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

14 United States Securities and Exchange  
15 Commission,

16 Plaintiff,

17 v.

18 Jonathan Larmore, et al.,

19 Defendants, and

20 Michelle Larmore, Marcia Larmore,  
21 CSL Investments, LLC,  
22 MML Investments, LLC,  
23 Spike Holdings, LLC,  
24 and JMMAL Investments, LLC,

25 Relief Defendants.

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

**RECEIVER’S MOTION FOR  
ORDERS APPROVING:**

**(I) (A) THE ENGAGEMENT AND  
COMPENSATION OF MARCUS &  
MILLICHAP REAL ESTATE  
INVESTMENT SERVICES AS  
BROKER FOR THE SALE OF  
REAL PROPERTY LOCATED AT  
900 WEST MARION AVENUE,  
PUNTA GORDA, FLORIDA, AND  
(B) THE BIDDING AND AUCTION  
PROCEDURES FOR THE SALE OF  
THE PROPERTY; AND**

**(II) THE SALE OF THE PROPERTY  
AFTER AUCTION, FREE AND  
CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND  
INTERESTS**

26 <sup>1</sup> Admitted *pro hac vice*.

27 <sup>2</sup> Admitted *pro hac vice*.

28 <sup>3</sup> Admitted *pro hac vice*.

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1 Allen D. Applbaum as receiver for ArciTerra Companies, LLC (“ArciTerra”) and related  
2 entities (the “Receiver”), by and through his counsel, Archer & Greiner, P.C., hereby  
3 respectfully moves this Court for entry of two orders: **First**, approving (a) the Receiver’s  
4 engagement and compensation of Marcus & Millichap Real Estate Investment Services  
5 (“Marcus & Millichap”) as broker for the sale of real property located at 900 West Marion  
6 Avenue, Punta Gorda, Florida 33950, including all buildings, equipment, furniture and fixtures  
7 located thereon (collectively, the “Property”), owned by Receivership Entity, 900 West Marion  
8 Avenue FL, LLC (“900 West Marion”), and (b) the proposed bidding and auction procedures  
9 (the “Sale Procedures”) for the sale of the Property; and **Second**, approving the sale of the  
10 Property to Harborview Property Holdings LLC (the “Stalking Horse Buyer”), or such other  
11 bidder that submits a higher and better offer at a public auction, free and clear of all liens,  
12 claims, encumbrances and interests.  
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15

16 **I. Preliminary Statement**

17 1. On December 21, 2023 and May 6, 2024, the Court appointed the Receiver  
18 pursuant to the *Order Appointing Temporary Receiver and Temporarily Freezing Assets and*  
19 *Imposing Litigation Injunction* [ECF 77] and *Order Appointing Receiver Freezing Assets, and*  
20 *Imposing Litigation Injunction* [ECF 154] (together, the “Receivership Order”).<sup>4</sup> Since his  
21 appointment, the Receiver and his retained professionals have, among other things, assumed  
22 control of the Receivership Entities and Receivership Assets, conducted preliminary  
23 investigations into the claims and liens asserted against Receivership Assets, negotiated  
24  
25

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26  
27 <sup>4</sup> Capitalized, undefined terms shall have the meanings ascribed to them in the  
28 Receivership Order.

1 standstill and forbearance stipulations with parties asserting liens and other interests in  
2 Receivership Assets, sold numerous properties and other assets owned by Receivership  
3 Entities, and conducted other activities required by the Receivership Order to administer the  
4 Receivership Estate.  
5

6         2. The Receiver brings this Motion to approve the sale of the Property, which is  
7 subject to, and secured by, a Mortgage, Assignment of Rents, Security Agreement and Fixture  
8 Filing dated July 25, 2022 (the "Mortgage") held by Standard Insurance Company (the  
9 "Mortgage Lender") and serviced by StanCorp Mortgage Investors, LLC ("StanCorp"). The  
10 Mortgage secures a loan commitment of up to \$10.2 million (the "Loan") made to 900 West  
11 Marion, ArciTerra, and Jonathan Larmore, as evidenced by that certain Phased Funding Note  
12 with the Mortgage Lender dated July 25, 2022. The initial Loan amount of \$5,579,750 was  
13 provided at the time the Loan was made, with \$4,720,250 held back (the "Holdback Amount")  
14 to be advanced during the two-year period after July 2022 to cover capital and tenant  
15 improvements. The Holdback Amount was never advanced and as of the date of this Motion,  
16 the outstanding balance on the Loan is approximately \$5.3 million.  
17

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19  
20         3. Since his appointment, the Receiver and his professionals engaged with  
21 representatives of StanCorp regarding the Mortgage and disposition options for the Property.  
22 By agreement dated as of August 20, 2024, the Receiver and StanCorp agreed to proceed with  
23 a sale in accordance with the procedures and terms set forth in this Motion, including a  
24 reasonable carveout for the benefit of the Receivership Estate if the sale does not generate  
25 sufficient proceeds to satisfy the Loan in full (the "Carveout Agreement").  
26

27         4. The Receiver also entered into discussions with Marcus & Millichap to provide  
28

1 a broker's opinion of value and to potentially market and broker a sale of the Property. The  
2 Receiver ultimately agreed to engage Marcus & Millichap in accordance with that certain  
3 Exclusive Representation Agreement (the "M&M Agreement"), which is subject to Court  
4 approval and is annexed as **Exhibit A** to the accompanying Declaration of Randall Coxworth  
5 (the "Coxworth Declaration").  
6

7 5. Over the last several weeks, Marcus & Millichap has worked diligently to locate  
8 a buyer for the Property through commercially reasonable and customary channels and engaged  
9 with several parties interested in purchasing the Property. Several parties expressed interest in  
10 purchasing the Property and Marcus & Millichap afforded all interested parties an opportunity  
11 to conduct due diligence and submit offers for the Property. Ultimately, Marcus & Millichap  
12 received four offers to purchase the Property, ranging in price from \$1,900,000 to \$3,050,000,  
13 which was submitted by the Stalking Horse Buyer. The offers received were substantially in  
14 line with the opinion of value provided by Marcus & Millichap.  
15  
16

17 6. After reviewing the terms of the offers, and in consultation with his professionals,  
18 the Receiver accepted the offer submitted by the Stalking Horse Buyer and entered into  
19 negotiations over the terms of a purchase agreement. The parties ultimately executed the asset  
20 purchase agreement (the "Stalking Horse Agreement"), which is annexed as **Exhibit B** to the  
21 Coxworth Declaration. The Stalking Horse Agreement provides for the Receiver's sale of the  
22 Property to the Stalking Horse Buyer on an "as-is, where-is" basis with limited contingencies,  
23 for cash consideration of \$3,050,000 (the "Purchase Price"). As an inducement for the Stalking  
24 Horse Buyer to submit its bid and establish a minimum price at a public auction, the Stalking  
25 Horse Agreement also provides for a \$100,000 break-up fee (the "Break-up Fee"), which  
26  
27  
28

1 represents 3.3% of the Purchase Price, and only payable to the Stalking Horse Buyer if the  
2 Receiver closes on a higher bid after the auction.

3  
4 7. Pursuant to the Carveout Agreement, the Purchase Price, less broker  
5 commissions and other closing costs, will result in approximately \$490,000 in net proceeds for  
6 the benefit of the Receivership Estate, and further bidding could enhance such recoveries.  
7 Assuming no higher bids, the Receiver estimates that StanCorp will be paid approximately  
8 \$2,285,500 at closing of the sale in full satisfaction and release of the Mortgage.  
9

10 8. Absent an overbid at the auction, the Receiver believes, in his reasonable business  
11 judgment, that the Purchase Price offered by the Stalking Horse Buyer is the best price  
12 obtainable for the Property and, accordingly, the Receiver respectfully requests that the Court  
13 grant the relief requested by this Motion.  
14

## 15 **II. Background**

### 16 **A. The Receivership Order and Appointment of the Receiver**

17 9. On November 28, 2023, the Securities and Exchange Commission filed its  
18 Complaint [ECF 1] against Jonathan Larmore, ArciTerra, ArciTerra Note Advisors II, LLC,  
19 ArciTerra Note Advisors III, LLC, ArciTerra Strategic Retail Advisor, LLC, and Cole Capital  
20 Funds, LLC (collectively, the “Defendants”). Michelle Larmore; Marcia Larmore; CSL  
21 Investments, LLC; MML Investments, LLC; Spike Holdings, LLC and JMMAL Investments,  
22 LLC were named as relief defendants.  
23

24  
25 10. On December 21, 2023, the Court entered the Receivership Order, which  
26 appointed the Receiver to, among other things, (a) perform the duties specified in the  
27 Receivership Order; (b) ascertain the financial condition of the Receivership Entities and all of  
28



1 the Receivership Assets (as defined in the Receivership Order); (c) oversee and manage the  
2 Receivership Entities and the Receivership Assets; and (d) propose for Court approval a fair  
3 and equitable distribution of the Receivership Assets.  
4

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

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

10 B. The Property

11 12. The Property consists of 3.99 acres of land, and includes three buildings totaling  
12 approximately 40,000 square feet, that is conveniently located three miles from Interstate 75  
13 and four miles from Punta Gorda Airport. The Property is zoned for residential development,  
14 including single family, duplexes and multi-family homes. The main building on the Property  
15 is currently occupied by the not-for-profit Military Heritage Museum pursuant to a lease dated  
16 as of November 7, 2018, which is set to expire in 2027, with additional tenant options to extend  
17 for an additional five years. The sale to the Stalking Horse Buyer is subject to the Military  
18 Heritage Lease.  
19  
20

21 C. The StanCorp Secured Loan and Carveout Agreement

22 13. Upon his appointment, the Receiver and his professionals engaged with StanCorp  
23 regarding the Property and agreed to proceed with a sale in accordance with the procedures set  
24 forth in this Motion. Pursuant to their negotiated Carveout Agreement, the Receiver agreed to  
25 sell the Property free and clear of all liens, including the Mortgage, with the proceeds of any  
26 sale proceeds first applied to commissions due to Marcus & Millichap and other closing costs  
27  
28

1 (including tax liens), then to the Receivership Estate in a guaranteed amount of \$100,000, plus  
2 an additional 30% of sale proceeds over \$1,750,000. StanCorp, on behalf of the Mortgage  
3 Lender, agreed to receive the remaining sale proceeds up to the undisputed amount of its claim,  
4 with any sale proceeds above the claim amount going to the Receivership Estate. Based on the  
5 Purchase Price payable by the Stalking Horse Buyer at closing, the Receiver anticipates paying  
6 StanCorp, on behalf of the Mortgage Lender, \$2,285,500 in full satisfaction of the claims and  
7 release of the Mortgage on the Property, with the Receivership Estate receiving approximately  
8 \$765,000.  
9  
10

11 D. The Stalking Horse Buyer

12 14. While negotiating with StanCorp, the Receiver engaged with Marcus & Millichap  
13 to find a buyer for the Property and through the efforts of Marcus & Millichap, the Receiver  
14 received several offers to purchase the Property. While the offers received were generally  
15 within the same price range, the Receiver believes the Stalking Horse Buyer's offer is the  
16 highest and best as the cash consideration is higher than the other bidders and Marcus &  
17 Millichap is confident the Stalking Horse Buyer has the financial wherewithal to consummate  
18 the purchase.  
19  
20

21 15. After receiving and carefully considering all the offers, the Receiver and the  
22 Stalking Horse Buyer negotiated and finalized the terms of the Stalking Horse Agreement,  
23 which sets forth the terms of the proposed sale. Pursuant to the terms of the Stalking Horse  
24 Agreement, the Stalking Horse Buyer has provided the Receiver with a \$100,000 cash deposit,  
25 and agreed to pay the remainder of the Purchase Price at closing. Notably, the Stalking Horse  
26 Agreement provides for the sale of the Property on an "as is, where is" basis, with no  
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28

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

3  
4 16. The Receiver believes, in his reasonable business judgment, that the offer by the  
5 Stalking Horse Buyer as reflected in the Stalking Horse Agreement is the highest and best offer  
6 received. Furthermore, the reasonableness of the Purchase Price will be further tested through  
7 the auction process provided for in the proposed Sale Procedures.

8  
9 **III. Relief Requested**

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

- 11 a. The approval of (i) the Receiver’s engagement and compensation of Marcus &  
12 Millichap, pursuant to the terms of the M&M Agreement, and (ii) the Sale  
13 Procedures, including the Break-up Fee payable to the Stalking Horse Buyer,  
14 approving the notice of auction and sale, scheduling an auction to be conducted  
15 by Zoom (the “Auction”) and setting a sale hearing date after the Auction (the  
16 “Sale Hearing”) to consider the final approval of the sale of the Property (the  
17 “Sale Procedures Order”), in the form attached hereto as **Exhibit 2**; and  
18 b. The approval of the sale of the Property to the Stalking Horse Buyer or such other  
19 bidder offering the highest and best bid at the Auction (the “Sale Order”), in the  
20 form attached hereto as **Exhibit 3**.

21  
22 **IV. Basis for Relief Requested**

23 A. Authorization to Sell the Property

24 18. The Court’s power to supervise an equity receivership and to determine the  
25 appropriate actions to be taken in the administration of the receivership is extremely broad. *See*  
26 *Securities and Exchange Com'n v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005)  
27 (*quoting Securities and Exchange Com'n v. Hardy*, 803 F.2d 1034, 1037 (9th Cir. 1986)). “The  
28 power of a district court to impose a receivership or grant other forms of ancillary relief does  
not in the first instance depend on a statutory grant of power from the securities laws. Rather,

1 the authority derives from the inherent power of a court of equity to fashion effective relief.”  
2 *Securities and Exchange Com'n v. Wencke*, 622 F.2d 1363, 1369 (9th Cir. 1980). A court  
3 imposing a receivership assumes custody and control of all assets and property of the  
4 receivership, and it has broad equitable authority to issue all orders necessary for the proper  
5 administration of the receivership estate. *See Securities and Exchange Com'n v. Credit Bancorp*  
6 *Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002).

8  
9 19. It is well within the Court’s broad authority to approve the auction and Sale  
10 Procedures set forth herein. “The power of sale necessarily follows the power to take  
11 possession and control of and to preserve property.” *Securities and Exchange Com'n v.*  
12 *American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *abrogated on other grounds*  
13 *by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998) (quoting 2 Ralph E. Clark,  
14 *Treatise on Law & Practice of Receivers* § 482 (3d ed. 1992)); *see also Gockstetter v. Williams*,  
15 9 F.2d 354, 357 (9th Cir. 1925) (“In authorizing the sale of property by receivers, courts of  
16 equity are vested with broad discretion as to price and terms”).  
17

18  
19 20. In addition to the equitable powers vested in this Court, this Court is conferred  
20 with the statutory authority to authorize the sale of the Property. Sales of assets by federal  
21 receivers are governed by sections 2001, 2002, and 2004 of Title 28 of the United States Code.  
22 Section 2001 governs sales of real property and section 2004 governs sales of personal property,  
23 while section 2002 sets forth the procedures for the noticing of sales.  
24

25 21. Section 2001(a) sets forth the requirements for a receiver’s sale of real estate  
26 pursuant to a public auction process as requested by this Motion:  
27

28 Any realty or interest therein sold under any order or decree of any court of the

1 United States shall be sold as a whole or in separate parcels at public sale at the  
2 courthouse of the county, parish, or city in which the greater part of the property is  
3 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.

4 22. Section 2002 provides that notice of sales of real estate must be published:

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

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

11 24. Here, the Receiver proposes to sell the Property, which consists mainly of real  
12 property, pursuant to a public auction process in compliance with 28 U.S.C. §§ 2001(a) and  
13 2002. The sale of the Property to the Stalking Horse Buyer is subject to an auction to be  
14 conducted by Zoom as prescribed in the Sale Procedures. The Receiver proposes to schedule  
15 the Auction for a date in late January 2025 and requests that the Court schedule a Sale Hearing  
16 shortly after the Action to approve the sale to the highest and best bidder.

17 25. The Receiver will cause notice of the Auction and Sale Hearing to be published  
18 for four consecutive weeks in *The Daily Sun*. In addition to publishing notice, Marcus &  
19 Millichap will continue marketing the Property in a cost-effective approach across multiple  
20 platforms, including mail, email, and telephone, in a manner consistent with ordinary custom  
21 and practice in the industry.

22 26. Once the Auction is completed, the Receiver will proceed with the Sale Hearing  
23 before the Court at which time he will announce the winner of the Auction and request approval  
24  
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1 of the sale to such prevailing bidder. The Receiver believes, in his reasonable business  
2 judgment, that selling the Property in accordance with the process set forth in this Motion and  
3 the public auction will yield the highest and best offers for the Property.  
4

5 **B. Approval of the Engagement and Compensation of Marcus & Millichap**

6 27. The Receiver also seeks approval of his engagement of Marcus & Millichap to  
7 further market and solicit offers for the Property and broker its sale. Pursuant to paragraph 6(I)  
8 of the Receivership Order, the Receiver may engage and employ professionals, including  
9 brokers, as necessary to assist in carrying out his duties.  
10

11 28. Marcus & Millichap is a nationally-recognized commercial brokerage firm with  
12 significant expertise brokering and selling properties comparable to the Property. For the  
13 Property, Marcus & Millichap has created marketing materials that showcase the Property and  
14 established a data room for bidders to review pertinent information and conduct their due  
15 diligence. Once prospective bidders sign a confidentiality agreement, they can receive access  
16 to a data room which will provide an in-depth review of all information on the Property. Marcus  
17 & Millichap will continue to market and solicit bids by advertising and specifically targeting  
18 buyers reasonably believed to be interested in purchasing the Property. In addition, Marcus &  
19 Millichap will cause notice of the Auction and Sale Hearing to be published in a local  
20 publication, *The Daily Sun*. Through these efforts, the Property will be exposed to a targeted  
21 marketing list of active bidders.  
22  
23  
24

25 29. Pursuant to the M&M Agreement, Marcus & Millichap is entitled to receive a  
26 commission of five percent (5%) of the gross purchase price on account of their services (the  
27 "M&M Commission"). StanCorp has consented to the M&M Commission and the Receiver  
28

1 requests authority to pay the M&M Commission upon the closing of the sale of the Property  
2 from the proceeds thereof.

3  
4 30. Marcus & Millichap has represented to the Receiver that it does not hold any  
5 interest materially adverse to any of the Receivership Entities. A Declaration of  
6 Disinterestedness was recently filed by Marcus & Millichap in this case in connection with the  
7 Receiver's efforts to sell the Morningstar at Arcadia facility owned by Glenrosa 32, LLC [ECF  
8 139], which is adopted herein by reference. The Court previously approved the engagement of  
9 Marcus & Millichap under similar terms to market and sell properties owned by other  
10 Receivership Entities.  
11

12 31. Accordingly, the Receiver submits that Marcus & Millichap is best suited for  
13 marketing and brokering the sale of the Property and that the engagement of Marcus &  
14 Millichap on the terms and conditions set forth herein and in the M&M Agreement is necessary  
15 and appropriate, in the best interests of the Receivership Estate, and should be granted.  
16

17 C. Approval of the Sale Procedures

18 32. The Receiver proposes to sell the Property for the highest and best price at a  
19 public Auction in accordance with the Sale Procedures to be approved by the Sale Procedures  
20 Order. Through the Sale Procedures, the Receiver, with the assistance of Marcus & Millichap,  
21 intends to market-test the value of the Property to determine the highest and best offers for the  
22 Property.  
23

24 33. The Sale Procedures Order also specifies the procedures for bidding on the sale  
25 and filing objections to the proposed sale. The key terms of the proposed Sale Procedures  
26 include:  
27  
28

- 1 a. “Qualified Bidders” may Attend the Auction. A “Qualified Bidder” is a prospective  
2 purchaser who, no later than 10 days prior to the Auction submits a written bid  
3 proposal to the Receiver that: (i) is accompanied by a fully executed asset purchase  
4 agreement for the Property for the Purchase Price, plus the Minimum Initial Overbid  
5 Amount (defined below), and with terms substantially similar in all material aspects  
6 to the terms of the Stalking Horse Agreement and otherwise acceptable to the  
7 Receiver in his sole discretion (a “Qualified Bid PSA”), (ii) confirms such  
8 prospective purchaser’s ability to close and consummate the transaction no later than  
9 thirty-five (35) days of entry of the Sale Order, and (iii) treats the bidder’s deposit in  
10 accordance with the procedures in the Sale Procedures Order. The Stalking Horse  
11 Bidder is deemed a Qualified Bidder.
- 12 b. Due Diligence. All bidders who execute confidentiality agreements will be  
13 permitted to conduct due diligence on the Property, including via a review of the due  
14 diligence materials prepared by Marcus & Millichap, prior to the Auction. Due  
15 diligence materials will be made available by Marcus & Millichap.
- 16 c. No Contingencies. Qualified Bidders shall agree that the sale of the Property shall  
17 not be subject to any contingencies, including without limitation, for financing, due  
18 diligence, or inspection.
- 19 d. As Is/Where Is Purchase. Qualified Bidders shall agree that the sale of the Property  
20 shall be on an “as-is, where-is” basis, with no representations or warranties made by  
21 the Receiver, his professionals, or the Receivership Entities.
- 22 e. Minimum Initial Overbid and Subsequent Overbids. The initial overbid must be at  
23 least \$500,000 in excess of the Purchase Price (the “Minimal Initial Overbid  
24 Amount”). Subsequent overbids shall be in increments of at least \$50,000 above the  
25 Minimal Initial Overbid Amount.
- 26 f. Consent to Court Jurisdiction. All Qualified Bidders appearing at the Auction shall  
27 be deemed to have consented to the Court’s jurisdiction and the Court shall be the  
28 exclusive forum for any disputes arising in connection with any agreements to  
purchase the Property.
- g. Determination of the Successful Bidder at the Auction: At the conclusion of the  
Auction, the Receiver, in consultation with his professional advisors, will accept the  
bidder who submits the highest and best offer for the Property (the “Successful  
Bidder”).
- h. The Back-up Bidder: The Receiver will also accept the bid from the second highest  
bidder (the “Back-up Bidder”) who shall close on the purchase of the Property in the  
event the Successful Bidder fails to close.



- 1  
2 i. Required Deposits. After the Auction, the Successful Bidder and Back-up Bidder  
3 will be required to increase their deposits to five percent (5%) of the purchase price  
4 and sign a purchase and sale agreement, substantially in the form of the Stalking  
5 Horse Agreement.

6 34. If no other Qualified Bidders submit bids prior to the bid deadline, the Auction  
7 may be cancelled and the Receiver will seek entry of the Sale Order and approval of the Stalking  
8 Horse Agreement at the Sale Hearing.

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

12 D. Payment of the Break-up Fee is Appropriate

13 36. Pursuant to the Stalking Horse Agreement, the Receiver has agreed to pay a  
14 Break-up Fee to the Stalking Horse Buyer if the Receiver receives and closes on a bid with a  
15 bidder other than the Stalking Horse Buyer. The Break-up Fee will be paid to the Stalking  
16 Horse Buyer at closing of the sale to a Successful Bidder, other than the Stalking Horse Buyer,  
17 and from the proceeds of the sale.  
18

19 37. The Receiver submits that payment of the Break-up Fee, which is approximately  
20 3.3% of the Purchase Price, is reasonable and provides a substantial benefit to the Receivership  
21 Estate and its stakeholders as it provides a market-based indication of value that will open, and  
22 establish a floor price at the Auction.  
23

24 38. A break-up fee is designed to compensate a bidder for the risk of being outbid.  
25 Courts recognize that break-up fees may enhance the bidding process by encouraging the first  
26 bid. Break-up fees may “be legitimately necessary to convince a ‘white knight’ to enter the  
27  
28

1 bidding by providing some form of compensation for the risks it is undertaking.” *Samjens*  
2 *Partners I v. Burlington Industries Inc.*, 663 F.Supp. 614, 624 (S.D.N.Y. 1988). Break-up fees  
3 of three percent or less of a purchase price have been approved by courts where it is determined  
4 that the fee will not chill bidding and is beneficial to the selling estate. *In re Cmty. Healthcare*  
5 *of Douglas, Inc.*, 2013 WL 12291504, at \*2 (Bankr. D. Ariz. Oct. 22, 2013); *In re Sea Island*  
6 *Co.*, 2010 WL 4393269, at \*3 (Bankr. S.D. Ga. Sept. 15, 2010).

8  
9 39. Here, the 3.3% Break-up Fee will be paid only if the Stalking Horse Buyer is  
10 outbid at the Auction and from the proceeds of the sale. Accordingly, the Receiver requests  
11 that the Court approve the Break-up Fee as reasonable.

12 E. Sale Free and Clear of Liens, Claims, Encumbrances and Interests

13  
14 40. An order approving the sale of assets by a federal receiver may provide for the  
15 sale of property free and clear of liens, claims, encumbrances and other interests with all such  
16 interests attaching to the proceeds of the sale. *S.E.C. v. Cap. Cove Bancorp LLC*, 2015 WL  
17 9701154, at \*4 (C.D. Cal. Oct. 13, 2015); *Regions Bank v. Egyptian Concrete Co.*, 2009 WL  
18 4431133, at \*7 (E.D. Mo. Dec. 1, 2009) (“[I]t has long been recognized that under appropriate  
19 circumstances, a federal court presiding over a receivership may authorize the assets of the  
20 receivership to be sold free and clear of liens and related claims”); *Quilling v. Trade Partners,*  
21 *Inc.*, 2007 WL 296211 (W.D. Mich. Aug. 15, 2007) (approving receiver’s sale of property free  
22 and clear of all liens and encumbrances); *see also Seaboard Natl. Bank v. Rogers Milk Prod.*  
23 *Co.*, 21 F.2d 414, 416 (2d Cir. 1927); *S.E.C. v. Princeton Econ. Int’l Ltd.*, 2008 WL 7826694,  
24 \*5 (S.D.N.Y. Sept. 30, 2008).

25  
26  
27 41. The Receiver proposes to sell the Property to the Successful Bidder in accordance  
28

1 with the Sale Procedures, free and clear of all liens, claims, encumbrances and other interests,  
2 including the Mortgage (collectively, “Liens and Encumbrances”) with such Liens and  
3 Encumbrances, to the extent not satisfied at closing or by agreement, attaching to the proceeds  
4 of the sale in the same order of priority.  
5

6 42. In addition to the Mortgage and the claims of the Mortgage Lender, the Receiver  
7 is aware of approximately \$120,000 in property tax liens asserted against the Property. The  
8 Purchase Price will provide sufficient funds to satisfy the tax liens in full and the Mortgage in  
9 accordance with the terms of the Carveout Agreement. Based on the Stalking Horse  
10 Agreement, the Receiver estimates the Mortgage Lender will receive approximately  
11 \$2,285,000, to be paid at closing on the sale, in full satisfaction and release of the Mortgage.  
12

13 43. To the extent other Liens and Encumbrances exist, the Receiver requests  
14 authority to close the sale of the Property, free and clear of all Liens and Encumbrances, and  
15 for those Liens and Encumbrances to attach to the sale proceeds, which shall be placed in a  
16 segregated receivership account pending further order of the Court or written agreement among  
17 the parties.  
18

19  
20 F. Proposed Form and Manner of Notice of the Sale

21 44. To provide all interested parties with notice of the Auction and Sale Hearing and  
22 an opportunity to object to the proposed sale, the Receiver requests approval of notice and  
23 objection procedures as set forth in the Sale Procedures Order. The Receiver proposes to serve  
24 the form of notice of the sale, attached as Exhibit B to the Sale Procedures Order (the “Sale  
25 Notice”) by United States first class mail or email (to the extent known) on (a) all known  
26 creditors of 900 West Marion at the address set forth in the Receivership Entities’ books and  
27  
28

1 records or as updated pursuant to a request by a creditor or by returned mail from the post office  
2 with a forwarding address; (b) any party known or reasonably believed to have asserted any  
3 Lien and Encumbrance or other interest in the Property, including StanCorp; (c) all parties to  
4 pending litigation against 900 West Marion (as of the date of entry of the Sale Procedures  
5 Order); (d) any party known or reasonably believed to have expressed an interest in acquiring  
6 the Property; (e) the Securities and Exchange Commission, the United States Attorney for the  
7 Southern District of New York; (f) all local governmental units; and (g) such additional persons  
8 and entities deemed appropriate by the Receiver.  
9  
10

11 45. The Sale Notice will also be made available on the Receiver's website at  
12 <http://www.arciterrareceivership.com>. In addition, the Receiver will cause Marcus & Millichap  
13 to publish notice of the Auction and his intent to sell the Property for four weeks and in  
14 accordance with 28 U.S.C. § 2002, in The Daily Sun, a publication of wide circulation in Punta  
15 Gorda, Florida where the Property is located.  
16

17 46. The Receiver submits that the notice to be provided and the method of service  
18 proposed herein constitute good and adequate notice of the sale, and complies with sections  
19 2001 and 2002 of Title 28. Accordingly, the Receiver requests that this Court approve the  
20 notice procedures and that no other or further notice of the sale is required.  
21

## 22 **V. Conclusion**


23 47. No prior motion for the relief sought herein has been made to any court.  
24

25 48. Given the authorities set forth herein, request is made to waive any requirement  
26 to file a separate memorandum of law. *See* LRCiv 7.2(b).  
27  
28

1           WHEREFORE, the Receiver respectfully requests that this Court (a) enter the Sale  
2 Procedures Order approving the M&M Agreement and the Sale Procedures; (b) enter the Sale  
3 Order approving the sale of the Property to the bidder offering the highest and best bid at the  
4 Auction; and (c) grant such other relief as is just and equitable.  
5

6 Dated: December 4, 2024

ARCHER & GREINER, P.C.

7  
8 By:  \_\_\_\_\_

Allen G. Kadish<sup>1</sup>

Gerard DiConza<sup>2</sup>

Harrison H.D. Breakstone<sup>3</sup>

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New York, New York 10036

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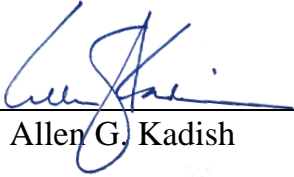
gdiconza@archerlaw.com

hbreakstone@archerlaw.com

*Counsel for Allen D. Applbaum as Receiver*

**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 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**



**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 APPROVING:**

**(I) (A) THE ENGAGEMENT AND  
COMPENSATION OF MARCUS &  
MILLICHAP REAL ESTATE  
INVESTMENT SERVICES AS  
BROKER FOR THE SALE OF  
REAL PROPERTY LOCATED AT  
900 WEST MARION AVENUE,  
PUNTA GORDA, FLORIDA, AND  
(B) THE BIDDING AND AUCTION  
PROCEDURES FOR THE SALE OF  
THE PROPERTY; AND**

**(II) THE SALE OF THE PROPERTY  
AFTER AUCTION, FREE AND  
CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND  
INTERESTS**

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 (“ArciTerra”) and related entities (the “Receiver”) for entry of  
two orders: (I) approving (a) the Receiver’s engagement and compensation of Marcus &  
Millichap Real Estate Investment Services (“Marcus & Millichap”) as broker for the sale  
of real property located at 900 West Marion Avenue, Punta Gorda, Florida 33950,

1 including all buildings, equipment, furniture and fixtures located thereon (the “Property”),  
2 owned by Receivership Entity, 900 West Marion Avenue FL, LLC (“900 West Marion”),  
3 and (b) the proposed bidding and auction procedures (the “Sale Procedures”) for the sale  
4 of the Property; and (II) approving the sale of the Property to Harborview Property  
5 Holdings LLC (“Stalking Horse Buyer”), or such other bidder that submits a higher and  
6 better offer at a public auction, free and clear of all liens, claims, encumbrances and  
7 interests (the “Motion”).

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

18         3. On December 21, 2023 and May 6, 2024, the Court entered the *Order*  
19 *Appointing Temporary Receiver and Temporarily Freezing Assets and Imposing Litigation*  
20 *Injunction* [ECF 77] and the *Order Appointing Receiver Freezing Assets, and Imposing*  
21 *Litigation Injunction* [ECF 154] (together, the “Receivership Order”), which among other  
22 things, appointed the Receiver and approved the engagement of StoneTurn and Archer &  
23 Greiner, P.C. as retained professionals for the Receiver in this case.

1 4. Since his appointment, the Receiver and his team of professionals have  
2 investigated and evaluated the financial affairs of the Receivership Estate, including its  
3 numerous real estate holdings. The Receiver has undertaken significant efforts to stabilize  
4 the many properties within the Receivership Estate, including the Property, and has  
5 obtained prior approval from the Court to sell several properties.  
6

7 5. The Property is owned by 900 West Marion and includes three buildings  
8 totaling approximately 40,000 square feet, that is conveniently located three miles from  
9 Interstate 75 and four miles from Punta Gorda Airport. The Property is zoned for  
10 residential development, including single family, duplexes and multi-family homes. The  
11 main building on the Property is currently occupied by the not-for-profit Military Heritage  
12 Museum pursuant to a lease dated as of November 7, 2018, which is set to expire in 2027,  
13 with additional tenant options to extend for an additional five years.  
14

15 6. The Property is subject to a Mortgage, Assignment of Rents, Security  
16 Agreement and Fixture Filing dated July 25, 2022 (the "Mortgage") securing a loan  
17 commitment of up to \$10.2 million (the "Loan") made to 900 West Marion, ArciTerra and  
18 Jonathan Larmore by Standard Insurance Company (the "Mortgage Lender"). Shortly after  
19 the Receiver's appointment, I engaged in discussions with StanCorp Mortgage Investors,  
20 LLC ("StanCorp"), as representative and servicer for the Mortgage Lender, regarding the  
21 Loan, the status of Property and potential disposition options. I have maintained frequent  
22 communications with StanCorp's representatives throughout the Receivership case and the  
23 parties entered into a forbearance agreement, which has been extended to allow for the sale  
24 process to proceed.  
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1           7.       After review of the Loan documents, it was determined that the amount due  
2 on Loan is approximately \$5.3 million. In addition to discussions with StanCorp, the  
3 Receiver entered into discussions with Marcus & Millichap about an initial opinion of  
4 value and potential marketing and sale options for the Property. Marcus & Millichap is a  
5 nationally-recognized commercial brokerage firm with significant expertise brokering and  
6 selling properties comparable to the Property.  
7

8           8.       After receiving an initial opinion of value from Marcus & Millichap, the  
9 Receiver and StanCorp entered into an agreement dated as of August 20, 2024 (the  
10 “Carveout Agreement”), which provides for a sale of the Property and reasonable carveout  
11 for the benefit of the Receivership Estate if the sale proceeds are insufficient to satisfy the  
12 Loan in full. Specifically, the Carveout Agreement provides that the proceeds of any sale  
13 will first be applied to commissions due to Marcus & Millichap (5% of the sale price) and  
14 other closing costs (including tax liens), which are estimated at approximately four percent  
15 (4%) of the sale price. The Receivership Estate will receive the next \$100,000 and thirty  
16 percent (30%) of sale proceeds in excess of \$1,750,000. StanCorp, on behalf of the  
17 Mortgage Lender, will receive the remaining sale proceeds up to the undisputed claim of  
18 the Mortgage Lender to satisfy and release the Mortgage.  
19  
20  
21

22           9.       In addition to the Carveout Agreement, the Receiver negotiated the terms of  
23 the Marcus & Millichap engagement and entered into the Marcus & Millichap Exclusive  
24 Representation Agreement (the “M&M Agreement”), which is subject to Court approval  
25 through the Motion. A copy of the M&M Agreement is attached hereto as **Exhibit A**.  
26 Pursuant to the M&M Agreement, Marcus and Millichap is entitled to commissions equal  
27  
28

1 to five percent (5%) of the ultimate sale price for the Property, which commission will be  
2 paid at closing of the sale. Prior to execution of the M&M Agreement, Marcus & Millichap  
3 informed the Receiver of the absence of any material conflict. A Marcus & Millichap  
4 Declaration of Disinterestedness was recently filed in this case in connection with the  
5 Receiver's efforts to sell the Morningstar at Arcadia facility owned by Receivership Entity,  
6 Glenrosa 32, LLC [ECF 139].  
7

8 10. Pursuant to the Carveout Agreement, it was agreed that Marcus & Millichap  
9 would seek out potential stalking horse bidders to establish a minimum price for the  
10 Property at an auction. In its efforts to find a potential stalking horse buyer, Marcus &  
11 Millichap created marketing materials and a data room with pertinent information on the  
12 Property, including environmental reports, title reports and the lease agreement between  
13 900 West Marion and the Heritage Military Museum, and showcased the Property through  
14 its vast network of brokers. During the initial marketing process, Marcus & Millichap  
15 received four offers for the Property, with purchase prices ranging from \$1,900,000 to  
16 \$3,050,000. After review of the offers, the Receiver accepted the offer made by  
17 Harborview Property Holdings LLC ("Stalking Horse Buyer") and the parties thereafter  
18 negotiated and agreed to the terms of the Asset Purchase Agreement attached hereto as  
19 **Exhibit B** (the "Stalking Horse Agreement"). The Stalking Horse Bidder was chosen  
20 based on several factors, including purchase price, qualification, and anticipated  
21 wherewithal to close the transaction soon after its approval.  
22  
23  
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25

26 11. In accordance with the Carveout Agreement, the Purchase Price, less broker  
27 commissions, other closing costs and payment to StanCorp, will result in approximately  
28

1 \$490,000 in net proceeds for the benefit of the Receivership Estate, and further bidding  
2 could enhance such recoveries. Assuming no higher bids, the Receiver estimates that  
3 StanCorp will be paid approximately \$2,285,500 at closing of the sale.

4 12. I declare under penalty of perjury that the foregoing is true and correct.

5 Dated: San Diego, California  
6 December 2, 2024

*Randall Coxworth*  
7 \_\_\_\_\_  
8 Randall Coxworth

**INDEX TO EXHIBITS**

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**Exhibit A – M&M Agreement**

**Exhibit B - Proposed Asset Purchase Agreement**

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Exhibit A

Marcus & Millichap Engagement Agreement




# Marcus & Millichap

## EXCLUSIVE REPRESENTATION AGREEMENT

**THIS REPRESENTATION AGREEMENT (this "Agreement") IS INTENDED TO BE A LEGALLY BINDING AGREEMENT. PLEASE READ IT CAREFULLY.**

The undersigned [Allen D. Applbaum, receiver of ArciTerra Companies, LLC and its related entities] (the "**Seller**") acting by Allen D. Applbaum, solely in his capacity as court appointed receiver (the "**Receiver**"), and subject to Court approval as further described below hereby employs Marcus & Millichap Real Estate Investment Services Inc. ("**Broker**") and grants to Broker, for a period of time (the "**Term**") commencing on Monday, August 12<sup>nd</sup>, 2024, and ending at midnight on Thursday, January 9<sup>th</sup>, 2025, the exclusive right and authority to sell that certain real property (the "**Property**") located in the City of Punta Gorda, County of Charlotte, State of Florida, and more particularly described as follows, and on the terms set forth herein:

PROPERTY	PURCHASE PRICE
900 W Marion Ave, Punta Gorda, FL 33950  [Parcel ID: 41-22-12-204-001]	

[If the Property described above consists of more than one unique legal parcel, Seller agrees to sell all or any combination of such parcels, and the term "Property" as used herein shall refer to any such combination.] **[NOTE: WHERE MULTIPLE PROPERTIES MAY NOT BE SOLD INDIVIDUALLY AND MUST BE SOLD AS A UNIT, ESPECIALLY WHERE AN AGGREGATE VALUE/PP IS LISTED ABOVE, REPLACE IMMEDIATELY PRECEDING LANGUAGE WITH FOLLOWING:** If the Property described above consists of more than one unique legal parcel, Broker acknowledges that all listed property must be sold together and/or as a single unit and the term "Property" as used herein shall refer to all such property in the aggregate being sold in a single transaction unless otherwise consented to in writing by Seller.]

(For clarity and for the avoidance of doubt, where this Agreement refers to the "knowledge", "agreement", "consent", "acknowledgement" or "discretion" (or words of similar import) of "Seller" (as applicable), to the extent "Seller" shall be interpreted (or shall be required by context) to mean "Receiver", the same shall refer to the actual (unless otherwise expressly set forth herein) knowledge, agreement, consent, acknowledgement or discretion (as applicable) of Receiver solely in his capacity as court appointed receiver for the Seller. However, no personal liability, responsibility for any prior acts of Seller, nor prior knowledge of Seller, shall be imputed to Receiver.)

- 1) **TERMS AND CONDITIONS OF SALE:** Seller authorizes Broker to list the Property for the Purchase Price(s) set forth in the table above.
- 2) **TITLE:** Seller represents and warrants to Broker that to the best of its knowledge, fee title to the Property is now vested with Seller (subject to any matters that a complete title search would show) and that Seller and the individuals executing this Agreement on behalf of Seller are duly authorized and empowered to execute this Agreement and any subsequent purchase agreement, and that, to the best of its knowledge, execution hereof shall not result in any breach of, or constitute a default under, any contract or other agreement to which Seller is a party.
- 3) **COMMISSION:** In consideration of the brokerage services to be rendered by Broker, the commission payable hereunder shall be an amount equal to the sum of [five (5%)] of the gross purchase price paid by a purchaser to the Seller for the Property sold. Commission will be paid, subject to approval and order of the United States District Court for the District of Arizona (as

further set forth below), by Seller upon the occurrence of any of the following events:

- a. The Property is sold, exchanged, or otherwise conveyed during the Term, or any extension thereof, whether by Seller or by or through any other person or entity; or
- b. A sale, exchange or other conveyance of the Property is made within ninety (90) days after the expiration of the Term to a person or entity with whom Broker has actively negotiated (either directly or through another broker or agent), or to whose attention Broker has specifically brought the Property (beyond general advertising or viewing on an or equivalent MLS service), or who was introduced to Seller by Broker as a Prospective Purchaser (herein, "**Prospective Purchaser**"), provided that the name of any such person or entity has either been submitted to Seller by delivery of a written offer to purchase or letter of intent, prior to expiration of the Term, or by delivery to Seller by Broker of written notice of (not more than twenty (20)) said Prospective Purchaser(s) within fourteen (14) calendar days following such expiration. With respect to a sale, exchange or other conveyance to any such Prospective Purchaser, Broker shall conclusively be deemed to be the procuring cause. The term "Prospective Purchaser" shall include that person or entity to whose attention Broker has brought the Property (subject to the foregoing), as well as any partnership, joint venture, corporation, limited liability company, trust or other similar entity in which that person or entity has a controlling interest.

Broker's entitlement to a commission vests on the day of closing, and this Agreement shall constitute an irrevocable instruction to Escrow to pay the applicable commission out of funds deposited for the closing of the transaction, as an express condition of closing. In the case of any sale accomplished through an escrow, this commission shall be paid at close of escrow, and Broker shall be entitled to make demand of any escrow holder for payment from the proceeds of sale. Broker shall be entitled to a commission only if, as and when the close of escrow and the conveyance of the Property actually occurs. If for any reason whatsoever (including, without limitation, the termination of the purchase agreement by Seller or the Prospective Purchase or any default by Seller or the Prospective Purchaser) the purchase and sale contemplated by the purchase agreement is not consummated, no portion of the commission nor any other commission or payment of any kind or nature shall be deemed earned or due and payable to Broker (and no portion of any forfeited earnest money deposit shall be payable to Broker). Except for the commission described in this Agreement, neither Seller nor any of its members, affiliates or related entities shall be responsible for any other commission, fee, payment or other compensation to Broker's with respect to the Property. Broker understands and acknowledges that Seller may modify or terminate the purchase agreement as Seller deems appropriate in its sole and absolute discretion, without obtaining the consent or approval of Broker, and if the purchase agreement is terminated no portion of the commission nor any other commission or payment of any kind or nature whatsoever shall be due to Broker. If a Prospective Purchaser defaults under the terms of the purchase agreement, Seller may take any action Seller deems appropriate but shall not be obligated to commence legal or other proceedings against Prospective Purchaser. Broker and Seller acknowledge and agree that Broker is not and shall not be deemed a third-party beneficiary of the purchase agreement.

- 4) **OPERATING INFORMATION:** Seller agrees to provide Broker with items a – f listed below, to the extent applicable to the Property and in Seller's actual possession or which Seller has reasonable access, as soon as reasonably practicable under the circumstances (unless otherwise specified herein):
  - a. A complete and current rent roll, including lease expiration dates and security deposits.
  - b. The detailed monthly operating statements of the Property.
  - c. All service contracts which affect the Property.
  - d. Any and all documents relating to in any way the following: (1) Special Flood Hazard Area; (2) Dam Failure Inundation Area; (3) Earthquake Fault Zone; (4) Seismic Hazard Zone; (5) High Fire Severity Area; and/or (6) Wildland Fire Area.
  - e. Any and all documents, of any type or nature, which in any way references the existence of mold or mold-related problems with the Property.
  - f. Any and all documents, of any type or nature, which in any way references the existence of lead-based paint or lead- based paint problems with the Property.
- 5) **INSPECTION OF PROPERTY:** Seller agrees that Broker and its representatives shall have the right to

enter upon and inspect the interior and exterior of the Property with Prospective Purchasers with prior reasonable notice, subject to the rights of any tenants (if any), and without unreasonably disturbing the operation of the Property or any tenants (if any). Broker agrees to indemnify and hold harmless Seller and Receiver 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 Broker or any Prospective Purchaser's entry upon the Property to the extent caused by Broker or such Prospective Purchaser's negligence or willful misconduct.

- 6) **SELLER'S REPRESENTATIONS AND WARRANTIES:** This paragraph left intentionally blank.
- 7) **DISCLOSURE OF REAL ESTATE LICENSURE:** Broker hereby represents that it and its personnel providing services are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform its obligations under this Agreement. Broker shall, at its expense, obtain and keep in full force and effect throughout the Term of this Agreement all licenses and permits required to be maintained by Broker in connection with the rendering of the services contemplated herein. Any disclosures required by the state in which this Property is located are attached hereto as **Exhibit A** and are incorporated herein by this reference.
- 8) **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Broker shall assist Seller in marketing the Property and in negotiating the terms and conditions of sale with any Prospective Purchasers. Broker shall not, however, have authority to bind Seller to any contract or purchase agreement. Broker shall not be responsible for performing any due diligence or other investigation of the Property, or for providing professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for confidential information regarding Seller's business or financial condition and the negotiation of the terms of a purchase agreement between Seller and a Prospective Purchaser, Seller and Broker agree that their relationship is at arm's length. Notwithstanding anything contained herein, Seller shall not be obligated in respect of any transaction involving the Property unless and until Seller shall, in its sole and absolute discretion, have entered into final binding agreements with respect thereto. Seller may, at any time and in its sole and absolute discretion, accept or reject any or all offers involving the Property or withdraw the Property from the market, in each case, without liability or obligation.
- 9) **LIMITATION OF LIABILITY:** Except for Broker's gross negligence or willful misconduct, Broker's liability for any breach or negligence in its performance of this Agreement shall be limited to the greater of (a) \$250,000 or (b) three (3) times the amount of compensation (i) actually received by Broker in any transaction hereunder or (ii) if liability arises where no compensation has been earned, the compensation that would have been earned and payable based on a completed closing at the agreed listing price for the Property. 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) **CONFIDENTIALITY:** Broker agrees to keep all information regarding the Seller and the Property confidential and will not disclose any such information to any person or use such information for any purpose other than its efforts to find a purchaser for the Property, provided that Broker may disclose such information to any person requesting such information that Seller reasonably believes has the financial resources necessary to purchase the Property, provided that, at Seller's election and request, such person enters into a confidentiality agreement regarding such information for the benefit of Seller, which confidentiality agreement shall be reasonably acceptable to Seller.
- 11) **BROKER COOPERATION:** Broker is authorized to use its discretion regarding the cooperation with other duly licensed real estate brokers. The sharing of commissions received by Broker with other brokers shall be at the sole and absolute discretion of Broker. Such cooperation will be evidenced by a separate agreement between Broker and any cooperating broker. Seller agrees that, in the event any broker other than Broker or a broker affiliated with Broker is involved in the disposition of the property, Broker shall have no liability to Seller for the acts or omissions of such other broker, who shall not be deemed to be a subagent of Broker. In the event of a co-broker, Seller shall be responsible for the payment of solely any commission outlined in this Agreement without regard to any separate agreement with any co-broker. Notwithstanding anything herein, the

combined commission between Broker and any co-broker may not exceed the five percent (5%) of the gross purchase price set forth herein without prior written consent of the Seller.

- 12) **AFFILIATED BROKERS/DUAL AGENCY:** Broker may be affiliated with other brokerage companies in other states. Broker may disseminate information about the Property to such affiliated brokers, inviting the submission of offers on the Property. Seller authorizes Broker and any affiliated brokers/agents to represent any Prospective Purchaser in the acquisition of the Property, and to submit offers on behalf of such purchasers. Seller understands that this authorization may result in affiliated Brokers or agents of Broker representing both Seller and a Prospective Purchaser. Seller hereby authorizes and consents to such dual agency disclosure and agrees to execute a confirmation of such disclosed agency; provided that Broker shall at all times exercise its obligation under this Agreement with the customary standard of care and with all duties of loyalty, confidentiality, and trust exclusively to Seller, and further subject to the following requirements: (a) Broker will promptly notify Seller in writing in the event that Broker intends to act as a dual agent in a negotiation with a particular Prospective Purchaser (including any Prospective Purchaser submitted after the Term of this Agreement); (b) at the election of Seller in the event of a dual agency, Broker shall appoint separate designated agents for each party. Broker shall not disclose the confidential information of one principal to the other. Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the sale of any portion of the Property without full prior written disclosure to Seller and Seller's prior written consent thereto. No broker fee or commission shall be owed by Seller to Broker in connection with any transaction as to which Broker claims a fee or other commission under this Agreement, where a Prospective Purchaser (including any Prospective Purchaser submitted after the Term of this Agreement) is affiliated with, controlled by or under common control with, Broker or any agent of Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Seller of such affiliation and Seller's specific prior written consent thereto.
- 13) **ATTORNEYS' FEES:** In any litigation, arbitration or other legal proceeding which may arise between any of the parties hereto, including Broker, the prevailing party shall be entitled to recover its costs, including costs of arbitration, and reasonable attorneys' fees in addition to any other relief to which such party may be entitled.
- 14) **TAX WITHHOLDING:** Seller agrees to execute and deliver any instrument, affidavit or statement, or to perform any act reasonably necessary and customary to carry out the provisions of the Foreign Investment in Real Property Tax Act and regulations promulgated thereunder.
- 15) **ADDENDA:** Any addendum attached hereto, and either signed or initialed by the parties shall be deemed a part hereof. This Agreement, including addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever, either express or implied, except as set forth herein. Any future modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.
- 16) **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State where the Property is located.
- 17) **COURT APPROVAL:** The Receiver has been appointed as receiver for Jonathan M. Larmore, ArciTerra Companies, LLC and related entities, including Seller, and is entering into this Agreement and "acting" on behalf of Seller, solely as Receiver pursuant to that certain Order Appointing Temporary Receiver and Temporarily Freezing Assets and Imposing Litigation Injunction dated December 21, 2023, as further supplemented by that certain Order Appointing Receiver, Freezing Assets, and Imposing Litigation Injunction dated May 6, 2024 issued by the United States District Court for the District of Arizona (the "**Court**"), Case No. 23-CV-02470-PHX-DLR. Notwithstanding anything herein to the contrary, the parties to this Agreement acknowledge and agree that this Agreement and the Seller's and Broker's respective obligations under this Agreement are subject to approval and order of the Court. In the event that the approval is denied by the Court this 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.

- 18) **NO BROKER LIEN:** Notwithstanding any provision of this Agreement to the contrary, and to the full extent permissible under the Governing Law of this Agreement, Broker hereby waives and relinquishes any lien or claim against the Property, including the right to file any lien of record, in connection with any dispute under this Agreement as to any commission or other fee due hereunder. Broker shall otherwise retain all available remedies at law.
- 19) **SEVERABILITY:** In the event any term or provision of this Agreement shall be held illegal, unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby and shall remain in full force and effect.
- 20) **MISCELLANEOUS:** 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.

SELLER UNDERSTANDS AND ACKNOWLEDGES THAT BROKER 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 SELLER'S ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL.

[SIGNATURE PAGES FOLLOW]

The undersigned Seller and Broker agree to the terms and conditions set forth in this Agreement.


**SELLER:**

[Allen D. Applbaum, receiver of ArciTerra Companies, LLC and its related entities]

ADDRESS:

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

\_\_\_\_\_  
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\_\_\_\_\_

Signed:   
By: Allen D. Applbaum  
Title: Receiver  
Date: 8/15/2024

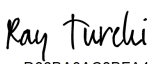
**BROKER:**

**Marcus & Millichap Real Estate Investment Services, Inc.**

ADDRESS:

DocuSigned by:  
  
By: D66BA0AC8BFA457...

300 South Orange Avenue,  
Suite 700, Orlando, FL  
32801  
\_\_\_\_\_

DocuSigned by:  
  
Signed: D66BA0AC8BFA457...  
By: Ray Turchi  
Title: Senior Managing Director Investments  
Date: 8/30/2024 | 12:19:39 PDT

**Exhibit A**

**Required Broker State Disclosures (if any)**

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Exhibit B

Proposed Asset Purchase Agreement

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**EXECUTION COPY**

**ASSET PURCHASE AGREEMENT**

his Asset Purchase Agreement (this “**Agreement**”) is entered into as of November \_\_, 2024 (the “**Effective Date**”) by and between HARBORVIEW PROPERTY HOLDINGS, LLC, a Florida limited liability company, and its permitted assigns (“**Buyer**”), and 900 West Marion Avenue FL LLC (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 certain real property consisting of approximately 3.98 acres located at 900 W Marion Ave, Punta Gorda, FL 33950 (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**”); 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 auction scheduled by the Court in the Bidding Procedures Order to consider higher and better offers as determined by the Receiver for the purchase of the Property.

“**Auction Price**” means the highest and best sale price for the Property established at the conclusion of the Auction.

“**Bidding Procedures Order**” shall mean such Order entered by the Court, substantially in the form annexed hereto as Exhibit G, that, *inter alia*: (i) schedules the Auction and Sale Hearing, (ii) approves bidding procedures for bidders to submit offers for the Property at the Auction, and (iii) approves and authorizes payment of the Breakup Fee from the Prevailing Bidder sale proceeds to the Buyer, in the event the Prevailing Bidder is not the Buyer.

“**Breakup Fee**” means 3.3% of the Purchase Price (\$100,000) and payable to Buyer from the sale proceeds of sale to a Prevailing Bidder other than Buyer.

“**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, contracts, including service, landscaping or other contracts (if and as applicable), and other agreements, if any, relating to the ownership and maintenance of the Property, copies of which are provided to Buyer with the Due Diligence Materials, together with, as applicable and to the extent applicable and 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, balances on deposit to the credit of Seller with banking institutions (all of which shall be retained by Seller).

“**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 for or in connection with its ownership or operation of the Property, and (c) communications between Seller or any Affiliate and their respective attorneys.

**“Insurable Title”** means good and marketable title to the Real Property, free and clear of any and all Encumbrances, except Permitted Encumbrances.

**“Intangible Property”** means, if any, (a) all 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, and (b) all development rights and goodwill related to any portion of the Property, but excluding the Excluded Assets.

**“Leases”** means those unexpired leases, occupancy or other written agreements entered into with tenants or occupants of the Property, 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 Property.

**“Parties”** refers to the Buyer and Seller together.

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

**“Prevailing Bidder”** means the bidder who submits the Auction Price.

**“Qualified Bid”** means a bid submitted in the Auction by a Qualified Bidder.

**“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.

**“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, environmental studies and other reports, which relate to the Property, which are in the present possession or control of the Seller (the "**Records**"); and

**2.1.5** All 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.

### **III.** **PURCHASE PRICE AND EARNEST MONEY**

**3.1** Purchase Price. The purchase price (the "**Purchase Price**") for the Property shall be the higher of (a) Three Million Fifty Thousand and 00/100 Dollars (\$3,050,000.00), or (b) the Auction Price submitted by the Buyer at the Auction. 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.

**3.2** Earnest Money. An earnest money deposit in the amount of One Hundred Thousand and 00/100 Dollars (\$100,000) (the "**Initial 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

two days (2) days following execution of this Agreement by Buyer. If Buyer is selected as the Prevailing Bidder or Backup Bidder (as defined below) at the Auction, then within two days following such selection, Buyer shall deposit an additional earnest money deposit, such that the earnest money deposit shall be equal to five percent (5%) of the Purchase Price after the Auction (the “**Additional Earnest Money**” and together with the Initial Earnest Money, the “**Earnest Money**”).

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

#### **IV.**

### **SALE SUBJECT TO AUCTION AND 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 the Receiver’s receipt of the Initial Earnest Deposit, the Receiver, on behalf of the Receivership Estates and Seller, shall file with the Court, the Sale Motion seeking entry of the Bidding Procedures Order and Sale Order. The Receiver shall affix a true and complete copy of this Agreement to the Sale Motion filed with the Court.

**4.2** Court Filings. The Receiver agrees to diligently prosecute the Sale Motion and seek entry of the Bidding Procedures Order and Sale Order. The Receiver shall use his best efforts to cause the Sale Order to be entered and become a Final Order as soon as practicable after entry. Notwithstanding the foregoing, nothing in this Agreement precludes the Parties from consummating the transactions contemplated by this Agreement if the Sale Order has been entered and has not been stayed.

**4.3** Auction. The Auction shall be held at a place approved by the Bidding Procedures Order and will be held to consider higher and/or better offers submitted by Qualified Bidders, as defined in Section 4.4, to purchase the Property on such date as determined by the Court. The Auction shall continue until there is only one bid that is the highest and best bid, which is the Auction Price. The Earnest Money submitted by Buyer shall be irrevocable and nonrefundable until the closing of the sale of the Property to the Prevailing Bidder, at which time, the Earnest Money shall be repaid to Buyer, together with the Breakup Fee, in the event the Buyer is not the Prevailing Bidder, as provided by the Bidding Procedures Order.

**4.4** Qualified Bidders. To be determined a qualified bidder (a “**Qualified Bidder**”), one must:

(i) provide a fully executed purchase and sale agreement for the Property in form substantially similar to this Agreement (“**Qualified Bid PSA**”), acceptable to the Receiver in his sole discretion;

(ii) provide an earnest money deposit (the “**Bid Deposit**”) by wire transfer or cashier’s check in the amount of five percent (5%) payable to the Receiver, which amount shall be non-refundable to the Qualified Bidder that is deemed the Prevailing Bidder at the Auction if for any reason (a) the Prevailing Bidder fails to finally close the purchase and sale such that title transfers by

no later than the Closing Date or (b) the Prevailing Bidder fails to provide the balance of the purchase price to the Receiver one day prior to the Closing Date;

(iii) provide proof of funds in such form as shall be required by Receiver. Each Qualified Bidder must provide the Qualified Bid PSA and Bid Deposit to the Receiver no later than five (5) business days prior to the Auction; and Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative. If there are multiple Qualified Bidders at the Auction, the Receiver shall obtain the Court's approval of the Prevailing Bidder and also the Qualified Bidder with the next highest bid at the Auction (the "**Backup Bidder**"). At the conclusion of the Auction, the Prevailing Bidder and Backup Bidder shall increase the Bid Deposit amount to ten percent (10%) of the Purchase Price after Auction. The Receiver shall retain the Backup Bidder's Bid Deposit until (a) the closing for the Prevailing Bidder occurs, in which event the Backup Bidder's Bid Deposit shall immediately be returned to the Backup Bidder, or (b) the closing for the Prevailing Bidder fails to occur, in which event the Backup Bidder's Bid Deposit shall be applied to the purchase price for the Backup Bidder's closing as set forth herein below. If the Prevailing Bidder fails to close the purchase and sale of the Property, the Backup Bidder shall be deemed to be the Prevailing Bidder and the Receiver shall provide written notice thereof to the Backup Bidder. Within ten (10) days after the Backup Bidder's receipt of such notice from the Receiver, the closing for the Backup Bidder's purchase of the Property shall occur. Pursuant to the foregoing, if the initial Prevailing Bidder fails to close the purchase and sale of the Property and the Court has approved a Backup Bidder, the Receiver shall proceed to close with the Backup Bidder without any obligation to conduct another auction as a condition precedent to such closing. The Prevailing Bidder's Bid Deposit shall be applied to the purchase price at closing, if the sale is approved by the Court and the Prevailing Bidder closes the purchase and sale of the Property.

**4.5 Overbids, Bid Increments, and Auction.** The minimum initial overbid shall be Five Hundred Thousand and No/100 Dollars (\$500,000.00). If any overbids are received and are Qualified Bids, the sale of the Property will be subject to the Auction. As applicable, the Receiver will provide the Auction instructions to all Qualified Bidders and only Qualified Bidders may make bids at the Auction. All bids will be subject to overbids in increments of Fifty Thousand and No/100 Dollars (\$50,000.00).

**4.6 Consent to Court Jurisdiction.** All Qualified Bidders appearing at the Auction 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 any agreements to purchase the Property.

**4.7 Court Approval if No Qualified Bids are Received.** In the event no Qualified Bids are received by the Receiver, the Receiver will ask the Court to approve the sale to Buyer pursuant to this Agreement.

**4.8 Receiver's Right to Determine Conduct of Auction.** The Receiver reserves the right to deny any person admittance to the Auction, to postpone or cancel the Auction, and to change any terms or procedures of the Auction or the particular conditions of sale, as necessary, upon notice to Buyer, and any Qualified Bidders, prior to or at the Auction, without further Court order.

**4.9 No Contingencies.** There is no contingency of any kind or nature that will permit the Buyer or any Qualified Bidder to withdraw its bid and receive a return of the Earnest Money other than (a) the Court's denial of the Sale Motion, (b) the Receiver's inability to deliver Insurable Title to



the Real Property, or (c) the Buyer not being selected as the Prevailing Bidder after the Auction (the “**Excluded Contingencies**”). The Receiver shall have the right in his sole and absolute option to adjourn the Closing for a period not to exceed sixty (60) days 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.

**4.10 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 B 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 C 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.** Intentionally Omitted;

**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 D 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 E 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 F 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.** The Sale Order;

**5.2.1.11.** 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

**5.2.1.12.** All keys to the Property, if applicable, which are in the possession or control of Seller.

**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) Assignment of Intangibles; and (iii) 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 Property is being conveyed and 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; (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 Initial 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 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 (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 Property is materially damaged, destroyed or 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, if any, up to the amount of the Purchase Price. For purposes of this **section**, a "**material portion**" of the Property 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 Property, (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 of the Property or materially reduce the market value of the Property as a result thereof.

**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 Florida.

**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** To the extent required by any of the Leases or applicable law, Buyer shall (a) 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 and (b) 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** If the Property is served by any utilities, Seller shall arrange for final meter (if any) 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 connected utility actually serving the Property, if any, 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 any applicable 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 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, if any, shall be and remain the property of Seller subsequent to the Closing of the transaction contemplated hereby.

**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:                    900 West Marion Avenue FL, LLC  
    c/o Allen D. Applbaum, Receiver  
    StoneTurn  
    17 State Street, 2<sup>nd</sup> 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: Gerard DiConza  
Tel. (212) 682-4940  
Email: gdiconza@archerlaw.com

IF TO BUYER:                    Harborview Property Holdings LLC

24211 Harborview Road  
Punta Gorda, FL 33980  
Tel. (941) 979-2336  
Attn: Anthony Dubbaneh  
Email: anthony@harborviewcapitalgroup.com

**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”**

**900 WEST MARION AVE FL, LLC, a**  
Delaware limited liability company

Signed by:  
  
By: 8F2188CF34F645E...  
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”**

**HARBORVIEW PROPERTY HOLDINGS,**  
LLC, a Florida limited liability company

By:   
Anthony Dubbaneh (Nov 7, 2024 17:32 EST)  
Name: Anthony Dubbaneh  
Title: Manager - Member

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: \_\_\_\_\_

**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**

**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 C**

**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 “**Property**”); 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 Property 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 D**

**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**”).

5. 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 vacant real property located in \_\_\_\_\_, together with certain rights appurtenant thereto (the “**Property**”); pursuant to that certain Asset Purchase Agreement dated as of [ ], between Assignor and Assignee (the “**APA**”)

6. 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 Property as of the date hereof (the “**Intangibles**”).

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

8. 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:

(a) 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 (a) all transferable certificates (including the certificates of occupancy for the Real Property), licenses, permits and now in effect with respect to the Property, at no cost to Seller, and (b) all development rights and goodwill related to any portion of the Property, if any, owned by Seller and relating solely to the Property.

(b) 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.

(c) 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.

(d) 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 [\_\_\_\_\_].

(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 Intangibles as of the date first set forth above.

**ASSIGNOR:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT E**

**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**”).

1. 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 vacant real property located in \_\_\_\_\_, together with certain rights appurtenant thereto (the “**Property**”); 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 Contracts (other than Excluded Contracts) applicable to the Property as of the date hereof (the “**Contracts**”).

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

9. 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:

(f) 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).

(g) 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.

(h) 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.



(i) 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 [\_\_\_\_\_].

(j) 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 F**  
**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: \_\_\_\_\_

**EXHIBIT G**

**FORM BIDDING PROCEDURES ORDER**

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

3 Securities and Exchange Commission,

4 Plaintiff,

5 v.

6 Jonathan Larmore; ArciTerra Companies,  
7 LLC; ArciTerra Note Advisors II, LLC;  
8 ArciTerra Note Advisors III, LLC;  
9 ArciTerra Strategic Retail Advisor, LLC;  
and Cole Capital Funds, LLC,

10 Defendants, and

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

15 Relief Defendants.  
16

Case No. 23-cv-02470-DLR

**[PROPOSED] ORDER (I)**  
**APPROVING THE ENGAGEMENT**  
**AND COMPENSATION OF**  
**MARCUS & MILLICHAP REAL**  
**ESTATE INVESTMENT SERVICES**  
**AS BROKER FOR THE SALE OF**  
**PROPERTY LOCATED AT 900**  
**WEST MARION AVENUE, PUNTA**  
**GORDA, FLORIDA; (II)**  
**APPROVING THE AUCTION AND**  
**BIDDING PROCEDURES FOR THE**  
**SALE OF THE PROPERTY; AND**  
**(III) GRANTING RELATED**  
**RELIEF**

17  
18 Having considered the Receiver’s Motion for orders: (A) approving (i) the  
19 Receiver’s engagement and compensation of Marcus & Millichap Real Estate Investment  
20 Services (“Marcus & Millichap”) as broker for the sale of real property owned by  
21 Receivership Entity,<sup>1</sup> 900 West Marion Ave FL, LLC (“900 West Marion”), and located  
22 at 900 West Marion Avenue, Punta Gorda, Florida, including all buildings, equipment,  
23 furniture and fixtures (the “Property”), and (ii) the proposed auction and bidding  
24 procedures for the sale of the Property (the “Bidding Procedures”), including scheduling  
25  
26

27  
28 <sup>1</sup> Capitalized undefined terms shall have the meanings ascribed to them in the Motion.

1 an auction and sale hearing date to consider the sale of the Property; (B) approving the sale  
2 of the Property to Harborview Property Holdings LLC (“Stalking Horse Buyer”) or such  
3 other bidder that submits a higher and better offer at a public auction, free and clear of all  
4 liens, claims, encumbrances and interests; and (C) granting related relief (the “Motion”);  
5 and upon consideration of any and all responses and replies relating to the Motion; and  
6 upon finding that due and sufficient notice of the Motion has been given and no other or  
7 further notice need be given; and after due deliberation and it appearing that the relief  
8 sought in the Motion is in the best interest of the Receivership Estate, its creditors, and  
9 other parties in interest,  
10  
11

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

13  
14 1. This Court has jurisdiction over this matter, the above-captioned defendants  
15 and relief-defendants, and over all property of the Receivership Estate.

16 2. Proper, timely, adequate, and sufficient notice of the Motion has been  
17 provided, such notice was sufficient and appropriate under the particular circumstances,  
18 and no other or further notice of the Motion or relief sought in the Motion is necessary or  
19 required.  
20

21 3. A reasonable opportunity to object or be heard regarding the requested relief  
22 in the Motion and this Order has been afforded to all interested parties, including, without  
23 limitation, all parties to this action and all persons or entities known to the Receiver that  
24 have or may have an interest in any portion of the Property.  
25

26 4. The Receiver has the power and authority to sell the Property, or any portion  
27 of the Receivership Estate, at a public sale pursuant to and in accordance with the Bidding  
28

1 Procedures, free and clear of liens, claims, and encumbrances, with such liens, claims, and  
2 encumbrances attaching to the proceeds of such sale with the same validity and in the same  
3 order of priority.  
4

5 5. Upon the Receiver's appointment and after investigating the financial  
6 condition of the Receivership Estate, the Receiver undertook a comprehensive effort to  
7 solicit interest from potential purchasers for the Property.  
8

9 6. The Receiver's entry into the Marcus & Millichap Exclusive Representation  
10 Agreement, and the underlying retention of Marcus & Millichap, as a disinterested  
11 professional, is in the best interest of the Receivership Estate and its creditors.  
12

13 7. The Receiver's existing and continued marketing efforts, combined with the  
14 publication set forth herein is reasonable and sufficient.  
15

16 8. The Receiver has demonstrated a sufficient basis and compelling  
17 circumstances requiring the entry of this Order, the selection of the Stalking Horse Buyer,  
18 the Break-up Fee provided to the Stalking Horse Buyer, and the proposed sale of the  
19 Property in accordance with the Bidding Procedures, and such actions: (a) are appropriate  
20 exercises of the Receiver's reasonable business judgment; (b) are in the best interest of the  
21 Receivership Estate and its creditors; and (c) meet the requirements of and are consistent  
22 with 28 U.S.C. §§ 2001, 2002, and 2004.  
23

24 9. The Receiver's authorization to pay the Break-up Fee is reasonable under the  
25 circumstances as an essential inducement and condition relating to the Stalking Horse  
26 Buyer's entry into, and continuing obligations under the Stalking Horse Agreement.  
27  
28



1           10. The Receiver’s promise to pay the Break-up Fee, which has induced the  
2 Stalking Horse Buyer to submit its bid that will serve as a minimum or floor bid on which  
3 the Receiver can rely, provides a material benefit to the Receivership Estate, by increasing  
4 the likelihood that the best possible purchase price for the Property will be received. The  
5 Break-up Fee may be paid by the Receiver without further hearing or proof upon closing  
6 of a sale of the Property to any bidder other than the Stalking Horse Buyer who submits a  
7 higher and better offer at the Auction.  
8  
9

10           11. The Bidding Procedures are reasonable, non-collusive, negotiated in good  
11 faith, substantively and procedurally fair, and will enable the Receiver to obtain the highest  
12 value for the Property.  
13

14           12. The Receiver may sell the Property in accordance with the Bidding  
15 Procedures.  
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 any and all objections to the Motion concerning the Bidding  
21 Procedures and relief granted in this Order that have not been withdrawn, waived, resolved,  
22 sustained, or settled, are expressly denied and overruled in their entirety; and it is further  
23

24           **ORDERED** that the Marcus & Millichap Exclusive Representation Agreement as  
25 set forth in **Exhibit [ ]** to the Declaration of Randall Coxworth annexed to the Motion, is  
26 approved; and it is further  
27  
28

1           **ORDERED** that the Stalking Horse Agreement as set forth in **Exhibit [ ]** to the  
2 Declaration of Randall Coxworth, annexed to the Motion, is approved; and it is further

3           **ORDERED** that the Bidding Procedures, as set forth in **Exhibit A** to this Order are  
4 approved in their entirety; and it is further  
5

6           **ORDERED** that the Receiver may proceed to sell the Property, in accordance with  
7 the Bidding Procedures; and it is further  
8

9           **ORDERED** that the Receiver may proceed to sell the Property free and clear of  
10 liens, claims, encumbrances, and other interests at a public auction to be held by Zoom in  
11 accordance with and subject to the Bidding Procedures on [            ] [            ],  
12 2025, at [        :        ] [ .m] (Phoenix Time); and it is further  
13

14           **ORDERED** that the Stalking Horse Buyer’s deposit (as provided in the Stalking  
15 Horse Agreement) shall be held in escrow and shall not constitute or be deemed to  
16 constitute property of any receivership estate or the Receiver, and the Receivership Estate  
17 and Receiver shall have no interest of any kind (equitable or otherwise) in the deposit  
18 unless and until such deposit is actually unconditionally paid or payable in accordance with  
19 the Stalking Horse Agreement, and no liens, claims or encumbrances shall attach to the  
20 deposit; and it is further  
21

22           **ORDERED** that the Sale Hearing shall be held telephonically or as  
23 otherwise ordered by the Court, on [            ] [        ], 2025, at [        :        ] [.m]  
24 (Phoenix Time); and it is further  
25

26           **ORDERED** that any objection on any basis to the proposed sale of the Property  
27 must be filed in writing with the Court no later than [            ] [            ], 2025, at [        ]  
28

1 : ] [\_.m] (Phoenix Time) (the “Objection Deadline”) and served on (a) counsel  
2 to the Receiver, Archer & Greiner, P.C., Attn: Allen G. Kadish and Harrison H.D.  
3 Breakstone, 1211 Avenue of the Americas, New York, New York 10036, and (b) counsel  
4 to the Stalking Horse Buyer, [INSERT]; and it is further

6 **ORDERED** that the Receiver shall: (a) provide notice to (i) all relevant federal,  
7 state and local taxing and regulatory authorities or offices that have a reasonably known  
8 interest in the relief requested in the Motion; (ii) counsel to the Stalking Horse Buyer; (iii)  
9 the parties set forth on the certificate of service of the Motion and any other party that has  
10 entered an appearance in this case or otherwise requested notice in this case; and (iv) all of  
11 the persons or entities the Receiver has identified as (A) having an interest in the Property  
12 or (B) potentially interested in acquiring the Property; (b) publish a notice of Auction and  
13 Sale Hearing with [local Punta Gorda publication] once a week for at least four (4) weeks  
14 prior to the proposed Auction, which publication shall be deemed due, timely, good, and  
15 sufficient notice of the entry of this Order, the Sale Order and all proceedings to be held in  
16 accordance with this Order; and it is further

20 **ORDERED** that any person or entity seeking to participate as a bidder at the  
21 Auction shall comply with the Bidding Procedures; and it is further

23 **ORDERED** that each Qualified Bidder participating at the Auction will be required  
24 to confirm that it has not engaged in any collusion with respect to the bidding on or sale of  
25 the Property; and it is further

26 **ORDERED** that under no circumstances shall any prospective purchaser have any  
27 claims at law or equity against the Receiver, his professionals or the Receivership Estate  
28

1 arising out of their participation or involvement in the Auction or the purchase and sale of  
2 the Property; and it is further

3           **ORDERED** that this Order shall become effective immediately upon its entry; and  
4  
5 it is further

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

8  
9 Dated: \_\_\_\_\_, 2024

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11 \_\_\_\_\_

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**EXHIBIT A**

**BIDDING PROCEDURES**

**900 WEST MARION AVENUE, PUNTA GORDA, FLORIDA**

Allen D. Applbaum, as receiver (the “Receiver”) for ArciTerra Companies, LLC and related entities including, but not limited to 900 West Marion Avenue FL, LLC (“900 West Marion”), submits the following sale and bidding procedures (the “Bidding Procedures”) for the sale of sale of real property owned by 900 West Marion and located at 900 West Marion Avenue, Punta Gorda, Florida, including all buildings, equipment, furniture and fixtures (the “Property”), free and clear of all liens, claims, encumbrances and interests, as may be approved by the United States District Court for the District of Arizona.

There will be a public Auction to submit and accept bids for the Property held by Zoom on February \_\_, 2025, beginning at 10:00 a.m. (Phoenix Time). Instructions for attending the Auction will be delivered to Qualified Bidders (as defined below) by Marcus & Millichap Real Estate Investment Services, as broker for the Receiver (“Marcus & Millichap”).

The Receiver has entered into an Asset Purchase Agreement with Harborview Property Holdings LLC (the “Stalking Horse Buyer”), dated November \_\_, 2024 (the “Stalking Horse Agreement”) providing for a purchase price for the Property of Three Million Fifty Thousand and 00/100 Dollars (\$3,050,000.00) (the “Purchase Price”).

Only “Qualified Bidders” shall be permitted to attend the Auction and submit bids for the Property. A “Qualified Bidder” is a prospective purchaser who, no later than 10 days prior to the Auction:

- a. Submits a written bid proposal to Marcus & Millichap that (1) is accompanied by a fully executed asset purchase agreement for the Property for the Purchase Price, plus the Minimum Initial Overbid Amount (defined below), and with terms substantially similar in all material aspects to the terms of the Stalking Horse Agreement and otherwise acceptable to the Receiver in his sole discretion (a “Qualified Bid PSA”), and (2) confirms such prospective purchaser’s ability to close and consummate the transaction no later than thirty-five (35) days of entry of the Sale Order.
- b. Provides evidence, in a form reasonably acceptable to the Receiver, that the prospective purchaser has funds immediately available to pay the Purchase Price for the Property, plus the Minimum Initial Overbid Amount.

- 1 c. Submits a good faith deposit of five percent (5%) of the amount bid by such  
2 prospective purchaser (the “Deposit”) by wire transfer or certified bank check to  
3 be held in escrow by First Chicago Title Company. Deposit instructions will be  
4 provided upon request to Marcus & Millichap or the Receiver’s undersigned  
5 counsel. The Deposit of each prospective purchaser that complies with  
6 subsections a. and b. above (each, a “Qualified Bidder”) that is not determined  
7 at the Auction to have submitted the Successful Bid (as defined below) or the  
8 Back Up Bid (as defined below) shall be irrevocable and non-refundable until  
9 such time as the Auction concludes or the Receiver receives and accepts a higher  
10 or better bid at the Auction. The Deposit submitted by a Qualified Bidder that  
11 submits the Back Up Bid shall be irrevocable and nonrefundable until the closing  
12 of the sale of the Property to the Successful Bidder.
- 13 d. The Stalking Horse Buyer is Deemed a Qualified Bidder: Notwithstanding the  
14 bidding requirements above, the Stalking Horse Buyer is deemed a Qualified  
15 Bidder.
- 16 e. Minimum Initial Overbid and Subsequent Overbids: All initial overbids must be  
17 at least \$500,000 in excess of the Purchase Price (the “Minimal Initial Overbid  
18 Amount”). Subsequent overbids shall be in increments of at least \$50,000 above  
19 the Minimal Initial Overbid Amount and subsequent higher bids.
- 20 f. Bidding at the Auction: The Auction shall continue until there is only one bid  
21 made by a Qualified Bidder (a “Qualified Bid”) that the Receiver, in consultation  
22 with Marcus & Millichap and his other professionals, determines is the highest  
23 and best Qualified Bid (the “Successful Bid”). The Receiver shall also  
24 determine which Qualified Bid is the second highest and best Qualified Bid (the  
25 “Back Up Bid”). To the extent the Stalking Horse Buyer Purchase Price is the  
26 second highest and best Qualified Bid it shall be the Back Up Bid.
- 27 g. Due Diligence. All Qualified Bidders will be permitted to conduct due diligence  
28 on the Property, including via a review of the due diligence materials prepared  
by Marcus & Millichap, prior to the Auction.
- h. No Contingencies. The sale to any Qualified Bidder shall not be subject to any  
contingencies, including without limitation, for financing, due diligence, or  
inspection.
- i. As Is/Where Is Purchase. The sale to any Qualified Bidder shall be on an "AS-  
IS, WHERE-IS" basis, with no representations or warranties made by the  
Receiver, his professionals, or the Receivership Entities.

**EXHIBIT B**

**SALE NOTICE**

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

Securities and Exchange Commission,

Plaintiff,

v.

Jonathan Larmore; ArciTerra Companies,  
LLC; ArciTerra Note Advisors II, LLC;  
ArciTerra Note Advisors III, LLC;  
ArciTerra Strategic Retail Advisor, LLC;  
and Cole Capital Funds, LLC,

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-DLR

**NOTICE OF PUBLIC SALE OF  
PROPERTY LOCATED AT 900  
WEST MARION, PUNTA GORDA,  
FLORIDA**

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 900 West Marion Avenue FL, LLC (“900 West Marion”), intends to sell, through his broker, Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”), the real property owned by 900 West Marion and located at 900 West Marion Avenue, Punta Gorda, Florida, including all buildings, equipment, furniture and fixtures (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

1 Property, and (ii) the proposed auction and bidding procedures for the sale of the Property  
2 (the “Bidding Procedures”), including the scheduling of an Auction and Sale Hearing to  
3 consider the sale of the Property; (B) approving the sale of the Property to Harborview  
4 Property Holdings LLC (“Stalking Horse Buyer”) or such other bidder that submits a  
5 higher and better offer at a public auction, free and clear of all liens, claims, encumbrances  
6 and interests; and (C) granting related relief (the “Sale Motion”), the Receiver is soliciting  
7 higher and better offers for the Property.

8  
9 The Receiver is soliciting higher and better offers by means of an Auction, which  
10 shall be governed by the terms and conditions of the order establishing bidding procedures  
11 (the “Bidding Procedures Order”) approved by the Court.

12  
13 The Sale Motion and the Bidding Procedures Order are on file with the United States  
14 District Court for the District of Arizona, Sandra Day O’Connor U.S. Courthouse, 401 W.  
15 Washington St., Suite 130, SPC 1, Phoenix, Arizona 85003-2118 (the “Court”), and are  
16 available for review during regular business hours. **Copies of the Sale Motion, the  
17 Bidding Procedures Order, and the Stalking Horse Buyer Asset Purchase Agreement  
18 are also available upon request from the undersigned or by visiting the Receiver’s  
19 website at [www.arciterrareceivership.com](http://www.arciterrareceivership.com).**

20  
21 OBJECTIONS, if any, to the relief requested in the Sale Motion or to final approval  
22 of the proposed Sale of the Property must be filed in writing with the Clerk of the Court on  
23 or before **January \_\_, 2025** at 5:00 p.m., Phoenix Time (the “Objection Deadline”). A copy  
24 of the objection must also be served on all of the following so as to be received by the  
25 Objection Deadline: (i) counsel to the Receiver, Archer & Greiner, P.C., Attn: Allen G.  
26 Kadish and Harrison H.D. Breakstone, 1211 Avenue of the Americas, New York, New  
27 York 10036, and (b) counsel to the Stalking Horse Buyer, **INSERT**.

28  
29 **Through this Notice, HIGHER AND BETTER OFFERS to purchase the  
30 Property are hereby solicited.** If offers are timely received, an auction will be held on  
31 February \_\_, 2025 at 10:00 a.m., Phoenix Time, by Zoom. Instructions for attending the  
32 Auction will be delivered by Marcus & Millichap to all Qualified Bidders (as defined in  
33 the Bidding Procedures Order).

34  
35 A FINAL HEARING on the Sale Motion will take place on February \_\_, 2025 at  
36 \_\_:00 a.m., Phoenix Time, telephonically or as otherwise ordered by the Court, before the  
37 Honorable Douglas L. Rayes.

38  
39 Please be advised that any of the foregoing dates may be changed by the Court  
40 without further notice.

41  
42 If you have any questions regarding or would like copies of materials relating to the  
43 information in this Notice, please make such request in writing to Counsel for the Receiver,  
44



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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# APA (900 West Marion Punta Gorda) - 11.6.24 clean

Final Audit Report

2024-11-07

Created:	2024-11-07
By:	Thomas Klein (teklein10@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAgBg4LKclhXB_iZBwWcZ9SJODasp4ObzS

## "APA (900 West Marion Punta Gorda) - 11.6.24 clean" History

-  Document created by Thomas Klein (teklein10@gmail.com)  
2024-11-07 - 8:15:14 PM GMT
-  Document emailed to Anthony Dubbaneh (dubbaneh@gmail.com) for signature  
2024-11-07 - 8:15:24 PM GMT
-  Email viewed by Anthony Dubbaneh (dubbaneh@gmail.com)  
2024-11-07 - 10:32:27 PM GMT
-  Document e-signed by Anthony Dubbaneh (dubbaneh@gmail.com)  
Signature Date: 2024-11-07 - 10:32:42 PM GMT - Time Source: server
-  Agreement completed.  
2024-11-07 - 10:32:42 PM GMT

**EXHIBIT 2**

**SALE PROCEDURES ORDER**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Securities and Exchange Commission,

Plaintiff,

v.

Jonathan Larmore; ArciTerra Companies,  
LLC; ArciTerra Note Advisors II, LLC;  
ArciTerra Note Advisors III, LLC;  
ArciTerra Strategic Retail Advisor, LLC;  
and Cole Capital Funds, LLC,

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-DLR

**[PROPOSED] ORDER (I)  
APPROVING THE ENGAGEMENT  
AND COMPENSATION OF  
MARCUS & MILLICHAP REAL  
ESTATE INVESTMENT SERVICES  
AS BROKER FOR THE SALE OF  
REAL PROPERTY LOCATED AT  
900 WEST MARION AVENUE,  
PUNTA GORDA, FLORIDA; AND  
(II) APPROVING THE BIDDING  
AND PROCEDURES FOR THE  
SALE OF THE PROPERTY**

Having considered the Receiver’s Motion for orders: (I) approving (a) the Receiver’s engagement and compensation of Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”) as broker for the sale of real property located at 900 West Marion Avenue, Punta Gorda, Florida 33950, including all buildings, equipment, furniture and fixtures located thereon (the “Property”), owned by Receivership Entity,<sup>1</sup> 900 West Marion Avenue FL, LLC (“900 West Marion”), and (b) the proposed bidding and auction procedures (the “Sale Procedures”) for the sale of the Property; and (II) approving the sale

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<sup>1</sup> Capitalized undefined terms shall have the meanings ascribed to them in the Motion.

1 of the Property to Harborview Property Holdings LLC (“Stalking Horse Buyer”) pursuant  
2 to the Asset Purchase Agreement dated as of November 11, 2024 (the “Stalking Horse  
3 Agreement”) or such other bidder that submits a higher and better offer at a public auction,  
4 free and clear of all liens, claims, encumbrances and interests (the “Motion”); and upon the  
5 Declaration of Randall Coxworth in Support of the Motion (the “Coxworth Declaration”);  
6 and upon consideration of any and all responses and replies relating to the Motion; and  
7 upon finding that due and sufficient notice of the Motion has been given and no other or  
8 further notice need be given; and after due deliberation and it appearing that the relief  
9 sought in the Motion is in the best interest of the Receivership Estate, its creditors, and  
10 other parties in interest,  
11  
12

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

14  
15 1. This Court has jurisdiction over this matter, the above-captioned defendants  
16 and relief defendants, and over all property of the Receivership Estate.

17  
18 2. Proper, timely, adequate, and sufficient notice of the Motion has been  
19 provided, such notice was sufficient and appropriate under the particular circumstances,  
20 and no other or further notice of the Motion or relief sought in the Motion is necessary or  
21 required.

22  
23 3. A reasonable opportunity to object or be heard regarding the requested relief  
24 in the Motion and this Order has been afforded to all interested parties, including, without  
25 limitation, all parties to this action and all persons or entities known to the Receiver that  
26 have or may have an interest in any portion of the Property.  
27  
28

1           4.       The Receiver has the power and authority to sell the Property, or any portion  
2 of the Receivership Estate, at a public sale pursuant to and in accordance with the Sale  
3 Procedures, free and clear of liens, claims, and encumbrances, with such liens, claims, and  
4 encumbrances attaching to the proceeds of such sale with the same validity and in the same  
5 order of priority.  
6

7           5.       Upon the Receiver's appointment and after investigating the financial  
8 condition of the Receivership Estate, the Receiver undertook a comprehensive effort to  
9 solicit interest from potential purchasers for the Property.  
10

11           6.       The Receiver's entry into the Marcus & Millichap Exclusive Representation  
12 Agreement (the "M&M Agreement") annexed as an exhibit to the Coxworth Declaration,  
13 and the underlying retention of Marcus & Millichap, as a disinterested professional, is in  
14 the best interest of the Receivership Estate and its creditors.  
15

16           7.       The Receiver's existing and continued marketing efforts, combined with the  
17 publication set forth herein is reasonable and sufficient.  
18

19           8.       The Receiver has demonstrated a sufficient basis and compelling  
20 circumstances requiring the entry of this Order, the selection of the Stalking Horse Buyer,  
21 the Break-up Fee provided to the Stalking Horse Buyer, and the proposed sale of the  
22 Property in accordance with the Sale Procedures, and such actions: (a) are appropriate  
23 exercises of the Receiver's reasonable business judgment; (b) are in the best interest of the  
24 Receivership Estate and its creditors; and (c) meet the requirements of and are consistent  
25 with 28 U.S.C. §§ 2001 and 2002.  
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1           9.       The Receiver’s authorization to pay the Break-up Fee is reasonable under the  
2 circumstances as an essential inducement and condition relating to the Stalking Horse  
3 Buyer’s entry into, and continuing obligations under the Stalking Horse Agreement.  
4

5           10.       The Receiver’s promise to pay the Break-up Fee, which has induced the  
6 Stalking Horse Buyer to submit its bid that will serve as a minimum or floor bid on which  
7 the Receiver can rely, provides a material benefit to the Receivership Estate, by increasing  
8 the likelihood that the best possible purchase price for the Property will be received. The  
9 Break-up Fee may be paid by the Receiver without further hearing or proof upon closing  
10 of a sale of the Property to any bidder other than the Stalking Horse Buyer who submits a  
11 higher and better offer at the Auction.  
12

13           11.       The Sale Procedures are reasonable, non-collusive, negotiated in good faith,  
14 substantively and procedurally fair, and will enable the Receiver to obtain the highest value  
15 for the Property.  
16

17           12.       The Receiver may sell the Property in accordance with the Sale Procedures.  
18

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

21           **ORDERED** that the Motion is GRANTED as set forth in this Order; and it is further  
22

23           **ORDERED** that any and all objections to the Motion concerning the Sale  
24 Procedures and relief granted in this Order that have not been withdrawn, waived, resolved,  
25 sustained, or settled, are expressly denied and overruled in their entirety; and it is further

26           **ORDERED** that the M&M Agreement as set forth in Exhibit A to the Coxworth  
27 Declaration is approved; and it is further  
28

1           **ORDERED** that the Stalking Horse Agreement as set forth in Exhibit B to the  
2 Coxworth Declaration is approved; and it is further

3           **ORDERED** that the Sale Procedures, as set forth in Exhibit 1 to this Order are  
4 approved in their entirety; and it is further

5           **ORDERED** that the notice of auction and sale, as set forth in Exhibit 2 (the  
6 “Notice”) to this Order, is hereby approved; and it is further

7           **ORDERED** that the Receiver may proceed to sell the Property, in accordance with  
8 the Sale Procedures; and it is further

9           **ORDERED** that the Receiver may proceed to sell the Property free and clear of  
10 liens, claims, encumbrances, and other interests at a public auction to be held by Zoom in  
11 accordance with and subject to the Sale Procedures on January \_\_, 2025 at 10:00 a.m.  
12 (Phoenix Time); and it is further

13           **ORDERED** that the Stalking Horse Buyer’s deposit (as provided in the Stalking  
14 Horse Agreement) shall be held in escrow and shall not constitute or be deemed to  
15 constitute property of any receivership estate or the Receiver, and the Receivership Estate  
16 and Receiver shall have no interest of any kind (equitable or otherwise) in the deposit  
17 unless and until such deposit is actually unconditionally paid or payable in accordance with  
18 the Stalking Horse Agreement, and no liens, claims or encumbrances shall attach to the  
19 deposit; and it is further

20           **ORDERED** that the Sale Hearing shall be held telephonically or as  
21 otherwise ordered by the Court, on February [ ], 2025, at [ :            ] [.m] (Phoenix  
22 Time); and it is further



1           **ORDERED** that any objection on any basis to the proposed sale of the Property  
2 must be filed in writing with the Court no later than January [\_\_\_], 2025, at 4:00 p.m.  
3 (Phoenix Time) (the “Objection Deadline”) and served on counsel to the Receiver, Archer  
4 & Greiner, P.C., Attn: Allen G. Kadish and Harrison H.D. Breakstone, 1211 Avenue of the  
5 Americas, New York, New York 10036; and it is further  
6

7           **ORDERED** that the Receiver shall cause his retained professionals (a) to provide  
8 notice, substantially in the form of the Notice, to (i) all known parties having an interest in  
9 the Property, including StanCorp Mortgage Investors, LLC; (ii) counsel to the Stalking  
10 Horse Buyer; (iii) the parties set forth on the certificate of service of the Motion and any  
11 other party that has entered an appearance in this case or otherwise requested notice in this  
12 case; and (iv) all of the persons or entities the Receiver has identified as (A) having an  
13 interest in the Property or (B) potentially interested in acquiring the Property; and (b) to  
14 publish a notice of Auction and Sale Hearing with The Daily Sun once a week for at least  
15 four (4) weeks prior to the proposed Auction, which publication shall be deemed due,  
16 timely, good, and sufficient notice of the entry of this Order, the Sale Order and all  
17 proceedings to be held in accordance with this Order; and it is further  
18  
19  
20

21           **ORDERED** that any person or entity seeking to participate as a bidder at the  
22 Auction shall comply with the Sale Procedures; and it is further  
23

24           **ORDERED** that each Qualified Bidder participating at the Auction will be required  
25 to confirm that it has not engaged in any collusion with respect to the bidding on or sale of  
26 the Property; and it is further  
27  
28

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

6           **ORDERED** that this Order shall become effective immediately upon its entry; and  
7 it is further  
8

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

11 Dated: December \_\_, 2024  
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**EXHIBIT A**

**SALE PROCEDURES**

**900 WEST MARION AVENUE, PUNTA GORDA, FLORIDA**

Allen D. Applbaum, as receiver (the “Receiver”) for ArciTerra Companies, LLC and related entities including, but not limited to 900 West Marion Avenue FL, LLC (“900 West Marion”), submits the following sale and bidding procedures (the “Sale Procedures”) for the sale of real property owned by 900 West Marion and located at 900 West Marion Avenue, Punta Gorda, Florida, including all buildings, equipment, furniture and fixtures (the “Property”), free and clear of all liens, claims, encumbrances and interests, as may be approved by the United States District Court for the District of Arizona.

There will be a public Auction to submit and accept bids for the Property held by Zoom on January \_\_, 2025, beginning at 10:00 a.m. (Phoenix Time). Instructions for attending the Auction will be delivered to Qualified Bidders (as defined below) by Marcus & Millichap Real Estate Investment Services, as broker for the Receiver (“Marcus & Millichap”).

The Receiver has entered into an Asset Purchase Agreement with Harborview Property Holdings LLC (the “Stalking Horse Buyer”), dated November 11, 2024 (the “Stalking Horse Agreement”) providing for a purchase price for the Property of Three Million Fifty Thousand and 00/100 Dollars (\$3,050,000.00) (the “Purchase Price”).

Only “Qualified Bidders” shall be permitted to attend the Auction and submit bids for the Property. A “Qualified Bidder” is a prospective purchaser who, no later than 10 days prior to the Auction:

- a. Submits a written bid proposal to Marcus & Millichap that (1) is accompanied by a fully executed asset purchase agreement for the Property for the Purchase Price, plus the Minimum Initial Overbid Amount (defined below), and with terms substantially similar in all material aspects to the terms of the Stalking Horse Agreement and otherwise acceptable to the Receiver in his sole discretion (a “Qualified Bid PSA”), and (2) confirms such prospective purchaser’s ability to close and consummate the transaction no later than thirty-five (35) days of entry of the Sale Order.
- b. Provides evidence, in a form reasonably acceptable to the Receiver, that the prospective purchaser has funds immediately available to pay the Purchase Price for the Property, plus the Minimum Initial Overbid Amount.

- 1 c. Submits a good faith deposit of five percent (5%) of the amount bid by such  
2 prospective purchaser (the “Deposit”) by wire transfer or certified bank check to  
3 be held in escrow by First Chicago Title Company. Deposit instructions will be  
4 provided upon request to Marcus & Millichap or the Receiver’s undersigned  
5 counsel. The Deposit of each prospective purchaser that complies with  
6 subsections a. and b. above (each, a “Qualified Bidder”) that is not determined  
7 at the Auction to have submitted the Successful Bid (as defined below) or the  
8 Back Up Bid (as defined below) shall be irrevocable and non-refundable until  
9 such time as the Auction concludes or the Receiver receives and accepts a higher  
10 or better bid at the Auction. The Deposit submitted by a Qualified Bidder that  
11 submits the Back Up Bid shall be irrevocable and nonrefundable until the closing  
12 of the sale of the Property to the Successful Bidder.
- 13 d. The Stalking Horse Buyer is Deemed a Qualified Bidder: Notwithstanding the  
14 bidding requirements above, the Stalking Horse Buyer is deemed a Qualified  
15 Bidder.
- 16 e. Minimum Initial Overbid and Subsequent Overbids: All initial overbids must be  
17 at least \$500,000 in excess of the Purchase Price (the “Minimal Initial Overbid  
18 Amount”). Subsequent overbids shall be in increments of at least \$50,000 above  
19 the Minimal Initial Overbid Amount and subsequent higher bids.
- 20 f. Bidding at the Auction: The Auction shall continue until there is only one bid  
21 made by a Qualified Bidder (a “Qualified Bid”) that the Receiver, in consultation  
22 with Marcus & Millichap and his other professionals, determines is the highest  
23 and best Qualified Bid (the “Successful Bid”). The Receiver shall also  
24 determine which Qualified Bid is the second highest and best Qualified Bid (the  
25 “Back Up Bid”). To the extent the Stalking Horse Buyer Purchase Price is the  
26 second highest and best Qualified Bid it shall be the Back Up Bid.
- 27 g. Due Diligence. All Qualified Bidders will be permitted to conduct due diligence  
28 on the Property, including via a review of the due diligence materials prepared  
by Marcus & Millichap, prior to the Auction.
- h. No Contingencies. The sale to any Qualified Bidder shall not be subject to any  
contingencies, including without limitation, for financing, due diligence, or  
inspection.
- i. As Is/Where Is Purchase. The sale to any Qualified Bidder shall be on an "AS-  
IS, WHERE-IS" basis, with no representations or warranties made by the  
Receiver, his professionals, or the Receivership Entities.

**EXHIBIT B**

**SALE NOTICE**

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

Securities and Exchange Commission,

Plaintiff,

v.

Jonathan Larmore; ArciTerra Companies,  
LLC; ArciTerra Note Advisors II, LLC;  
ArciTerra Note Advisors III, LLC;  
ArciTerra Strategic Retail Advisor, LLC;  
and Cole Capital Funds, LLC,

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-DLR

**NOTICE OF PUBLIC SALE OF  
PROPERTY LOCATED AT 900  
WEST MARION, PUNTA GORDA,  
FLORIDA**

TO ALL PARTIES IN INTEREST:

Notice is hereby given that Allen D. Applbaum, as Receiver for ArciTerra Companies, LLC and related entities, including 900 West Marion Avenue FL, LLC (“900 West Marion”), intends to sell, through his broker, Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”), the real property owned by 900 West Marion and located at 900 West Marion Avenue, Punta Gorda, Florida, including all buildings, equipment, furniture and fixtures located thereon (the “Property”), free and clear of all liens, claims, interests and encumbrances (the “Sale”).

By this Notice, the Receiver is soliciting higher and better offers for the Property by means of an Auction, which shall be governed by the terms and conditions of the order

1 establishing sale and bidding procedures approved by the United States District Court for  
2 the District of Arizona (the “Court”).

3 OBJECTIONS, if any, to the Sale or to final approval of the proposed Sale of the  
4 Property must be filed in writing with the Clerk of the Court on or before January \_\_, 2025  
5 at 4:00 p.m., Phoenix Time (the “Objection Deadline”). A copy of the objection must also  
6 be served on 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,  
so as to be received by the Objection Deadline.

7 If offers by qualified bidders are timely received, Marcus & Millichap will conduct  
8 an auction by Zoom on January \_\_, 2025 at 10:00 a.m., Phoenix Time. Instructions for  
9 attending the Auction will be delivered by Marcus & Millichap to all qualified bidders.

10 A FINAL HEARING on the Sale will take place on February \_\_, 2025 at \_\_:00 a.m.,  
11 Phoenix Time, telephonically or as otherwise ordered by the Court, before the Honorable  
Douglas L. Rayes.

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

14 If you have any questions regarding or would like copies of materials relating to the  
15 information in this Notice or the Sale, please make such request in writing to Counsel for  
16 the Receiver, Archer & Greiner, P.C., 1211 Avenue of the Americas, New York, New York  
10036 Attn: Allen G. Kadish and Harrison H.D. Breakstone or visit the Receiver’s website  
17 at [www.arciterrareceivership.com](http://www.arciterrareceivership.com).

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**EXHIBIT 3**  
**SALE ORDER**

**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

**[PROPOSED] ORDER (I)  
APPROVING (A) THE SALE OF  
THE REAL PROPERTY LOCATED  
AT 900 WEST MARION AVENUE,  
PUNTA GORDA, FLORIDA, AND  
OWNED BY 900 WEST MARION  
AVENUE FL, LLC, FREE AND  
CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND  
INTERESTS, AND (B) GRANTING  
RELATED RELIEF**

The Court having considered the Receiver’s Motion for Orders: (I) approving (a) the Receiver’s engagement and compensation of Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”) as broker for the sale of real property located at 900 West Marion Avenue, Punta Gorda, Florida 33950, including all buildings, equipment, furniture and fixtures located thereon (the “Property”), owned by Receivership Entity, 900 West Marion Avenue FL, LLC (“900 West Marion”), and (b) the proposed bidding and auction procedures (the “Sale Procedures”) for the sale of the Property; and (II) approving the sale of the Property to Harborview Property Holdings LLC (“Stalking Horse Buyer”) pursuant to the Asset Purchase Agreement dated as of November 11, 2024



1 (the “Stalking Horse Agreement”) or such other bidder that submits a higher and better  
2 offer at a public auction, free and clear of all liens, claims, encumbrances and interests (the  
3 “Motion”); and upon consideration of any and all responses and replies relating to the  
4  
5 Motion; and upon finding that due and sufficient notice of the Motion has been given and  
6 no other or further notice need be given; and after due deliberation and it appearing that  
7 the relief sought in the Motion is in the best interest of the Receivership Estate, its creditors,  
8 and other parties in interest,  
9

10 **IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:**<sup>1</sup>

11 1. This Court has jurisdiction over this matter, the above-captioned defendants  
12 and relief defendants, and over the property of each Receivership Estate.  
13

14 2. The approval of the sale of the Property is within the sound legal discretion  
15 of this Court.

16 3. It is necessary and appropriate for this Court to retain jurisdiction to, among  
17 other things, (a) interpret, implement, and enforce the terms and provisions of this Order,  
18 the Stalking Horse Agreement, all amendments to the Stalking Horse Agreement, any  
19 waivers and consents under the Stalking Horse Agreement, and each of the agreements  
20 executed in connection with the Stalking Horse Agreement, (b) any agreement provided  
21 by a Qualified Bidder in connection with the Auction (a “Qualified Bid PSA”), all  
22 amendments to any Qualified Bid PSA, any waivers and consents under any Qualified Bid  
23 PSA, and each of the agreements executed in connection with any Qualified Bid PSA, and  
24  
25  
26

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27 <sup>1</sup> Capitalized, undefined terms shall have the meanings ascribed to them in the Motion.  
28

1 (c) to adjudicate, if necessary, any and all disputes concerning or relating in any way to the  
2 sale of the Property, and such jurisdiction is retained.

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

4  
5 4. The Receiver properly provided notice of the Motion, Auction and proposed  
6 sale of the Property, and no other or further notice is necessary or required.

7 5. The Receiver has adequately disclosed all material terms and conditions  
8 regarding the Sale Procedures, Stalking Horse Agreement, and sale of the Property.

9  
10 6. The notice provided by the Receiver was in substantial compliance with all  
11 applicable laws and satisfied all due process requirements.

12 7. The notice provided was reasonably calculated to apprise all interested  
13 parties of the sale of the Property.

14  
15 8. As a result, notice of the Motion, Sale Procedures, Sale Hearing, and Auction  
16 and a reasonable opportunity to object or be heard with respect to the foregoing has been  
17 afforded to all interested persons and entities, and the notice provided is appropriate and  
18 sufficient for all purposes, including the sale of the Property free and clear of all liens,  
19 claims, encumbrances, and other interests.

20  
21 **THE AUCTION COMPLIED WITH THE**  
22 **SALE PROCEDURES ORDER AND APPLICABLE LAW**

23 9. On January \_\_, 2025 at 10:00 a.m. (Phoenix Time), the Receiver, through  
24 Marcus & Millichap, conducted the Auction in accordance with the Sale Procedures Order.

25 10. The Receiver complied in all material respects with applicable law.  
26  
27  
28

1 11. The Successful Bidder has confirmed that it did not engage in any collusion  
2 in connection with the Auction or the purchase of the Property.

3 12. The Auction was substantively and procedurally fair to all potential bidders,  
4 including the Successful Bidder.

5 13. The Auction was conducted in good faith.

6  
7 **HIGHEST AND BEST OFFER**

8 14. At the Auction, [INSERT NAME OF SUCCESSFUL BIDDER] (the  
9 “Successful Bidder”) was selected by the Receiver as the Successful Bidder with a cash  
10 offer in the amount of \$[ ] for the Property (the “Successful Bid”).

11 15. A true and correct copy of the Stalking Horse Agreement [or Qualified Bid  
12 PSA] applicable to the Successful Bidder is attached to this Order as Exhibit A and  
13 incorporated in this paragraph by reference.  
14

15 16. The Successful Bidder submitted the highest or otherwise best offer to  
16 purchase the Property.  
17

18 17. Neither the sale of the Property nor the Stalking Horse Agreement violate or  
19 are otherwise inconsistent with the Sale Procedures Order, the Sale Procedures, or  
20 applicable law.  
21

22 18. The Successful Bid and Stalking Horse Agreement constitute the highest and  
23 best offer for the Property and will provide a greater recovery for each Receivership  
24 Estate’s creditors than would be provided by any other practical alternative.  
25  
26  
27  
28

1 19. The Receiver's determination that the Successful Bid and Stalking Horse  
2 Agreement constitute the highest and best offer for the Property constitutes a valid and  
3 sound exercise of the Receiver's reasonable business judgment.

4  
5 20. The Successful Bid and Stalking Horse Agreement represent a fair and  
6 reasonable offer to purchase the Property under the circumstances of this receivership case.

7 21. The Receiver's decision to sell the Property to the Successful Bidder  
8 pursuant to the Stalking Horse Agreement and this Order is supported by good business  
9 reasons and sound justification based upon the Receiver's experience and the  
10 circumstances presented in this case.  
11

12 **GOOD FAITH OF THE SUCCESSFUL BIDDER**

13 22. The Successful Bidder is an independent legal entity separate and distinct  
14 from the Receiver or any other party to this case. The Successful Bidder is not an affiliate,  
15 subsidiary, or other insider of any of the parties to this case or the Receiver. The Successful  
16 Bidder has no common equity holders, directors, managers, or officers with any of the  
17 parties to this case or the Receiver. The Successful Bidder is not a mere continuation of the  
18 Defendants and there is no continuity of enterprise among the parties to this case or the  
19 Receiver. The Successful Bidder is not holding itself out to the public as a continuation of  
20 the Defendants or the Receiver.  
21

22  
23 23. The terms of the sale of the Property, as set forth more specifically in the  
24 Stalking Horse Agreement, are fair and reasonable under the circumstances.  
25

26 24. The sale of the Property to the Successful Bidder in all respects complies  
27 with the Sale Procedures, Sale Procedures Order, and applicable law.  
28

1 25. The Successful Bidder negotiated the terms and conditions of the sale of the  
2 Property in good faith and at arm's length.

3 26. The Successful Bidder is entering into the Stalking Horse Agreement and  
4 sale of the Property in good faith and is a good faith purchaser for value.  
5

6 27. The Successful Bidder will be acting in good faith in closing the sale of the  
7 Property pursuant to the Stalking Horse Agreement after entry of this Order.  
8

9 28. This Court has found that the Successful Bidder has acted in good faith in all  
10 respects in connection with this case, the Sale Procedures, the Auction, and the sale of the  
11 Property.

12 **NO FRAUDULENT TRANSFER**

13 29. The consideration provided for the Property under the Stalking Horse  
14 Agreement: (a) is fair and reasonable; (b) is the highest or otherwise best offer for the  
15 Property; and (c) constitutes reasonably equivalent value for the Property.  
16

17 **VALIDITY OF TRANSFER**

18 30. The Receiver's transfer of the Property including fee title to the real property  
19 along with this Order will be a legal, valid, and effective transfer of the Property including  
20 fee title to the real property and will indefeasibly vest the Successful Bidder with good and  
21 valid title in and to the Property free and clear of any Liens and Encumbrances (as defined  
22 below).  
23

24 31. The Receiver has full power and authority to execute and consummate the  
25 Stalking Horse Agreement and all related documents and is directed to do so, and no  
26 consents or approvals (other than those expressly provided for in the Stalking Horse  
27  
28

1 Agreement) are required to consummate the transactions contemplated by the Stalking  
2 Horse Agreement and this Order.

3 32. The Receiver (i) has all rights and powers with respect to the Receivership  
4 Estate, including the Property, (ii) possesses good, valid, and marketable title to the  
5 Property, and (iii) has the ability and authority to convey the Property to the Successful  
6 Bidder on the terms and conditions set forth in the Stalking Horse Agreement and this  
7 Order.  
8

9 33. The Receiver and Successful Bidder proposed, negotiated, and entered into  
10 the Stalking Horse Agreement without collusion, in good faith, and from arm's length  
11 bargaining positions.  
12

13 34. Neither the Receiver nor the Successful Bidder have engaged in any conduct  
14 that would cause or permit the Stalking Horse Agreement or transactions contemplated  
15 thereby to be avoided or otherwise set aside.  
16

17 **THE SALE IS IN THE BEST INTEREST OF**  
18 **THE RECEIVERSHIP ESTATE AND ITS CREDITORS**

19 35. The approval and consummation of the sale of the Property pursuant to and  
20 in accordance with the Stalking Horse Agreement and this Order is in the best interest of  
21 the Receivership Estate and its creditors.  
22

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

25 **ORDERED** that the Motion is GRANTED as set forth in this Order; and it is further  
26  
27  
28

1           **ORDERED** that all objections to the Motion concerning the Auction, Successful  
2 Bid, Successful Bidder, marketing process employed by the Receiver, Stalking Horse  
3 Agreement or otherwise relating to the sale of the Property and relief granted in this Order  
4 that have not been withdrawn, waived, resolved, sustained, or settled are expressly denied  
5 and overruled in their entirety; and it is further

7           **ORDERED** that the Stalking Horse Agreement, as set forth in Exhibit A to this  
8 Order, is approved in its entirety; and it is further

10           **ORDERED** that the Property includes fee title to the real estate, free and clear of  
11 all Liens and Encumbrances in accordance with the Stalking Horse Agreement and this  
12 Order; and it is further

13           **ORDERED** that the Receiver is authorized to take all actions to consummate the  
14 sale of the Property pursuant to and in accordance with the Stalking Horse Agreement and  
15 this Order, including transferring and conveying the Property to the Successful Bidder; and  
16 it is further

18           **ORDERED** that the Receiver is authorized, directed, and empowered to  
19 consummate and implement fully the Stalking Horse Agreement, together with all  
20 additional instruments and documents that may be necessary or desirable to implement and  
21 consummate the sale of the Property in accordance with the Stalking Horse Agreement and  
22 this Order; and it is further

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

1           **ORDERED** that, time being of the essence, the Successful Bidder is directed to use  
2 its best efforts to close the sale of the Property in accordance with the terms of the Stalking  
3 Horse Agreement and this Order, but in no event shall closing occur more than thirty-five  
4 (35) days after entry of this Order; and it is further

5  
6           **ORDERED** that, in the Receiver’s sole discretion, any agreements, documents, or  
7 other instruments executed in connection with the Stalking Horse Agreement may be  
8 modified, amended, or supplemented by the Receiver and Successful Bidder in accordance  
9 with the terms of the Stalking Horse Agreement, without further notice or order of this  
10 Court, provided that any such modification, amendment, or supplement does not have a  
11 material adverse effect on the Receivership Estate; and it is further

12  
13           **ORDERED** that the Receiver is authorized to pay the undisputed amounts due and  
14 owing to the Mortgage Lender in accordance with the Carveout Agreement executed as of  
15 August 20, 2024 (the “Carveout Agreement”) between the Receiver and StanCorp  
16 Mortgage Investors, LLC (“StanCorp”), as representative and servicer for the Mortgage  
17 Lender; and it is further

18  
19           **ORDERED** that the transfer of the Property to the Successful Bidder shall be free  
20 and clear of any and all liens, encumbrances, claims, charges, defenses, offsets,  
21 recoupments, and interests on the foregoing and against the foregoing of whatever type or  
22 description, including, without limitation, the Mortgage, tax claims and tax liens, and any  
23 restrictions on or conditions to transfer or assignment, liens, mortgages, security interests,  
24 pledges, hypothecations, control agreements, equities and other claims and interests having  
25 arisen, existed, or accrued prior to and through the Closing Date (as defined in the Stalking  
26  
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28



1 Horse Agreement), whether direct or indirect, monetary or non-monetary, arising at law or  
2 in equity, contract or tort, absolute or contingent, matured or unmatured, voluntary or  
3 involuntary, liquidated or unliquidated, of, by, or against the Property (collectively, the  
4 “Liens and Encumbrances”); and it is further  
5

6 **ORDERED** that any and all Liens and Encumbrances not satisfied or waived at  
7 closing on the sale will attach to the net proceeds of the sale of the Property with the same  
8 effect, validity, enforceability, and priority as such Liens and Encumbrances had against  
9 the Property prior to the sale authorized by this Order, subject to any rights, claims,  
10 defenses, and objections of the Receiver and all interested parties with respect to such Liens  
11 and Encumbrances; and it is further  
12

13 **ORDERED** that the provisions of this Order authorizing the sale of the Property  
14 free and clear of any and all Liens and Encumbrances shall be, and are, self-executing, and  
15 the Receiver and Successful Bidder shall not be required, but are permitted in their  
16 discretion, to execute or file releases, termination statements, assignments, consents, or  
17 other instruments in order to effectuate, consummate, and implement the provisions of the  
18 Stalking Horse Agreement and this Order; and it is further  
19

20 **ORDERED** that this Order is effective as a determination that any and all Liens and  
21 Encumbrances, if any, will be, and are, without further action by any person or entity,  
22 unconditionally released, discharged, and terminated with respect to the Property; and it is  
23 further  
24

25 **ORDERED** that all persons who hold Liens and Encumbrances against the Property  
26 are forever estopped and permanently enjoined from asserting or prosecuting any claims  
27  
28

1 or causes of action against the Successful Bidder, its affiliates, successors or assigns, or  
2 any of their respective officers, directors, employees, attorneys or advisors, arising out of  
3 or in connection with the sale of the Property or any liabilities owed by the above-captioned  
4 Defendants and Relief Defendants; and it is further

5  
6 **ORDERED** that the transfer of the Property to the Successful Bidder may not be  
7 avoided under any applicable law, because the Successful Bidder is providing the  
8 Receivership Estates with reasonably equivalent value; and it is further

9  
10 **ORDERED** that no party shall have any rights of redemption with respect to the  
11 Property; and it is further

12 **ORDERED** that all entities that are presently, or upon Closing may be, in  
13 possession of some or all of the Property are directed to surrender possession of the  
14 Property to the Receiver or the Receiver's designee; and it is further

15  
16 **ORDERED** that neither the purchase of the Property nor the subsequent operation  
17 of the Property by the Successful Bidder shall cause the Successful Bidder or its affiliates,  
18 successors, or assigns or their respective properties to be deemed a successor in any respect  
19 of the Receivership Entities' or the above-captioned Defendants' business operations  
20 within the meaning of any laws, rules, or regulations relating to any tax, revenue, pension,  
21 benefit, ERISA, environmental, labor, employment, products liability, or other law, rule,  
22 or regulation of any federal, state, or local government; and it is further

23  
24  
25 **ORDERED** that, upon Closing, this Order and the documents executed in  
26 connection with and pursuant to this Order constitute a full and complete general  
27 assignment, conveyance, and transfer of the Property or a deed or a bill of sale transferring  
28

1 good and marketable title in the Property to the Successful Bidder on the Closing Date free  
2 and clear of all Liens and Encumbrances, and each and every federal, state, and local  
3 governmental agency or department is directed to accept this Order as such an assignment,  
4 deed, or bill of sale or any and all documents and instruments necessary and appropriate to  
5 consummate the transactions contemplated by the Stalking Horse Agreement and this  
6 Order; and it is further  
7

8           **ORDERED** that, if necessary, this Order shall be accepted for recordation on or  
9 after the Closing Date as conclusive evidence of the free and clear, unencumbered transfer  
10 of title to the Property to the Successful Bidder; and it is further  
11

12           **ORDERED** that this Court retains exclusive jurisdiction to (a) enforce and  
13 implement the Stalking Horse Agreement and any other agreements, documents, and  
14 instruments executed in connection with the Stalking Horse Agreement, (b) compel  
15 delivery of possession of the Property (or any part of the Property) to the Successful Bidder,  
16 (c) resolve any disputes, controversies, or claims arising out of or relating to the Stalking  
17 Horse Agreement, this Order, or the sale of the Property, and (d) interpret, implement, and  
18 enforce the provisions of this Order; and it is further  
19

20           **ORDERED** that the terms and conditions of the Stalking Horse Agreement and this  
21 Order will be binding in all respects upon, and will inure to the benefit of, the Receiver,  
22 the Receivership Estate, each of the Receivership Entities, the Successful Bidder, and their  
23 respective affiliates, successors and assigns, and any affected third parties; and it is further  
24

25           **ORDERED** that, the Receiver, Marcus & Millichap and their representatives and  
26 professionals shall not be liable or bound to any person including the Successful Bidder, in  
27  
28

1 any manner by expressed or implied warranties, guarantees, promises, statements,  
2 representations or information pertaining to the Glenrosa Property, made or furnished by  
3 any of them or any other real estate broker, agent, employee, servant or other person or  
4 professional representing or purporting to represent the Receiver and Marcus & Millichap,  
5 unless such warranties, guaranties, promises, statements, representations or information are  
6 expressly and specifically set forth in writing within the Stalking Horse Agreement; and it  
7 is further  
8

9  
10 **ORDERED** that, to the extent of any inconsistency between the provisions of any  
11 agreements, documents, or other instruments executed in connection with the Stalking  
12 Horse Agreement and this Order, the provisions of this Order control; and it is further  
13

14 **ORDERED** that the Receiver is authorized to pay Marcus & Millichap its  
15 commission in accordance with the M&M Agreement at the Closing of the sale of the  
16 Property; and it is further  
17

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

21 Dated: January \_\_, 2025  
22

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