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

United States Securities and Exchange  
 Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

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

Relief Defendants.

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

**RECEIVER'S MOTION FOR ORDERS  
 (I) APPROVING (A) THE  
 ENGAGEMENT AND  
 COMPENSATION OF MARCUS &  
 MILLICHAP REAL ESTATE  
 INVESTMENT SERVICES AS  
 BROKER TO SELL THE REAL  
 PROPERTIES SUBJECT TO THE  
 CMBS LOAN SERVICED BY 3650  
 REIT LOAN SERVICING LLC AND (B)  
 THE SALE AND AUCTION  
 PROCEDURES FOR THE SALE OF  
 THE PROPERTIES; (II) APPROVING  
 (A) THE SALE OF THE PROPERTIES,  
 FREE AND CLEAR OF ALL LIENS,  
 CLAIMS, ENCUMBRANCES AND  
 INTERESTS, (B) THE ENGAGEMENT  
 AND COMPENSATION OF THE  
 DEFEASANCE CONSULTANT, AND  
 (C) THE USE OF THE SALE  
 PROCEEDS TO DEFEASE AND  
 SATISFY THE CMBS LOAN; AND (III)  
 GRANTING RELATED RELIEF**

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

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

## **TABLE OF CONTENTS**

	<u>Page</u>
Table of Authorities.....	ii
I. Preliminary Statement.....	1
II. Background.....	5
A. The Receivership Order and Appointment of the Receiver.....	5
B. The Properties .....	6
C. Marcus & Millichap Marketing and Engagement Terms .....	7
D. The Secured CMBS Loan .....	8
E. The Mezzanine Loan.....	10
III. Relief Requested .....	10
IV. Basis for Relief Requested.....	11
A. Authorization to Sell the Property .....	11
B. Approval of the Engagement and Compensation of Marcus & Millichap .....	12
C. Approval of the Sale Procedures.....	14
D. Sale Free and Clear of Liens, Claims, Encumbrances and Interests.....	15
E. Engagement of the Defeasance Consultant and Defeasance of the Loan .....	15
F. Proposed Form and Manner of Notice of the Sale.....	16
V. Conclusion .....	17

**TABLE OF AUTHORITIES****Page(s)****Federal Cases**

<i>Gockstetter v. Williams</i> , 9 F.2d 354 (9th Cir. 1925).....	10
<i>S.E.C. v. Hardy</i> , 803 F.2d 1034, 1037 (9th Cir. 1986) .....	14
<i>S.E.C. v. Cap. Cove Bancorp LLC</i> , 2015 WL 9701154 (C.D. Cal. Oct. 13, 2015).....	14
<i>S.E.C. v. American Capital Invest., Inc.</i> , 98 F.3d 1133 (9th Cir. 1996), <i>abrogated on other grounds by Steel Co. v.</i> <i>Citizens for a Better Env't</i> , 523 U.S. 83 (1998) .....	10

**Federal Statutes**

28 U.S.C. § 2001 .....	11, 17
28 U.S.C. § 2002 .....	11, 17
28 U.S.C. § 2004 .....	11, 17

**Other Authorities**

2 Ralph E. Clark, <i>Treatise on Law &amp; Practice of Receivers</i> § 482 (3d ed. 1992) .....	10
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Allen D. Applbaum as receiver for ArciTerra Companies, LLC and related entities (the “Receiver”), by and through his counsel, hereby respectfully moves (the “Motion”) this Court for the entry of two orders: *First*, approving (a) the Receiver’s engagement of and compensation of Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”) as broker for the sale of the twelve properties listed on **Exhibit 1** attached hereto (each referred to herein as a “Property”, and collectively, the “Properties”), each of which is subject to a cross-collateralized Commercial Mortgage Backed Securities loan (the “CMBS Loan”) serviced by 3650 REIT Loan Servicing LLC, as the special servicer (“3650”) and (b) the proposed sale and auction procedures (the “Sale Procedures”) for the sale of the Properties; and *Second*, approving (a) the sale of the Properties to a bidder or bidders who submit the highest and best offer for the Properties at an auction, free and clear of all liens, claims, encumbrances and interests, and upon closing of the sale, (b) the Receiver’s engagement of a defeasance consultant to assist in the defeasance of the CMBS Loan, and (c) the use of the sale proceeds to defease and satisfy the CMBS Loan in accordance with the terms of, the CMBS Loan agreement.

#### **I. Preliminary Statement<sup>1</sup>**

1. The Receiver seeks approval of his engagement of Marcus & Millichap and the proposed Sale Procedures for the sale of the Properties, which are owned by a Receivership Entity (collectively, the “Receivership Borrowers”). The Properties are all subject to the CMBS Loan

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<sup>1</sup> Capitalized terms not otherwise defined in this Motion shall have the meanings ascribed to them in the Order Appointing Temporary Receiver and Temporarily Freezing Assets and Imposing Litigation Injunction [ECF No. 77], as supplemented by the May 6, 2024 Order Appointing Receiver Freezing Assets, and Imposing Litigation Injunction [ECF No. 154] (the “Receivership Order”).

1 in the original amount of \$60 million made by Grass River Real Estate Credit Partners Loan  
2 Funding, LLC, to each of the Receivership Borrowers, which loan was assigned to Wells Fargo  
3 Bank, National Association, as Trustee, on behalf of the registered Holders of CSAIL 2020-C19  
4 Commercial Mortgage Trust, Commercial Mortgage Pass-Through Certificates, Series 2020-C19  
5 (the “Lender”). The CMBS Loan is currently serviced by 3650 and, according to 3650, the amount  
6 outstanding is approximately \$69.2 million, which includes a prepayment premium or penalty of  
7 approximately \$8.3 million, and default interest of approximately \$6 million through July 1, 2025.  
8  
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10 2. The CMBS Loan was guaranteed by Defendant, Jonathan Larmore, and secured by  
11 mortgages on the Properties as well as two additional properties, one located at 160 Plainfield  
12 Village Drive Plainfield, IN 46168 (the “Plainfield Village Property”) owned by AT Plainfield  
13 Village IN II, LLC (“Plainfield Village”), and the other located at 5173 W. Washington Street  
14 Indianapolis, IN 46241 (the “Westgate Plaza Property”, and together with the Plainfield Village  
15 Property, the “Indiana Properties”) owned by ArciTerra Westgate Indianapolis IN II, LLC  
16 (“Westgate Plaza” and together with Plainfield Village and the Receivership Borrowers, the  
17 “Borrowers”). The Indiana Properties are controlled by Martha R. Lehman (the “Indiana  
18 Receiver”), pursuant that certain Order dated August 18, 2023 of the Hamilton Superior Court of  
19 the State of Indiana (the “Indiana Court”), Case No. 29D02-2305-PL-004542. The Receiver has  
20 obtained the consent of the Indiana Receiver to simultaneously market and sell the Indiana  
21 Properties through Marcus & Millichap with a portion of the sale proceeds used to defease and  
22 satisfy the CMBS Loan as set forth herein. The Indiana Receiver is simultaneously seeking  
23 approval of the auction process and sale of the Indiana Properties from the Indiana Court.  
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27 3. Throughout this Receivership, the Receiver and his professionals have engaged in  
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1 extended discussions with 3650's representatives, keeping them informed and apprised of the  
2 status of the Properties and discussing alternative disposition scenarios to obtain optimal value for  
3 the Properties and the Receivership Estates. Along with the appropriate pro rata share of the  
4 proceeds from the sale of the Indiana Properties, the Receiver believes that the sale of the  
5 Properties will result in sufficient funds to satisfy the Lender as set forth herein.<sup>2</sup>

7 4. Through the proposed Sale Procedures, Marcus & Millichap will extensively market  
8 the Properties and list them on the online RealINSIGHT Marketplace Auction Platform (the  
9 "Marketplace Auction Platform") previously approved by the Court to auction and sell other  
10 properties under the Receiver's control. At the auction, the Receiver will select the highest and  
11 best offer for each of the Properties and enter into an asset purchase agreement for each Property  
12 (the "Purchase Agreement"), substantially in the form annexed as an exhibit to the accompanying  
13 Declaration of Randall Coxworth (the "Coxworth Declaration"). The Purchase Agreement  
14 provides for the sale of each of the Properties on an "as is, where is" basis, with no representations  
15 or warranties from the Receiver or the Receivership Entities.<sup>3</sup>  
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20 <sup>2</sup> The Indiana Receiver has agreed that a portion of the sale proceeds from the sale of the  
21 Indiana Properties may be used to defease and satisfy the CMBS Loan.

22 <sup>3</sup> Notwithstanding execution of a Purchase Agreement upon completion of the Auction, the  
23 Receiver retains the right to seek approval by the Court of a transaction pursuant to which the  
24 Receivership Borrowers sell, transfer, or otherwise dispose of all or substantially all the  
25 Properties, directly or indirectly, including through an asset sale, stock sale, credit bid or other  
26 similar transaction or series of transactions to a person or entity other than the highest bidder for  
27 any Property at the Auction (an "Alternate Transaction"). Upon approval by the Court of an  
28 Alternate Transaction, any Purchase Agreement with the highest bidder or back-up bidder shall  
be deemed terminated and the Receiver and Receivership Estates shall have no liability to any  
bidder for the Property, other than the return of any deposit made by a bidder. 3650 has informed  
the Receiver that it only consents to a sale and defeasance transaction as proposed by this Motion.

1           5.     After extensive and continuing negotiations with 3650 and subject to the terms of  
2 an agreement to continue using rents and waive default rate interest and other fees upon  
3 defeasance (the “3650 Waiver Agreement”), the Receiver intends to use a portion of the sale  
4 proceeds obtained through the auction to “defease” the CMBS Loan in accordance with the  
5 defeasance clause set forth in the Loan Agreement (as defined below). The defeasance clause  
6 allows the Borrowers to sell the Properties without incurring a prepayment penalty by replacing  
7 the collateral (*i.e.*, the Properties) with a portfolio of U.S. treasury securities that generate  
8 sufficient cash flow to make all payments on the CMBS Loan through maturity. The Receiver  
9 anticipates that the defeasance will require approximately \$55 to \$57 million in sale proceeds to  
10 satisfy the CMBS Loan. Additional sale proceeds will be used to satisfy default interest and fees  
11 asserted by 3650 through July 1, 2025 in the approximate amount of \$6 million. Subject to the  
12 terms of the 3650 Waiver Agreement, 3650 has consented to the proposed defeasance and has  
13 agreed to conditionally waive any additional default interest and other fees incurred between July  
14 and December 15, 2025 of approximately \$2 million, on the condition that the defeasance is  
15 consummated before December 15, 2025. Through the sale process proposed herein and ultimate  
16 defeasance, the Receivership Estates will save approximately \$10 to \$11 million in penalties,  
17 default interest and fees, *vis a vis* a sale of the Properties and payment of the proceeds to 3650 to  
18 satisfy the CMBS Loan.

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21           6.     In consultation with 3650, the Receiver intends to engage the services of Defease  
22 With Ease, or such other defeasance consultant acceptable to the Receiver and 3650 (the  
23 “Defeasance Consultant”), to facilitate and assist in the defeasance of the CMBS Loan. The  
24 Defeasance Consultant will, among other things, form or cause the formation of “successor  
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1 borrowers,” coordinate the purchase and structure of the “Defeasance Collateral” and coordinate  
2 all deliverables to the Lender, escrow agents and other third parties in accordance with the Loan  
3 Agreement. The Receiver anticipates that the Defeasance Consultant will charge approximately  
4 \$200,000 for its services.  
5

6 7. Through this Motion, the Receiver seeks approval of the sale of the Properties and  
7 concurrent defeasance of the Lender, through which the Receiver anticipates satisfying the  
8 Lender’s claims against the Receivership Estates in full, with remaining sale proceeds to be held  
9 by the Receiver on behalf of the Borrowers.  
10

## 11 **II. Background**

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

13 8. On November 28, 2023, the Securities and Exchange Commission (“SEC”) filed its  
14 Complaint [ECF No. 1] against Jonathan Larmore; ArciTerra Companies, LLC (“Arciterra”);  
15 ArciTerra Note Advisors II, LLC; ArciTerra Note Advisors III, LLC; ArciTerra Strategic Retail  
16 Advisor, LLC; and Cole Capital Funds, LLC (collectively, the “Defendants”). Michelle Larmore;  
17 Marcia Larmore; CSL Investments, LLC; MML Investments, LLC; Spike Holdings, LLC and  
18 JMMAL Investments, LLC were named as Relief Defendants.  
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21 9. On November 29, 2023, the SEC filed the *Plaintiff SEC’s Ex Parte Motion for*  
22 *Temporary Restraining Order and Related Equitable Relief* [ECF No. 4] (the “TRO Motion”),  
23 seeking, *inter alia*, to enjoin certain actions by the Defendants, freezing assets of the Defendants,  
24 the Relief Defendants and their affiliates, and appointing the Receiver. After filing the TRO  
25 Motion, the Indiana Receiver and the SEC reached an agreement pursuant to which the ArciTerra  
26 entities under the control of the Indiana Receiver, including the Indiana Properties, were excluded  
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28



1 from the relief sought by the TRO Motion, and the Indiana Receiver would be permitted to  
2 continue her liquidation efforts commenced in Indiana. On December 21, 2023, the Court granted  
3 the relief requested by the TRO Motion, excluding the Indiana Properties, and appointed the  
4 Receiver in accordance with the terms of the Receivership Order.  
5

6 10. Pursuant to the Receivership Order, the Receiver is authorized to, among other  
7 things, “conduct an orderly liquidation or disposition of the Receivership Entities and the  
8 Receivership Assets in a manner and over a period of time calculated to maximize their value for  
9 investors and the Receivership Estate” and “[s]ell, assign, transfer or otherwise dispose of any  
10 assets of the Receivership Entities either directly or through one or more Retained Personnel,  
11 subject to approval by this Court with respect to any material assets[.]”  
12

13  
14 B. The Properties

15 11. The Properties consist mostly of retail shopping centers with one office property  
16 located throughout the United States at the addresses listed on Exhibit 1. Upon his appointment,  
17 the Receiver and his professionals expended significant time and effort in making necessary  
18 repairs and ensuring the payment of necessary operating expenses for the Properties. In addition,  
19 the Receiver and his professionals entered into immediate discussions with 3650 and its  
20 representatives, keeping them informed of all matters concerning operations and required  
21 expenditures and ultimately entered into a consensual stipulation with 3650 (the “3650  
22 Stipulation”), agreeing to, *inter alia*, maintain the status quo and cash management arrangement  
23 agreed to by the Receivership Borrowers prior to appointment of the Receiver.  
24  
25

26 12. Under the 3650 Stipulation, tenants at the Properties remit their respective rent  
27 payments to a lockbox account controlled by 3650 and those funds are used to make interest  
28

1 payments on the CMBS Loan and reimburse the Receivership Borrowers for necessary operating  
2 and other expenses incurred by the Receiver. In addition, with the consent of 3650, the Receiver  
3 agreed to appoint Cushman & Wakefield U.S., Inc. ("C&W") to manage and operate each of the  
4 Properties. As a result of C&W's efforts, the Properties are approximately 75% occupied, with  
5 continuing efforts by the Receiver and leasing brokers to market and lease the remaining vacant  
6 units. The Receiver does not believe there were any payment defaults at the time of his  
7 appointment (although 3650 contends that Events of Default had occurred and were continuing at  
8 such time) and, based on the 3650 Stipulation, the Borrowers have remained current on their  
9 agreed obligations to the Lender during the Receivership.

12 C. Marcus & Millichap Marketing of the Properties

13 13. Since the Receiver's appointment, he and his professionals engaged in extensive  
14 diligence and discussions with Marcus & Millichap about marketing and selling the Properties.  
15 As a result of these discussions, the Receiver agreed to engage Marcus & Millichap and a  
16 marketing and sale strategy in accordance with the terms set forth in that certain Exclusive  
17 Representation Agreement (the "M&M Agreement"), a copy of which is annexed as Exhibit A to  
18 the Coxworth Declaration.  
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20

21 14. Pursuant to the M&M Agreement, Marcus & Millichap will market the Properties  
22 through various channels up to the auction, including targeting of buyers through its top retail  
23 teams and auction database of multi-tenant retail investors. As part of its engagement, Marcus &  
24 Millichap will purchase reports, including a Phase I Environmental Report, a Property Condition  
25 Report, and title reports for prospective bidders to conduct their necessary due diligence, which  
26 must be completed prior to the auction. During the marketing and due diligence period, Marcus  
27  
28

1 & Millichap will respond to questions from prospective bidders about the auction process and  
2 terms of sale, and assist the Receiver in vetting prospective bidders' financial ability to  
3 consummate any proposed sale transaction.  
4

5 15. At the auction, bidders will bid on the Properties (or any of them) and the proposed  
6 Sale Procedures require all prevailing bidders to pay for all transfer taxes and closing costs,  
7 including the fee payable to the Marketplace Auction Platform, which is the greater of five percent  
8 (5%) of the winning bid or \$25,000 (the "Platform Fee"). As part of the M&M Agreement, the  
9 Marketplace Auction Platform has agreed to rebate 40% of the Platform Fee to the Receivership  
10 Estates upon closing of the sales for those Properties sold for amounts in excess of \$1 million.  
11

12 D. The CMBS Loan

13 16. On or about February 10, 2020, Grass River Real Estate Credit Partners Loan  
14 Funding, LLC (the "Original Lender") made the CMBS Loan in the original principal amount of  
15 \$60,000,000 to the Borrowers pursuant to a written agreement among the parties thereto (the  
16 "Loan Agreement"). Pursuant to the Loan Agreement, the Borrowers are jointly and severally  
17 liable for repayment of the CMBS Loan, which was scheduled to mature on March 5, 2030.  
18  
19

20 17. In conjunction with the Loan, the Borrowers made and delivered to the Original  
21 Lender a Promissory Note dated as of February 10, 2020, in the principal sum of \$60,000,000 (the  
22 "Note"). The Borrowers further executed and delivered to the Original Lender a Mortgage  
23 and Assignment of Leases and Rents securing payment of the Note dated as of February 10,  
24 2020 (the "Mortgage"). The Mortgage was recorded by the Original Lender in the counties where  
25 the Borrowers are located. On or about March 1, 2020, the Loan was securitized into the CSAIL  
26 2020-C19 Commercial Mortgage Trust pursuant to a pooling and servicing Agreement, and as a  
27  
28

1 result, Original Lender assigned all of its right, title and interests to the Lender.

2       18. Pursuant to section 2.8 of the Loan Agreement, the Borrowers may defease the  
3 CMBS Loan upon the sale or transfer of the Properties, subject to certain conditions, including:  
4 (a) payment of all principal and interest due and payable on the CMBS Loan, (b) establishing a  
5 “Defeasance Collateral Account” at an eligible financial institution, (c) funding the Defeasance  
6 Collateral Account with government securities in an amount sufficient to pay principal and interest  
7 on the CMBS Loan through the maturity date (the “Defeasance Collateral”), (d) executing a  
8 security agreement for the Defeasance Collateral Account and Defeasance Collateral for the  
9 benefit of the Lender, (e) delivering an opinion of counsel that Lender has a legal and valid  
10 perfected first priority security interest in the Defeasance Collateral Account and Defeasance  
11 Collateral, and (f) delivering a certificate from a public accounting firm certifying that the  
12 Defeasance Collateral will generate monthly amounts sufficient to satisfy the defeasance  
13 payments. The Loan Agreement and related documents do not permit the defeasance of the  
14 CMBS Loan during the continuation of an Event of Default and, accordingly, the Lender’s consent  
15 is necessary to accomplish any defeasance.

16       19. The sale proceeds will be used, with the assistance of the Defeasance Consultant, to  
17 establish and fund the Defeasance Collateral Account with the Defeasance Collateral in  
18 accordance with the Loan Agreement. Upon defeasance, a “Successor Borrower” will replace the  
19 Borrowers as obligors under the CMBS Loan, which entity shall be established by the Lender and  
20 shall not be subject to the Receiver’s control. Through the Sale Order, the Receiver requests that  
21 the Court approve and authorize the Receiver to take all steps necessary to proceed with the  
22 defeasance, including engaging and paying the Defeasance Consultant.

1 E. The Mezzanine Loan

2 20. In connection with the CMBS Loan, on February 10, 2020, the Borrowers entered  
 3 into that certain Mezzanine Loan Agreement with QUADRANT MEZZ FUND, LP (the  
 4 “Mezzanine Lender”), in the original principal amount of \$10,000,000, purportedly secured by a  
 5 pledge of 100% of the limited liability company interests in each of the Borrowers pursuant to  
 6 that certain Mezzanine Pledge and Security Agreement dated as of February 10, 2020. The  
 7 Mezzanine Lender has a claim against the Borrowers and does not hold a mortgage on any of the  
 8 Properties to be sold through this Motion. The Mezzanine Lender has asserted it is owed  
 9 \$16,061,461.45, as of February 4, 2025, which includes default interest in the amount of  
 10 \$945,267.57, and a prepayment penalty of \$3,193,283.79. The Receiver disputes the Mezzanine  
 11 Lender’s claim to the extent it seeks default interest, prepayment penalties and excessive fees.<sup>4</sup>  
 12  
 13  
 14

15 **III. Relief Requested**

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

- 17 a. The approval of (i) the Receiver’s engagement and compensation of Marcus &  
 18 Millichap pursuant to the terms of the M&M Agreement, and (ii) the Sale Procedures,  
 19 including approving the notice of auction and sale, scheduling an auction to be  
 20 conducted by the Marketplace Auction Platform (the “Auction”) and setting a sale  
 21 hearing date after the Auction (the “Sale Hearing”) to consider the final approval of  
 the sale of each Property (the “Sale Procedures Order”), in the form attached hereto  
 as **Exhibit 3**; and
- 22 b. The approval of (i) the sale of each Property to the bidder offering the highest and  
 23

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24 <sup>4</sup> The Receiver anticipates that the sale of the Properties will generate sufficient proceeds to  
 25 satisfy and defease the Lender. It is uncertain whether the Mezzanine Lender’s claim will be  
 26 satisfied. If any Receivership Borrower has excess funds after defeasance of the Lender, such  
 27 funds shall be held by the Receiver in a segregated receivership account for the benefit of the  
 28 respective Receivership Borrower. If the Receiver and Mezzanine Lender reach a resolution on  
 the Mezzanine Lender’s allowed claim, the Receiver will seek Court approval for payment of such  
 claim.

best bid at the Auction, (ii) the Receiver's engagement and payment to the Defeasance Consultant, and (iii) the defeasance of the CMBS Loan in accordance with the Loan Agreement (the "Sale Order"), in the form attached hereto as **Exhibit 4**.

#### IV. Basis for Relief Requested

##### A. Authorization to Sell the Property

22. It is well-settled that the Court has broad authority to approve the auction and Sale Procedures as set forth herein. "The power of sale necessarily follows the power to take possession and control of and to preserve property." *S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir. 1996), *abrogated on other grounds by Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 93-94 (1998) (quoting 2 Ralph E. Clark, *Treatise on Law & Practice of Receivers* § 482 (3d ed. 1992)). In addition to the equitable powers vested in this Court, this Court is conferred with the statutory authority to authorize the sale of the Property. Sales of assets by federal receivers are governed by sections 2001,<sup>5</sup> 2002,<sup>6</sup> and 2004 of Title 28 of the United States

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<sup>5</sup> Section 2001(a) sets forth the requirements for a receiver's sale of real estate pursuant to a public auction process as requested by this Motion:

Any realty or interest therein sold under any order or decree of any court of the United States shall be sold as a whole or in separate parcels at public sale at the courthouse of the county, parish, or city in which the greater part of the property is 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.

<sup>6</sup> Section 2002 provides that notice of sales of real estate must be published:

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

1 Code. Section 2001 governs sales of real property and section 2004 governs sales of personal  
2 property, while section 2002 sets forth the procedures for the noticing of sales.

3  
4 23. Here, the Receiver proposes to sell the Properties through the Marketplace Auction  
5 Platform and as prescribed by the Sale Procedures Order. The Marketplace Auction Platform is  
6 a commercial online real estate auction site with one of the highest sale rates in the real estate  
7 industry, utilizing cutting-edge technology and a dedicated marketing team to bring the most  
8 diverse and competitive buyer pool to its listings. The Court previously approved the Receiver's  
9 sale of real property under similar sale procedures using the Marketplace Auction Platform.<sup>7</sup>  
10

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

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

16 25. The Receiver also seeks approval of his engagement of Marcus & Millichap to  
17 market and solicit offers for the Properties and broker the sale through the Marketplace Auction  
18 Platform. Pursuant to paragraph 6(I) of the Receivership Order, the Receiver may engage and  
19 employ professionals, including brokers, as necessary to assist in carrying out his duties. Marcus  
20 & Millichap is a nationally-recognized commercial brokerage firm with significant expertise  
21 brokering and selling properties comparable to the Properties. For the Properties, Marcus &  
22 Millichap has created high quality marketing materials that showcase their physical structures and  
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25  
26 <sup>7</sup> See Order (I) Approving (A) the Sale of the Real Property Subject to the "Rialto Portfolio"  
27 and Located at 412 Cross Oaks Mall, Plainwell, MI 49080 Owned By 412 Cross Oaks Mall  
28 Plainwell MI, LLC, Free and Clear of All Liens, Claims, Encumbrances and Interests, and (B)  
Granting Related Relief [ECF No. 281].

1 profitability history of each location. Once prospective bidders sign a confidentiality agreement,  
2 they can receive access to a data room which will provide an in-depth review of all pertinent  
3 information on the Properties. Marcus & Millichap will market and solicit bids by advertising in  
4 industry journals and specifically targeting buyers reasonably believed to be interested in  
5 purchasing the Properties. In addition, as stated above, Marcus & Millichap will cause to be  
6 published the notice of the Auction and Sale Hearing in local publications in counties where the  
7 Properties are located. Through these efforts, the Properties will be exposed to a targeted  
8 marketing list of active bidders including owners and operators of similar shopping centers,  
9 private equity and other financial funds.  
10  
11

12         26. Pursuant to the M&M Agreement, on account of its services, Marcus & Millichap  
13 is entitled to receive a commission of 3% to 4% for each Property, with its commission not to  
14 exceed 3.5% of the aggregate gross purchase price of the Properties (the “M&M Commission”).  
15 To the extent a successful purchaser’s broker is entitled to a co-brokerage fee, Marcus & Millichap  
16 will be responsible for paying such fee. If the auction does not generate aggregate sale proceeds  
17 in excess of \$70 million, the Receiver retains the right to withdraw the proposed sale and proceed  
18 with an alternative disposition upon consultation with 3650, subject to further order of this Court.  
19 In the event the auction and proposed sales do not generate sufficient funds to satisfy the Lender  
20 and no transaction is approved by the Court, no commission or fees will be due and owing to  
21 either Marcus & Millichap or the Marketplace Auction Platform.<sup>8</sup>  
22  
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25         27. The Receiver requests authority to pay the M&M Commission upon the closing of  
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27 <sup>8</sup> 3650 has informed the Receiver that it does not consent to any sale transaction whereby  
28 the proceeds are insufficient to consummate a defeasance of the CMBS Loan.



1 the sale of the Properties from the proceeds thereof. Marcus & Millichap has represented to the  
 2 Receiver that it does not hold any interest materially adverse to any of the Receivership Entities.<sup>9</sup>

3  
 4 28. The Receiver submits that Marcus & Millichap is best suited for marketing and  
 5 brokering the sale of the Properties and that the engagement of Marcus & Millichap on the terms  
 6 and conditions set forth herein, and in the M&M Agreement, is necessary and appropriate, in the  
 7 best interests of the Receivership Estate, and should be granted.

8  
 9 C. Approval of the Sale Procedures

10 29. The Receiver proposes to sell each of the Properties for the highest and best price  
 11 at a public auction in accordance with the Sale Procedures to be approved by the Sale Procedures  
 12 Order.<sup>10</sup> Through the Sale Procedures, the Receiver, with the assistance of Marcus & Millichap,  
 13 intends to market-test the value of the Properties to determine the highest and best offers for each  
 14 of the Properties. The Receiver submits that approval of these Sale Procedures is appropriate as  
 15 they will help to achieve the “primary purpose of [an] equity receivership;” that is, “to promote  
 16 orderly and efficient administration of the estate . . . for the benefit of creditors.” *S.E.C. v. Hardy*,  
 17 803 F.2d 1034, 1037 (9th Cir. 1986).  
 18  
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22 9 A Declaration of Disinterestedness was filed by Marcus & Millichap in this case in  
 23 connection with the Receiver’s efforts to sell the Morningstar at Arcadia facility owned by  
 24 Glenrosa 32, LLC [ECF No. 139], which is adopted herein by reference. The Court previously  
 25 approved the engagement of Marcus & Millichap under similar terms to market and sell properties  
 26 owned by other Receivership Entities. *See, e.g. Order (I) Approving (A) the Sale of the Real  
 Property Subject to the “Rialto Portfolio” and Located at 412 Cross Oaks Mall, Plainwell, MI  
 49080 Owned By 412 Cross Oaks Mall Plainwell MI, LLC, Free and Clear of All Liens, Claims,  
 Encumbrances and Interests, and (B) Granting Related Relief* [ECF No. 281].

27  
 28 <sup>10</sup> The Sale Procedures are set forth on Exhibit A to the proposed Sale Procedures Order.

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

30. While not expressly provided for statutorily, an order approving the sale of assets by a federal receiver may provide for the sale of property free and clear of liens, claims, encumbrances and other interests with all such interests attaching to the proceeds of the sale. *S.E.C. v. Cap. Cove Bancorp LLC*, 2015 WL 9701154, at \*4 (C.D. Cal. Oct. 13, 2015). The Receiver proposes to sell the Properties to a Successful Bidder (or bidders) in accordance with the Sale Procedures, free and clear of all liens, claims, encumbrances and other interests (collectively, “Liens and Encumbrances”) with such Liens and Encumbrances being satisfied at closing or attaching to the proceeds of the sale in the same order of priority. The Receiver anticipates that the sale proceeds from the sale of the Properties will, in aggregate, provide sufficient funds to defease and allow for the satisfaction of the Lender’s undisputed secured claims, which are cross-collateralized across all fourteen Properties. Upon sale of the Properties and defeasance in accordance with the terms set forth in this Motion, 3650 will release the Lender’s mortgages on the Properties.<sup>11</sup>

E. Engagement of the Defeasance Consultant and Defeasance of the Loan

31. Through this Motion, the Receiver seeks approval to engage and pay the Defeasance Consultant upon entry of the Sale Order to facilitate and administer the defeasance of the CMBS Loan in accordance with the Loan Agreement. Since its founding in 2000, Defease with Ease has

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<sup>11</sup> If other Liens and Encumbrances exist that are not provided for or satisfied at closing, the Receiver requests authority to close the sale of the Properties, free and clear of all such Liens and Encumbrances, and for those Liens and Encumbrances to attach to the sale proceeds relevant to that Property, which shall be placed in a segregated receivership account pending further order of the Court or written agreement among the parties.

1 been the market leader in the defeasance of commercial real estate loans in the United States and  
2 Canada. The company helps commercial real estate borrowers, brokers and attorneys make  
3 informed economic decisions about the defeasance component in sale or refinancing transactions,  
4 and then facilitates the defeasance process through its completion.

5  
6 32. For its services, Defease with Ease has informed the Receiver that it will accept a  
7 flat fee for its services upon consummation of the defeasance. The Receiver estimates the fee  
8 payable to the Defeasance Consultant will be approximately \$200,000.<sup>12</sup> The Receiver submits  
9 that the Defeasance Consultant is best suited to act in this capacity pursuant to the terms and  
10 conditions set forth herein, and that the engagement of the Defeasance Consultant is necessary  
11 and appropriate, in the best interests of the Receivership Estate, and should be granted.<sup>13</sup>

12  
13  
14 F. Proposed Form and Manner of Notice of the Sale

15 33. To provide interested parties with notice of the Auction and Sale Hearing and an  
16 opportunity to object, the Receiver requests approval of notice and objection procedures as set  
17 forth in the Sale Procedures Order. The Receiver proposes to serve, within five days of entry of  
18 the Sale Procedures Order, the form of notice of the sale, attached as Exhibit B to the Sale  
19 Procedures Order (the “Sale Notice”) by first class mail on (a) all known creditors of the  
20 Receivership Borrowers; (b) 3650 and any party known or reasonably believed to have asserted  
21 any Lien and Encumbrance or other interest in the Properties; (c) all parties to pending litigation  
22

23  
24  
25 <sup>12</sup> The Receiver solicited cost estimates from several similarly qualified consultants who were  
26 all similarly priced and determined that Defease With Ease possessed the best combination of  
experience, reputation and cost.

27 <sup>13</sup> The Receiver is not seeking to retain the Defeasance Consultant as “Retained Personnel” under  
28 the Receivership Order, but rather, for authority to pay the Defeasance Consultant under paragraph 6. G  
(iv) of the Receivership Order (“all other costs and expenses authorized by this Court”).

1 against the Receivership Borrowers (as of the date of entry of the Sale Procedures Order); (d) any  
2 party known or reasonably believed to have expressed an interest in acquiring the Property; (e)  
3 the Securities and Exchange Commission, the United States Attorney for the Southern District of  
4 New York, the Internal Revenue Service and all local governmental units; (f) the Mezzanine  
5 Lender; and (g) such additional persons and entities deemed appropriate by the Receiver.

7       34. The Sale Notice will also be made available, within five (5) days of entry of the Sale  
8 Procedures Order, on the Receiver's website at [www.arciterrareceivership.com](http://www.arciterrareceivership.com). In addition,  
9 within five (5) days of entry of the Sale Procedures Order, the Receiver will cause Marcus &  
10 Millichap to publish notice of the Auction and his intent to sell the Properties for four weeks in  
11 accordance with 28 U.S.C. § 2002, in publications where each of the Properties is located.

13       35. The Receiver submits that the notice to be provided and the method of service  
14 proposed herein constitutes good and adequate notice of the sale, and complies with sections 2001  
15 and 2002 of Title 28. Accordingly, the Receiver requests that this Court approve the notice  
16 procedures and that no other or further notice of the sale is required.

## 18 **V. Conclusion**

19       36. No prior motion for the relief sought herein has been made to any court. Given the  
20 authorities set forth herein, request is made to waive any requirement to file a separate  
21 memorandum of law. *See* LRCiv 7.2(b).

23       WHEREFORE, the Receiver respectfully requests that this Court (a) enter the Sale  
24 Procedures Order approving the M&M Agreement and the Sale Procedures; (b) enter the Sale  
25 Order approving the sale of the Properties to the bidder or bidders offering the highest and best  
26 bid at the Auction, approving the engagement of the Defeasance Consultant, and authorizing the  
27  
28

Receiver, with the assistance of the Defeasance Consultant, to defease and satisfy the CMBS Loan; and (c) grant such other relief as is just and equitable.

Dated: July 2, 2025

ARCHER & GREINER, P.C.

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

Allen G. Kadish<sup>14</sup>

Harrison H.D. Breakstone<sup>15</sup>

1211 Avenue of the Americas

New York, New York 10036

Tel: (212) 682-4940

Email: akadish@archerlaw.com

hbreakstone@archerlaw.com

*Counsel for Allen D. Applbaum as Receiver*

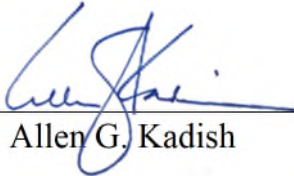
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<sup>14</sup> Admitted *pro hac vice*.

<sup>15</sup> Admitted *pro hac vice*.

**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2025, 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

**INDEX TO EXHIBITS**

**Exhibit 1 – List of Properties to be Sold**

**Exhibit 2 – Coxworth Declaration**

**Exhibit A – M&M Agreement**

**Exhibit B – Purchase Agreement**

**Exhibit 3 – Sale Procedures Order**

**Exhibit A – Sale Procedures**

**Exhibit B – Notice of Auction and Sale**

**Exhibit 4 – Sale Order**

**Exhibit A – Successful Bidder Asset Purchase Agreement**

**EXHIBIT 1 - PROPERTIES TO BE SOLD**

	<b>Borrower</b>	<b>Address of Property</b>	<b>Original Loan Allocation Amount</b>
1.	AT Seven Hills Aurora CO II, LLC	18511, 18581, 18757 & 18883 E. Hampden Ave. Aurora, CO 80013 ("Seven Hills Plaza Property")	\$22,650,023.32
2.	AT ALTUS Cumberland GA II, LLC	2997 & 2999 Cumberland Blvd. Smyrna, GA 30339 ("Cumberland Place Property")	\$7,055,229.79
3.	AT Eastman GA II, LLC	970 Indian Drive Eastman, GA 31023 ("Eastman Shopping Center Property")	\$706,257.32
4.	ATA Lanier Fayetteville GA II, LLC	320 West Lanier Avenue Fayetteville, GA 30214 ("Main Street Office Property")	\$4,912,268.17
5.	AT PT Danville IL II, LLC	22 West Newell Road Danville, IL 61834 ("Pine Tree Plaza Property")	\$1,681,190.19
6.	AT New Lenox IL-Inline II, LLC	2021 East Laraway Road New Lenox, IL 60451 ("Heather Glen Property")	\$1,924,495.52
7.	AT Auburn Plaza IN II, LLC	506 N. Grandstaff Drive Auburn, IN 46706 ("Auburn Cord Plaza Property")	\$3,777,744.70
8.	AT HL Burlington IA II, LLC	3351 Agency Street Burlington, IA 52601 ("Burlington Plaza West Property")	\$2,052,255.07
9.	AT Ville Platte LA II, LLC	925 E. LaSalle Street Ville Platte, LA 70586 ("Ville Platte Shopping Center Property")	\$1,412,199.78
10.	AT Sweden NY II, LLC	1561 Nathaniel Poole Trail Brockport, NY 14420 ("Sweden Shopping Center Property")	\$1,281,617.11
11.	AT Mayodan NC II, LLC	131 Commerce Drive Mayodan, NC 27027 ("Mayodan Shopping Center Property")	\$2,578,072.55
12.	AT Longview TX II, LLC	711 Estes Drive Longview, TX 75602 ("Longview Center Property")	\$1,208,228.26
<b>Indiana Properties Subject to Indiana Receiver</b>		<b>Address of Property</b>	<b>Original Loan Allocation Amount</b>
13.	AT Plainfield Village IN II, LLC	160 Plainfield Village Drive Plainfield, IN 46168 ("Plainfield Village Property")	\$3,545,981.17
14.	Arciterra Westgate Indianapolis IN II, LLC	5173 W. Washington Street Indianapolis, IN 46241 ("Westgate Plaza Property")	\$5,214,437.04
Total Original Loan:			<b><u>\$60,000,000.00</u></b>



**EXHIBIT 2**

**COXWORTH DECLARATION**

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States Securities and Exchange  
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

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

Relief Defendants.

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

**DECLARATION OF RANDALL  
COXWORTH IN SUPPORT OF  
RECEIVER'S MOTION FOR  
ORDERS (I) APPROVING (A) THE  
ENGAGEMENT AND  
COMPENSATION OF MARCUS &  
MILLICHAP REAL ESTATE  
INVESTMENT SERVICES AS  
BROKER TO SELL THE REAL  
PROPERTIES SUBJECT TO THE  
CMBS LOAN SERVICED BY 3650  
REIT LOAN SERVICING LLC  
AND (B) THE SALE AND  
AUCTION PROCEDURES FOR  
THE SALE OF THE PROPERTIES;  
(II) APPROVING (A) THE SALE  
OF THE PROPERTIES, FREE AND  
CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES AND  
INTERESTS, (B) THE  
ENGAGEMENT AND  
COMPENSATION OF THE  
DEFEASANCE CONSULTANT,  
AND (C) THE USE OF THE SALE  
PROCEEDS TO DEFEASE AND  
SATISFY THE CMBS LOAN; AND  
(III) GRANTING RELATED  
RELIEF**

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

1. I am a partner at the firm of StoneTurn Group, LLP ("StoneTurn") and  
submit this Declaration in support of the *Motion for Orders (I) Approving (a) the*

1 *Engagement and Compensation of Marcus & Millichap Real Estate Investment Services*  
2 *as Broker to Sell the Real Properties Subject to the CMBS Loan Serviced By 3650 REIT*  
3 *Loan Servicing LLC and (b) the Sale and Auction Procedures for the Sale of the Properties;*  
4 *(II) Approving (a) the Sale of the Properties, Free and Clear of All Liens, Claims,*  
5 *Encumbrances and Interests, (b) the Engagement and Compensation of the Defeasance*  
6 *Consultant, and (c) the Use of the Sale Proceeds to Defease and Satisfy the CMBS Loan;*  
7 *and (III) Granting Related Relief (the “Motion”)<sup>1</sup> filed by Allen D. Applbaum as receiver*  
8 *for ArciTerra Companies, LLC and related entities (the “Receiver”).*

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

22       3. On December 21, 2023 and May 6, 2024, the Court entered the Receivership  
23 Order which among other things, appointed the Receiver and approved the engagement of

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27 <sup>1</sup> Capitalized, undefined terms are as in the Motion.

1 StoneTurn and Archer & Greiner, P.C. as retained professionals for the Receiver in this  
2 case.

3 4. Since his appointment, the Receiver and his team of professionals have  
4 reviewed and evaluated the financial affairs of the Receivership Estate, including its  
5 numerous real estate holdings. The Receiver has undertaken significant efforts to stabilize  
6 the many properties within the Receivership Estate, including the Properties subject to the  
7 Motion.  
8

9 5. Shortly after the Receiver's appointment, I engaged in discussions with 3650  
10 acting on behalf of the Lender of the CMBS Loan. The Receiver's team entered into  
11 discussions with 3650's representatives and ultimately entered into the 3650 Stipulation,  
12 agreeing to, *inter alia*, maintain the status quo and cash management arrangement agreed  
13 to by the Receivership Borrowers prior to appointment of the Receiver.  
14

15 6. The CMBS Loan is secured by two additional properties, the Indiana  
16 Properties controlled by the Indiana Receiver pursuant that certain Order, dated August 18,  
17 2023, of the Indiana Court, Case No. 29D02-2305-PL-004542. In addition to the frequent  
18 communications with 3650, I have maintained discussions with the Indiana Receiver  
19 regarding the Indiana Properties.  
20

21 7. After extensive analysis, the Receiver and his team of professionals  
22 determined that the best course of action was to market and sell the Properties and use the  
23 proceeds to defease the CMBS Loan in accordance with the terms of the loan agreement.  
24 The Receiver recently obtained the consent of the Indiana Receiver to simultaneously  
25 market and sell the Indiana Properties with a portion of the sale proceeds used to defease  
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28

1 and satisfy the CMBS Loan. The Indiana Receiver is seeking approval of the auction  
2 process and sale from the Indiana Court. Along with the proceeds from the sale of the  
3 Indiana Properties, the Receiver believes that the sale of the Properties will result in  
4 sufficient funds to consummate the defeasance of the CMBS Loan and satisfy the claims  
5 of the Lender.  
6

7 8. Upon making the decision to market and sell the Properties, the Receiver  
8 considered potential brokers and ultimately selected Marcus & Millichap to broker and sell  
9 the Properties. Marcus & Millichap is a nationally-recognized commercial brokerage firm  
10 with significant expertise brokering and selling properties comparable to the Properties.  
11

12 9. For the Properties, Marcus & Millichap created high quality marketing  
13 materials that showcase the impressive physical structures and profitability history of each  
14 center. Once prospective bidders sign a confidentiality agreement, they can receive access  
15 to a data room which will provide an in-depth review of all pertinent information on each  
16 Property. Marcus & Millichap will market and solicit bids by advertising in industry  
17 journals and specifically targeting buyers reasonably believed to be interested in  
18 purchasing the Properties. In addition, Marcus & Millichap will cause to be published the  
19 notice of the auction and sale hearing in local publications in counties where the Properties  
20 are located. Through these efforts, the Properties will be exposed to a targeted marketing  
21 list of active bidders including owners and operators of similar properties, private equity  
22 and other financial funds.  
23  
24

25 10. The Receiver then negotiated the terms of the M&M Agreement which is  
26 subject to Court approval through the Motion. A copy of the M&M Agreement is attached  
27  
28

1 hereto as **Exhibit A**. The Court previously approved the Receiver's sale of real property  
2 under similar sale and auction procedures using the Marketplace Auction Platform.

3 11. Prior to execution of the M&M Agreement, Marcus & Millichap informed  
4 the Receiver of the absence of any material conflict. A Marcus & Millichap Declaration  
5 of Disinterestedness was recently filed in this case in connection with the Receiver's efforts  
6 to sell the Morningstar at Arcadia facility [ECF No. 139].  
7

8 12. Pursuant to the M&M Agreement for the sale of the Properties, Marcus &  
9 Millichap is entitled to receive a commission of 3% to 4% for each Property, with its  
10 commission not to exceed 3.5% of the aggregate gross purchase price of the Properties. If  
11 the successful purchaser's broker is entitled to a co-brokerage fee, Marcus & Millichap  
12 will be responsible for paying such fee.  
13

14 13. In connection with the engagement of Marcus & Millichap, it was  
15 determined that conducting an auction through the RealINSIGHT Marketplace Auction  
16 Platform (<https://rimarketplace.com>) (the "Marketplace Auction Platform"), would lead to  
17 the highest and best offer for the Property. The Marketplace Auction Platform is a  
18 commercial online real estate auction site with one of the highest sale rates in the real estate  
19 industry, utilizing cutting-edge technology and a dedicated marketing team to bring the  
20 most diverse and competitive buyer pool to its listings.  
21

22 14. At the auction, the proposed Sale Procedures require all prevailing bidders to  
23 agree to pay all transfer taxes and closing costs, including the fee payable to the  
24 Marketplace Auction Platform, which is the greater of five percent (5%) of the winning bid  
25 or \$25,000 (the "Platform Fee"). As part of the M&M Agreement, the Marketplace  
26  
27  
28

1 Auction Platform has agreed to rebate 40% of the Platform Fee to the Receivership Estate  
2 upon closing of the sales to the extent the purchase price for any particular Property exceeds  
3 \$1 million.

4 15. Upon conclusion of the auction, the Receiver will select the highest and best  
5 offer for each of the Properties that matches or exceeds the reserve price established by  
6 Marcus & Millichap and enter into the Purchase Agreement, substantially in the form  
7 annexed hereto as **Exhibit B**. The Purchase Agreement provides for the sale of each  
8 Property on an “as is, where is” basis, with no representations or warranties from the  
9 Receiver or the Receivership Entities and is solely contingent on approval of this Motion  
10 and the Receiver’s ability to deliver insurable title.  
11

12 16. In the event the auction through the Marketplace Auction Platform does not  
13 generate anticipated aggregate sale proceeds in excess of \$70 million, the Receiver retains  
14 the right to withdraw the proposed sale and proceed with an alternative disposition upon  
15 consultation with 3650, subject to further order of this Court. In the event the auction and  
16 proposed sales do not generate sufficient funds to satisfy the Lender and are not approved  
17 by the Court, no commission or fees will be due and owing to either Marcus & Millichap  
18 or the Marketplace Auction Platform.  
19

20 17. After extensive negotiations with 3650, the Receiver intends to use a portion  
21 of the sale proceeds to “defease” the CMBS Loan in accordance with the defeasance clause  
22 set forth in the Loan Agreement. The Receiver and 3650 have reached an agreement  
23 pursuant to which 3650 has agreed to waive certain default rate interest and other fees for  
24 the period July through December 15, 2025 of approximately \$2 million, on the condition  
25  
26  
27  
28

1 that the defeasance is consummated before December 15, 2025 (the “3650 Waiver  
2 Agreement”).

3 18. In the commercial mortgage context, defeasance allows for the release of real  
4 property securing a loan in exchange for the substitution of replacement collateral. In  
5 CMBS loan “defeasance” transactions, borrowers use the proceeds from a refinance or sale  
6 of property securing an existing loan to purchase a collateral portfolio of U.S. government  
7 securities. This portfolio of securities, which must be sufficient to make all of the remaining  
8 debt service payments under the existing loan, is substituted as the collateral for the  
9 previously secured real estate. This “substitute” or “defeasance” collateral is then pledged  
10 to the existing lender, and the lender thereafter releases the real property from the mortgage  
11 lien (the loan is thus “defeased”). The original loan note remains outstanding but is  
12 assumed by an entity known as the “successor borrower.” Through the defeasance, the  
13 substitute/defeasance collateral is transferred to the successor borrower, which makes the  
14 ongoing debt service payments required by the loan and replaces the original borrower as  
15 the obligor of the defeased loan.

16 19. The defeasance clause in the CMBS Loan allows the Borrowers to sell the  
17 Properties without incurring a prepayment penalty by replacing the collateral (*i.e.*, the  
18 Properties) with a portfolio of U.S. treasury securities that generate sufficient cash flow to  
19 make all payments on the CMBS Loan through maturity. The Receiver anticipates that the  
20 defeasance will require approximately \$55 to \$57 million in sale proceeds to fund the  
21 purchase of replacement collateral. Additional sale proceeds will be used to satisfy default  
22 interest and fees asserted by 3650 through July 1, 2025 in the approximate amount of \$6



1 million and to otherwise satisfy the CMBS in accordance with the 3650 Waiver Agreement.  
2 Through the sale and defeasance, the Receivership Estates will save approximately \$10 to  
3 \$11 million in default interest and fees, vis a vis a sale the Properties and payment of the  
4 proceeds to 3650 to satisfy the CMBS Loan.

5         20. In consultation with 3650, the Receiver intends to engage the services of the  
6 Defeasance Consultant, to facilitate and assist in the defeasance of the CMBS Loan. The  
7 Defeasance Consultant will, among other things, form or cause the formation of “successor  
8 borrowers,” coordinate the purchase and structure of the “Defeasance Collateral” and  
9 coordinate all deliverables to lenders, escrow agents and other third parties in accordance  
10 with the Loan Agreement. The Receiver anticipates that the Defeasance Consultant will  
11 charge approximately \$200,000 for its services.  
12

13  
14         21. I declare under penalty of perjury that the foregoing is true and correct.  
15

16 Dated: San Diego, California  
17 June 28, 2025

*Randall Coxworth*  
Randall Coxworth

**INDEX OF EXHIBITS TO COXWORTH DECLARATION**

**Exhibit A – M&M Agreement**

**Exhibit B - Proposed Asset Purchase Agreement**

Exhibit A

Marcus & Millichap Engagement Agreement

# Marcus & Millichap

## Real Estate Investment Services

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

17 State Street, 2<sup>nd</sup> Floor  
New York, New York 10004

June 18, 2025

**Re: Exclusive Representation Agreement for Auction Sales**

Dear Mr. Applbaum:

Marcus & Millichap Real Estate Investment Services, Inc. (including its subsidiary and affiliated entities, “**Marcus & Millichap**”) (any references to “we,” “us,” “our,” or similar terms will refer to Marcus & Millichap) is pleased to enter into this Exclusive Representation Agreement for Auction Sales (this “**Agreement**”) with: **Allen D. Applbaum as Receiver in the matter of *Securities and Exchange Commission v. Jonathan Larmore, et al., Case No. 2:23-cv-02470-PHX-DLR in the United States District Court for the District of Arizona* (“Seller”)** (any references to “you,” “your,” or similar terms will refer to Seller) in connection with the sale of real property located at

131 Commerce Lane, Mayodan, NC - Parcel ID: 171670
320 W. Lanier Avenue, Fayetteville, GA - Parcel ID: 05-23-00-097
18511 E. Hampden Avenue, Aurora, CO - Parcel ID: 1975-34-3-18-001
1651 Nathaniel Poole Trail, Brockport, NY - Parcel ID: 265289-084-010-0001-053-000
350 N. Grandstaff Drive, Auburn, IN - Parcel ID: 17-06-30-402-002.000-025
3351 Agency Street, Burlington, IA - Parcel ID: 10-36-476-033
2021 East Laraway Road, New Lenox, IL - Parcel ID: 08-25-301-002
22 West Newell Road, Danville, IL - Parcel ID: 18-17-202-004
711 Estes Drive, Longview, TX - Parcel ID: 20389
915 E. LaSalle Street, Ville Platte, LA - Parcel ID: 1110036725

2997 Cumberland Circle, Atlanta, GA - Parcel ID: 17-0881-0-002-0
970 Indian Lane, Eastman, GA - Parcel ID: 00480-00000-025-G01

(the “**Property**”). You and Marcus & Millichap may be referred to in this Agreement individually as a “**Party**” or collectively as “**Parties**.”

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

2. **Term**. The term of Agreement will commence effective as of May 2<sup>nd</sup>, 2025 (the “**Commencement Date**”) and continue for a period of 200 days through and including midnight on December 20<sup>th</sup>, 2025 (such time being the “**Term**”).

3. **Engagement**. Subject to Court approval, you hereby engage us and grant to us, for the Term, the exclusive and irrevocable right and authority to list, market, and sell the Property. You agree to promptly refer and provide to us all inquiries of anyone interested in the Property, including but not limited to any letters of intent, purchase and sale agreements, or any other documents material to the sale of the Property which you might receive.

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

obligated, subject to Court approval as stated above, to sell the Property to the highest bidding purchaser and failure or refusal to complete the sale after may have legal consequences, including but not limited to having to pay our commission and the Platform Fee.

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

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

3.4. You agree we and our representatives will have the right to enter on the Property with prospective buyers, at reasonable hours, subject to the rights of any tenants or occupants thereof, and without unduly disturbing such tenants or occupants, to allow for the inspection of the interior and exterior of the Property, and to make available to prospective buyers all financial data concerning the Property. We agree to indemnify and hold you harmless from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any prospective purchasers) or the Property that arise in connection with our entry upon the Property to the extent caused by our negligence or willful misconduct.

4. **Reserve Price.** You authorize us to offer the Property for sale on the Auction Platform at the following unpublished reserve price (in each case, the "**Reserve Price**" as to such Property) of:

## Auction Sales Listing Agreement – 3650 Portfolio

Page 4

Three Million, Two Hundred and Fifty Thousand Dollars (\$3,250,000) ( <u>Property: 131 Commerce Lane, Mayodan, NC Parcel ID: 171670</u> )
Two Million, Three Hundred and Sixteen Thousand Dollars (\$2,316,000) ( <u>Property: 320 W. Lanier Avenue, Fayetteville, GA Parcel ID: 05-23-00-097</u> )
Twenty-One Million, Four Hundred and Twenty Thousand Dollars (\$21,420,000) ( <u>Property: 18511 E. Hampden Avenue, Aurora, CO Parcel ID: 1975-34-3-18-001</u> )
Two Million, Thirty-Four Thousand Dollars (\$2,034,000) ( <u>Property: 1651 Nathaniel Poole Trail, Brockport, NY Parcel ID: 265289-084-010-0001-053-000</u> )
Three Million, Five Hundred Thousand Dollars (\$3,500,000) ( <u>Property: 350 N. Grandstaff Drive, Auburn, IN Parcel ID: 17-06-30-402-002.000-025</u> )
Two Million, Five Hundred Thousand Dollars (\$2,500,000) ( <u>Property: 3351 Agency Street, Burlington, IA Parcel ID: 10-36-476-033</u> )
One Million, Eight Hundred and Eighty Thousand Dollars (\$1,880,000) ( <u>Property: 2021 East Laraway Road, New Lenox, IL Parcel ID: 08-25-301-002</u> )
One Million, Seven Hundred and Twenty-Five Thousand Dollars (\$1,725,000) ( <u>Property: 22 West Newell Road, Danville, IL Parcel ID: 18-17-202-004</u> )
Two Million, Two Hundred Thousand Dollars (\$2,200,000) ( <u>Property: 711 Estes Drive, Longview, TX Parcel ID: 20389</u> )

Two Million, Three Hundred and Thirty Thousand Dollars (\$2,330,000) (Property: 915 E. LaSalle Street, Ville Platte, LA - Parcel ID: 1110036725)
Seven Million, Five Hundred and Thirty Thousand Dollars (\$7,530,000) (Property: 2997 Cumberland Circle, Atlanta, GA Parcel ID: 17-0881-0-002-0)
One Million, Three Hundred and Fifteen Thousand Dollars (\$1,315,000) (Property: 970 Indian Lane, Eastman, GA Parcel ID: 00480-00000-025-G01)

5. **Commission and Platform Fees.**

5.1. In consideration of the services to be rendered by us, you agree to pay us a commission equal to:

131 Commerce Lane, Mayodan, NC   Reserve Price: \$3,250,000   Commission: 4%
320 W. Lanier Avenue, Fayetteville, GA   Reserve: \$2,316,000   Commission: 4%
18511 E. Hampden Avenue, Aurora, CO   Reserve: \$21,420,000   Commission: 3%
1651 Nathaniel Poole Trail, Brockport, NY   Reserve: \$2,034,000   Commission: 4%
350 N. Grandstaff Drive, Auburn, IN   Reserve: \$3,500,000   Commission: 4%
3351 Agency Street, Burlington, IA   Reserve: \$2,500,000   Commission: 4%
2021 East Laraway Road, New Lenox, IL   Reserve: \$1,880,000   Commission: 4%
22 West Newell Road, Danville, IL   Reserve: \$1,725,000   Commission: 4%
711 Estes Drive, Longview, TX   Reserve: \$2,200,000   Commission: 4%
915 E. LaSalle Street, Ville Platte, LA   Reserve: \$2,330,000   Commission: 4%
2997 Cumberland Circle   Atlanta, GA   Reserve: \$7,530,000   Commission: 4%



970 Indian Lane, Eastman, GA   Reserve: \$1,315,000   Commission: 4%
--

subject to approval and order of the Court and the terms and conditions of this Agreement (specifically including but without limitation Section 5.6 hereof), if:

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

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

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

5.2. Additionally, if an event set forth in 5.1 do not occur, in consideration of the services to be rendered by us, you agree to pay us a commission, subject to approval and order of the Court, as follows:

5.3. If, during the Term, you terminate a contract for a purchase price equal to or in excess of the Reserve Price, or you otherwise cause the transaction not to close, for any reason other than (a) denial by the Court or any court of competent jurisdiction of an order approving the sale or (b) as a result of a breach of the buyer’s obligations in the purchase and sale agreement, you agree to pay us a commission equal to the percentage of the sales price listed in Section 5.1 of the Property identified in that offer or contract; or

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

5.5. Except in the event one or more occurrences outlined in Sections 5.1 and 5.2, above, occur, in which case the entire commission will become due and owing to Marcus & Millichap, you and Marcus & Millichap each agree if, after a contract for the purchase and sale of the Property has been executed, the sale of the Property is not completed, you may choose one of the following options: (a) renew this Agreement with a new Term commencing on the date the purchase and sale agreement is terminated and re-list your Property for sale through the Auction Platform on the same terms and conditions set forth herein, with all rights of both Parties reserved with regard to the Agreement and its original Term, or (b) if you collect or retain any deposit or monetary sum in connection with the termination of the purchase and sale agreement, you agree to pay us an amount equal to one-half of any deposit or any other monetary sum, damages, penalties, compensation or consideration (including liquidated damages) retained, received, or collected by you or otherwise paid to you (net of costs of collection, including litigation), by suit or otherwise, resulting, stemming, or arising from said purchase and sale contract or this Agreement, if and when said amounts are made available to you and, on said payment to us, this Agreement will terminate. However, with regard to option (b), above, the amount due to us will not exceed the amount of the commission to which we would have been entitled had the transaction closed.

5.6. In the event of a completed sale, exchange, or conveyance of the Property, the applicable commission set forth above must be paid to Marcus & Millichap in full at closing, provided that (i) the cumulative commission paid to us shall not exceed three and one-half percent (3.5%) of the ultimate realized sales price of all Property sold (including, for the avoidance of doubt, the realized sales price of 160 Plainfield Village Drive, Plainfield Indiana, and 5173 W. Washington Street, Indianapolis, Indiana (collectively, the “**Indiana Properties**”) which are subject to a separate agreement with Martha R. Lehman as Receiver), and (ii) we acknowledge that if the aggregate gross auction sales proceeds for the Property (including the Indiana Properties) does not exceed Seventy Million Dollars (\$70,000,000) (the “**Minimum Aggregate Auction Proceeds**”), and as a result (A) approval of the sales is denied by the Court, or (B) the party holding a mortgage lien on the Property declines to accept an amount less than the Minimum Aggregate Auction Proceeds and Seller is unable to complete closing on the Property, no commission shall be due to us. For the avoidance of doubt, Marcus & Millichap shall be paid its commission in accordance with the terms of this Agreement (x) in the event the properties are sold at auction, even if the Minimum Aggregate Auction Proceeds are not reached or exceeded but, nevertheless, approval of the sales is granted by the Court and Seller completes closing on the Property at such approved amount below the Minimum Aggregate Auction Proceeds or (y) Minimum Aggregate Auction Proceeds are met but, in lieu of an auction sale, the Court approves as the “highest and

best” result the disposition of the property to (and/or the foreclosure thereon by) any creditor holding a lien in the Property in exchange for an unconditional release from the liens of such creditor secured by the subject Property.

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

5.8. You terminate an executed contract for a purchase price equal to or in excess of the Reserve Price, or you otherwise cause such transaction not to close (for any reason other than as a result of a material breach of the buyer’s obligations or failure of a closing condition not resulting from your default, or for failure to obtain Court approval), in which case you shall immediately pay REDS the Platform Fee; or

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

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

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

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

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

6.2. It is your sole responsibility, subject to approval of the Court, to evaluate any offers, letters of intent, purchase and sale agreements, or other contracts you might execute in connection with the listing, marketing, and sale of the Property, as well as to evaluate any potential purchasers of the Property. We may communicate to you information, records, or communications provided to us or as we may locate or discover, and we may provide to you form, sample, or template contracts, but we cannot certify, represent, or warrant to you the truthfulness, completeness, or accuracy of any information provided to you in connection with the sale of the Property, or that any contract provided to you is satisfactory to your particular needs and interests. All decisions to sell the Property, engage in any negotiations, or enter into any contract with any potential buyers are yours, subject to approval of the Court. You are advised to seek any legal, financial, tax, or other advice as may be beneficial to you in making those decisions.

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

You also agree and hereby authorize us to disclose to potential buyers any defect known to us which we believe to be material.

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

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

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

7.3. Other licensees who are affiliated with Marcus & Millichap under a different Broker of Record than the Broker of Record representing you are “Affiliated Brokers.” You acknowledge and agree that the representation of any potential buyer by any Affiliated Broker in connection with the purchase of your Property will not create in a dual agency relationship so long as the Affiliated Brokers representing the buyer are licensed under a different Broker of Record than the Broker of Record under whom the licensees representing you are licensed. In such instances, the Affiliated Brokers who represent the potential buyer(s) of your Property will owe duties of loyalty, confidentiality, and trust exclusively to their own clients; while the licensees who represent you will owe duties of loyalty, confidentiality, and trust exclusively to you. Marcus & Millichap licensees representing you will not, without your written consent, disclose your confidential information to potential buyers, and Marcus & Millichap licensees representing potential buyers likewise will not, without the buyer(s)’s written consent, disclose the buyers’ confidential information to you.

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

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

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

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

YOU UNDERSTAND AND ACKNOWLEDGE MARCUS & MILLICHAP IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL, OR TAX ADVICE AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM YOUR OWN LEGAL COUNSEL, ACCOUNTANTS, OR TAX PROFESSIONALS. YOU UNDERSTAND THERE ARE MANY WAYS TO LIST, MARKET, AND SALE PROPERTY, AND YOU HAVE COMPLETED YOUR OWN INVESTIGATIONS AND DUE

DILIGENCE, AND CONSULTED YOUR OWN LEGAL OR OTHER PROFESSIONAL ADVISORS TO DETERMINE THAT LISTING YOUR PROPERTY FOR SALE THROUGH THE AUCTION PLATFORM IS YOUR DESIRED METHOD. IN MAKING THAT DETERMINATION, YOU HAVE NOT RELIED ON ANY INFORMATION PROVIDED TO YOU OR REPRESENTATION MADE BY MARCUS & MILLICHAP.

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

13. **Intentionally Omitted.**

14. **Third Party Beneficiary.** The Parties agree that REDS is intended to be, and shall have the rights of, a third party beneficiary under Section 5.2 of this Agreement and shall have the right to enforce the related provisions of Section 5.2 of this Agreement as if it were a party hereto; provided however, in enforcing either such provision REDS shall not be subject to any other terms of this Agreement, including, but not limited to, Section 8.

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

Very Truly Yours,



Signed: \_\_\_\_\_

State: Indiana

License: RB14034355



Signed: \_\_\_\_\_ DocuSigned by:  
John Leonard  
A0000000CAWSE

License: 252904

Marcus & Millichap Real Estate Investment  
Services of Chicago, Inc., a California  
corporation

Signed:  \_\_\_\_\_  
2A8D18C203F54E04

By: Jon Ruzicka

State: Iowa

License: B6337900

Auction Sales Listing Agreement – 3650 Portfolio

Marcus & Millichap Real Estate Investment  
Services of Chicago, Inc., a California  
corporation

Signed:  \_\_\_\_\_

By: Steven Weinstock

State: Illinois

License: 471.011175

Auction Sales Listing Agreement – 3650 Portfolio

Marcus & Millichap Real Estate Investment  
Services, Inc., a California corporation

Signed:  \_\_\_\_\_


By: John Horowitz

State: New York

License: 10311204479

Auction Sales Listing Agreement – 3650 Portfolio

Marcus & Millichap Real Estate  
Investment Services of Atlanta, Inc.,  
a Georgia corporation

Signed:  \_\_\_\_\_  
Signed by: Donald Gilchrist  
639CD354A0E344D


By: Donald Gilchrist

State: North Carolina

License: 241055

Auction Sales Listing Agreement – 3650 Portfolio

Marcus & Millichap Real Estate Investment  
Services of Atlanta, Inc., a Georgia  
corporation

Signed:  \_\_\_\_\_  
DocuSigned by:  
Adam Lewis  
100048709

By: Adam Lewis

State: Colorado

License: 100048709

## Auction Sales Listing Agreement – 3650 Portfolio

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

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

Signed by:



8F2188CF34F645E...

Signed: \_\_\_\_\_

By: Allen D. Applbaum

Title: Receiver

Date: \_\_\_\_\_

230514945 v4

230514945 v6

Exhibit B

Proposed Asset Purchase Agreement

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**ACKNOWLEDGMENT OF OFFEROR**

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

**OFFEROR:**

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
[company name]

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

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

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

Date: \_\_\_\_\_

**ASSET PURCHASE AGREEMENT**

(AUCTION)

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

This Asset Purchase Agreement (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2025 (the “**Effective Date**”) by and between [INSERT NAME OF BUYER], a \_\_\_\_\_ limited liability company, and its permitted assigns (“**Buyer**”), and [INSERT NAME OF ENTITY] (the “**Seller**”), by Allen D. Applbaum as Receiver in the matter of Securities and Exchange Commission v. Jonathan Larmore, et al., Case No. 2:23-cv-02470-PHX-DLR in the United States District Court for the District of Arizona (the “**Receiver**”).

**WITNESSETH**

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

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

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

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

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

**I.**  
**DEFINITIONS**

**1.1** Definitions.

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

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

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

“**Bidding Procedures Order**” shall mean such Order entered by the Court on \_\_\_\_\_, 2025 that, *inter alia*: (i) schedules the Auction and Sale Hearing, and (ii) approves bidding procedures for bidders to submit offers for the Property at the Auction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## II.

### **AUCTION PROCESS; PURCHASE AND SALE**

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

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

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

**2.1.3** The Leases, with the collected rents prorated through the date of Closing, provided, however, that Buyer shall not be entitled to any security deposits thereon;

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

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

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

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

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

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

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

### **III.**

#### **PURCHASE PRICE AND EARNEST MONEY**

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

**3.2** Earnest Money. An earnest money deposit in the amount of ten percent (10%) of the Purchase Price, or \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_.00) (the “**Earnest Money**”) shall be deposited by wire transfer in escrow with Chicago Title NCS California, 3780 Kilroy Airport Way, Suite 100, Long Beach, CA 90806; attention Jody Kelly, 213-330-3027,

Jody.Kelly@ctt.com (the “**Title Company**”) no later than one (1) day following the Auction (even if the sale is subject to confirmation).

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

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

#### IV.

#### **SALE SUBJECT TO APPROVAL OF THE COURT**

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

**4.2** Intentionally Omitted.

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

**4.4** Intentionally Omitted.

**4.5** Intentionally Omitted.

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

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



## V. CLOSING

**5.1** Time and Place of Closing. The closing of the purchase and sale of the Property (the “**Closing**”) pursuant to this Agreement shall take place within thirty-five (35) days immediately following the entry of the Sale Order (the “**Closing Date**”), it being expressly understood by the Parties that time is of the essence. Failure to consummate the Closing shall not result in the termination of this Agreement or relieve Buyer of any obligation hereunder. Notwithstanding the actual time of Closing on the Closing Date, the Closing shall be deemed, for accounting and financial reporting purposes, to have occurred as of 12:00:01 a.m. on the Closing Date. The Closing shall be held by remote escrow through the office of the Title Company, or at such other location as may be acceptable to the Parties.

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

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

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

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

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

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

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



representation in such affidavit resulting from a failure by the Receiver to disclose information of which it was actually aware);

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

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

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

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

**5.2.1.11.** The Sale Order;

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

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

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

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

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

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

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

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

**VI.**  
**PROPERTY CONVEYED “AS-IS”**

**6.1** No Representations or Warranties. The Receiver, his Broker and their representatives and professionals have not made and do not make any representations or warranties as to the physical (including without limitation environmental) condition, expenses, operations, value of the Property, or any other matter or thing affecting or related to the Property or this sale, which might be pertinent to the purchase of the Property. Buyer hereby expressly agrees and acknowledges that no such representations or warranties, express or implied, have been made. The Receiver, the Broker and their representatives and professionals shall not be liable or bound in any manner by expressed or implied warranties, guarantees, promises, statements, representations or information pertaining to the Property, made or furnished by the Broker or the Receiver or any real estate broker, agent, employee, servant or other person or professional representing or purporting to represent the Broker or the Receiver unless such warranties, guaranties, promises, statements, representations or information are expressly and specifically set forth in writing within this Agreement.

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

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

exclusively on its own independent investigation and evaluation of every aspect of the Property and not on any materials supplied by the Receiver, the Receivership Estates, the Seller, Broker and their representatives and professionals. Buyer expressly disclaims any intent to rely on any such materials provided to it in connection with this Agreement and the purchase of the Property and agrees that it shall rely solely on its own independently developed or verified information.

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

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

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

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

## **VII.**

### **CONDITION; CASUALTY**

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

**7.2** If, prior to the Closing, a material portion of the Land or Improvements is materially damaged or is destroyed, or is taken under power of eminent domain (or any entity having condemnation authority shall take any steps preliminary thereto), then Seller shall promptly deliver to Buyer written notice thereof and Buyer shall be entitled, as its sole remedy, to terminate this Agreement

and receive a prompt refund of the Earnest Money upon written notice to Seller given prior to Closing. In the event that Buyer does not terminate this Agreement pursuant to the immediately preceding sentence, Buyer shall close this transaction on the date and at the Purchase Price herein agreed, and Seller will assign to Buyer Seller's right in and to any insurance proceeds payable in connection with the casualty or Seller's portion of any condemnation award, as the case may be, up to the amount of the Purchase Price. For purposes of this section, a "**material portion**" of the Land or Improvements shall mean that portion which, if damaged, destroyed, taken or condemned, would (i) eliminate access to any portion of the remainder to which access is available as of the date of this Agreement, (ii) cause any non-compliance with any applicable law, ordinance, rule or regulation of any federal, state or local authority or governmental agency having jurisdiction over the Land, (iii) materially breach any reciprocal easement agreement, covenant or similar agreement with or obligation to a third party, (iv) materially adversely reduce Buyer's expected economic return from its contemplated ownership or operation of the Center or materially reduce the market value of the Land or Improvements as a result thereof or (v) allow any tenant to terminate its Lease prior to its stated expiration (unless such right is included in an existing Lease or is otherwise required by applicable law).

## **VIII.**

### **REPRESENTATIONS AND WARRANTIES**

**8.1** Buyer warrants and represents to Seller as follows:

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

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

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

## **IX.**

### **CONDITIONS TO CLOSING**

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

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

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

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

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

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

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

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

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

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

## **X.** **COSTS**

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

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

**10.1.2** any fees incurred in connection with any Survey;

**10.1.3** all expenses pertaining to any financing obtained by Buyer;

**10.1.4** all recording fees, transfer taxes and intangible taxes;

**10.1.5** any escrow or Closing fees; and

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

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

**10.2.1** fees and disbursements of Seller's counsel.

## **XI.** **PRORATIONS**

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

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

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

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

**11.1.4** To the extent not specifically addressed above, all obligations for taxes, common area expenses, operating expenses or additional charges of any nature related to the Property will be pro-rated between Seller and the Buyer as of the Closing Date. If the actual amount of such



amounts is not known as of such date, the proration at the Closing will be on an equitable basis and will be based on the most current and accurate billing information available. If, upon receipt of the actual bills, such proration proves to be inaccurate, then Seller and Buyer (and/or its property manager) shall correct the proration as soon as possible and make the appropriate payments to reflect same, provided that no payments shall be made to the extent the amount thereof is less than \$2,000.00 in the aggregate. For the avoidance of doubt, the foregoing shall include all obligations and liabilities (for services and materials ordered, or otherwise in the ordinary course of business) and accounts payable for the Center and the Real Property owing as of the Closing Date for merchandise, equipment, supplies and other materials and services paid, incurred or ordered shall be paid by Seller.

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

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

**11.1.7** The provisions of this Section shall survive Closing.

## **XII.** **INTENTIONALLY OMITTED**

## **XIII.** **DEFAULT AND REMEDIES**

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

**13.2** If Buyer fails to close the transaction contemplated hereby for any reason other than the Excluded Contingencies, Seller shall be entitled to receive the Earnest Money as liquidated damages; provided Seller does not waive and, in particular, reserves any rights against and indemnities from Buyer which are herein intended to survive the termination of this Agreement pursuant to the express provisions hereof. Seller and Buyer recognize and agree that, under the circumstances existing as of the date of execution of this Agreement, the liquidated damages set forth above are a reasonable estimate of the damages which Seller would incur as a result of such a failure and are reasonable in the context of the transaction in which a complete measure of damages is not feasible.

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

#### **XIV.** **NOTICES**

**14.1** Any notice, request, demand, instruction or other communication to be given to either party hereunder, except those required to be delivered at Closing, shall be in writing, and shall be given and received (a) upon receipt if hand delivered, (b) the following business day after being sent by recognized overnight courier service, or (c) the date sent by electronic mail (including, without limitation, by PDF) shall be deemed given when sent, provided any such notice by electronic mail is sent on a business day during regular business hours (otherwise it shall be deemed received on the following business day). All notices shall be addressed as follows, and the individuals listed below shall serve as the primary representatives and points of contact for all matters relating to the administration of this transaction, from contract execution through Closing:

IF TO SELLER: [INSERT ENTITY NAME]  
c/o Allen D. Applbaum, Receiver  
StoneTurn  
17 State Street, 2<sup>nd</sup> Floor  
New York, New York 10004  
Tel. (212) 430-3449  
Email: aapplbaum@stoneturn.com

And

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



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

And

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

IF TO BUYER: [INSERT]

Attn:  
Email:

WITH A COPY TO: [INSERT]

Attn:  
Email:

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

## **XV. ESCROW INSTRUCTIONS**

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

**XVI.**  
**MISCELLANEOUS**

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

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

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

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

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

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

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

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

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

**16.10** Time is of the essence in this Agreement.

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

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

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

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

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

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

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

*[ Signatures on following pages ]*

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

**“SELLER”**

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

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

**“BUYER”**

**[INSERT]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED by the Title Company the \_\_\_\_ day of \_\_\_\_\_, 2025, for the purposes of acknowledging receipt of the Earnest Money and agreeing to the provisions relating to the rights and obligations of the Title Company, as set forth herein.

**Chicago Title Insurance Company**

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

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

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

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

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

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

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

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

*[Signature Pages Follow]*

**SELLER:**

\_\_\_\_\_,  
a \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**PURCHASER(S):**

\_\_\_\_\_,  
\_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

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

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

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

Date: \_\_\_\_\_

**IF INDIVIDUALS:**

\_\_\_\_\_

\_\_\_\_\_  
PRINTED NAME

Date: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
PRINTED NAME

Date: \_\_\_\_\_

**SCHEDULE A-1**

**Legal Description of Real Property**

*[To be attached by Title Company]*



**SCHEDULE A-2**

**Personal Property**

**EXHIBIT A**

**Excluded Contracts**

**[TO BE PROVIDED]**

**EXHIBIT B**

**Allocation of Purchase Price**

**[TO BE PROVIDED]**

**EXHIBIT C**  
**FORM of Deed**  
**RECEIVER'S DEED**

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

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

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

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

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

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

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

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

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

Receiver

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

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

\_\_\_\_\_ day of \_\_\_\_\_, 200\_.

(Name)  
Notary Public

Return to: \_\_\_\_\_

**EXHIBIT D**

**FORM of Lease Assignment**

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Leases)**

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

**ASSIGNOR:**

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

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

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

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

**ASSIGNEE:**

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

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

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

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



**EXHIBIT “A” TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

**LEASES**

**[LIST LEASES / RENT ROLL]**

**EXHIBIT E**

**FORM of Bill of Sale**

**BILL OF SALE**

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

**RECITALS**

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

**SELLER:**

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

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

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

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

**BUYER:**

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

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

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

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

**EXHIBIT “A” TO BILL OF SALE**

Legal Description

**EXHIBIT F**

**FORM of Assignment of Intangibles**

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Intangibles)**

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

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

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

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

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

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

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

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

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

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

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

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

[SIGNATURE PAGE FOLLOWS]

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

**ASSIGNOR:**

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

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

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

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

**ASSIGNEE:**

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

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

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

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

**EXHIBIT G**

**FORM of Assignment of Contracts**

**ASSIGNMENT AND ASSUMPTION AGREEMENT  
(Contracts)**

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

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

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

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

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

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

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

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



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

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

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

[SIGNATURE PAGE FOLLOWS]

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

**ASSIGNOR:**

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

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

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

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

**ASSIGNEE:**

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

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

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

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

**EXHIBIT “A” TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

**CONTRACTS**

[LIST CONTRACTS]

**EXHIBIT H**

**FORM of FIRPTA**

**FIRPTA AFFIDAVIT**

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

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

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

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

**SELLER:**

[\_\_\_\_],  
a [\_\_\_\_\_]

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

228758911 v2  
230585528 v2

**EXHIBIT 3**

**SALE PROCEDURES ORDER**

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

3 United States Securities and Exchange  
4 Commission,

5                                   Plaintiff,

6                                   v.

7 Jonathan Larmore, et al.,

8                                   Defendants, and

9  
10 Michelle Larmore, Marcia Larmore,  
11 CSL Investments, LLC,  
12 MML Investments, LLC,  
13 Spike Holdings, LLC,  
and JMMAL Investments, LLC,

14                                   Relief Defendants.  
15

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

**[PROPOSED] ORDER (I)  
APPROVING (A) THE  
ENGAGEMENT AND  
COMPENSATION OF MARCUS &  
MILLICHAP REAL ESTATE  
INVESTMENT SERVICES AS  
BROKER TO SELL THE REAL  
PROPERTIES SUBJECT TO THE  
CMBS LOAN SERVICED BY 3650  
REIT LOAN SERVICING LLC,  
AND (B) THE SALE AND AUCTION  
PROCEDURES FOR THE SALE  
OF THE PROPERTIES; AND (II)  
GRANTING RELATED RELIEF**

16           The Court having considered the Receiver's *Motion for Orders Approving (I) (a)*  
17 *the Engagement and Compensation of Marcus & Millichap Real Estate Investment*  
18 *Services as Broker to Sell the Real Properties Subject to the CMBS Loan Serviced By 3650*  
19 *REIT Loan Servicing LLC and (b) the Sale and Auction Procedures for the Sale of the*  
20 *Properties; (II) Approving (a) the Sale of the Properties, Free and Clear of All Liens,*  
21 *Claims, Encumbrances and Interests, (b) the Engagement and Compensation of the*  
22 *Defeasance Consultant, and (c) the Receiver's Use of the Sale Proceeds to Defeasance and*  
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1 *Satisfy the CMBS Loan; and (III) Granting Related Relief* (the “Motion”);<sup>1</sup> and upon  
2 consideration of any and all responses and replies relating to the Motion; and upon due and  
3 sufficient notice of the Motion having been given and that no other or further notice need  
4 be given; and after due deliberation; and it appearing that the relief sought in the Motion is  
5 in the best interest of the Receivership Estate, its creditors, and other parties in interest,  
6

7 **IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:**  
8

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

11 2. Proper, timely, adequate, and sufficient notice of the Motion has been  
12 provided, such notice was sufficient and appropriate under the particular circumstances,  
13 and no other or further notice of the Motion or relief sought in the Motion is necessary or  
14 required.  
15

16 3. A reasonable opportunity to object or be heard regarding the requested relief  
17 in the Motion and this Order has been afforded to all interested parties, including, without  
18 limitation, all parties to this action and all persons or entities known to the Receiver that  
19 have or may have an interest in any portion of the Properties.  
20

21 4. The Receiver has the power and authority to sell the Properties, or any  
22 portion of the Receivership Estate, at a public sale pursuant to and in accordance with the  
23 Sale Procedures, free and clear of liens, claims, and encumbrances, with such liens, claims,  
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27 <sup>1</sup> Capitalized, undefined terms shall have the meanings ascribed to them in the  
28 Motion.

1 and encumbrances attaching to the proceeds of such sale with the same validity and in the  
2 same order of priority.

3         5.       Upon the Receiver's appointment and after investigating the financial  
4 condition of the Receivership Estate, the Receiver evaluated the real estate holdings of the  
5 Receivership Estate and determined to undertake a comprehensive effort to solicit interest  
6 from potential purchasers for the Properties.  
7

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

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

15         8.       The Receiver has demonstrated a sufficient basis and compelling  
16 circumstances requiring the entry of this Order and the proposed sale of the Properties in  
17 accordance with the Sale Procedures, and such actions: (a) are appropriate exercises of the  
18 Receiver's reasonable business judgment; (b) are in the best interest of the Receivership  
19 Estate and its creditors; and (c) meet the requirements of and are consistent with 28 U.S.C.  
20 §§ 2001 and 2002.  
21

22         9.       The Sale Procedures are reasonable, non-collusive, negotiated in good faith,  
23 substantively and procedurally fair, and will enable the Receiver to obtain the highest value  
24 for the Property.  
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26         **NOW, THEREFORE, BASED UPON THE FOREGOING FINDINGS AND**  
27 **THE RECORD BEFORE THIS COURT, IT IS HEREBY**  
28



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

2           **ORDERED** that any and all objections to the Motion concerning the Sale  
3 Procedures and relief granted in this Order that have not been withdrawn, waived, resolved,  
4 sustained, or settled, are expressly denied and overruled in their entirety; and it is further  
5

6           **ORDERED** that the M&M Agreement as set forth in Exhibit A to the Coxworth  
7 Declaration, is approved, and it is further

8           **ORDERED** that the Sale Procedures, as set forth in Exhibit A to this Order, are  
9 approved in their entirety; and it is further  
10

11           **ORDERED** that the Receiver may proceed to sell the Properties, in accordance with  
12 the Sale Procedures, and subject to further Order of the Court approving such sale as being  
13 in the best interest of the Receivership Estates; and it is further  
14

15           **ORDERED** that the Receiver may proceed to sell the Properties free and clear of  
16 liens, claims, encumbrances, and other interests at a public auction to be held on the  
17 RealINSIGHT Marketplace Auction Platform at <https://rimarketplace.com> in accordance  
18 with, and subject to, the Sale Procedures with an auction commencing on September 9,  
19 2025 at 12:00 Noon (Eastern Standard Time) and ending on September 11, 2025 at 12:00  
20 Noon (Eastern Standard Time) (the “Auction”); and it is further  
21

22           **ORDERED** that the Sale Hearing shall be held in Courtroom [                      ] at the  
23 United States District Court for the District of Arizona, Sandra Day O’Connor U.S.  
24 Courthouse, 401 W. Washington St., Suite 130, SPC 1, Phoenix, Arizona 85003-2118, on  
25 September \_\_, 2025, at [ :                      ] [.m] (Phoenix Time); and it is further  
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1       **ORDERED** that any objection on any basis to the proposed sale of any of the  
2 Properties must be filed in writing with the Court no later than September \_\_, 2025, at [ :  
3 ] [\_m] (Phoenix Time) (the “Objection Deadline”) and served on counsel to  
4 the Receiver, Archer & Greiner, P.C., Attn: Allen G. Kadish and Harrison H.D.  
5 Breakstone, 1211 Avenue of the Americas, New York, New York 10036; and it is further  
6

7       **ORDERED** that the notice of sale attached as Exhibit B hereto (the “Sale Notice”),  
8 is hereby approved; and it is further  
9

10       **ORDERED** that the Receiver shall cause service of the Sale Notice, within five (5)  
11 business days of entry of this Order, by United States first class mail on: (a) all known  
12 creditors of the Receivership Borrowers at the address set forth in the Receivership  
13 Entities’ books and records or as updated pursuant to a request by a creditor or by returned  
14 mail from the post office with a forwarding address; (b) 3650 and any other party known  
15 or reasonably believed to have asserted any Lien and Encumbrance or other interest in the  
16 Properties; (c) all parties to pending litigation against the Receivership Borrowers (as of  
17 the date of entry of this Order); (d) any party known or reasonably believed to have  
18 expressed an interest in acquiring the Property; (e) the Securities and Exchange  
19 Commission, the United States Attorney for the Southern District of New York, the Internal  
20 Revenue Service and all local governmental units; (f) the Mezzanine Lender; and (g) such  
21 additional persons and entities deemed appropriate by the Receiver; and it is further  
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25       **ORDERED** that the Receiver shall cause the Sale Notice to be published in general  
26 circulation publications in the counties where the Properties are located once a week for at  
27 least four (4) weeks prior to the Auction, which publication shall be deemed due, timely,  
28

1 good, and sufficient notice of the entry of this Order, the Sale Order and all proceedings to  
2 be held in accordance with this Order; and it is further

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

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

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

12 **ORDERED** that, notwithstanding the acceptance of a bid at the Auction, the  
13 Receiver retains the right to seek approval by the Court of a transaction pursuant to which  
14 the Receivership Borrowers sell, transfer, or otherwise dispose of all or substantially all  
15 the Properties, directly or indirectly, including through an asset sale, stock sale, credit bid  
16 or other similar transaction or series of transactions to a person or entity other than the  
17 highest bidder for any Property at the Auction (an “Alternate Transaction”); and it is further

18 **ORDERED** that, upon approval by the Court of an Alternate Transaction, any asset  
19 purchase agreement with the highest bidder or back-up bidder for any Property shall be  
20 deemed terminated and the Receiver and Receivership Estates shall have no liability to any  
21 bidder for the Property, other than the return of any deposit made by a bidder; and it is  
22 further

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

3           **ORDERED** that this Court shall retain jurisdiction over any and all matters or  
4  
5 disputes arising from or related to this Order or its enforcement.

6 Dated: July \_\_, 2025

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**EXHIBIT A**

**SALE PROCEDURES FOR:**

**[SEE EXHIBIT A-1 FOR LIST OF PROPERTIES TO BE SOLD]**

Securities and Exchange Commission v. Larmore, *et al.*

Case No. 23-CV-02470-DLR

United States District Court for the District of Arizona (the “Court”)

Allen D. Applbaum, as receiver (the “Receiver”) for ArciTerra Companies, LLC and related entities, submits the following sale and auction procedures (the “Sale Procedures”) for the sale of the twelve properties on Exhibit A-1 (each a “Property”, and collectively, the “Properties”), each of which is owned by Receivership Entities, and two additional properties under the control of Martha R. Lehman, as receiver pursuant that certain Order dated August 18, 2023 of the Hamilton Superior Court of the State of Indiana, Case No. 29D02-2305-PL-004542. The sale of each Property shall be free and clear of all liens, claims, encumbrances and interests, and subject to the below auction procedures approved by the Court:

a. Auction Place and Time. There will be a public Auction to submit and accept bids for the Property held on the RealINSIGHT Marketplace Auction Platform at <https://rimarketplace.com> (the “Marketplace Auction Platform”) commencing on September 8, 2025 at 12:00 Noon (Eastern Standard Time) and ending on September 11, 2025 at 12:00 Noon (Eastern Standard Time).

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

c. Bidding at Auction and Selection of Successful Bidders. Upon the conclusion of the Auction and attaining the aggregate minimum reserve price of \$70 million for all Properties, the Receiver will accept the bid from the bidder who submits the highest and best offer for the Property (the “Successful Bidder”).

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

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

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

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

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

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

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

14 j. Properties Subject to Cross-Collateralized CMBS Loan. The Properties are  
15 subject to a cross-collateralized CMBS mortgage loan to be satisfied upon closing of the  
16 sale. The closing on the sale of the Properties shall occur simultaneously. If the auction  
17 does not generate anticipated aggregate sale proceeds in excess of \$70 million, the Receiver  
18 retains the right to withdraw the proposed sale and proceed with an alternative disposition  
19 upon consultation with the holder of the CMBS mortgage and subject to further order of  
20 this Court.  
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**EXHIBIT A-1 TO AUCTION PROCEDURES - PROPERTIES TO BE SOLD**

	<b>Borrower</b>	<b>Address of Property</b>
1.	AT Seven Hills Aurora CO II, LLC	18511, 18581, 18757 & 18883 E. Hampden Ave, Aurora, CO 80013 ("Seven Hills Plaza Property")
2.	AT ALTUS Cumberland GA II, LLC	2997 & 2999 Cumberland Blvd. Smyrna, GA 30339 ("Cumberland Place Property")
3.	AT Eastman GA II, LLC	970 Indian Drive Eastman, GA 31023 ("Eastman Shopping Center Property")
4.	ATA Lanier Fayetteville GA II, LLC	320 West Lanier Avenue Fayetteville, GA 30214 ("Main Street Office Property")
5.	AT PT Danville IL II, LLC	22 West Newell Road Danville, IL 61834 ("Pine Tree Plaza Property")
6.	AT New Lenox IL-Inline II, LLC	2021 East Laraway Road New Lenox, IL 60451 ("Heather Glen Property")
7.	AT Auburn Plaza IN II, LLC	506 N. Grandstaff Drive Auburn, IN 46706 ("Auburn Cord Plaza Property")
8.	AT HL Burlington IA II, LLC	3351 Agency Street Burlington, IA 52601 ("Burlington Plaza West Property")
9.	AT Ville Platte LA II, LLC	925 E. LaSalle Street Ville Platte, LA 70586 ("Ville Platte Shopping Center Property")
10.	AT Sweden NY II, LLC	1561 Nathaniel Poole Trail Brockport, NY 14420 ("Sweden Shopping Center Property")
11.	AT Mayodan NC II, LLC	131 Commerce Drive Mayodan, NC 27027 ("Mayodan Shopping Center Property")
12.	AT Longview TX II, LLC	711 Estes Drive Longview, TX 75602 ("Longview Center Property")
	<b>Indiana Properties Subject to Indiana Receiver</b>	<b>Address of Property</b>
13.	AT Plainfield Village IN II, LLC	160 Plainfield Village Drive Plainfield, IN 46168 ("Plainfield Village Property")
14.	Arciterra Westgate Indianapolis IN II, LLC	5173 W. Washington Street Indianapolis, IN 46241 ("Westgate Plaza Property")

**EXHIBIT B**

**SALE NOTICE**

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

United States Securities and Exchange  
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

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

Relief Defendants.

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

**NOTICE OF PUBLIC SALE OF:**

**[INSERT NAME AND ADDRESS  
OF PROPERTY TO BE SOLD]**

TO ALL PARTIES IN INTEREST:

Notice is hereby given that Allen D. Applbaum, as Receiver for ArciTerra Companies, LLC and related entities, intends to sell, through his broker, Marcus & Millichap Real Estate Investment Services (“Marcus & Millichap”), a multi-use retail center located in **[INSERT ADDRESS OF PROPERTY]**, and owned by **[INSERT RECEIVERSHIP ENTITY]** (the “Property”), free and clear of all liens, claims, interests and encumbrances (the “Sale”).

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



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

4 The Receiver is soliciting higher and better offers by means of an Auction to be  
 5 conducted on the Marketplace Auction Platform, which shall be governed by the terms and  
 6 conditions of the order establishing sale and auction procedures (the “Sale Procedures  
Order”) approved by the Court on [ ], 2025.

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

12 OBJECTIONS, if any, to the relief requested in the Sale Motion or to final approval  
 13 of the proposed Sale of the Property must be filed in writing with the Clerk of the Court on  
 14 or before [ ], 2025 at 5:00 p.m., Phoenix Time (the “Objection Deadline”). A  
 15 copy of the objection must also be served on all of the following so as to be received by  
 16 the Objection Deadline: counsel to the Receiver, Archer & Greiner, P.C., Attn: Allen G.  
 Kadish and Harrison H.D. Breakstone, 1211 Avenue of the Americas, New York, New  
 York 10036.

17 **Through this Notice, HIGHER AND BETTER OFFERS to purchase the**  
 18 **Property are hereby solicited.** The Auction will be held on the Marketplace Auction  
 19 Platform beginning on September 9, 2025 at 12:00 Noon (Eastern Standard Time) and  
 20 ending on September 11, 2025 at 12:00 Noon (Eastern Standard Time). Instructions for  
 attending the Auction are available at: [at https://rimarketplace.com](https://rimarketplace.com).

21 A FINAL HEARING on the Sale Motion will take place on [ ], 2025 at  
 22 \_\_:00 a.m., Phoenix Time, at the United States District Court for the District of Arizona,  
 23 Sandra Day O’Connor U.S. Courthouse, 401 W. Washington St., Suite 130, SPC 1,  
 Phoenix, Arizona 85003-2118, before the Honorable Douglas L. Rayes.

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

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

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

**EXHIBIT 4**  
**SALE ORDER**

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

United States Securities and Exchange  
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

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

Relief Defendants.

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

**[PROPOSED] ORDER (I)  
APPROVING (A) THE SALE OF  
THE REAL PROPERTY LOCATED  
AT [INSERT ADDRESS] OWNED  
BY [INSERT NAME OF  
RECEIVERSHIP ENTITY], FREE  
AND CLEAR OF ALL LIENS,  
CLAIMS, ENCUMBRANCES AND  
INTERESTS, (B) THE  
ENGAGEMENT AND  
COMPENSATION OF THE  
DEFEASANCE CONSULTANT,  
AND (C) THE RECEIVER'S USE OF  
THE SALE PROCEEDS TO  
DEFEASE AND SATISFY THE  
CMBS LOAN; AND (II) GRANTING  
RELATED RELIEF**

The Court having considered the Receiver's *Motion for Orders (I) Approving (a) the Engagement and Compensation of Marcus & Millichap Real Estate Investment Services as Broker to Sell the Real Properties Subject to the CMBS Loan Serviced By 3650 REIT Loan Servicing LLC, and (b) the Sale and Auction Procedures for the Sale of the Properties; (II) Approving (a) the Sale of the Properties, Free and Clear of All Liens, Claims, Encumbrances and Interests, (b) the Engagement and Compensation of the Defeasance Consultant, and (c) the Receiver's Use of the Sale Proceeds to Defease and Satisfy the CMBS Loan; and (III)*

1 *Granting Related Relief* (the “Motion”);<sup>1</sup> and upon consideration of any and all responses and  
2 replies relating to the Motion; and upon finding that due and sufficient notice of the Motion has  
3 been given and no other or further notice need be given; and after due deliberation and it  
4 appearing that the relief sought in the Motion is in the best interest of the Receivership Estate,  
5 its creditors, and other parties in interest,  
6

7 **IT IS HEREBY FOUND, DETERMINED, AND CONCLUDED THAT:**  
8

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

11 2. The approval of the sale of the [INSERT NAME OF PROPERTY TO BE SOLD]  
12 (the “Property”) to [INSERT SUCCESSFUL BIDDER] (the “Successful Bidder”) in  
13 accordance with the terms of the Purchase Agreement annexed hereto as **Exhibit A** is within  
14 the sound legal discretion of this Court.  
15

16 3. It is necessary and appropriate for this Court to retain jurisdiction to, among other  
17 things, (a) interpret, implement, and enforce the terms and provisions of this Order, the  
18 Purchase Agreement, all amendments to the Purchase Agreement, any waivers and consents  
19 under the Purchase Agreement, and each of the agreements executed in connection with the  
20 Purchase Agreement and (b) to adjudicate, if necessary, any and all disputes concerning or  
21 relating in any way to the sale of the Property, and such jurisdiction is retained.  
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28 <sup>1</sup> Capitalized, undefined terms shall have the meanings ascribed to them in the Motion.

**PROPER NOTICE OF THE MOTION AND AUCTION**

4. The Receiver properly provided notice, pursuant to and in accordance with the Sale Procedures Order, and no other or further notice is necessary or required.

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

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

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

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

**THE AUCTION COMPLIED WITH THE  
SALE PROCEDURES ORDER AND APPLICABLE LAW**

9. Commencing on September 9, 2025 at 12:00 Noon (Eastern Standard Time) and ending on September 11, 2025 at 12:00 Noon (Eastern Standard Time), the Receiver, through RealINSIGHT Marketplace Auction Platform at <https://rimarketplace.com> (the “Marketplace Auction Platform”), conducted the Auction in accordance with the Sale Procedures Order.

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

1           11. The Successful Bidder has confirmed that it did not engage in any collusion in  
2 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] was selected by  
9 the Receiver as the Successful Bidder with a cash offer in the amount of \$[           ] for the  
10 Property (the “Successful Bid”).

11           15. A true and correct copy of the Purchase Agreement applicable to the Successful  
12 Bidder is attached to this Order as **Exhibit A** and incorporated in this paragraph by reference.

13           16. The Successful Bidder submitted the highest or otherwise best offer to purchase  
14 the Property.

15           17. Neither the sale of the Property nor the Purchase Agreement violate or are  
16 otherwise inconsistent with the Sale Procedures Order, the Sale Procedures, or applicable law.

17           18. The Successful Bid and Purchase Agreement constitute the highest and best offer  
18 for the Property and will provide a greater recovery for each Receivership Estate’s creditors  
19 than would be provided by any other practical alternative.

20           19. The Receiver’s determination that the Successful Bid and Purchase Agreement  
21 constitute the highest and best offer for the Property constitutes a valid and sound exercise of  
22 the Receiver’s reasonable business judgment.

1           20.    The Successful Bid and Purchase Agreement represent a fair and reasonable offer  
2 to purchase the Property under the circumstances of this receivership case.

3           21.    The Receiver's decision to sell the Property to the Successful Bidder pursuant to  
4 the Purchase Agreement and this Order is supported by good business reasons and sound  
5 justification based upon the Receiver's experience and the circumstances presented in this case.  
6

7                           **GOOD FAITH OF THE SUCCESSFUL BIDDER**

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

16           23.    The terms of the sale of the Property, as set forth more specifically in the Purchase  
17 Agreement, are fair and reasonable under the circumstances.  
18

19           24.    The sale of the Property to the Successful Bidder in all respects complies with  
20 the Sale Procedures, Sale Procedures Order, and applicable law.  
21

22           25.    The Successful Bidder negotiated the terms and conditions of the sale of the  
23 Property in good faith and at arm's length.  
24

25           26.    The Successful Bidder is entered into the Purchase Agreement and agreement to  
26 purchase the Property in good faith and is a good faith purchaser for value.  
27  
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1           27. The Successful Bidder will be acting in good faith in closing the sale of the  
2 Property pursuant to the Purchase Agreement after entry of this Order.

3           28. This Court has found that the Successful Bidder has acted in good faith in all  
4 respects in connection with this case, the Sale Procedures, the Auction, and the sale of the  
5 Property.  
6

7                                   **NO FRAUDULENT TRANSFER**

8           29. The consideration provided for the Property under the Purchase Agreement: (a)  
9 is fair and reasonable; (b) is the highest or otherwise best offer for the Property; and (c)  
10 constitutes reasonably equivalent value for the Property.  
11

12                                   **VALIDITY OF TRANSFER**

13           30. The Receiver's transfer of the Property including fee title to the real property  
14 along with this Order will be a legal, valid, and effective transfer of the Property including fee  
15 title to the real property and will indefeasibly vest the Successful Bidder with good and valid  
16 title in and to the Property free and clear of any Liens (as defined below).  
17

18           31. The Receiver has full power and authority to execute and consummate the  
19 Purchase Agreement and all related documents and is directed to do so, and no consents or  
20 approvals (other than those expressly provided for in the Purchase Agreement) are required to  
21 consummate the transactions contemplated by the Purchase Agreement and this Order.  
22

23           32. The Receiver (i) has all rights and powers with respect to the Receivership Estate,  
24 including the Property, (ii) possesses good, valid, and marketable title to the Property, and (iii)  
25 has the ability and authority to convey the Property to the Successful Bidder on the terms and  
26 conditions set forth in the Purchase Agreement and this Order.  
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1           33.    The Receiver and Successful Bidder proposed, negotiated, and entered into the  
2 Purchase Agreement without collusion, in good faith, and from arm's length bargaining  
3 positions.  
4

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

9                           **THE SALE IS IN THE BEST INTEREST OF**  
10                          **THE RECEIVERSHIP ESTATE AND ITS CREDITORS**

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

14                          **ENGAGEMENT OF THE DEFEASANCE CONSULTANT AND**  
15                          **DEFEASANCE OF THE SENIOR MORTGAGE LOAN ON THE PROPERTY**

16           36.    The engagement of the Defeasance Consultant and defeasance of the CMBS Loan  
17 is in the best interest of the Receivership Estate and its creditors and, upon closing of the sale,  
18 the Receiver is authorized to engage the Defeasance Consultant, proceed with defeasance of  
19 the CMBS Loan, pay the Defeasance Consultant and otherwise fund the defeasance transaction.  
20

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

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

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

3 **ORDERED** that the Purchase Agreement, as set forth in Exhibit A to this Order, is  
4 approved in its entirety; and it is further

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

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

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

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

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

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

8       **ORDERED** that the transfer of the Property to the Successful Bidder shall be free and  
9 clear of any and all liens, encumbrances, claims, charges, defenses, offsets, recoupments, and  
10 interests on the foregoing and against the foregoing of whatever type or description, including,  
11 without limitation, tax claims and tax liens (other than tax liens for real estate taxes to be paid  
12 at Closing), and any restrictions on or conditions to transfer or assignment, liens, mortgages,  
13 security interests, pledges, hypothecations, control agreements, equities and other claims and  
14 interests having arisen, existed, or accrued prior to and through the Closing Date (as defined in  
15 the Purchase Agreement), whether direct or indirect, monetary or non-monetary, arising at law  
16 or in equity, contract or tort, absolute or contingent, matured or unmatured, voluntary or  
17 involuntary, liquidated or unliquidated, of, by, or against the Property (collectively, the “Liens  
18 and Encumbrances”); and it is further  
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22       **ORDERED** that any and all Liens and Encumbrances not satisfied at closing will attach  
23 to the net proceeds of the sale of the Property with the same effect, validity, enforceability, and  
24 priority as such Liens and Encumbrances had against the Property prior to the sale authorized  
25 by this Order, subject to any rights, claims, defenses, and objections of the Receiver and all  
26 interested parties with respect to such Liens and Encumbrances; and it is further  
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1           **ORDERED** that upon closing on the sale of the Properties the Receiver is authorized to  
2 engage the Defeasance Consultant to assist in the defeasance of the CMBS Loan in accordance  
3 with the Loan Agreement, including the delivery of all defeasance documents and other  
4 deliverables in accordance with the Loan Agreement and to pay the Defeasance Consultant and  
5 other amounts required to consummate the defeasance transaction and, upon defeasance, the  
6 Lender shall be deemed to release any and all Liens and Encumbrances it has on the Property;  
7 and it is further  
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10           **ORDERED** that the provisions of this Order authorizing the sale of the Property free  
11 and clear of any and all Liens and Encumbrances shall be, and are, self-executing, and the  
12 Receiver and Successful Bidder shall not be required, but are permitted in their discretion, to  
13 execute or file releases, termination statements, assignments, consents, or other instruments in  
14 order to effectuate, consummate, and implement the provisions of the Purchase Agreement and  
15 this Order; and it is further  
16

17           **ORDERED** that this Order is effective as a determination that any and all Liens and  
18 Encumbrances, if any, will be, and are, without further action by any person or entity,  
19 unconditionally released, discharged, and terminated with respect to the Property; and it is  
20 further  
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22           **ORDERED** that all persons who hold Liens and Encumbrances against the Property are  
23 forever estopped and permanently enjoined from asserting or prosecuting any claims or causes  
24 of action against the Successful Bidder, its affiliates, successors or assigns, or any of their  
25 respective officers, directors, employees, attorneys or advisors, arising out of or in connection  
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1 with the sale of the Property or any liabilities owed by the above-captioned defendants; and it  
2 is further

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

6  
7 **ORDERED** that no party shall have any rights of redemption with respect to the  
8 Property; and it is further

9  
10 **ORDERED** that all entities that are presently, or upon Closing may be, in possession of  
11 some or all of the Property are directed to surrender possession of the Property to the Receiver  
12 or the Receiver's designee; and it is further

13  
14 **ORDERED** that neither the purchase of the Property nor the subsequent operation of  
15 the Property by the Successful Bidder shall cause the Successful Bidder or its affiliates,  
16 successors, or assigns or their respective properties to be deemed a successor in any respect of  
17 the Receivership Entities' or the above-captioned defendants' business operations within the  
18 meaning of any laws, rules, or regulations relating to any tax, revenue, pension, benefit, ERISA,  
19 environmental, labor, employment, products liability, or other law, rule, or regulation of any  
20 federal, state, or local government; and it is further

21  
22 **ORDERED** that, upon Closing, this Order and the documents executed in connection  
23 with and pursuant to this Order constitute a full and complete general assignment, conveyance,  
24 and transfer of the Property or a deed or a bill of sale transferring good and marketable title in  
25 the Property to the Successful Bidder on the Closing Date free and clear of all Liens and  
26 Encumbrances, and each and every federal, state, and local governmental agency or department  
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1 is directed to accept this Order as such an assignment, deed, or bill of sale or any and all  
2 documents and instruments necessary and appropriate to consummate the transactions  
3 contemplated by the Purchase Agreement and this Order; and it is further  
4

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

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

16 **ORDERED** that the terms and conditions of the Purchase Agreement and this Order  
17 will be binding in all respects upon, and will inure to the benefit of, the Receiver, the  
18 Receivership Estate, each of the Receivership Entities, the Successful Bidder, and their  
19 respective affiliates, successors and assigns, and any affected third parties; and it is further  
20

21 **ORDERED** that, to the extent of any inconsistency between the provisions of any  
22 agreements, documents, or other instruments executed in connection with the Purchase  
23 Agreement and this Order, the provisions of this Order control; and it is further  
24

25 **ORDERED** that the Receiver is authorized to pay Marcus & Millichap its commission  
26 due upon sale of the Property at the Closing; and it is further  
27  
28

1       **ORDERED** that, the Receiver is hereby authorized to employ the Defeasance  
2 Consultant pursuant to the terms of the Motion and take any action necessary to defease the  
3 CMBS Loan, including, but not limited to, causing the Defeasance Consultant to fund the  
4 Defeasance Collateral Account with the Defeasance Collateral and executing all documents,  
5 including a security agreement for the Defeasance Collateral Account and Defeasance  
6 Collateral for the benefit of the Lender; and it is further  
7

8       **ORDERED** that upon defeasance, the Lender and its agents or assigns shall have a legal  
9 and valid perfected first priority security interest in the Defeasance Collateral Account and  
10 Defeasance Collateral; and it is further  
11

12       **ORDERED** that there is no just delay for the implementation of this Order and, for all  
13 purposes, this Order shall be a final order upon its entry with respect to the sale of the Property  
14 and other relief granted in this Order.  
15

16 Dated: September \_\_, 2025  
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