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9 *Counsel for Allen D. Applbaum as Receiver*

10  
11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE DISTRICT OF ARIZONA**  
13

14 United States Securities and Exchange  
15 Commission,

16 Plaintiff,

17 v.

18 Jonathan Larmore, et al.,

19 Defendants, and

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

25 Relief Defendants.  
26

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

**RECEIVER'S MOTION FOR  
AN ORDER (I) APPROVING  
THE ENGAGEMENT AND  
COMPENSATION OF LEASE  
BROKERS; AND (II) GRANTING  
RELATED RELIEF**

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

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

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622 F.2d 1363 (9th Cir. 1980) .....5

Allen D. Applbaum as receiver for ArciTerra Companies, LLC and related entities (the “Receiver”), by and through his counsel, Archer & Greiner, P.C., hereby respectfully moves this Court for an order (i) approving the Receiver’s engagement and compensation of the following commercial lease brokers: (a) Cushman & Wakefield U.S., Inc., (b) Bradley Company, LLC, (c) SVN | Toomey Property Advisors, (d) Second Story Property Management Company LLC, and (e) McWhirter Realty Partners, LLC (each a Lease Broker, together, the “Lease Brokers”); and (ii) granting related relief, as follows:

### **I. Preliminary Statement**

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

2. The Receiver brings this Motion to retain the Lease Brokers to help locate tenants and negotiate/execute leases for the following properties:

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<sup>3</sup> On June 7, 2024, the Receiver filed the *ArciTerra Receiver’s First Status Report* [ECF No. 179] (the “First Status Report”).

Lease Broker	Property Address
SVN   Bradley Company, LLC	2507 (2513) East North Street, Kendallville, Indiana 46755
SVN   Bradley Company, LLC	411 Cross Oaks Drive, Plainwell, Michigan 49080
SVN   Second Story Property Management Company, LLC	5339 Elvis Presley Boulevard, Memphis, Tennessee 38116
SVN   Second Story Property Management Company, LLC	2135 Lowes Dr., Clarksville, Tennessee 37040
SVN   Second Story Property Management Company, LLC	100 Lowes Road, Dickson, Tennessee 37055
SVN   Toomey Property Advisors	60 Colonial Promenade Parkway, Alabaster, Alabama 35007
SVN   Toomey Property Advisors	81 Jameson Lane, Greenville Alabama, 36037
SVN   Toomey Property Advisors	8001 Vaughn Road, Montgomery, Alabama 36616
SVN   McWhirter Realty Partners, LLC	5157 Jimmy Lee Smith Parkway, Hiram, Georgia 30141
Cushman & Wakefield U.S., Inc.	18511 E. Hampden Avenue, Aurora, Colorado 80013

3. The Receiver has agreed to engage each Lease Broker on substantially similar terms within a certain range. A copy of each Lease Broker's representation agreement, subject to Court approval, is attached to the Declaration of Randall Coxworth (the "Coxworth Declaration"), which is annexed hereto as Exhibit 1.

4. Accordingly, the Receiver respectfully requests that the Court grant this Motion by entering an order approving the Receiver's engagement of the Lease Brokers and payment of any commissions earned under the respective representation agreements.

## **II. Background**

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

5. On November 28, 2023, the Securities and Exchange Commission filed its Complaint [ECF No. 1] (the "Complaint") against Jonathan Larmore ("Larmore"); ArciTerra Companies, LLC ("ArciTerra"); ArciTerra Note Advisors II, LLC; ArciTerra Note Advisors III, LLC; ArciTerra Strategic Retail Advisor, LLC; and Cole Capital Funds, LLC (all together,

1 the “Defendants”). Michelle Larmore; Marcia Larmore; CSL Investments, LLC; MML  
2 Investments, LLC; Spike Holdings, LLC and JMMAL Investments, LLC were named as relief  
3 defendants.  
4

5 6. On December 21, 2023, the Court entered the Receivership Order, which  
6 appointed the Receiver to, among other things, (a) perform the duties specified in the  
7 Receivership Order; (b) ascertain the financial condition of the Receivership Entities and all of  
8 the Receivership Assets (as defined in the Receivership Order); (c) oversee and manage the  
9 Receivership Entities and the Receivership Assets; and (d) propose for Court approval a fair  
10 and equitable distribution of the Receivership Assets.  
11

12 7. Paragraph 6(I) of the Receivership Order provides that the Receiver shall have  
13 the power and duty to:  
14

15 Engage and employ agents, claim and noticing agents, persons, firms and other  
16 persons and entities, including ... brokers...to assist in the carrying out of the  
Receiver’s duties and responsibilities...[.]

17 8. The Receiver has been managing, among other Receivership Assets, the  
18 commercial real estate projects that are Receivership Assets and it has become clear that certain  
19 properties need to be leased up so as to maintain and enhance values.  
20

21 9. On March 1, 2024, the Receiver entered into the Property Management  
22 Agreement with SVN Elevate Asset Management, LLC (“SVN”) to provide property  
23 management services and assist with the operations of the properties that are part of the “Rialto  
24 Asset Group” as described in more detail in the First Status Report. Due to the expertise and  
25 familiarity of SVN with regard to those properties, the Receiver seeks to retain them as Lease  
26 Broker.  
27  
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1           10. On April 12, 2024, the Receiver entered into the Property Management  
2 Agreement with Cushman & Wakefield U.S., Inc., to provide property management services  
3 and assist with the operations of properties that are part of the “REIT 3650 Asset Group,” as  
4 described in more detail in the First Status Report. Due to the expertise and familiarity of  
5 Cushman & Wakefield U.S., Inc. with regard to those properties, the Receiver seeks to retain  
6 them as Lease Broker.  
7

8           11. The Receivership Estate also includes certain properties that are part of the  
9 “National REIT Asset Group,” as described in more detail in the First Status Report. The  
10 Receiver does not have a third party property manager for the National REIT Asset Group and  
11 manages the properties directly. The Receiver seeks to retain SVN with regard to those  
12 properties as Lease Broker.  
13  
14

15           12. The Receiver believes, in his reasonable business judgment, that the retention of  
16 the Lease Brokers on the terms set forth herein, to assist with leasing of the Rialto Asset Group,  
17 REIT 3650 Asset Group and National REIT Properties, is in the best interest of the  
18 Receivership Estate.  
19

### 20 **III. Relief Requested**

21           13. By this Motion, the Receiver respectfully seeks entry of an order (i) approving  
22 the Receiver’s engagement of the Lease Brokers and payment of commissions earned under  
23 the respective representation agreement, and (ii) granting related relief.  
24

### 25 **IV. Basis for Relief Requested**

26           14. The Court’s power to supervise an equity receivership and to determine the  
27 appropriate actions to be taken in the administration of the receivership is extremely broad. *See*  
28

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

13  
14 15. As set forth above, pursuant to paragraph 6(I) of the Receivership Order, the  
15 Receiver may engage and employ professionals, including brokers, as necessary to assist in  
16 carrying out his duties, upon Court order. The Receiver seeks approval of the Lease Brokers’  
17 representation engagements in order to locate tenants and negotiate and execute leases for the  
18 Rialto Asset Group, REIT 3650 Asset Group and National REIT Properties.

19  
20 16. Each of the Lease Brokers is a well respected brokerage firm with significant  
21 localized expertise in commercial leasing.

22  
23 17. Pursuant to their respective Representation Agreements, each Lease Broker is  
24 entitled to receive between five and seven percent of the total net lease consideration for the  
25 term on account of their leasing services (the “Lease Broker Commission”).

26  
27 18. The Receiver submits that the engagement of the Lease Brokers on the terms and  
28 conditions set forth herein and in the Representation Agreements is necessary and appropriate,

1 in the best interests of the Receivership Estate, and should be granted in all respects.

2 **V. Conclusion**

3 19. No prior motion for the relief sought herein has been made to any court.

4 20. Given the authorities set forth herein, request is made to waive any requirement  
5 to file a separate memorandum of law. *See* LRCiv 7.2(b).  
6

7 WHEREFORE, the Receiver respectfully requests that this Court enter an order (i)  
8 approving the Receiver's engagement of the Lease Brokers and payment of any commissions  
9 earned under the respective representation agreement, and (ii) granting such other relief as is  
10 just and equitable.  
11

12 Dated: August 2, 2024

ARCHER & GREINER, P.C.

13  
14 By: 

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

Harrison H.D. Breakstone<sup>2</sup>

1211 Avenue of the Americas

New York, New York 10036

Tel: (212) 682-4940

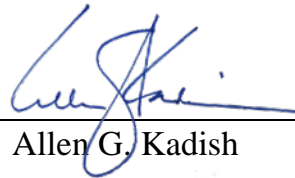
Email: akadish@archerlaw.com

hbreakstone@archerlaw.com

19  
20 *Counsel for Allen D. Applbaum as Receiver*  
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**CERTIFICATE OF SERVICE**

I hereby certify that on August 2, 2024, I electronically transmitted the foregoing document with the Clerk of the Court using the CM/ECF systems, which will provide electronic mail notice to all counsel of record.



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Allen G. Kadish

**INDEX TO EXHIBITS**

**Exhibit 1 – Coxworth Declaration**

**Exhibit A – Representation Agreements**

**Exhibit 2 – Proposed Order**

**EXHIBIT 1**

**COXWORTH DECLARATION**

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

United States Securities and Exchange  
Commission,

Plaintiff,

v.

Jonathan Larmore, et al.,

Defendants, and

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

Relief Defendants.

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

**DECLARATION IN SUPPORT  
OF MOTION**

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 am a Certified Construction Manager and Auditor, who specializes in program and project management services, including strategic delivery, risk identification, contract control assessments, and process performance reviews. My experience also includes capital project financial analyses, financial restructuring, rescue financing and forbearance services across various real estate asset classes. I have a B.A. and M.B.A. and have been in practice as a construction and real estate professional and consultant for over twenty-

five years. I have led the real estate efforts at StoneTurn on behalf of the Receiver and worked closely with the Receiver and Receiver's counsel. I submit this declaration in support of the relief sought in the prefixed Motion and adopt the statements made therein as if set forth herein.

2. On May 6, 2024, the Court entered the *Order Appointing Receiver and Freezing Assets and Imposing Litigation Injunction* [ECF No. 154] (the "Receivership Order"), which among other things, appointed Allen D. Applbaum as Receiver (the "Receiver"), and approved StoneTurn and Archer & Greiner, P.C. as "Retained Personnel" in this case.

3. Upon the Receiver's appointment and after investigating the financial condition of the Receivership Estate, the Receiver evaluated the real estate holdings of the Receivership Estate and undertook a comprehensive effort to determine the best disposition of the property.

4. Upon making the determination that it would be in the best interest of the receivership to lease up the properties, the Receiver considered potential brokers and ultimately determined that it would be in the best interest of the Receivership Estate to retain the Lease Brokers. Specifically, the Receiver has decided to retain the following Lease Brokers for the properties, subject to Court approval:

Lease Broker	Property Address
SVN   Bradley Company, LLC	2507 (2513) East North Street, Kendallville, Indiana 46755
SVN   Bradley Company, LLC	411 Cross Oaks Drive, Plainwell, Michigan 49080
SVN   Second Story Property Management Company, LLC	5339 Elvis Presley Boulevard, Memphis, Tennessee 38116
SVN   Second Story Property Management Company, LLC	2135 Lowes Dr., Clarksville, Tennessee 37040

SVN   Second Story Property Management Company, LLC	100 Lowes Road, Dickson, Tennessee 37055
SVN   Toomey Property Advisors	60 Colonial Promenade Parkway, Alabaster, Alabama 35007
SVN   Toomey Property Advisors	81 Jameson Lane, Greenville Alabama, 36037
SVN   Toomey Property Advisors	8001 Vaughn Road, Montgomery, Alabama 36616
SVN   McWhirter Realty Partners, LLC	5157 Jimmy Lee Smith Parkway, Hiram, Georgia 30141
Cushman & Wakefield U.S., Inc.	18511 E. Hampden Avenue, Aurora, Colorado 80013

5. A copy of each Representation Agreement is attached hereto (collectively) as Exhibit A.

6. The Representation Agreements provide for a fee in the amount of a commercially reasonable or reduced percentage because of the fiduciary nature of the engagement.

7. The following are the key terms of the proposed Representation Agreements, subject to entry of the Proposed Order (reference should be made to each entire agreement, attached hereto):

a. **SVN Elevate Asset Management** [(i) Bradley Company, LLC, (ii) Toomey Property Advisors, (iii) Second Story Property Management Company LLC, (iv) McWhirter Realty Partners, LLC]:

i. Commission: Six percent (6%) of the base rent amount of the initial term. Two percent (2%) of the base rent amount for negotiated renewals.

ii. Time of Payment: Half of the commission is due upon execution of the lease and the other half of the commission is due upon rent commencement under the lease.

b. **Cushman & Wakefield U.S., Inc.**

i. Commission: Five percent (5%) of the total net lease consideration for the full term. Three and a half percent (3.5%) for any renewal or extension term.

1  
2 ii. Time of Payment: Full amount due upon rent commencement  
3 under the lease.

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

5 Dated: San Diego, California  
6 July 28, 2024

*Randall Coxworth*

\_\_\_\_\_  
Randall Coxworth

Exhibit A

Representation Agreements



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### EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **412 Cross Oaks Mall Plainwell LLC**, (hereinafter referred to as "Landlord") hereby engages **Bradley Company** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **411 Cross Oaks Dr., Plainwell, MI 49080 consisting of approximately 7003 SF (Exhibit "A")** irrevocably for a period commencing **4/15/24** and ending midnight **10/13/24**, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \$12.00/sf, NNN.

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker ½ of the commission due in connection with the initial lease term upon execution of the lease and the other ½ of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.



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3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property.

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses, damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.



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8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.


12. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

13. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Bill Bussey and Katie Lovely as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

Received 08/02/24 am/pm on, 2024.

**Landlord: 412 Cross Oaks Mall Plainwell LLC, Allen D Applbaum as Receiver**

Signature: , 412 Cross Oaks Mall Plainwell LLC

By: Allen D. Applbaum as Receiver  
c/o StoneTurn Group, LLC  
17 State Street, 2<sup>nd</sup> Floor  
New York, NY 10004

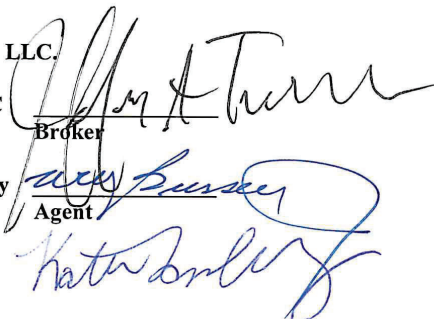
**Broker: Bradley Company, LLC**

**Listed By: Bradley Company, LLC**

**Through: Bill Bussey / Katie Lovely**

Broker

Agent





AG 4-23-24

Exhibit A





# McWhirter

Commercial Real Estate Since 1981

## EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **ATA Hiram Square GA LLC**, (hereinafter referred to as "Landlord") hereby engages **McWhirter Realty Partners, LLC** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **5157 Jimmy Lee Smith Parkway, Hiram, GA 30141 consisting of approximately 24,960± square feet retail center (Exhibit "A")** irrevocably for a period commencing 4/15/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \$ 24.00 sf, NNN.

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker ½ of the commission due in connection with the initial lease term upon execution of the lease and the other ½ of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each



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Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses, damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.



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10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from McWhirter Realty Partners, LLC to my email [pmm@mcwrealty.com](mailto:pmm@mcwrealty.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Basim Khan & Peyton McWhirter as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

Received 08/02/24 am/pm on, 2024.

**McWhirter Realty Partners, LLC**

**LANDLORD: ATA Hiram Square GA, LLC,  
Allen D. Applbaum as receiver**

By: Peyton McWhirter  
H-65265, 207691

ATA Hiram Square GA, LLC  
By: Allen D. Applbaum as Receiver  
c/o Stone Turn Group LLC  
17 State Street, 2<sup>nd</sup> Floor  
New York, NY 10004

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

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

Date: 05/09/2024

Date: August 2, 2024



# McWhirter

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**Exhibit A**



LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING. COMPENSATION CHARGED BY BROKERAGE FIRMS IS NOT SET BY LAW. SUCH CHARGES ARE ESTABLISHED BY EACH REAL ESTATE BROKERAGE FIRM.

**DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE  
LANDLORD AGENCY, TENANT AGENCY, OR TRANSACTION-BROKER**

**LISTING AGREEMENT  
FOR LEASE**

**AT Seven Hills Aurora CO II, LLC.**, a Delaware limited liability company, by and through Allen D. Applbaum, solely in his capacity as receiver ("Landlord") appoints the brokerage firm of **Cushman & Wakefield U.S., Inc. ("C&W")** as its sole agent and grants to C&W the exclusive right to lease the real property located at **18511 E. Hampden Avenue, Aurora, CO 80013** (the "Property") as provided below.

1. Court Approval. The Landlord's and C&W's respective obligations under this Listing 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 Listing 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 Listing Agreement. The parties acknowledge that the receiver acts pursuant to this Listing Agreement solely in his capacity as receiver and 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. Subject to Court approval, the term of this Listing Agreement will commence as of **June 7, 2024** and will expire on **June 6, 2025** (the "Listing Term"). Upon the expiration of the Listing Term, this Listing shall automatically be extended on a month-to-month basis ("Extension Period") for an additional six (6) months. Either party may terminate this Listing Agreement during the Listing Term upon thirty (30) days prior written notice by the terminating party to the other party.

3. Services. C&W will use commercially reasonable efforts to obtain satisfactory tenants for the Property at a lease rate to be determined by Landlord and on such other terms as are acceptable to Landlord in its sole discretion. C&W will negotiate the business terms of any lease on behalf of and in coordination with Landlord and in Landlord's best interest, subject to Landlord's review and final approval, except as otherwise directed by Landlord, provided that C&W shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a prospective tenant ("Prospective Tenant"). Notwithstanding anything to the contrary herein, Landlord shall not be required or compelled to accept any particular tenant or lease procured by C&W, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any prospective tenant in order to satisfy Landlord's obligation to reasonably cooperate with C&W under this Listing Agreement. C&W will cooperate with other licensed real estate brokers as set forth herein. C&W shall, at its expense, obtain and keep in full force and effect throughout the term of this Listing Agreement all licenses and permits required to be maintained by C&W in connection with the rendering of the services.

4. Marketing. Landlord authorizes C&W to advertise and place signage on the Property, subject to Landlord's approval of any advertisements and signage. C&W, at its own expense, will place its standard sign on the Property and will prepare and distribute a standard brokerage flyer. All advertising whether prepared or issued by C&W or by Landlord will identify C&W as Landlord's exclusive agent for the Property. C&W shall (i) submit a written report to Landlord no less frequently than twice a month, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom C&W has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord

concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property.

5. Referrals. During the term of this agreement, Landlord will refer to C&W all inquiries and offers received by Landlord with respect to the Property, regardless of the source of such inquiries or offers.

6. Commission. If, during the term hereof, Landlord leases any premises within the Property as set forth on Schedule B, Landlord will pay to C&W a commission in accordance with the attached Schedule A. Within 10 days after the end of the term, C&W will provide to Landlord a list of prospective tenants to whom the Property was submitted by any party during the term. If a prospective tenant, appearing on the list, enters into a lease within 90 days after the end of the term, Landlord will pay a commission to C&W as provided above. Landlord agrees that such 90-day period will be extended for so long as negotiations with a prospective tenant are continuing.

7. Outside brokers. If C&W recognizes an outside broker authorized to represent the tenant in a transaction for which a commission is payable hereunder, C&W will request such broker to agree to accept the outside broker portion of the commission computed and payable in accordance with the annexed Schedule A, and if such other broker agrees, Landlord will pay C&W the commission computed and payable in accordance with the annexed Schedule A out of which C&W will pay to such other broker its agreed upon commission and retain the balance of the commission as C&W's compensation. If the other broker does not so agree, then negotiations will be suspended until such agreement is obtained.

8. Fees and Expenses. If either party commences litigation against the other party to enforce its rights under this agreement, the prevailing party will be entitled to recover from the other party the costs and expenses (including reasonable attorneys' fees) incurred.

## LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

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9. Authority. Landlord represents that, in its capacity as receiver, it is in fact the owner of the Property and has the right to lease the Property. The individuals signing below represent that they are authorized to sign this agreement on behalf of the entity indicated.

10. Professional Advice. C&W recommends that Landlord obtain legal, tax or other professional advice relating to this agreement and the proposed lease of the Property as well as the condition and/or legality of the Property, including, but not limited to, the Property's improvements, equipment, soil, tenancies, title, environmental aspects and compliance with the Americans with Disabilities Act. C&W will have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Landlord and C&W. Landlord further agrees that in determining the financial soundness of a prospective tenant, Landlord will rely solely upon Landlord's own investigation and evaluation, notwithstanding C&W's assistance in gather any financial information, provided that C&W is acting in good faith and in compliance with its Uniform Duties (as defined below) in gathering such information.

11. OFAC. Each party represents and warrants to the other that it Landlord, in its capacity as receiver: (a) is not, and will not become, a person or entity with whom a party is prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other governmental action; and (b) is not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.

12. Anti-Bribery & Corruption. Each party represents and warrants to the other (with Landlord acting in its capacity as receiver) that it (and any party acting on its behalf) has not, in order to enter into this agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this agreement.

In the event of any violation of this section, the non-offending party shall be entitled to immediately terminate this agreement and take such other actions as are permitted or required to be taken under law or in equity.

13. Miscellaneous. This agreement shall be governed by the laws of the State of Colorado, without giving effect to principles of conflicts of law. This agreement constitutes the entire agreement between the parties regarding the subject matter herein, and no amendments, changes or modifications may be made to this agreement without the express written consent of each of the parties. If any term or provision of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms and provisions of the Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated. No failure or delay by a party in exercising any right hereunder or any partial exercise thereof shall operate as a waiver thereof or prohibit any other or further exercise of any right hereunder. This agreement shall benefit and be binding upon the parties and their respective successors and assigns. This agreement may be executed and delivered (including by facsimile, "pdf" or other electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.

LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

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**AT Seven Hills Aurora CO II, LLC., a  
Delaware limited liability company, by  
and through Allen D. Applbaum, solely  
in his capacity as receiver**

By:



Name: Allen D. Applbaum

Title: Receiver, ArciTerra Companies  
and Related Entities

Date: August 2, 2024

**CUSHMAN & WAKEFIELD U.S., INC**

By:



Name: Kristine Reinhardt

Title: Managing Broker

Date: July 3, 2024

## SCHEDULE A

## COMMISSIONS FOR LEASE

**Rates:**

- **Direct Transaction:** In a direct lease transaction where the Tenant is not represented by a broker and the listing team at Cushman & Wakefield U.S., Inc., directly procure a Tenant for the premises, a commission of five percent (5%) of the total net lease consideration for the full term shall be payable.
- **Co-op Transaction:** In the event any other broker, including other agents of Cushman & Wakefield U.S., Inc., procure a tenant for the premises, a commission of seven percent (7%) of the total net lease consideration for the term shall be payable.

**Renewals; Extensions; Expansions:** If a lease contains an option or other right to renew or extend the term or to lease additional space, and if the lease is renewed or extended or if a tenant leases additional space, whether or not strictly pursuant to the option or right contained in the lease, Landlord shall pay to C&W, at the time of the renewal, extension or lease of additional space, an additional commission of 3.5% for the renewal or extension term, or for such additional space.

**Cancellation Clauses:** C&W will be paid a commission based upon the entire lease term notwithstanding any right of Landlord to cancel the lease, provided that, if a tenant has a right to cancel the lease after the term has commenced (and for reasons unrelated to casualty, condemnation, default and the like), the commission will initially be based upon the noncancellable portion of the lease term plus the amount of any cancellation payment payable by tenant; if such right is not thereafter exercised, Landlord will promptly pay C&W the balance of the commission. A lease will be deemed canceled only if tenant vacates the premises. If a lease is terminated or amended and tenant remains under a new or different arrangement, C&W shall be paid the balance of its commission. If a cancellation payment includes the unamortized commission, then C&W will be paid a full commission as if no right of cancellation existed. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, C&W acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to C&W.

**Time of Payment:** Except as set forth herein, Commissions on leases shall be earned, due and paid in full upon the rent commencement date as set forth in the lease between Landlord and tenant. If C&W receives any deposit from a tenant or Prospective Tenant in connection with a lease Property procured by C&W pursuant to the terms of this Listing Agreement, C&W shall promptly (and not than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

## SCHEDULE B

## PREMISES

Location	Landlord	Address	Unit	Tenant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	138	Movie Tavern
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	140	Domino's Pizza
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	142	Hopebridge
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	152	Golden Flame Hot Wings #2
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	154	Allstate Insurance
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	156	Golden Flame Hot Wings
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	162	Care and Community
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	170	Peoples Food Mart
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	176	MyEyeDr
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	184, 186A	Havana Auto Parts

## LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	108	Smoker Friendly
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	186B	Play it Again Sports
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	187	Weight Watchers
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	194	7 Eleven
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	204	Crossroads Bible Church
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	210, 212	State Farm Insurance
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	216	National Martial Arts Academy
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	OUT4	Village Inn
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	Vacant, OUT5	Bridgestone/Firestone Inc
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	T2	T-Mobile
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	102	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	112	Animal Care Center of Aurora

This form has been prepared by C&amp;W's Legal Counsel. (5/1/18)

THIS FORM HAS NOT BEEN APPROVED BY THE COLORADO REAL ESTATE COMMISSION

CUSHMAN &amp; WAKEFIELD

## LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	110	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	160	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	166	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	168	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	172	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	174	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	178	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	Vacant, 188	The Classic Cut
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	192	Vacant
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	120	Lady Luck Tattoo
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	122	Star 4 Ever Nail Salon
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	124	Honeybee Asian Bistro

This form has been prepared by C&amp;W's Legal Counsel. (5/1/18)

THIS FORM HAS NOT BEEN APPROVED BY THE COLORADO REAL ESTATE COMMISSION

CUSHMAN &amp; WAKEFIELD

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## LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	128	Music Go Round
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	132	Taqueria Jalisco Mexican Grill
Seven Hills Plaza	AT Seven Hills Aurora CO II, LLC	18511 E. Hampden Ave., Aurora, CO 80013	134	Vacant

LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

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**Sale by Landlord:** In the event of a sale, conveyance or other disposition of all of Landlord's interest in the Property at which the lease is made, Landlord shall remain responsible to pay C&W the commissions due and/or which may become due hereunder as of the date of the sale, conveyance or other disposition of the Property, unless Landlord shall obtain from the grantee of its interest and deliver to C&W an agreement whereby the grantee assumes Landlord's commission obligations hereunder.

**Broker Regulatory or Statutory Provisions:** The following provisions must be included in brokerage agreements in the State of Colorado:

- C&W designates **Tyler Bray and Nico Demetrian** ("Broker") to serve as the broker of Landlord in the transaction contemplated by this Agreement. If more than one individual is so designated, then references in this Agreement to Broker shall include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with the Broker(s) and does not extend to C&W as the employing brokerage firm or to any other brokers employed by C&W who are not otherwise designated herein as Brokers.
- C&W, acting through Broker, as either a Transaction-Broker or a Landlord's agent, shall perform the following **Uniform Duties** when working with Landlord:
  - a. Broker shall exercise reasonable skill and care for Landlord, including, but not limited to the following:
    - (1) Performing the terms of any written or oral agreement with Landlord;
    - (2) Presenting all offers to and from Landlord in a timely manner regardless whether the Property is subject to a lease or letter of intent to lease;
    - (3) Disclosing to Landlord adverse material facts actually known by Broker;
    - (4) Advising Landlord regarding the transaction and regarding obtaining expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;
    - (5) Accounting in a timely manner for all money and property received; and
    - (6) Keeping Landlord fully informed regarding the transaction.
  - b. If the agreement be one of agency then Broker, as Landlord's agent, has the following additional duties:
    - (1) Promoting the interests of Landlord with the utmost good faith, loyalty and fidelity.
    - (2) Seeking lease rates and terms that are acceptable to Landlord.
    - (3) Counseling Landlord as to any material benefits or risks of a transaction that are actually known by Broker.
  - c. Broker shall not disclose the following information without the informed consent of Landlord:
    - (1) That Landlord is willing to accept less than the asking lease rate for the

LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

Property;

## LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING. COMPENSATION CHARGED BY BROKERAGE FIRMS IS NOT SET BY LAW. SUCH CHARGES ARE ESTABLISHED BY EACH REAL ESTATE BROKERAGE FIRM.

- (2) What the motivating factors are for Landlord to lease the Property;
  - (3) That Landlord will agree to lease terms other than those offered;
  - (4) Any material information about Landlord unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or
  - (5) Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.
- d. Landlord consents to Broker's disclosure of Landlord's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee shall not further disclose such information without consent of Landlord, or use such information to the detriment of Landlord.
  - e. In the event Broker defaults under this Agreement, Landlord has the right to cancel this Agreement, including all rights of C&W to any compensation. Examples of a Broker default include, but are not limited to (1) failure to fulfill all material obligations of Broker and (2) failure to fulfill all material duties as set forth in "a," "b" and "c" above. Any rights of Landlord that accrued prior to cancellation will survive such cancellation.
- IN-COMPANY TRANSACTIONS - DIFFERENT C&W BROKERS: When Landlord and tenant in a transaction are working with different C&W brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established with their respective clients. Landlord acknowledges that C&W is allowed to offer and pay compensation to brokers within C&W who are working with a tenant.
  - IN-COMPANY TRANSACTIONS – SAME C&W BROKER(S): If Landlord and tenant are both working with the same C&W Broker(s), such Broker(s) must function as follows:
    - LANDLORD AGENCY ONLY: If a written agency relationship exists, Broker represents Landlord as the Landlord's agent and shall treat the tenant as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker must disclose to such customer Broker's relationship with Landlord.
    - TRANSACTION-BROKERAGE RELATIONSHIP: If a Transaction-Broker relationship exists between Broker and Landlord, Broker must work with Landlord as a Transaction-Broker. A Transaction-Broker must perform the duties described above and facilitate sales transactions without being an advocate or agent for either party.
    - BROKERAGE RELATIONSHIP WITH BOTH: Alternatively, if Broker has or enters into an agency or Transaction-Broker relationship with the tenant, then Broker must act as a Transaction-Broker for both the Landlord and the tenant. A Transaction-Broker must perform the duties described above and facilitate sales transactions without being an advocate or agent for either party.
  - Neither C&W nor Broker(s) shall accept compensation from any other person or entity in connection with the Property without the written consent of Landlord. Additionally, neither C&W nor Broker(s) are permitted to assess or receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Landlord signs a separate written consent for such services.

LISTING AGREEMENT FOR LEASE – LANDLORD AGENCY

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING. COMPENSATION CHARGED BY BROKERAGE FIRMS IS NOT SET BY LAW. SUCH CHARGES ARE ESTABLISHED BY EACH REAL ESTATE BROKERAGE FIRM.

- Landlord acknowledges that C&W may have agreements with other landlords to market and lease their properties.
- It is unlawful for either Landlord or C&W to discriminate against any persons because of their race, creed, color, sex, sexual orientation, marital status, national origin, familial status, physical or mental disability, handicap, religion or ancestry of such person.
- If a dispute arises relating to this Agreement, prior to or after possession of the leased premises and is not resolved, the parties must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentiality. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless other agreed, will terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the other party's last known address.
- Landlord agrees to, in its capacity as receiver, disclose to C&W or Prospective Tenants and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding toxic, contaminated or hazardous substances, or defective conditions, at the Property. Landlord authorizes C&W to transmit such information to prospective purchasers. Colorado law requires a broker to disclose to any prospective tenant all adverse material facts actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property and the physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property which are required by law to be disclosed. These types of disclosures may include such matters as structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses and zoning variances. Landlord agrees that any tenant may have the Property inspected and authorizes C&W to disclose any facts actually known by C&W about the Property.

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## EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **5339 Elvis Presley Boulevard Memphis Tn LLC, Allen D. Applbaum as Receiver** (hereinafter referred to as "Landlord") hereby engages **SECOND STORY PROPERTY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **5339 Elvis Presley Blvd, Memphis, Tennessee 38116 consisting of approximately 19,200 square feet (Exhibit "A")** irrevocably for a period commencing 08/01/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \_\_\_\_\_

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals



and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses,



damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning



the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Second Story Real Estate Management to my email [tiffanye.robinson@svn.com](mailto:tiffanye.robinson@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Tiffany Robinson, Brian Chadwick and Hunter Myers as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

**SECOND STORY PROPERTY  
MANAGEMENT COMPANY, LLC,  
a Tennessee limited liability company**

**5339 Elvis Presley Boulevard Memphis Tn LLC,**

By: Tiffany Robinson

By: Allen D. Applbaum as Receiver

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

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

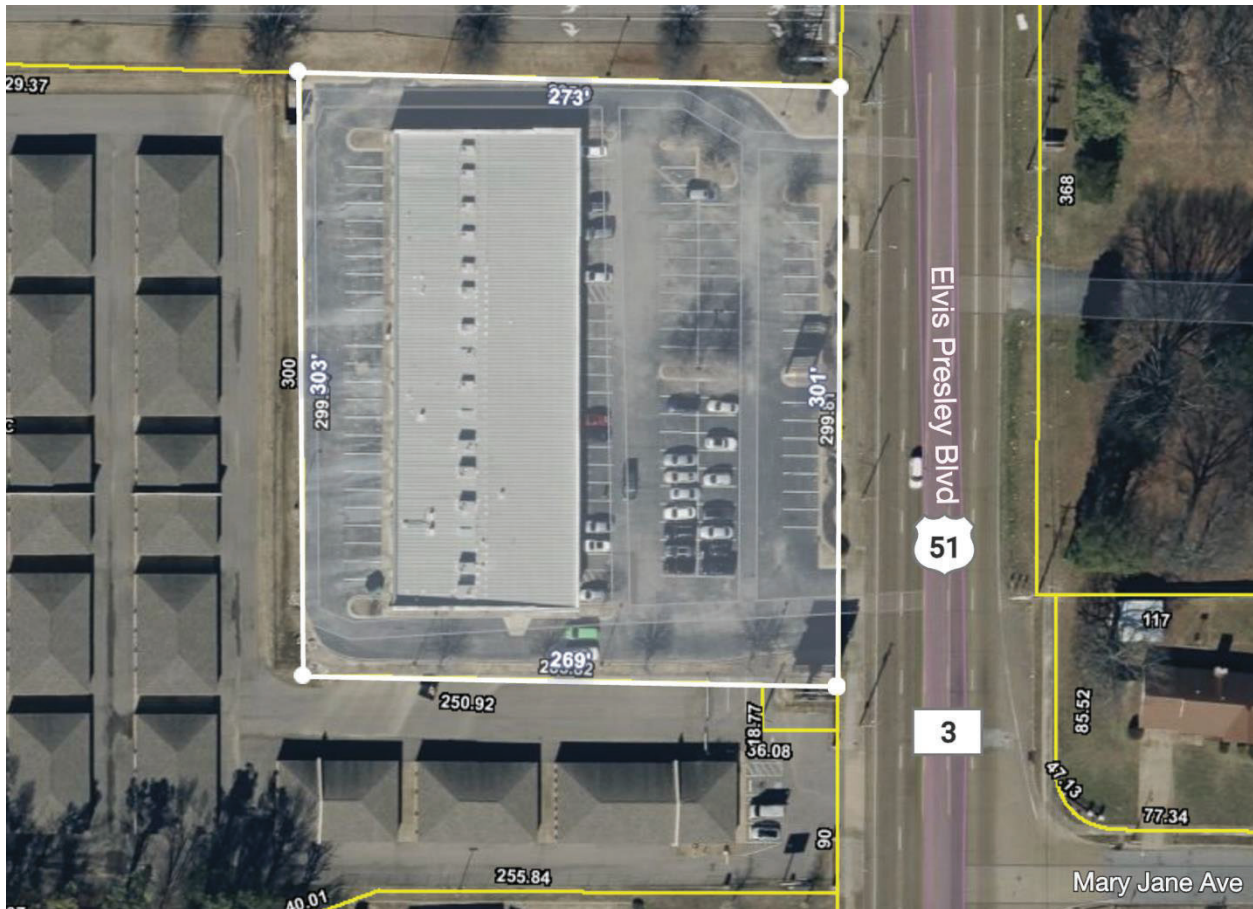
Date: 05 / 10 / 2024 \_\_\_\_\_

Date: 08/02/2024 \_\_\_\_\_



Exhibit A

5339 Elvis Presley Blvd, Memphis, TN 38116





## EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **1921 Gallatin Pike Nashville Tn LLC, Allen D. Applbaum as Receiver** (hereinafter referred to as "Landlord") hereby engages **SECOND STORY PROPERTY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **1921 Gallatin Pike North, Madison, Tennessee 37115 consisting of approximately 7,281 square feet (Exhibit "A")** irrevocably for a period commencing 08/01/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \_\_\_\_\_

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals



and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses,



damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning



the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Second Story Real Estate Management to my email [tiffanie.robinson@svn.com](mailto:tiffanie.robinson@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Tiffanie Robinson, Brian Chadwick and Hunter Myers as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

**SECOND STORY PROPERTY  
MANAGEMENT COMPANY, LLC,  
a Tennessee limited liability company**

**1921 Gallatin Pike Nashville Tn LLC,**

By: Tiffanie Robinson

By: Allen D. Applbaum as Receiver,  
ArciTerra Companies and Related Entities

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

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

Date: 05 / 10 / 2024

Date: 08/02/2024



## Exhibit A

1921 Gallatin Pike North, Madison, TN 37115





## EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **Arcitererra Vn Dickson Tn LLC, Allen D. Applbaum as Receiver** (hereinafter referred to as "Landlord") hereby engages **SECOND STORY PROPERTY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **100 Lowes Road, Dickson, Tennessee 37115 consisting of approximately 4,000 square feet (Exhibit "A")** irrevocably for a period commencing 08/01/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \_\_\_\_\_

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals



and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses,



damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning



the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Second Story Real Estate Management to my email [tiffanie.robinson@svn.com](mailto:tiffanie.robinson@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Tiffanie Robinson, Brian Chadwick and Hunter Myers as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

**SECOND STORY PROPERTY  
MANAGEMENT COMPANY, LLC,  
a Tennessee limited liability company**

**Arciterra Vn Dickson Tn LLC,**

By: Tiffanie Robinson

By: Allen D. Applbaum as Receiver,  
Arciterra Companies and Related Entities

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

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

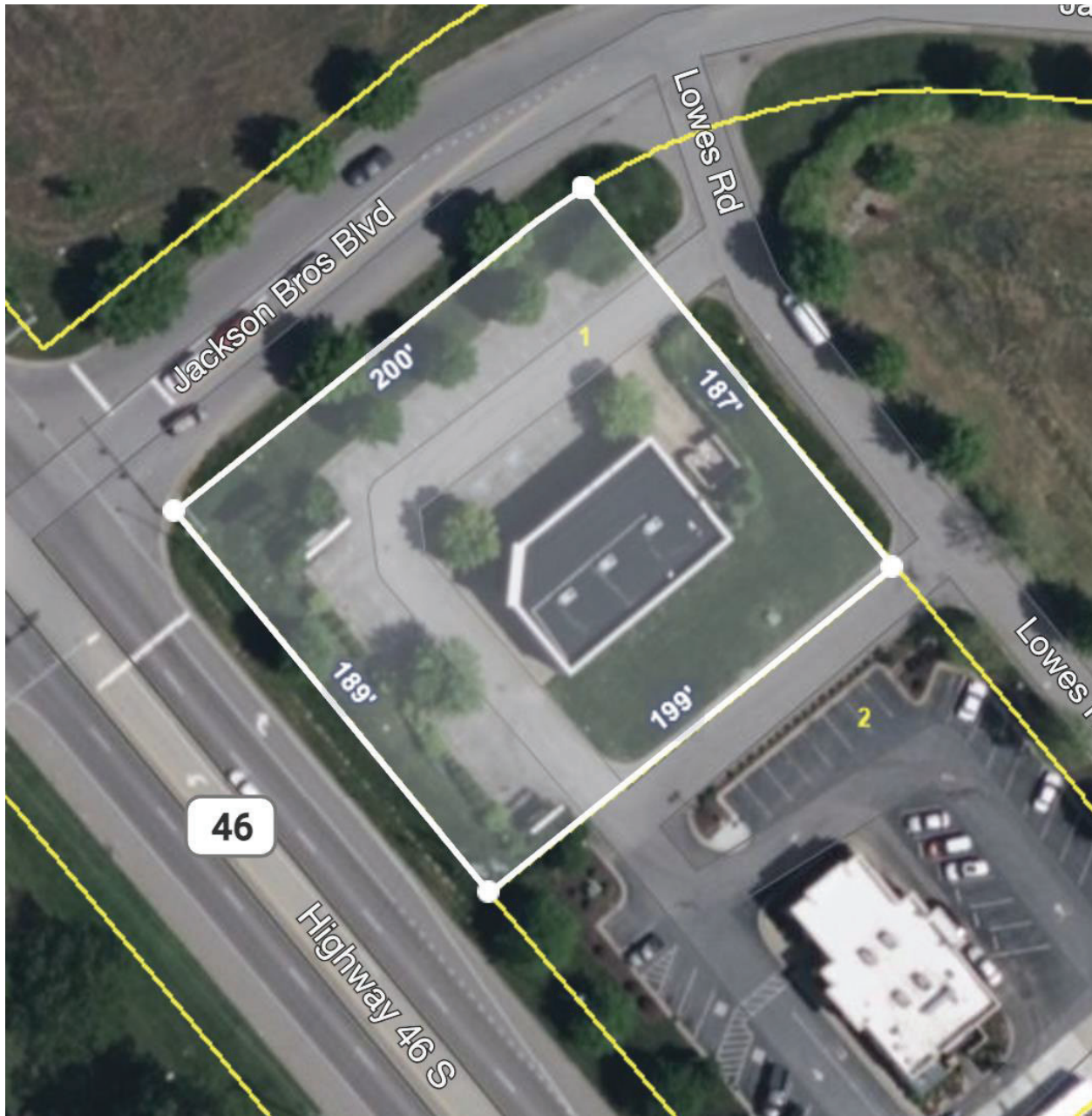
05 / 10 / 2024  
Date: \_\_\_\_\_

Date: 08/02/2024



## Exhibit A

100 Lowes Road, Dickson, TN 37055





## EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **Arciterra Vn Clarksville Tn LLC, Allen D. Applbaum as Receiver** (hereinafter referred to as "Landlord") hereby engages **SECOND STORY PROPERTY MANAGEMENT COMPANY, LLC, a Tennessee limited liability company** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **2135 Lowes Drive, Clarksville, Tennessee 37040 consisting of approximately 3,100 square feet (Exhibit "A")** irrevocably for a period commencing 08/01/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \_\_\_\_\_

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals



and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses,



damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning



the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Second Story Real Estate Management to my email [tiffanie.robinson@svn.com](mailto:tiffanie.robinson@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Tiffanie Robinson, Brian Chadwick and Hunter Myers as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

**SECOND STORY PROPERTY  
MANAGEMENT COMPANY, LLC,  
a Tennessee limited liability company**

**Arciterra Vn Clarksville Tn LLC,**

By: Tiffanie Robinson

By: Allen D. Applbaum as Receiver,  
ArciTerra Companies and Related Entities

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

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

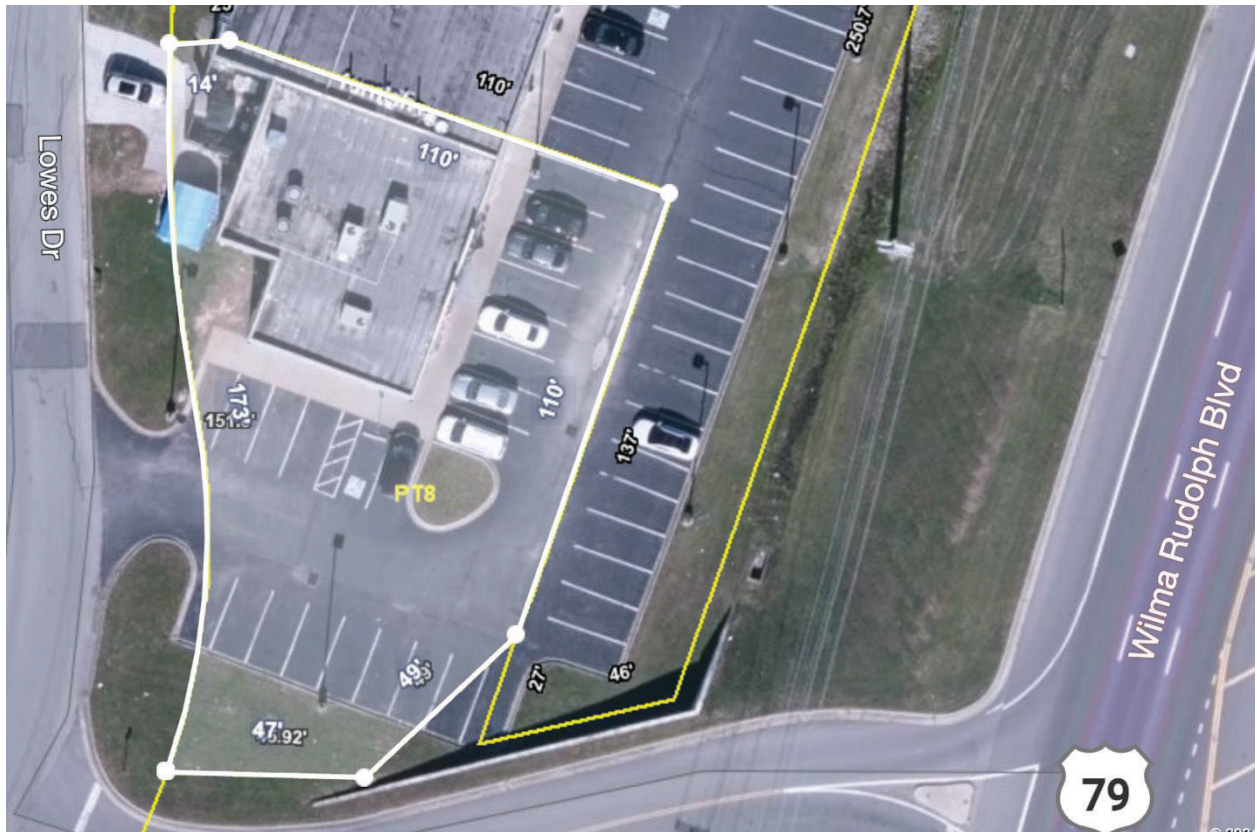
Date: 05 / 10 / 2024  
\_\_\_\_\_

Date: 08/02/2024



Exhibit A

2135 Lowes Drive, Clarksville, TN 37040





AG 4-5-24

### EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **60 Colonial Promenade Alabaster AL, LLC**, (hereinafter referred to as "Landlord") hereby engages **SVN | Toomey Property Advisors** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **60 Colonial Promenade Parkway, Alabaster Alabama 35007 consisting of approximately 11,998 square feet (Exhibit "A")** irrevocably for a period commencing 4/15/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \$27.00/sf, NNN.

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

**AG 4-5-24**

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property.

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses, damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

**AG 4-5-24**

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Toomey Property Advisors to my email [justin.toomey@svn.com](mailto:justin.toomey@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Justin Toomey, Kateleigh Calloway, Scotty Wells, and Hanna Millette as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

SVN| Toomey Property Advisors

60 Colonial Promenade Alabaster AL, LLC

By: Justin Toomey

By: Allen D. Applbaum, as Receiver  
ArciTerra Companies and Related Entities

Signed:  \_\_\_\_\_  
0B19BEE4D8C3465...

Signed: 

Date: 5/13/2024

Date: 08/02/2024



AG 4-5-24

Exhibit A



228682514 v3



AG 4-5-24

**EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY**

The undersigned Landlord, **81 Jameson Lane Greenville AL, LLC**, (hereinafter referred to as "Landlord") hereby engages **SVN | Toomey Property Advisors** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **Greenville Plaza located at 81 Jameson Lane, Greenville, Alabama 36037 consisting of approximately 1,000 square feet (Exhibit "A")** irrevocably for a period commencing 3/13/24 and ending midnight 9/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \$15.00/sf, NNN.

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

**AG 4-5-24**

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property.

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses, damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

**AG 4-5-24**

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Toomey Property Advisors to my email [justin.toomey@svn.com](mailto:justin.toomey@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Justin Toomey, Kateleigh Calloway, Scotty Wells, and Hanna Millette as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

**SVN| Toomey Property Advisors****81 Jameson Lane Greenville AL, LLC**

By: Justin Toomey

By: Allen D. Applbaum, as Receiver  
ArciTerra Companies and Related EntitesSigned:    
0B198EE4D8C3465...Signed: 

Date: 5/13/2024

Date: 08/02/2024



AG 4-5-24

Exhibit A



228682514 v3



AG 4-5-24

### EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **Walcent Kendallville IN, LLC**, (hereinafter referred to as "Landlord") hereby engages **Bradley Company** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **2507 (2513) East North Street, Kendallville, IN 46755 consisting of approximately 14,600 square feet (Exhibit "A")** irrevocably for a period commencing **4/15/24** and ending midnight **10/13/24**, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \$12.00, NNN.

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

**AG 4-5-24**

3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property.

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses, damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

**AG 4-5-24**

8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

13. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Dave Horacek and Jonathan Hardy as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

**Landlord: Walcent Kendallville IN, LLC, Allen D Applbaum as Receiver**

Signature:

A handwritten signature in blue ink, appearing to be 'A. Applbaum', written over a horizontal line.

Walcent Kendallville In, LLC

August 2, 2024

By: Allen D. Applbaum as Receiver  
c/o StoneTurn Group, LLC  
17 State Street, 2<sup>nd</sup> Floor  
New York, NY 10004

**Broker: Bradley Company, LLC. And Indiana Limited Liability Company**

Signature:

DocuSigned by:  
 \_\_\_\_\_  
66E72B98671D433...

 A DocuSign signature block. It includes the text 'DocuSigned by:' above a handwritten signature in blue ink that appears to be 'Bill Drinkall'. The signature is written over a horizontal line. Below the signature, there is a long horizontal line and a small alphanumeric string '66E72B98671D433...'.

By: William Drinkall, VP Brokerage



Exhibit A

AG 4-5-24



228682514 v3



AG 4-5-24

### EXCLUSIVE LISTING CONTRACT FOR LEASE OF PROPERTY

The undersigned Landlord, **8001 Vaughn Road Montgomery AL, LLC**, (hereinafter referred to as "Landlord") hereby engages **SVN | Toomey Property Advisors** (hereinafter referred to as "Broker"), its successors and assigns, as Landlord's exclusive Broker, to lease the following described Property: **8001 Vaughn Road Montgomery, AL 36616 consisting of approximately 11,994 square feet (Exhibit "A")** irrevocably for a period commencing 4/13/24 and ending midnight 10/13/24, unless earlier terminated in accordance with the terms hereof (the "Expiration Date"). Either party may terminate this listing agreement (the "Contract") with written notice 30 days prior to termination.

Any Lease of the property shall be determined on a case-by-case basis, and for any price or terms as may hereafter be agreed upon in writing and approved by the Landlord in its sole discretion, it being acknowledged and agreed that Landlord shall not be required or compelled to accept any particular tenant or lease procured by Broker, but may accept or decline the same as an exercise of its commercial judgment. Landlord shall not be required to agree to or complete any construction, renovations or other fit out or repair demanded by any Prospective Tenant in order to satisfy Landlord's obligation to reasonably cooperate with Broker under this Contract.

Additional terms and conditions to offer for a proposed lease shall be the following:

Base Rent: \$22.00/sf, NNN.

1. If a lease is negotiated and executed covering said property, during the term of this Contract, or within 90 days after the expiration of this Contract with any party to whom Broker has submitted said property during the term of this Contract (or any affiliate, nominee or representative of such party), provided that such Prospective Tenant is specifically identified on a written list of Prospective Tenants submitted to Landlord not later than 5 business days following Expiration Date of this Contract (a "Prospective Tenant"), Landlord agrees to pay to Broker a commission as set forth below on the base rents under any lease and under any renewals or extensions thereof covering said Property. This commission shall be earned and paid for services rendered if, during the Term or any extensions thereto: (a) All or any portion of the Property is leased to a tenant (by Broker, Landlord, or anyone else); (b) intentionally omitted; (c) Any contract for the lease of any portion of the Property is entered into by Landlord and executed. Broker may, but shall not be required to, submit a list of not more than 10 Prospective Tenants to Landlord not later than 5 business days following the Expiration Date.

2. If a lease is consummated on the Property during the term of this Contract or within 90 days after the expiration of this Contract or any extensions thereto, with any Prospective Tenant to whom Broker has submitted said Property during the term of this Contract, (or any affiliate, nominee or representative of such party) Landlord agrees to pay the Broker  $\frac{1}{2}$  of the commission due in connection with the initial lease term upon execution of the lease and the other  $\frac{1}{2}$  of the commission due upon rent commencement under the lease based upon the following lease commission structure:

Six Percent (6%) of the base rent amount of the initial term, excluding NNN expense reimbursements. fee or commissions will be split 50/50 with cooperating Brokers. Two Percent (2%) of the base rent amount shall be paid to the Broker for negotiated renewals and expansion options included in the executed lease (upon the actual exercise thereof).

Notwithstanding any of the foregoing or any other provision of this Contract to the contrary, if a definitive lease is entered into and such lease provides that the tenant may unilaterally (and without default of Landlord) cancel the lease for a portion of the initial term thereof, then Broker's fee or commission shall be deemed earned only on the non-cancelable portion of the lease term. In addition to the foregoing, if the lease contains contingencies and conditions (including, by way of example and not of limitation, zoning variances, occupancy permits and the like) that must be satisfied prior to the effectiveness of the lease and the failure of which gives either or both parties a termination right thereunder, Broker acknowledges and agrees that no fee or commission shall be earned or due unless and until all such conditions and contingencies have been satisfied or waived in writing and the time periods for payment of the fee or commission hereunder shall not begin to run until such conditions and contingencies are satisfied or waived. In the event that the lease is terminated prior to its effectiveness for failure of such conditions and contingencies to be satisfied, no fee or commission or any other amounts shall be earned by or due to Broker.

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3. Landlord agrees to reasonably cooperate with Broker in effecting a lease of the Property and to immediately refer to Broker all inquiries of anyone interested in the Property. All negotiations are to be through Broker; provided that Broker shall keep Landlord informed of such negotiations in a timely manner and Landlord shall be entitled to participate directly or indirectly at its election in any negotiations with a Prospective Tenant. Broker shall keep Landlord fully advised as to the status of negotiations with each Prospective Tenant. All offers and counteroffers must be submitted to Landlord whether or not recommended by Broker. Broker shall (i) submit a written report to Landlord no less frequently than bi-monthly, itemizing each Prospective Tenant to whom the Property has been specifically presented and/or with whom Broker has negotiated or is negotiating and indicating the activity and any relevant events occurring during the preceding two-week period, (ii) periodically confer with Landlord concerning any marketing challenges encountered and suggestions to improve the marketability of space at the Property, and (iii) keep Landlord informed of the progress of construction of tenant improvements (if applicable) and other matters relevant to the lease of the Property.

4. Broker is authorized to place its "For Lease" or "Available" signs on said Property, at its expense. Should the Broker deem it necessary, the Landlord authorizes the Broker to advertise the Property on a computerized system of public access such as the Internet. Landlord further authorizes Broker to disseminate pertinent information about the property including, but not limited to, the photo of the property, lease price, property condition, and/or Landlord's conditions affecting such property. Broker shall determine, at its discretion, the extent to which said Property shall be advertised for lease, at Broker's cost, and Landlord shall pay for the cost of all other advertising desired by Landlord, provided that such costs are preapproved in writing.

5. Landlord represents that it is the owner of the Property and agrees to disclose to Broker and to Prospective Tenants any and all information (not subject to legal, ethical or contractual confidentiality or privilege obligations) which Landlord actually has in its possession regarding the condition of the Property, including, but not limited to, the presence and location of asbestos, PCB transformers, other toxic, hazardous, or contaminated substances and underground storage tanks, in, on, or about the Property.

6. Landlord agrees to indemnify and hold harmless Broker from any claims, demands, expenses, losses, damages or injuries (including death) to persons or the property that arise in connection with the Property during the term of this Contract due to violations of fire protection/prevention laws or other similar safety laws where such losses, damages or injuries other than to the extent caused by Broker's negligence or willful misconduct in acting as agent with respect to the property. Broker agrees to indemnify and hold harmless Landlord from any claims, demands, expenses, losses, damages or injuries (including death) to persons (including any Prospective Tenants) or the property that arise in connection with Broker's entry upon the Property to the extent caused by Broker's negligence or willful misconduct.

7. Landlord acknowledges that Broker may represent Prospective Tenants and consents to such dual representation; provided that Broker shall at all times exercise its obligation under this Contract with the customary standard of care and further subject to the following requirements: (a) Broker will promptly notify Landlord in writing in the event that Broker intends to act as a dual agent in a lease negotiation with a particular Prospective Tenant; (b) at the election of Landlord in the event of a dual agency, Broker shall appoint separate designated agents for each party ("Designated Agents") and that any Designated Agent(s) representing Landlord shall represent only the interest of Landlord and shall not, without Landlord's written permission, disclose to a Prospective Tenant or a broker designated to represent a Prospective Tenant (i) that Landlord may agree to a rent, terms, or any conditions of lease other than those established by Landlord, (ii) Landlord's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule, or (iii) any information about Landlord and/or the Property which Landlord has identified as confidential unless disclosure of the information is otherwise required by statute or rule (or, as it relates to the Property, as otherwise expressly required by the terms of this Contract). Broker agrees not to act as a principal, or on behalf of any entity in which it has a financial interest, in any transaction involving the lease of any portion of the Property without full prior written disclosure to Landlord and Landlord's prior written consent thereto. Broker agrees not to disclose the confidential information of one principal to the other. Notwithstanding any provision in this Contract to the contrary, and for the avoidance of doubt, no Broker fee or commission or commission shall be owed by Landlord to Broker in connection with any transaction contemplated herein, or any other transaction as to which Broker claims a fee or other commission under this Contract, where a Prospective Tenant shall itself be affiliated with, controlled by or under common control with, Broker, or any person or entity otherwise employed by or affiliated with Broker, without full prior written disclosure to Landlord of such affiliation and Landlord's specific prior written consent thereto.

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8. If Broker receives any deposit from a tenant or Prospective Tenant in connection with a lease of the Property procured by Broker pursuant to the terms of this Contract, Broker shall promptly (and not later than three (3) business days) inform and turn such deposit(s) over to or as directed by Landlord.

9. Landlord and Broker have mutually negotiated all terms of this agreement. Landlord and Broker agree that this Contract constitutes the entire agreement between Landlord and Broker and supersedes all prior discussions, negotiations and agreements, whether oral or written. No amendment, alteration or withdrawal of this Contract shall be valid or binding unless made in writing and signed by both Landlord and Broker (without limiting either party's right to terminate this Contract as set forth herein). This Contract shall be binding upon the successors and assignees of the parties.

10. Landlord agrees to hold Broker harmless from all claims, disputes, litigation, and judgments, and all costs and reasonable attorney's fees incurred by Broker in connection therewith, arising from any incorrect information supplied by Landlord, or from any material fact known by Landlord concerning the Property which Landlord was required by this Contract to disclose but fails to disclose.

11. It is understood that it is illegal for either Landlord or Broker to refuse to display or lease the Property to any person because of race, color, religion, national origin, sex, marital status or physical disability.

12. I hereby consent to receive email transmissions sent from SVN | Toomey Property Advisors to my email [justin.toomey@svn.com](mailto:justin.toomey@svn.com).

13. If an attorney is engaged to enforce its rights under this Contract, Landlord agrees to pay the reasonable fee of such attorney, which fee is hereby fixed, if the collection of money is involved, at the lesser of such attorney's actual fees and 15% of the amount thereof, and such fee in no event shall be less than \$100.00.

14. A licensee engaged in any real estate transaction shall be considered to be representing the person with whom he is working as a Designated Agent unless there is a written agreement between the Broker and the person providing that there is a different relationship, or the licensee is performing only ministerial acts on behalf of the person. Broker designates and Landlord accepts Justin Toomey, Kateleigh Calloway, Scotty Wells, and Hanna Millette as the Landlord's Designated Agents.

15. Broker hereby represents that it and its personnel providing services (including any Designated Agents (as hereinafter defined) are, to the extent required by law, duly licensed in the state in which the Property is located to carry out and perform Broker's obligations under this Contract. Broker shall, at its expense, obtain and keep in full force and effect throughout the term of this Contract all licenses and permits required to be maintained by Broker in connection with the rendering of the services.

SVN| Toomey Property Advisors

8001 Vaughn Road Montgomery AL, LLC

By: Justin Toomey

By: Allen D. Applbaum, as Receiver  
ArciTerra Companies and Related Entities

Signed:    
DocuSigned by: Justin Toomey  
0B19BEE4D8C3465...

Signed: 

Date: 5/13/2024

Date: 08/02/2024



AG 4-5-24

Exhibit A



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**EXHIBIT 2**

**PROPOSED 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. CV-23-02470-PHX-DLR

**[PROPOSED] ORDER (I)  
APPROVING THE  
ENGAGEMENT AND  
COMPENSATION OF LEASE  
BROKERS; AND (II) GRANTING  
RELATED RELIEF**

The Court having considered the Receiver’s motion for an order: (i) approving the Receiver’s engagement and compensation of the following commercial lease brokers: (a) Cushman & Wakefield U.S., Inc., (b) Bradley Company, LLC, (c) SVN | Toomey Property Advisors, (d) Second Story Property Management Company LLC, and (e) McWhirter Realty Partners, LLC (each a Lease Broker, together, the “Lease Brokers”); and (ii) granting related relief and (C) granting related relief (the “Motion”); and the Court having considered the declaration of Randall Coxworth filed in support thereof (the “Coxworth Declaration”), and the attachments thereto; and upon consideration of any and all responses and replies relating to the Motion; and upon due and sufficient notice of the Motion, and

1 no other or further notice need be given; and after due deliberation and it appearing that  
2 the relief sought in the Motion is in the best interests of the Receivership Estate, its  
3 creditors, and other parties in interest,  
4

5 **NOW, THEREFORE, UPON THE FOREGOING AND THE RECORD**  
6 **BEFORE THIS COURT, IT IS HEREBY ORDERED:**<sup>1</sup>

7 1. The Application is GRANTED to the extent set forth herein.  
8

9 2. The Representation Agreements identified in the Motion and described in the  
10 Coxworth Declaration, and attached as Exhibit A to the Coxworth Declaration, are  
11 approved.

12 3. The Receiver is authorized to enter into each Representation Agreement and  
13 pay each Lease Broker's commission upon fulfillment of relevant terms as set forth in the  
14 respective Representation Agreement.  
15

16 4. This Court reserves jurisdiction and authority to implement the terms hereof.  
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18 Dated: , 2024  
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27 <sup>1</sup> Capitalized undefined terms shall have the meanings ascribed to them in the Motion.  
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