agrees and acknowledges that no such representations or warranties, express or implied, have been made. The Receiver, the Broker and their representatives and professionals shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by the Broker or the Receiver or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Broker or the Receiver unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing within this Agreement.

6.2 “As Is”, “Where Is”, “With All Faults”. The Real Property is being sold **“AS IS”, “WHERE IS”, “WITH ALL FAULTS”**, without any representations, covenants, guarantees or warranties of any kind or nature, and free and clear of any Encumbrances (other than Permitted Encumbrances), with such Encumbrances, if any, to attach to the proceeds of sale in such order and priority as they existed immediately prior to the Closing, and the sale of the Real Property is subject to, among other things (a) any state of facts that an accurate survey may show; (b) any covenants, restrictions and easements of record and any other matters set forth as exceptions to title in any title commitment obtained Buyer, other than monetary liens to be discharged at Closing from closing proceeds; (c) any state of facts a physical inspection may show; (d) any building or zoning ordinances or other applicable municipal regulations and violations thereof; (e) environmental conditions; (f) rights of parties in possession pursuant to Leases which are disclosed to Buyer; and (g) governmental laws, regulations, statutes, codes, ordinances and restrictions now or hereafter in effect to the extent affecting or applicable to the Real Property, including, without limitation, zoning ordinances (and amendments and additions relating thereto), the Americans with Disabilities Act of 1990, as amended, and any other laws or regulations applicable to the operation of the Property; (h) liens for taxes not yet payable, and (i) any liens resulting from the actions or omissions of the Buyer (the matters in the foregoing clauses (a) through (i), each and collectively, **“Permitted Encumbrances”**).

6.3 Due Diligence. By delivering its Earnest Money, Buyer acknowledges that it had the opportunity to review and inspect the Property, the state of title thereof and laws, rules and regulations applicable thereto, and will rely solely thereon and on its own independent investigations and inspections of the Property in executing this Agreement. Neither the Broker, the Receiver nor any of their representatives or professionals makes any representations or warranties with respect to the permissible uses of the Property including, but not limited to, the zoning of the Real Property. The Real Property will be sold subject to any and all violations or conditions requiring corrective action. The Receiver, the Receivership Estates, including the Seller, the Broker and their representatives and professionals, make no representations or warranties as to the truth, accuracy or completeness of the Due Diligence Materials (*e.g.*, that such materials are complete, accurate or the final version thereof, or that all such materials are in Seller’s possession), and shall have no obligation to revise, update or augment such materials. It is the Parties’ express understanding and agreement that the Due Diligence Materials are provided only for Buyer’s convenience in making its own examination and determination as to whether it wishes to purchase the Property, and, in doing so, Buyer shall rely exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by the Receiver, the Receivership Estates, the Seller, Broker and their representatives and professionals. Buyer expressly disclaims any intent to rely on any such materials provided to it in connection with this Agreement and the purchase of the Property and agrees that it shall rely solely on its own independently developed or verified information.

6.4 The Receiver shall not be obligated to deliver at closing a Certificate of Occupancy, Certificate of Completion or any equivalent local document for the Real Property and/or any and all changes or additions thereto that would require a Certificate of Occupancy or Certificate of Completion.

6.5 If the Receiver is unable to deliver the Real Property in accordance with the terms and conditions of this Agreement for any reason whatsoever, the Receiver's only obligation will be to refund the Earnest Money, without interest, to the Buyer and, upon such refund, the Buyer shall have no claim or recourse against the Receiver, the Receivership Estates, the Broker or their representatives and professionals and shall have no further rights under this Agreement.

6.6 Buyer agrees, except to the extent required by applicable law, not to submit any reports, studies or other documents or information to any governmental agency prior to the Closing unless first approved by Seller, such approval not to be unreasonably conditioned, withheld or delayed. Specifically, Seller may object to any disclosure of adverse information or documentation relating to the Property. To the extent Buyer claims any disclosure is required by applicable law, Buyer shall afford Seller a reasonable opportunity to evaluate such claim and make any legal objection Seller is permitted by such law to make.

6.7 From and after the Closing, Buyer shall protect, defend, indemnify and hold the Receiver, the Receivership Estates, including the Seller, its member(s), affiliates and subsidiaries, and their respective members, partners, directors, officers, participants, employees and agents, free and harmless from and against any and all claims, including, without limitation, investigatory expenses, clean-up costs and reasonable attorneys' fees and related court costs of whatever kind or nature arising from or in any way connected with the physical condition of the Property or any other aspect of the Property, which first arise or accrue after the Closing. Buyer's obligations of indemnity set forth herein shall expressly survive the Closing hereof.

VII. **CONDITION; CASUALTY**

7.1 Until the Closing, Seller or Seller's agent shall operate and maintain the Property in a businesslike manner, subject to and in accordance with the terms of the Leases. Notwithstanding the foregoing, prior to the Closing, (i) Seller shall not enter into any new lease or amend or terminate any existing Lease or (ii) enter into any new service contract relating to the operation of the Property that will be binding on the Buyer or the Property after the Closing, without the prior written consent of Buyer (such consent not to be unreasonably, withheld, delayed or conditioned).

7.2 If, prior to the Closing, a material portion of the Land or Improvements is materially damaged or is destroyed, or is taken under power of eminent domain (or any entity having condemnation authority shall take any steps preliminary thereto), then Seller shall promptly deliver to Buyer written notice thereof and Buyer shall be entitled, as its sole remedy, to terminate this Agreement and receive a prompt refund of the Earnest Money upon written notice to Seller given prior to Closing. In the event that Buyer does not terminate this Agreement pursuant to the immediately preceding sentence, Buyer shall close this transaction on the date and at the Purchase Price herein agreed, and Seller will assign to Buyer Seller's right in and to any insurance proceeds payable in connection with the casualty or Seller's portion of any condemnation award, as the case may be, up to the amount of the Purchase Price. For purposes of this section, a "**material portion**" of the Land or Improvements

shall mean that portion which, if damaged, destroyed, taken or condemned, would (i) eliminate access to any portion of the remainder to which access is available as of the date of this Agreement, (ii) cause any non-compliance with any applicable law, ordinance, rule or regulation of any federal, state or local authority or governmental agency having jurisdiction over the Land, (iii) materially breach any reciprocal easement agreement, covenant or similar agreement with or obligation to a third party, (iv) materially adversely reduce Buyer's expected economic return from its contemplated ownership or operation of the Center or materially reduce the market value of the Land or Improvements as a result thereof or (v) allow any tenant to terminate its Lease prior to its stated expiration (unless such right is included in an existing Lease or is otherwise required by applicable law).

VIII. **REPRESENTATIONS AND WARRANTIES**

8.1 Buyer warrants and represents to Seller as follows:

8.1.1 Buyer is a [limited liability company] duly organized, validly existing and in good standing under the laws of the State of _____.

8.1.2 Buyer has full power and authority to enter into this Agreement and perform its obligations hereunder in accordance with the terms hereof. The execution, delivery and performance of this Agreement by Buyer and the documents to be executed by Buyer pursuant hereto have been duly and validly authorized by all necessary action on the part of Buyer, and this Agreement and any other such documents executed by Buyer document shall constitute the valid, binding obligation and agreement of Buyer, enforceable against Buyer in accordance with their respective terms. No bankruptcy, insolvency, reorganization, arrangement or moratorium proceeding or allegation of fraudulent conveyance is now pending or threatened against Buyer.

8.2 Such representations and warranties, shall survive the Closing hereof until six (6) months after the date of Closing. Any claim not asserted in writing by Seller or Buyer within such period shall lapse and be forever null and void.

IX. **CONDITIONS TO CLOSING**

9.1 Seller's Obligation to Close. The obligation of Seller to close under this Agreement is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided that Seller, at its election, may waive all or any of such conditions except the entry of the Sale Order.

9.1.1 Buyer shall have paid to Seller the Purchase Price required under this Agreement and all other amounts due to Seller hereunder.

9.1.2 All representations and warranties of Buyer set forth herein shall be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

9.1.3 Buyer shall have executed and/or delivered or caused to be delivered at Closing all documents and executed counterparts of documents and instruments required by this Agreement to be executed and/or delivered by Buyer and shall have taken all other actions and fulfilled all other covenants and conditions required of Buyer under this Agreement in all material respects.

9.1.4 Buyer shall have supplied all replacement insurance required of landlord under the Leases and shall otherwise be in a position to assume all of landlord's obligations thereunder. Buyer shall provide at Closing customary Certificates of Insurance evidencing all required coverage.

9.1.5 The transaction contemplated by this Agreement shall be approved by the Court and the Sale Order shall have been entered.

9.2 Buyer's Obligation to Close. The obligation of Buyer to close under this Agreement is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided that Buyer, at its election, may either (i) terminate this Agreement and receive a refund of its Earnest Money if any such condition is not satisfied as of the Closing Date or (ii) waive all or any of such conditions (other than section 9.2.1), which election shall be conclusively evidenced by Buyer's proceeding with and completing the Closing of the transaction provided for herein:

9.2.1 The transaction contemplated by this Agreement shall be approved by the Court as evidenced by entry of the Sale Order.

9.2.2 Seller shall have executed and/or delivered or caused to be delivered at Closing all of the documents and executed counterparts of documents and instruments required by this Agreement to be executed and/or delivered by Seller.

9.2.3 Title Company shall be prepared to issue to Buyer an owner's policy of title insurance for the Property in an amount equal to the Purchase Price.

X. **COSTS**

10.1 Buyer will pay the following costs of Closing this transaction:

10.1.1 the fees and disbursements of its counsel, inspecting architect and engineer, surveyor, environmental consultants and other consultants and agents, if any;

10.1.2 any fees incurred in connection with any Survey;

10.1.3 all expenses pertaining to any financing obtained by Buyer;

10.1.4 all recording fees, transfer taxes and intangible taxes;

10.1.5 any escrow or Closing fees; and

10.1.6 the cost of any owner's and lender's title insurance policy(ies), including any extended coverage title insurance policy or endorsements issued in connection with this Agreement or the transaction contemplated hereby.

10.2 Seller will pay the following costs of Closing this transaction:

10.2.1 fees and disbursements of Seller's counsel.

XI.
PRORATIONS

11.1 The following provisions shall govern the apportionment of income and expenses with respect to the Property between Seller and Buyer:

11.1.1 Seller shall arrange for final meter readings on all utilities at the Property to be taken prior to the Closing Date. Seller shall be responsible for the payment of utilities used through the day preceding the Closing Date and Buyer shall be responsible for the payment of utilities used on or after the Closing Date. With respect to any utility for which there is no meter, the expenses for such utility shall be prorated between Seller and Buyer at Closing based upon the most current bill for such utility. Buyer shall use reasonable efforts to cause the transfer of utility company accounts from Seller to Buyer on the Closing Date, provided that the same shall be transferred within not later than thirty (30) days thereafter in any event. All deposits with utility companies will be returned to Seller upon Buyer's receipt of the same.

11.1.2 Real estate taxes (including ad valorem and equivalent taxes) and assessments assessed prior to the Closing Date shall be prorated between the Buyer and the Seller as of the Closing Date. Seller shall pay, or Buyer shall receive a credit against the Purchase Price for, all taxes and assessments assessed in and for 2023, regardless of the date of assessment, and payable in 2024, and its proportionate share of the taxes and assessments assessed in 2024, and payable in 2025, based on the number of days in 2024 that Seller owned the Property. Thereafter, Seller shall have no further liability to pay taxes or assessments due after the Closing Date. If at the time of Closing the tax assessment for the Property for the succeeding year has been completed, taxes payable shall be computed based on the current tax assessment. If at the time of Closing the tax assessment for the Property for the succeeding year has not been completed, the taxes payable shall be assumed to be the same as the prior year for the purpose of such proration and credit for due but unpaid taxes, and this shall be a final settlement.

11.1.3 Lease rents (including, without limitation, all tenant reimbursement obligations related to taxes, common area expenses, operating expenses and/or additional charges of any nature to the extent applicable under any Lease) shall be pro-rated between Seller and Buyer as of the Closing Date. Lease rents that Buyer (and/or its property manager) receives after the Closing Date shall be promptly remitted if any, to Seller to the extent any pre-Closing Date Lease rents under such tenant's Lease remains unpaid. All prepaid rents and other income from the Property shall be credited to Buyer at Closing to the extent same is attributable to a period of time after Closing.

11.1.4 To the extent not specifically addressed above, all obligations for taxes, common area expenses, operating expenses or additional charges of any nature related to the Property will be pro-rated between Seller and the Buyer as of the Closing Date. If the actual amount of such amounts is not known as of such date, the proration at the Closing will be on an equitable basis and will be based on the most current and accurate billing information available. If, upon receipt of the actual bills, such proration proves to be inaccurate, then Seller and Buyer (and/or its property manager) shall correct the proration as soon as possible and make the appropriate payments to reflect same, provided that no payments shall be made to the extent the amount thereof is less than \$2,000.00 in the aggregate. For the avoidance of doubt, the foregoing shall include all obligations and liabilities (for services and materials ordered, or otherwise in the ordinary course of business) and accounts

payable for the Center and the Real Property owing as of the Closing Date for merchandise, equipment, supplies and other materials and services paid, incurred or ordered shall be paid by Seller.

11.1.5 The pro-rations described in this Section shall be made as of 12:00 a.m. EST on the Closing Date, as if Buyer were vested with title to the Property during the entire day upon which Closing occurs. All pro-rations described in this Section shall be effectuated by increasing or decreasing, as the case may be, the amount of cash to be paid by Buyer to Seller at Closing. Seller and Buyer (and/or its property manager) agree to adjust between themselves after Closing, as promptly as practicable, any errors or omissions in the pro-rations made at Closing.

11.1.6 All of Seller's Accounts Receivable shall be and remain the property of Seller subsequent to the Closing of the transaction contemplated hereby. At the Closing, Seller shall prepare a list of its outstanding Seller's Accounts Receivable as of the Closing Date, specifying the name of each account and the amount due to Seller. Buyer (and/or its property manager) shall hold in trust for Seller any funds which are received by Buyer (and/or its property manager) as payment of such accounts receivable, i.e., if Buyer (and/or its property manager) actually collects any such amounts; and Buyer (and/or its property manager) shall pay the monies collected in respect thereof (net of actual collection costs and costs owed to Buyer) to Seller at the end of each calendar month, accompanied by a statement showing the amount collected on each such account. Other than the foregoing, Buyer shall have no obligation with respect to any such account, and Buyer shall not be required to take any legal proceeding or action to effect collection on behalf of Seller. It is the intention of Buyer and Seller that although all Seller's Accounts Receivable shall be and remain the property of Seller, nevertheless, if any such accounts are paid to Buyer (and/or its property manager), then it/they shall collect same, deduct any costs owed to Buyer (and/or its property manager) and remit to Seller in the manner above provided. Notwithstanding anything to the contrary herein, all sums collected by Buyer (and/or its property manager) will be credited first to current amounts due to Buyer, and thereafter to amounts due Seller. Seller will not be entitled to enforce collection of the accounts receivable which are owed to Seller, except with respect to tenants who no longer lease any portion of the Property.

11.1.7 The provisions of this Section shall survive Closing.

XII.
INTENTIONALLY OMITTED

XIII.
DEFAULT AND REMEDIES

13.1 If Buyer is not then in default hereunder, and Seller fails to close the transaction contemplated hereby, Buyer shall be entitled, as its sole and exclusive remedy, to terminate this Agreement by giving written notice of termination and receive a full and immediate refund of any and all Earnest Money previously deposited.

13.2 If Buyer fails to close the transaction contemplated hereby for any reason other than the Excluded Contingencies, Seller shall be entitled to receive the Earnest Money as liquidated damages; provided Seller does not waive and, in particular, reserves any rights against and indemnities from Buyer which are herein intended to survive the termination of this Agreement pursuant to the express provisions hereof. Seller and Buyer recognize and agree that, under the circumstances

existing as of the date of execution of this Agreement, the liquidated damages set forth above are a reasonable estimate of the damages which Seller would incur as a result of such a failure and are reasonable in the context of the transaction in which a complete measure of damages is not feasible.

13.3 The provisions of this Article XII shall survive the termination of this Agreement.

XIV.
NOTICES

14.1 Any notice, request, demand, instruction or other communication to be given to either party hereunder, except those required to be delivered at Closing, shall be in writing, and shall be given and received (a) upon receipt if hand delivered, (b) the following business day after being sent by recognized overnight courier service, or (c) the date sent by electronic mail (including, without limitation, by PDF) shall be deemed given when sent, provided any such notice by electronic mail is sent on a business day during regular business hours (otherwise it shall be deemed received on the following business day). All notices shall be addressed as follows:

IF TO SELLER: [INSERT ENTITY NAME]
 c/o Allen D. Applbaum, Receiver
 StoneTurn
 17 State Street, 2nd Floor
 New York, New York 1004
 Tel. (212) 430-3449
 Email: aapplbaum@stoneturn.com

And

StoneTurn
6429 Wilshire Blvd, Suite 880
Los Angeles, California 90048
Attn: Randall Coxworth
Tel. (213) 459-1859
Email: rcoxworth@stoneturn.com

WITH A COPY TO: Archer & Greiner, P.C.
1025 Laurel Oak Road
Voorhees, New Jersey 08043
Attn: Jawad H. Salah
Tel. (856) 673-7143
Email: jsalah@archerlaw.com

And

Archer & Greiner, P.C.
1211 Avenue of the Americas
New York, New York 10036
Attn: Allen G. Kadish
Gerard DiConza
Tel. (212) 682-4940
Email: akadish@archerlaw.com
gdiconza@archerlaw.com

IF TO BUYER: [INSERT]

Attn:
Email:

WITH A COPY TO: [INSERT]

Attn:
Email:

14.2 The addresses and addressees for the purpose of this article may be changed by either party by giving notice of such change to the other party in the manner provided herein for giving notice. For the purpose of changing such addresses or addressees only, unless and until such written notice is received, the last address and addressee stated herein shall be deemed to continue in effect for all purposes.

XV.
ESCROW INSTRUCTIONS

15.1 Upon execution of this Agreement, the Parties shall deliver an executed counterpart of this Agreement to the Title Company to serve as the instructions to the Title Company as the escrow holder for consummation of the transaction contemplated herein. Seller and Buyer agree to execute such additional and supplementary escrow instructions as may be required by the Title Company to comply with the terms of this Agreement, provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall prevail as between Buyer and Seller.

XVI.
MISCELLANEOUS

16.1 This Agreement, together with the exhibits attached hereto, all of which are incorporated by reference, is the entire agreement between the Parties with respect to the subject matter hereof, and no alteration or modification hereof shall be binding unless in writing and signed by both Parties.

16.2 If any provision of this Agreement or application to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, shall not be affected thereby, and each provision hereof shall be valid and shall be enforced to the fullest extent permitted by law.

16.3 This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

16.4 Buyer may not assign this Agreement without first obtaining Seller's written consent, except that, to the extent permissible under (or not prohibited by) the Sale Order, Buyer may assign this Agreement to an entity controlled by, controlling or under common control with Buyer. Any assignment in contravention of this provision shall be void. No assignment shall release the Buyer herein named from any obligation or liability under this Agreement. Any permitted assignee shall be deemed to have made any and all representations and warranties made by Buyer hereunder, as if the assignee were the original signatory hereto.

16.5 Subject to the limitations of **Section 16.4**, this Agreement shall be binding upon and inure to the benefit of Buyer and Seller and their successors and permitted assigns.

16.6 Buyer shall make no public disclosure of the terms of this transaction without the prior written consent of Seller unless legally compelled to do so (by deposition, interrogatory, request for documents, subpoena, civil investigation, court order or demand or similar process or by law), except that Buyer may discuss the transaction in confidence with its members, attorneys, lenders, representatives, agents, contractors, proposed joint ventures or prospective mortgagees.

16.7 The captions in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement or the scope or content of any of its provisions.

16.8 In the event of any litigation arising out of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs. The term "prevailing party" as used in this Agreement shall include, but not be limited to, a party who obtains legal counsel or brings an action against the other by reason of the other's breach or default and obtains substantially the relief sought whether by compromise, mediation, settlement, judgment or otherwise (and regardless of whether formal litigation is commenced).

16.9 Nothing contained in this Agreement shall be construed to create a partnership or joint venture between the Parties or their successors in interest.

16.10 Time is of the essence in this Agreement.

16.11 This Agreement may be executed and delivered in any number of counterparts, and/or by email (.pdf format) or by facsimile each of which so executed and delivered shall be deemed to be an original and all of which shall constitute one and the same instrument.

16.12 Buyer and Seller agree not to record this Agreement or any memorandum hereof.

16.13 If as a result of any tax protest or otherwise any refund or reduction of any real property or other tax or assessment relating to the Property during the period for which, under the terms of this Agreement, Seller is responsible, Seller shall be entitled to receive or retain such refund or the benefit of such reduction, less equitable prorated costs of collection.

16.14 Buyer agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, member, shareholder, partner, principal, parent, subsidiary or other affiliate of the Receiver, the Receivership Estates, and Seller (collectively, the “**Seller’s Affiliates**”), arising out of or in connection with this Agreement or the transactions contemplated hereby. Buyer agrees to look solely to Seller’s assets directly attributable to the Property (including any consideration received by Seller from the sale of all or any part thereof) for the satisfaction of Seller’s liability or obligation arising under this Agreement or the transaction contemplated hereby, or for the performance of any of the covenants, warranties or other agreements of Seller contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of the Seller's Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby.

16.15 The formal tender of an executed Deed by Seller is hereby waived, but nothing herein contained shall be construed as a waiver of Seller’s obligation to deliver the Deed and/or of the concurrent obligation of Buyer to pay the portion of the Purchase Price payable at Closing, if any.

16.16 The parties each agree to do such other and further acts and things, and to execute and deliver such instruments and documents (not creating any obligations additional to those otherwise imposed by this Agreement) as either may reasonably request from time to time, whether at or after the Closing, in furtherance of the purposes of this Agreement. The provisions of this Section 16.16 shall survive the Closing.

16.17 THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT THAT EITHER PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THE PROPERTY, THE CONVEYANCE INSTRUMENT OR ANY OTHER DOCUMENTS EXECUTED IN CONNECTION HERewith, OR IN RESPECT OF ANY COURSE OF CONDUCT, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR EACH OF THE PARTIES TO ENTER INTO THIS TRANSACTION AND SHALL SURVIVE THE CLOSING OR THE TERMINATION OF THIS AGREEMENT.

[Signatures on following pages]

IN WITNESS WHEREOF, the undersigned parties have caused this Agreement to be executed as of the date first above written.

“SELLER”

[INSERT ENTITY NAME], a **[INSERT STATE]** limited liability company

By: _____
Allen D. Applbaum as Receiver in the
matter of Securities and Exchange
Commission v. Jonathan Larmore, et
al., Case No. 2:23-cv-02470-PHX-
DLR in the United States District Court
for the District of Arizona

“BUYER”

[INSERT]

By: _____
Name: _____
Title: _____

EXECUTED by the Title Company the ____ day of _____, 2024, for the purposes of acknowledging receipt of the Earnest Money and agreeing to the provisions relating to the rights and obligations of the Title Company, as set forth herein.

Chicago Title Insurance Company

By: _____

Name: _____

Title: _____

**ADDENDUM TO ASSET PURCHASE AGREEMENT
“SUBJECT TO”**

This Addendum to Asset Purchase Agreement (this “Addendum”), is entered into by and between Seller and Purchaser(s), who are parties to that certain Asset Purchase Agreement dated as of the date last signed by the parties (the “Agreement”).

This is a reserve auction and all Properties have a reserve price (“Reserve Price”), meaning the Seller for each Property can accept or reject any bid and has also established an unpublished, minimum selling price. The starting bid is not the Reserve Price. In order to become the winning Bidder for a Property, a Bidder must meet or exceed the Reserve Price and have the highest bid, and such highest bid shall be accepted or rejected in the sole discretion of Seller, and may be further subject to court approval. Purchaser(s) and Seller agree that Seller may terminate the Agreement, in Seller’s sole and absolute discretion, in the event Seller or the court does not approve the sale. Seller shall make such election by providing written notice to Purchaser(s) by electronic mail, overnight courier (FedEx, UPS or USPS Express Mail) or registered mail (return receipt requested) (“Notice”), with said Notice deemed given upon the date of sending of such Notice.

If Seller elects NOT to approve the transaction and elects to reject the Agreement and terminate the escrow and transaction, Title Company (as that term is defined in the Agreement) shall return to Purchaser(s) any Earnest Money Deposit given by Purchaser(s) to Title Company, such return contingent upon the Title Company’s confirmation of the Earnest Money Deposit having been received as “good funds” and in accordance with the terms of the Agreement. Seller or Seller’s representative is authorized to provide the necessary instruction to the Title Company directing the Title Company to return to Purchaser(s) any Earnest Money Deposit given by Purchaser(s) to Title Company and Title Company shall release such monies to Purchaser(s) pursuant to this Addendum. Effective upon release of the Earnest Money Deposit to Purchaser(s), the Agreement and the transaction contemplated thereby shall be cancelled and Purchaser and Seller shall be relieved of any further liability and/or obligation to each other under the Agreement. Purchaser(s) agrees to release Seller, Seller’s Broker, Auctioneer, Seller’s representatives and the Title Company from and against any and all liabilities in connection with the transaction and the Agreement. Purchaser grants Seller the unilateral right to execute cancellation instructions in the event that Seller elects to cancel and terminate the transaction pursuant to the terms of this Addendum.

If Seller elects to approve and confirm the transaction, then the Agreement shall continue in full force and effect and the Date of Closing shall be in accordance with the terms of the Agreement.

[Signature Pages Follow]

SELLER:

_____,
a _____

By:

Name:

Title:

Date:

PURCHASER(S):

_____,

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:

IF INDIVIDUALS:

PRINTED NAME

Date: _____

PRINTED NAME

Date: _____

SCHEDULE A-1

Legal Description of Real Property

[To be attached by Title Company]

SCHEDULE A-2

Personal Property

EXHIBIT A

Excluded Contracts

[TO BE PROVIDED]

EXHIBIT B

Allocation of Purchase Price

[TO BE PROVIDED]

EXHIBIT C

FORM of Deed

RECEIVER'S DEED

WHEREAS, the United States District Court for the _____ District of _____, in a civil action titled Securities and Exchange Commission v. _____ et al., Case No. _____, having on _____ ordered the appointment of _____ as Receiver to, *inter alia*, take possession, and arrange for the sale, of that certain property located at _____; and

WHEREAS, the Court having entered an order confirming the sale of the real property to _____ of _____, and approving this form of deed; and

WHEREAS, _____ whose address is _____ was duly authorized and directed to convey the real property to the purchaser; and

WHEREAS, the real property has been sold pursuant to the Court's order, for the sum of \$ _____, and

WHEREAS, the real property is more particularly described as follows:

NOW KNOW YE, THAT _____, pursuant to the authority and direction given to it, does hereby bargain, sell, transfer and convey to _____ all the right, title, claims, and interest in the above-described real property, to have and to hold, with appurtenances thereto, by _____ and her heirs and assigns, forever, for their own use and disposition.

AND ALSO, _____ does hereby covenant with _____, and its assigns, that it has full power and authority to grant and convey the aforesaid premises in the manner and form aforesaid.

Said premises are conveyed to _____ free and clear of any of the rights, titles, claims or interests, subject to any sums which may be due for municipal property, water or sewer taxes, or any special use charges or assessments, and subject to all laws, ordinances and governmental regulations affecting said premises, and any easements and restrictions appearing of record, if any.

I have hereunto set my hand and seal, this _____ day of _____, 200_.

Receiver

STATE OF _____
COUNTY OF _____

On this date _____, the signer and sealer of the foregoing instrument, personally appeared before me and acknowledged the same to be his free act and deed.

_____ day of _____, 200_.

(Name)
Notary Public

Return to: _____

EXHIBIT D

FORM of Lease Assignment

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Leases)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “**Assignment and Assumption of Leases**”) is dated this ___ day of _____, 202_, (the “**Effective Date**”) by and between [_____] a [_____] (“**Assignor**”), and [_____] a [_____] (“**Assignee**”).

1. Concurrently with the execution and delivery of this Assignment and Assumption of Leases, Assignor, in its capacity as Seller, is conveying to Assignee, in its capacity as Buyer, certain real property located in _____, together with the buildings and improvements thereon, and related personal property contained therein and certain rights appurtenant thereto, collectively comprising a retail center known as [“_____”] (the “**Center**”); pursuant to that certain Asset Purchase Agreement dated as of [_____], between Assignor and Assignee (the “**APA**”)

2. Pursuant to the APA, Assignor has agreed to assign and transfer to Assignee all of Assignor’s right, title and interest in and to the Leases applicable to the Center as of the date hereof.

3. Subject to the terms and conditions herein, Assignor desires to assign and Assignee desires to assume all of Assignor’s obligations under the Leases.

4. All capitalized terms used by not defined in this Assignment and Assumption of Leases shall have the meanings given thereto in the APA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

(a) **Assignment of Leases.** As of the Effective Date, Assignor hereby transfers, assigns, conveys and sets over to Assignee, its successors and assigns (i) all of Assignor’s obligations, covenants, rights, title and interest in, to and under the Leases, together with all amendments, extensions, renewals and other modifications thereto, and (ii) without limiting the provisions of Article XI of the APA (including the retention by Seller of its rights to pre-closing rents collected and Accounts Receivable) any and all rights of Assignor under the Leases to collect (or to cause its property manager to collect) rents, additional rents, escrow or security deposits, fees, income, charges, and profits arising and having arisen thereunder.

(b) **Assumption of Leases.** As of the Effective Date, Assignee hereby accepts the assignment of Assignor’s rights, title and interest in, to and under the Leases and assumes all of Assignor’s obligations thereunder with respect to the period from and after the Effective Date.

(c) **No Warranty; Release.** Assignor makes no representation or warranty regarding the Leases, and Assignee releases and shall have no recourse to Assignor in connection with any claims,

liabilities or costs arising under the Leases, including without limitation for the collection of rents or other charges thereunder.

(d) Successors and Assigns. This Assignment and Assumption of Leases shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. This Assignment and Assumption of Leases shall be governed by, and construed and enforced in accordance with, the internal laws of the State of [_____].

(e) Counterparts. This Assignment may be executed in one or more counterparts, each of which, taken together, shall constitute but one original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Leases as of the date first set forth above.

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT “A” TO ASSIGNMENT AND ASSUMPTION AGREEMENT

LEASES

[LIST LEASES / RENT ROLL]

EXHIBIT E

FORM of Bill of Sale

BILL OF SALE

THIS BILL OF SALE (the “**Bill of Sale**”) is dated this ___ day of _____, 202_, by and between [_____] a [_____] (“**Seller**”), and [_____] a [_____] (“**Buyer**”).

RECITALS

1. Concurrently with the execution and delivery of this Bill of Sale, Seller is conveying to Buyer, by Receiver’s Deed (the “**Deed**”) those certain tracts of land (the “**Land**”) more particularly described on Exhibit “A” attached hereto and made a part hereof for all purposes, together with the improvements located thereon (the “**Improvements**”, and together with the Land, the “**Property**”), pursuant to that certain Asset Purchase Agreement dated as of [_____], between Seller and Buyer (the “**APA**”).

2. Seller desires to sell, transfer and convey to Buyer, and Buyer desires to purchase from Seller the Improvements and Personal Property owned by Seller comprising and used in the operation of the Center (as hereafter defined), subject to the terms and conditions set forth herein.

3. All capitalized terms used by not defined in this Bill of Sale shall have the meanings given thereto in the APA.

NOW, THEREFORE, in consideration of the receipt of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration in hand paid by Buyer to Seller, the receipt and sufficiency of which are hereby acknowledged by Seller:

(a) Sale and Assignment. Seller does hereby SELL, TRANSFER, CONVEY, and DELIVER to Buyer, and Buyer hereby accepts, the personal property, if any, owned by Seller upon the Land or within the Improvements, including heating, ventilation and air conditioning systems, other existing Building systems, and all other components and equipment pertinent to any of the foregoing, maintenance supplies and tools, if any, located in or on the Improvements or Land (collectively, and as may be further defined in the APA, the “**Personal Property**”).

(b) No Warranty; Release. Seller makes no representation or warranty regarding the Personal Property, and Assignee releases and shall have no recourse to Assignor in connection with any claims, liabilities or costs arising from or relating to the Personal Property.

(c) Counterparts. This Assignment may be executed in one or more counterparts, each of which, taken together, shall constitute but one original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this instrument as of the date first set forth above.

SELLER:

[_____]

By: _____

Name: _____

Title: _____

BUYER:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT "A" TO BILL OF SALE

Legal Description

EXHIBIT F

FORM of Assignment of Intangibles

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Intangibles)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “**Assignment and Assumption of Intangibles**”) is dated this ___ day of _____, 202_, (the “**Effective Date**”) by and between [_____] a [_____] (“**Assignor**”), and [_____] a [_____] (“**Assignee**”).

4. Concurrently with the execution and delivery of this Assignment and Assumption of Intangibles, Assignor, in its capacity as Seller, is conveying to Assignee, in its capacity as Buyer, certain real property located in _____, together with the buildings and improvements thereon, and related personal property contained therein and certain rights appurtenant thereto, collectively comprising a [retail center] known as [“_____”] (the “**Center**”); pursuant to that certain Asset Purchase Agreement dated as of [_____], between Assignor and Assignee (the “**APA**”)

5. Pursuant to the APA, Assignor has agreed to assign and transfer to Assignee all of Assignor’s right, title and interest in and to the Intangibles applicable to the Center as of the date hereof (the “**Intangibles**”).

6. Subject to the terms and conditions herein, Assignor desires to assign and Assignee desires to assume all of Assignor’s obligations under the Intangibles.

7. All capitalized terms used by not defined in this Assignment and Assumption of Intangibles shall have the meanings given thereto in the APA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

(d) Assignment of Intangibles. As of the Effective Date, Assignor hereby sells, transfers, assigns, conveys and sets over to Buyer, its successors and assigns, and to the extent applicable, any/all (i) local telephone and facsimile exchange numbers identified exclusively with the Center, (ii) transferable certificates (including certificates of occupancy for the Real Property to the extent held by Seller and not any tenant of the Center), licenses, permits and warranties (specifically including all construction and equipment warranties and guarantees) now in effect with respect to the Property, at no cost to Seller (and provided, however, that Seller makes no representation or warranty with respect to the existence, availability or assignability of any of the foregoing), (iii) all general intangibles relating to design, development, operation and use of the Center, all rights and work product under construction, service, consulting, engineering, architectural, design and construction agreements (including any warranties contained therein) and other Contracts, and plans and specifications of any portion of the Center, and all development rights and goodwill related to any portion of the Property, (iv) the Intellectual Property Rights, and (v) all other intangible property used by Seller exclusively in connection with the ownership and operation of

the Center, but excluding the Excluded Assets, if any, owned by Seller and relating solely to the Land, the Improvements or the Personal Property.

(e) Assumption of Intangibles. As of the Effective Date, Assignee hereby accepts the assignment of Assignor's obligations, rights, title and interest in, to and under the Intangibles.

(f) No Warranty; Release. Assignor makes no representation or warranty regarding the Intangibles, and Assignee releases and shall have no recourse to Assignor in connection with any claims, liabilities or costs arising under the Intangibles.

(g) Successors and Assigns. This Assignment and Assumption of Intangibles shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. This Assignment and Assumption of Intangibles shall be governed by, and construed and enforced in accordance with, the internal laws of the State of [_____].

(h) Counterparts. This Assignment may be executed in one or more counterparts, each of which, taken together, shall constitute but one original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Intangibles as of the date first set forth above.

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT G

FORM of Assignment of Contracts

**ASSIGNMENT AND ASSUMPTION AGREEMENT
(Contracts)**

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the “**Assignment and Assumption of Contracts**”) is dated this ___ day of _____, 202_, (the “**Effective Date**”) by and between [_____] a [_____] (“**Assignor**”), and [_____] a [_____] (“**Assignee**”).

8. Concurrently with the execution and delivery of this Assignment and Assumption of Contracts, Assignor, in its capacity as Seller, is conveying to Assignee, in its capacity as Buyer, certain real property located in _____, together with the buildings and improvements thereon, and related personal property contained therein and certain rights appurtenant thereto, collectively comprising a retail center known as [“_____”] (the “**Center**”); pursuant to that certain Asset Purchase Agreement dated as of [_____], between Assignor and Assignee (the “**APA**”)

9. Pursuant to the APA, Assignor has agreed to assign and transfer to Assignee all of Assignor’s right, title and interest in and to the Contracts (other than Excluded Contracts) applicable to the Center as of the date hereof (the “**Contracts**”).

10. Subject to the terms and conditions herein, Assignor desires to assign and Assignee desires to assume all of Assignor’s obligations under the Contracts.

11. All capitalized terms used by not defined in this Assignment and Assumption of Contracts shall have the meanings given thereto in the APA.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

(i) Assignment of Contracts. As of the Effective Date, Assignor hereby transfers, assigns, conveys and sets over to Assignee, its successors and assigns (i) all of Assignor’s obligations, covenants, rights, title and interest in, to and under the Contracts, together with all amendments, extensions, renewals and other modifications thereto, and (ii) any and all rights of Assignor under the Contracts (other than any indemnification obligations, awards or payments in favor of or belonging to Assignor, if any, relating to periods or events prior to the Effective Date, which shall expressly be retained by Assignor).

(j) Assumption of Contracts. As of the Effective Date, Assignee hereby accepts the assignment of Assignor’s obligations, rights, title and interest in, to and under the Contracts and assumes all of Assignor’s obligations thereunder with respect to the period from and after the Effective Date.

(k) No Warranty; Release. Assignor makes no representation or warranty regarding the Contracts, and Assignee releases and shall have no recourse to Assignor in connection with any claims, liabilities or costs arising under the Contracts.

(l) Successors and Assigns. This Assignment and Assumption of Contracts shall inure to the benefit of, and be binding upon, the parties hereto and their respective successors and assigns. This Assignment and Assumption of Contracts shall be governed by, and construed and enforced in accordance with, the internal laws of the State of [_____].

(m) Counterparts. This Assignment may be executed in one or more counterparts, each of which, taken together, shall constitute but one original.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Assignment and Assumption of Contracts as of the date first set forth above.

ASSIGNOR:

[_____]

By: _____

Name: _____

Title: _____

ASSIGNEE:

[_____]

By: _____

Name: _____

Title: _____

EXHIBIT “A” TO ASSIGNMENT AND ASSUMPTION AGREEMENT

CONTRACTS

[LIST CONTRACTS]

EXHIBIT H

FORM of FIRPTA

FIRPTA AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee (Buyer) of a U.S. real property interest must withhold tax if the transferor (Seller) is a foreign person. To inform the transferee [____], a [____] (“**Buyer**”), that withholding of tax is not required upon the disposition of a U.S. real property interest [____], a [____] (“**Seller**”), hereby certifies to Purchaser the following:

1. Seller is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations) for purposes of U.S. income taxation;
2. Seller’s U.S. taxpayer identifying number (EIN number) is []; and
3. Seller’s address is [].

Seller understands that this certification may be disclosed to the Internal Revenue Service by Purchaser and that any false statement Seller has made here could be punished by fine, imprisonment or both.

Under penalties of perjury, Seller declares that it has examined this certification and to the best of Seller’s knowledge and belief, it is true, correct, and complete.

SELLER:

[____],
a [_____]

By: _____
Name: _____
Title: _____

Date: _____

228758911 v2
229246188 v1

EXHIBIT 2

SALE PROCEDURES ORDER

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1 consideration of any and all responses and replies relating to the Motion; and upon due and
2 sufficient notice of the Motion having been given and that no other or further notice need
3 be given; and after due deliberation; and it appearing that the relief sought in the Motion is
4 in the best interest of the Receivership Estate, its creditors, and other parties in interest,
5

6 **IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:**

7 1. This Court has jurisdiction over this matter, the above-captioned defendants
8 and relief-defendants, and over all property of the Receivership Estate.
9

10 2. Proper, timely, adequate, and sufficient notice of the Motion has been
11 provided, such notice was sufficient and appropriate under the particular circumstances,
12 and no other or further notice of the Motion or relief sought in the Motion is necessary or
13 required.
14

15 3. A reasonable opportunity to object or be heard regarding the requested relief
16 in the Motion and this Order has been afforded to all interested parties, including, without
17 limitation, all parties to this action and all persons or entities known to the Receiver that
18 have or may have an interest in any portion of the Property.
19

20 4. The Receiver has the power and authority to sell the Property, or any portion
21 of the Receivership Estate, at a public sale pursuant to and in accordance with the Sale
22 Procedures, free and clear of liens, claims, and encumbrances, with such liens, claims, and
23 encumbrances attaching to the proceeds of such sale with the same validity and in the same
24 order of priority.
25

26 5. Upon the Receiver's appointment and after investigating the financial
27 condition of the Receivership Estate, the Receiver evaluated the real estate holdings of the
28

1 Receivership Estate and determined to undertake a comprehensive effort to solicit interest
2 from potential purchasers for the Property.

3
4 6. The Receiver's entry into the M&M Agreement, and the underlying retention
5 of Marcus & Millichap, as a disinterested professional, is in the best interest of the
6 Receivership Estate and its creditors.

7
8 7. The Receiver's existing and continued marketing efforts, combined with the
9 publication set forth herein is reasonable and sufficient.

10
11 8. The Receiver has demonstrated a sufficient basis and compelling
12 circumstances requiring the entry of this Order and the proposed sale of the Property in
13 accordance with the Sale Procedures, and such actions: (a) are appropriate exercises of the
14 Receiver's reasonable business judgment; (b) are in the best interest of the Receivership
15 Estate and its creditors; and (c) meet the requirements of and are consistent with 28 U.S.C.
16 §§ 2001 and 2002.

17
18 9. The Sale Procedures are reasonable, non-collusive, negotiated in good faith,
19 substantively and procedurally fair, and will enable the Receiver to obtain the highest value
20 for the Property.

21 10. The Receiver may sell the Property in accordance with the Sale Procedures.

22 **NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND**
23 **THE RECORD BEFORE THIS COURT, IT IS HEREBY**

24 **ORDERED** that the Motion is GRANTED as set forth in this Order; and it is further
25
26
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28

1 the Receiver, Archer & Greiner, P.C., Attn: Allen G. Kadish and Harrison H.D.
2 Breakstone, 1211 Avenue of the Americas, New York, New York 10036; and it is further

3 **ORDERED** that the notice of sale attached as Exhibit B hereto (the "Sale Notice"),
4 is hereby approved; and it is further

5
6 **ORDERED** that the Receiver shall cause service of the Sale Notice, within five (5)
7 business days of entry of this Order, by United States first class mail on: (a) all known
8 creditors of Walcent Elk at the address set forth in the Receivership Entities' books and
9 records or as updated pursuant to a request by a creditor or by returned mail from the post
10 office with a forwarding address; (b) any party known or reasonably believed to have
11 asserted any Lien and Encumbrance or other interest in the Property; (c) all parties to
12 pending litigation against Walcent Elk (as of the date of entry of this Order); (d) any party
13 known or reasonably believed to have expressed an interest in acquiring the Property; (e)
14 the Securities and Exchange Commission, the United States Attorney for the Southern
15 District of New York, the Internal Revenue Service and all local governmental units; and
16 (f) such additional persons and entities deemed appropriate by the Receiver; and it is further

17
18
19 **ORDERED** that the Receiver shall cause the Sale Notice to be published in The
20 Elkhart Truth once a week for at least four (4) weeks prior to the Auction, which
21 publication shall be deemed due, timely, good, and sufficient notice of the entry of this
22 Order, the Sale Order and all proceedings to be held in accordance with this Order; and it
23 is further

24
25
26 **ORDERED** that any person or entity seeking to participate as a bidder at the
27 Auction shall comply with the Sale Procedures; and it is further

1 **ORDERED** that each bidder participating at the Auction will be required to confirm
2 that it has not engaged in any collusion with respect to the bidding on or sale of the
3 Property; and it is further
4

5 **ORDERED** that under no circumstances shall any bidder or prospective purchaser
6 for the Property have any claims at law or equity against the Receiver, his professionals or
7 the Receivership Estate arising out of their participation or involvement in the Auction or
8 the purchase and sale of the Property; and it is further
9

10 **ORDERED** that this Order shall become effective immediately upon its entry; and
11 it is further

12 **ORDERED** that this Court shall retain jurisdiction over any and all matters or
13 disputes arising from or related to this Order or its enforcement.
14

15 Dated: _____, 2024

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1 **EXHIBIT A**

2 **SALE PROCEDURES FOR:**

3 **NORTHFIELD PLAZA SHOPPING CENTER**
4 **LOCATED AT 2719-2733 EMERSON DRIVE,**
5 **ELKHART, INDIANA 46514**

6 Securities and Exchange Commission v. Larmore, *et al.*
7 Case No. 23-CV-02470-DLR
8 United States District Court for the District of Arizona (the “Court”)

9 Allen D. Applbaum, as receiver (the “Receiver”) for ArciTerra Companies, LLC
10 and related entities, submits the following sale and auction procedures (the “Sale
11 Procedures”) for the sale of Northfield Plaza, a multi-use retail center located in Elkhart,
12 IN (the “Property”), and owned by Receivership Entity, Walcent Elk/IN, LLC (“Walcent
13 Elk”). The sale of the Property shall be free and clear of all liens, claims, encumbrances
14 and interests, and subject to the below auction procedures approved by the Court:

15 a. Auction Place and Time. There will be a public Auction to submit and accept
16 bids for the Property held on the RealINSIGHT Marketplace Auction Platform at
17 <https://rimarketplace.com> (the “Marketplace Auction Platform”) commencing on October
18 28, 2024 at 12:00 Noon (Eastern Time) and ending on October 30, 2024 at Noon (Eastern
19 Time).

20 b. Qualification to Bid. Any bidder interested in purchasing the Property must
21 register to bid with the Marketplace Auction Platform at <https://rimarketplace.com> and
22 submit financial information, including proof of funds. Bidders who register and provide
23 sufficient information and proof of funds will receive an email confirming eligibility to
24 bid.

25 c. Bidding at Auction and Selection of Successful Bidders. Upon the
26 conclusion of the Auction and attaining the Reserve Price, the Receiver will accept the bid
27 from the bidder who submits the highest and best offer for the Property (the “Successful
28 Bidder”).

d. Execution of the Purchase Agreement. The Successful Bidder will be
required to execute the Purchase Agreement, substantially in the form approved by the
Court, within two hours of being selected as the Successful Bidder.

e. Submission of Non-Refundable Deposit. No later than twenty-four hours
after conclusion of the Auction, the Successful Bidder shall submit a non-refundable

1 deposit of ten percent (10%) of the purchase price (the “Deposit”) to be held in escrow
2 pending entry of the Order of the Court approving the sale and closing on the sale.

3 f. Platform Fee. The Successful Bidder shall be obligated to pay the Platform
4 Fee due to Marketplace Auction Platform upon closing of the sale.

5 g. Due Diligence. All bidders who execute confidentiality agreements will be
6 permitted to conduct due diligence on the Property, including via a review of the due
7 diligence materials prepared by Marcus & Millichap, prior to the Auction. Due diligence
8 materials will be made available by the Marketplace Auction Platform.

9 h. No Contingencies. The sale to the Successful Bidder shall not be subject to
10 any contingencies, including without limitation, for financing, due diligence, or inspection.

11 i. As Is/Where Is Purchase. The sale to the Successful Bidder shall be on an
12 “AS-IS, WHERE-IS” basis, with no representations or warranties made by the Receiver,
13 his professionals, or the Receivership Entities.
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EXHIBIT B

SALE NOTICE

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States Securities and Exchange
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

Michelle Larmore; Marcia Larmore;
CSL Investments, LLC;
MML Investments, LLC;
Spike Holdings, LLC;
and JMMAL Investments, LLC,

Relief Defendants.

Case No. 23-CV-02470-PHX-DLR

NOTICE OF PUBLIC SALE OF:

**NORTHFIELD PLAZA,
2719-2733 EMERSON DRIVE,
ELKHART, INDIANA 46514**

TO ALL PARTIES IN INTEREST:

Notice is hereby given that Allen D. Applbaum, as Receiver for ArciTerra Companies, LLC and related entities including, but not limited to, Walcent Elk/IN, LLC (“Walcent Elk”), intends to sell, through his broker, Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”), a multi-use retail center located in Elkhart, Indiana, and owned by Walcent Elk (the “Property”), free and clear of all liens, claims, interests and encumbrances (the “Sale”).

Pursuant to the Motion for Entry of an Orders: (A) approving (i) the Receiver’s engagement and compensation of Marcus & Millichap as broker for the sale of the Property, and (ii) the proposed sale and auction procedures for the sale of the Property (the “Sale Procedures”), including the scheduling of an Auction and Sale Hearing to consider the sale of the Property; (B) approving the sale of the Property to the bidders who submit the highest and best offers at a public auction to be conducted on RealINSIGHT

1 Marketplace Auction Platform at <https://rimarketplace.com> (the “Marketplace Auction
2 Platform”), free and clear of all liens, claims, encumbrances and interests; and (C) granting
3 related relief (the “Sale Motion”), the Receiver is soliciting higher and better offers for the
Property.

4 The Receiver is soliciting higher and better offers by means of an Auction to be
5 conducted on the Marketplace Auction Platform, which shall be governed by the terms and
6 conditions of the order establishing sale and auction procedures (the “Sale Procedures
Order”) approved by the Court on _____, 2024.

7 The Sale Motion and the Sale Procedures Order are on file with the United States
8 District Court for the District of Arizona, Sandra Day O’Connor U.S. Courthouse, 401 W.
9 Washington St., Suite 130, SPC 1, Phoenix, Arizona 85003-2118 (the “Court”), and are
10 available for review during regular business hours. **Copies of the Sale Motion, the Sale
11 Procedures Order, and the proposed Purchase Agreement to be executed by the
Successful Bidders are also available upon request from the undersigned or by
visiting the Receiver’s website at www.arciterrareceivership.com.**

12 OBJECTIONS, if any, to the relief requested in the Sale Motion or to final approval
13 of the proposed Sale of the Property must be filed in writing with the Clerk of the Court on
14 or before _____, 2024 at 5:00 p.m., Phoenix Time (the “Objection Deadline”). A copy
15 of the objection must also be served on all of the following so as to be received by the
16 Objection Deadline: counsel to the Receiver, Archer & Greiner, P.C., Attn: Allen G.
Kadish and Harrison H.D. Breakstone, 1211 Avenue of the Americas, New York, New
York 10036.

17 **Through this Notice, HIGHER AND BETTER OFFERS to purchase the
18 Property are hereby solicited.** The Auction will be held on the Marketplace Auction
19 Platform beginning on October 28, 2024 at Noon (Eastern Time) and ending on October
20 30 at 12:00 Noon (Eastern Time). Instructions for attending the Auction are available at:
at <https://rimarketplace.com>.

21 A FINAL HEARING on the Sale Motion will take place on November __, 2024 at
22 __:00 a.m., Phoenix Time, at the United States District Court for the District of Arizona,
23 Sandra Day O’Connor U.S. Courthouse, 401 W. Washington St., Suite 130, SPC 1,
Phoenix, Arizona 85003-2118, before the Honorable Douglas L. Rayes.

24 Please be advised that any of the foregoing dates may be changed by the Court
25 without further notice.

26 If you have any questions regarding or would like copies of materials relating to the
27 information in this Notice, please make such request in writing to Counsel for the Receiver,
28

1 Archer & Greiner, P.C., 1211 Avenue of the Americas, New York, New York 10036 Attn:
2 Allen G. Kadish and Harrison H.D. Breakstone.

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EXHIBIT 3
SALE ORDER

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF ARIZONA**

3
4 United States Securities and Exchange
5 Commission,

6 Plaintiff,

7 v.

8 Jonathan Larmore, et al.,

9 Defendants, and

10 Michelle Larmore; Marcia Larmore;
11 CSL Investments, LLC;
12 MML Investments, LLC;
13 Spike Holdings, LLC;
14 and JMMAL Investments, LLC,

15 Relief Defendants.
16

Case No. 23-CV-02470-PHX-DLR

**[PROPOSED] ORDER (I)
APPROVING (A) THE SALE OF
THE REAL PROPERTY OWNED
BY WALCENT ELK/IN, LLC, FREE
AND CLEAR OF ALL LIENS,
CLAIMS, ENCUMBRANCES AND
INTERESTS, AND (B) GRANTING
RELATED RELIEF**

17 The Court having considered the Receiver’s Motion for Orders: (A) approving (i)
18 the Receiver’s engagement and compensation of Marcus & Millichap Real Estate
19 Investment Services (“Marcus & Millichap”) as broker for the sale of a multi-use retail
20 center located in Elkhart, Indiana (the “Property”) owned by Receivership Entity, Walcent
21 Elk/IN, LLC (“Walcent Elk”), and (ii) the proposed auction and sale procedures (the “Sale
22 Procedures”) for the sale of the Property; (B) approving the sale of the Property to the
23 bidder who submits the highest and best offers for the Property at the auction, free and
24 clear of all liens, claims, encumbrances and interests; and (C) granting related relief (the
25 “Motion”); and upon consideration of any and all responses and replies relating to the
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1 Motion; and upon finding that due and sufficient notice of the Motion has been given and
2 no other or further notice need be given; and after due deliberation and it appearing that
3 the relief sought in the Motion is in the best interest of the Receivership Estate, its creditors,
4 and other parties in interest,
5

6 **IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:**¹

7 1. This Court has jurisdiction over this matter, the above-captioned defendants
8 and relief defendants, and over the property of each Receivership Estate.
9

10 2. The approval of the sale of the Property is within the sound legal discretion
11 of this Court.

12 3. It is necessary and appropriate for this Court to retain jurisdiction to, among
13 other things, (a) interpret, implement, and enforce the terms and provisions of this Order,
14 the Purchase Agreement, all amendments to the Purchase Agreement, any waivers and
15 consents under the Purchase Agreement, and each of the agreements executed in
16 connection with the Purchase Agreement and (b) to adjudicate, if necessary, any and all
17 disputes concerning or relating in any way to the sale of the Property, and such jurisdiction
18 is retained.
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20

21 **PROPER NOTICE OF THE MOTION AND AUCTION**

22 4. The Receiver properly provided notice, pursuant to and in accordance with
23 the Sale Procedures Order, and no other or further notice is necessary or required.
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27 ¹ Capitalized, undefined terms shall have the meanings ascribed to them in the Motion.
28

1 5. The Receiver has adequately disclosed all material terms and conditions
2 regarding the Sale Procedures, Purchase Agreement, and sale of the Property.

3 6. The notice provided by the Receiver was in substantial compliance with all
4 applicable laws and satisfied all due process requirements.

5 7. The notice provided was reasonably calculated to apprise all interested
6 parties of the sale of the Property free and clear of all liens, claims, encumbrances, and
7 other interests.
8

9 8. As a result, notice of the Motion, Sale Procedures, Sale Hearing, and Auction
10 and a reasonable opportunity to object or be heard with respect to the foregoing has been
11 afforded to all interested persons and entities, and the notice provided is appropriate and
12 sufficient for all purposes, including the sale of the Property free and clear of all liens,
13 claims, encumbrances, and other interests.
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16 **THE AUCTION COMPLIED WITH THE**
17 **SALE PROCEDURES ORDER AND APPLICABLE LAW**

18 9. Commencing on October 28, 2024 at 12:00 Noon (Eastern Time) and ending
19 on October 30, 2024 at 12:00 Noon (Eastern Time), the Receiver, through RealINSIGHT
20 Marketplace Auction Platform at <https://rimarketplace.com> (the “Marketplace Auction
21 Platform”), conducted the Auction in accordance with the Sale Procedures Order.
22

23 10. The Receiver complied in all material respects with applicable law.

24 11. The Successful Bidder has confirmed that it did not engage in any collusion
25 in connection with the Auction or the purchase of the Property.
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1 Property, and (iii) has the ability and authority to convey the Property to the Successful
2 Bidder on the terms and conditions set forth in the Purchase Agreement and this Order.

3 33. The Receiver and Successful Bidder proposed, negotiated, and entered into
4 the Purchase Agreement without collusion, in good faith, and from arm's length bargaining
5 positions.
6

7 34. Neither the Receiver nor the Successful Bidder have engaged in any conduct
8 that would cause or permit the Purchase Agreement or transactions contemplated thereby
9 to be avoided or otherwise set aside.
10

11 **THE SALE IS IN THE BEST INTEREST OF**
12 **THE RECEIVERSHIP ESTATE AND ITS CREDITORS**

13 35. The approval and consummation of the sale of the Property pursuant to and
14 in accordance with the Purchase Agreement and this Order is in the best interest of the
15 Receivership Estate and its creditors.
16

17 **NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND**
18 **THE RECORD BEFORE THIS COURT, IT IS HEREBY**

19 **ORDERED** that the Motion is GRANTED as set forth in this Order; and it is further

20 **ORDERED** that all objections to the Motion concerning the Auction, Successful
21 Bid, Successful Bidder, marketing process employed by the Receiver, Purchase Agreement
22 or otherwise relating to the sale of the Property and relief granted in this Order that have
23 not been withdrawn, waived, resolved, sustained, or settled are expressly denied and
24 overruled in their entirety; and it is further
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1 **ORDERED** that the Purchase Agreement, as set forth in Exhibit A to this Order, is
2 approved in its entirety; and it is further

3 **ORDERED** that the Property includes fee title to the real estate, free and clear of
4 all Liens and Encumbrances in accordance with the Purchase Agreement and this Order;
5 and it is further

6 **ORDERED** that the Receiver is authorized to take all actions to consummate the
7 sale of the Property pursuant to and in accordance with the Purchase Agreement and this
8 Order, including transferring and conveying the Property to the Successful Bidder; and it
9 is further
10

11 **ORDERED** that the Receiver is authorized, directed, and empowered to
12 consummate and implement fully the Purchase Agreement, together with all additional
13 instruments and documents that may be necessary or desirable to implement and
14 consummate the sale of the Property in accordance with the Purchase Agreement and this
15 Order; and it is further
16

17 **ORDERED** that the Receiver is authorized and directed to take all actions
18 necessary or desirable for the purpose of assigning, transferring, granting, conveying, and
19 conferring the Property to the Successful Bidder; and it is further
20

21 **ORDERED** that, time being of the essence, the Successful Bidder is directed to use
22 its best efforts to close the sale of the Property in accordance with the terms of the Purchase
23 Agreement and this Order, but in no event shall closing occur more than thirty-five (35)
24 days after entry of this Order; and it is further
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1 **ORDERED** that, in the Receiver’s sole discretion, any agreements, documents, or
2 other instruments executed in connection with the Purchase Agreement may be modified,
3 amended, or supplemented by the Receiver and Successful Bidder in accordance with the
4 terms of the Purchase Agreement, without further notice or order of this Court, provided
5 that any such modification, amendment, or supplement does not have a material adverse
6 effect on the Receivership Estate; and it is further
7

8 **ORDERED** that the Receiver is authorized to pay the undisputed amounts due and
9 owing to the Lender; and it is further
10

11 **ORDERED** that the transfer of the Property to the Successful Bidder shall be free
12 and clear of any and all liens, encumbrances, claims, charges, defenses, offsets,
13 recoupments, and interests on the foregoing and against the foregoing of whatever type or
14 description, including, without limitation, tax claims and tax liens (other than tax liens for
15 real estate taxes to be paid at Closing), and any restrictions on or conditions to transfer or
16 assignment, liens, mortgages, security interests, pledges, hypothecations, control
17 agreements, equities and other claims and interests having arisen, existed, or accrued prior
18 to and through the Closing Date (as defined in the Purchase Agreement), whether direct or
19 indirect, monetary or non-monetary, arising at law or in equity, contract or tort, absolute or
20 contingent, matured or unmatured, voluntary or involuntary, liquidated or unliquidated, of,
21 by, or against the Property (collectively, the “Liens and Encumbrances”); and it is further
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25 **ORDERED** that any and all Liens and Encumbrances will attach to the net proceeds
26 of the sale of the Property with the same effect, validity, enforceability, and priority as such
27 Liens and Encumbrances had against the Property prior to the sale authorized by this Order,
28

1 subject to any rights, claims, defenses, and objections of the Receiver and all interested
2 parties with respect to such Liens and Encumbrances; and it is further

3 **ORDERED** that the provisions of this Order authorizing the sale of the Property
4 free and clear of any and all Liens and Encumbrances shall be, and are, self-executing, and
5 the Receiver and Successful Bidder shall not be required, but are permitted in their
6 discretion, to execute or file releases, termination statements, assignments, consents, or
7 other instruments in order to effectuate, consummate, and implement the provisions of the
8 Purchase Agreement and this Order; and it is further
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11 **ORDERED** that this Order is effective as a determination that any and all Liens and
12 Encumbrances, if any, will be, and are, without further action by any person or entity,
13 unconditionally released, discharged, and terminated with respect to the Property; and it is
14 further
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16 **ORDERED** that all persons who hold Liens and Encumbrances against the Property
17 are forever estopped and permanently enjoined from asserting or prosecuting any claims
18 or causes of action against the Successful Bidder, its affiliates, successors or assigns, or
19 any of their respective officers, directors, employees, attorneys or advisors, arising out of
20 or in connection with the sale of the Property or any liabilities owed by the above-captioned
21 defendants; and it is further
22

23 **ORDERED** that the transfer of the Property to the Successful Bidder may not be
24 avoided under any applicable law, because the Successful Bidder is providing the
25 Receivership Estates with reasonably equivalent value; and it is further
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1 **ORDERED** that no party shall have any rights of redemption with respect to the
2 Property; and it is further

3 **ORDERED** that all entities that are presently, or upon Closing may be, in
4 possession of some or all of the Property are directed to surrender possession of the
5 Property to the Receiver or the Receiver’s designee; and it is further

6 **ORDERED** that neither the purchase of the Property nor the subsequent operation
7 of the Property by the Successful Bidder shall cause the Successful Bidder or its affiliates,
8 successors, or assigns or their respective properties to be deemed a successor in any respect
9 of the Receivership Entities’ or the above-captioned defendants’ business operations within
10 the meaning of any laws, rules, or regulations relating to any tax, revenue, pension, benefit,
11 ERISA, environmental, labor, employment, products liability, or other law, rule, or
12 regulation of any federal, state, or local government; and it is further
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16 **ORDERED** that, upon Closing, this Order and the documents executed in
17 connection with and pursuant to this Order constitute a full and complete general
18 assignment, conveyance, and transfer of the Property or a deed or a bill of sale transferring
19 good and marketable title in the Property to the Successful Bidder on the Closing Date free
20 and clear of all Liens and Encumbrances, and each and every federal, state, and local
21 governmental agency or department is directed to accept this Order as such an assignment,
22 deed, or bill of sale or any and all documents and instruments necessary and appropriate to
23 consummate the transactions contemplated by the Purchase Agreement and this Order; and
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25
26 it is further
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1 **ORDERED** that, if necessary, this Order shall be accepted for recordation on or
2 after the Closing Date as conclusive evidence of the free and clear, unencumbered transfer
3 of title to the Property to the Successful Bidder; and it is further
4

5 **ORDERED** that this Court retains exclusive jurisdiction to (a) enforce and
6 implement the Purchase Agreement and any other agreements, documents, and instruments
7 executed in connection with the Purchase Agreement, (b) compel delivery of possession of
8 the Property (or any part of the Property) to the Successful Bidder, (c) resolve any disputes,
9 controversies, or claims arising out of or relating to the Purchase Agreement, this Order,
10 or the sale of the Property, and (d) interpret, implement, and enforce the provisions of this
11 Order; and it is further
12

13 **ORDERED** that the terms and conditions of the Purchase Agreement and this Order
14 will be binding in all respects upon, and will inure to the benefit of, the Receiver, the
15 Receivership Estate, each of the Receivership Entities, the Successful Bidder, and their
16 respective affiliates, successors and assigns, and any affected third parties; and it is further
17
18

19 **ORDERED** that, to the extent of any inconsistency between the provisions of any
20 agreements, documents, or other instruments executed in connection with the Purchase
21 Agreement and this Order, the provisions of this Order control; and it is further
22

23 **ORDERED** that the Receiver is authorized to pay Marcus & Millichap its
24 commission in the amount of _____ at the Closing of the sale of the Property; and it
25 is further
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28

1 **ORDERED** that there is no just delay for the implementation of this Order and, for
2 all purposes, this Order shall be a final order upon its entry with respect to the sale of the
3 Property and other relief granted in this Order.
4

5 Dated: _____, 2024

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7 229327877 v7 _____

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