



The relief described hereinbelow is SO ORDERED.

Signed February 23, 2023.

H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

In re

WC BRAKER PORTFOLIO, LLC,

Debtor.¹

Chapter 11

Case No. 22-10293 (HCM)

**ORDER (I) APPROVING THE SALE OF DEBTOR'S PROPERTY
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND
INTERESTS, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND
(III) GRANTING RELATED RELIEF**

Upon consideration of the *Chapter 11 Trustee's Motion For Entry Of (I) An Order (A) Approving Bid Procedures In Connection With The Sale Of The Debtor's Property, B) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases, (C) Approving Stalking Horse Bidder (D) Scheduling An Auction And Hearing To Approve Sale*

¹ The last four digits of the Debtor's federal employer identification number are 2115. The Debtor's address is 814 Lavaca St, Austin, TX 78701.

Of Property, (E) Approving Form And Manner Of Notices Related Thereto, And (F) Granting Related Relief; And (II) An Order Authorizing And Approving (A) The Sale Of The Debtor's Property Free And Clear Of Liens, Claims, Rights, Encumbrances, And Other Interests, And (B) Related Relief ("Sale Motion") [Docket No. 230] of Dawn Ragan, as chapter 11 trustee (the "Trustee") for WC Braker Portfolio, LLC (the "Debtor"), seeking, among other things, entry of an order (this "Order" or "Sale Order")² pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code") and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (i) authorizing and approving the sale of the Debtor's Property (as defined herein), free and clear of all liens, claims and encumbrances; (ii) approving the Purchase and Sale Agreement between the Trustee on behalf of the Debtor and the Successful Bidder; (iii) approving the assumption and assignment of certain unexpired leases and executory contracts (collectively, the "Assumed Contracts"); and (vi) granting related relief, all as more fully described in the Sale Motion; and this Court having taken into consideration the prior hearing held on December 19, 2022 (the "Bidding Procedures Hearing") and order dated December 21, 2022 [Docket. No. 251] (the "Bid Procedures Order"), approving bidding procedures for the sale of Debtor's Property (the "Bidding Procedures") and granting certain related relief; and an auction (the "Auction") having been conducted in accordance with the Bid Procedures Order on February 14, 2023, and the Trustee, having determined after a full, fair and reasonable marketing process, that Braker Metric Business Parks, LLC ("Metric Business Parks") is the Successful Bidder with the highest or otherwise best bid for the Property; and ATX Braker SR, LLC ("ATX" and the "Stalking Horse Bidder") as the Next Highest Bidder ("Back-Up

² Capitalized terms not otherwise defined herein have the meanings ascribed to such terms in the Sale Motion and Bid Procedures Order.

Bidder"); and the Court having conducted a hearing to consider approval of the sale on February 23, 2023 (the "Sale Hearing"), during which all interested parties were offered an opportunity to be heard with respect to the Sale Motion, Auction and proposed Sale and assumption and assignment of Assumed Contracts; and this Court having reviewed and considered (i) the Sale Motion and the exhibits thereto; (ii) the Bid Procedures Order; (iii) the Purchase and Sale Agreement (as amended, the "Purchase Agreement") between the Trustee on behalf of the Debtor as Seller and Metric Business Parks as the Purchaser ("Buyer") [*see* Docket No. 306]; (iv) the testimony or proffer of the Trustee in support of the Sale Motion; and (v) the arguments of counsel made, and the evidence proffered or adduced at the Sale Hearing; and due notice of the Sale Motion, the Sale Hearing, and the form of this Sale Order in advance of the Sale Hearing having been provided; all objections to the Sale having been withdrawn, resolved, or overruled as set forth in this Order or on the record at the Sale Hearing; and it appearing that the relief granted herein is in the best interests of the Debtor, its estate, creditors, and all parties in interest in the Debtor's above-captioned bankruptcy case (the "Bankruptcy Case"); and upon the record of the Sale Hearing and this Bankruptcy Case; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. The Court's findings shall also include any oral findings of fact and conclusions of law made by this Court

during or at the conclusion of the Sale Hearing. This Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

B. Jurisdiction and Venue. This Court has jurisdiction over the Sale Motion, the Purchase Agreement (as defined herein), the Sale and the property of the Debtor's estate, including the Property, pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) that this Court can decide by final order under the United States Constitution. Venue of this Bankruptcy Case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. Statutory and Rule Predicates. The statutory and other legal predicates for the relief granted herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and the applicable Local Bankruptcy Rules of the United States Bankruptcy Court for the Western District of Texas (the "Local Rules").

D. Final Order. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). The Trustee has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale pursuant to the Purchase Agreement. In the absence of a stay pending appeal, the Buyer, being a good faith purchaser under section 363(m) of the Bankruptcy Code, may close the Sale pursuant to the Purchase Agreement at any time after the entry of this Order and shall not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

E. Notice and Opportunity to Be Heard. As evidenced by the certificates of service regarding the Sale Motion and the relief requested therein (*see* Docket. Nos. 230, 237, 241, 251, 252, 253, 274, 275, 281 and 293) previously filed with the Court, and representations of counsel at the Sale Hearing, a fair and reasonable opportunity to object to, and be heard with respect to,

the Sale Motion and the Sale has been given to all persons entitled to notice pursuant to applicable law and the Bid Procedures Order, including, but not limited to, the following: (i) all Contract Counterparties (as defined herein); (ii) any Entity (as defined in section 101(15) of the Bankruptcy Code) known by the Trustee to have asserted any lien, claim (as defined in 11 U.S.C. § 101(5)), encumbrance, or other interest in the Property; (iii) all affected federal, state and local regulatory and taxing authorities; (iv) all Entities known by the Trustee and her advisors to have recently expressed an interest in the Property; (v) all of the Debtor's known creditors (for whom identifying information and addresses are available to the Trustee); and (vi) all parties that have requested notice in this Bankruptcy Case pursuant to Bankruptcy Rule 2002.

F. In accordance with the Bid Procedures Order, and as evidenced by certificates of service filed in the Bankruptcy Case (*see* Docket No. 252 and 274), the Trustee served notice of the Auction and Sale by first-class, postage prepaid mail, and, for those parties who have consented to receive electronic notice, by the ECF system, to all parties required to receive such notice under the Bid Procedures Order and applicable rules.

G. In accordance with the Bid Procedures Order, notice of the Auction and Sale Hearing was published in the *Wall Street Journal* on December 29, 2022 (*see* Docket No. ___). Such publication is good and sufficient notice of the Sale with respect to all unknown creditors of the Debtor and other interested parties at addresses not reasonably known to the Trustee, to the extent such notice may be required. In addition, the Trustee, through the Marketing Agent, Keen-Summit Capital Partners LLC, caused further notice of the Auction and Sale-related deadlines to be published and circulated through several other real estate industry publications, press release, and e-commerce industry websites as evidenced by the *Declaration of Harold J. Bordwin* [Docket Nos. 299 and 300].

H. In accordance with the Bid Procedures Order, and as evidenced by certificates of service (*see* Docket Nos. 253, 275 and 281), the Trustee served notice of the proposed assumption and assignment of Available Contracts upon all counterparties to the Available Contracts listed therein. On February 3, 2023, the Trustee filed a revised Assumption Notice adding an additional Available Contract and served the affected counterparties that same day (*see* Docket No. 281) in accordance with the Bid Procedures Order. Two objections were timely filed (by Airship Syndicate Entertainment, Inc. and Smith & Nephew, Inc.). No other objections have been filed.

I. On February 16, 2023, the Trustee served the *Notice of Successful Bidder* [Docket No. 293] (the “**Post-Auction Notice**”) on all parties required to receive such notice under the Bid Procedures Order and applicable rules. Service of the Post-Auction Notice, as evidenced by that certain notice of service attached thereto, was appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the conclusion of the Auction and of the Successful Bidder.

J. The notices described in the foregoing paragraphs are good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures, the Purchase Agreement, the Auction, the Sale, the assumption and assignment to the Buyer of Available Contracts, the Cure Amounts, the Sale Hearing, and this Order, and all deadlines related thereto is or shall be required.

K. The Sale Process. The Bidding Procedures provided a full, fair, and reasonable opportunity for any Entity to make an offer to purchase the Property. The Trustee and her professionals have complied in all respects with the Bid Procedures Order and the Bidding Procedures in good faith. The Properties were fully and adequately marketed. The marketing process conducted by the Trustee and her Marketing Agent was robust and complete and

conducted in good faith, was intended to generate a fair market value buyer, and produced a buyer for fair market value of the Properties.

L. On or before February 7, 2023, the Trustee received eight (8) bids, including the bids from the Successful Bidder and Next-Highest Bidder, which she determined to be Qualified Bids in accordance with the Bid Procedures Order.

M. In accordance with the Bid Procedures Order, the Trustee conducted the Auction on February 14, 2023, and selected Metric Business Parks as the Successful Bidder for the Properties with a purchase price of \$102,250,000.00, pursuant to the Purchase Agreement as the Successful Bid. The Trustee also selected ATX as the Next-Highest Bidder with a purchase price of \$102,000,000.00 as the Next-Highest Bid ("Back-Up Bid"), in accordance with the Bid Procedures Order.

N. In accordance with the Bidding Procedures Order, the Trustee and the Successful Bidder have executed the Purchase Agreement, that provides for a Targeted Closing Date of the Sale after entry of the Sale Order. [See Docket No. 306]. The Purchase Agreement contemplates the sale of the Property to the Buyer pursuant to the terms and conditions thereof. The Purchase Agreement requires the sale of the Property, which is property of the Debtor's estate under Bankruptcy Code section 541, and, except as otherwise provided in the Purchase Agreement and this Order, such Sale will be free and clear of all liens, claims, and Encumbrances (as defined herein) pursuant to sections 105(a) and 363(f) of the Bankruptcy Code. In the event that the Successful Bidder, as Buyer, is unable to consummate the Sale on the Closing Date, the Bidding Procedures provide that the Trustee shall close the Sale with the Next-Highest Bidder pursuant to its Next-Highest Bid.

O. In light of the circumstances presented, (i) the Trustee and her advisors have engaged in an appropriate good faith marketing and sale process in accordance with the Bid Procedures Order and the Bidding Procedures, (ii) the Trustee and her advisors conducted a fair and open sale process, (iii) the sale process and the Bidding Procedures were non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any Entity to make an offer to purchase the Property, and (iv) the process conducted by the Trustee pursuant to the Bid Procedures Order and the Bidding Procedures obtained the highest and best value for the Property for the Debtor and its estate, and there was no other transaction available or presented that would have yielded as favorable an economic result for the Property.

P. As demonstrated by (i) the testimony and other evidence proffered or adduced at the Sale Hearing and (ii) the representations of counsel made on the record at the Sale Hearing, marketing efforts and a competitive sale process were conducted in accordance with the Bid Procedures Order and the Bidding Procedures. The Trustee (a) afforded interested potential purchasers a full, fair and reasonable opportunity to qualify as Qualified Bidders and submit their highest or otherwise best offer to purchase some or all of the Property, (b) provided Potential Bidders, upon request, sufficient information to enable them to make an informed judgment on whether to bid on the Property, (c) considered any Bids submitted on or before the deadline to submit bids under the Bid Procedures Order, and (d) did not improperly collude with any party.

Q. **Fair Consideration; Highest or Best Value.** The consideration to be provided by Buyer under the Purchase Agreement is fair and reasonable consideration for the Property and constitutes (i) reasonably equivalent value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, and the Uniform Voidable Transactions Act; (ii) fair consideration under the Uniform Fraudulent Conveyance Act; and (iii) reasonably equivalent value, fair consideration and

fair value under any other applicable laws of the United States, any state, territory or possession or the District of Columbia. Such consideration constitutes the highest or otherwise best bid for the Property. No other Entity has offered to purchase the Property that was a Qualified Bidder consistent with the Bid Procedures Order and for an amount that would provide greater value to the Debtor's estate than the Buyer. Prompt approval of the Sale is the only means to preserve and maximize the value of the Property.

R. Sound Business Purpose. The Trustee has demonstrated good, sufficient, and sound business purposes and justifications for approval of and entry into the Purchase Agreement and the other agreements, documents, and instruments deliverable thereunder or attached thereto (collectively, the "Transaction Documents"), and approval of the Sale (including all related transactions described in and contemplated therein). The entry into and performance under the Purchase Agreement by the Debtor and the Trustee, as applicable, (i) constitute a sound and reasonable exercises of the Trustee's business judgment consistent with her fiduciary duties, (ii) provides value to and are beneficial to the Debtor's estate, and are in the best interests of the Debtor and its stakeholders, and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale include, but are not limited to, the following: (i) the consideration offered by the Buyer pursuant to the Purchase Agreement (collectively, the "Purchase Price") and the other terms set forth in the Purchase Agreement constitute the highest or otherwise best offer received for all of the Debtor's right, title and interest in the property and interests in the property to be acquired by the Buyer under the Purchase Agreement (collectively, the "Property"); and (ii) the Sale on the terms set forth in the Transaction Documents present the best opportunity to maximize the value of the Property.

S. Neither the Buyer nor any of its affiliates, subsidiaries, officers, directors, members, partners, principals, or any of their respective representatives, successors, or assigns is an insider (as that term is defined in section 101(31) of the Bankruptcy Code) of the Debtor. The Buyer is purchasing the Property in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to, and granted pursuant to Paragraph 28 below, the full rights, benefits, privileges, and protections of that provision, and has otherwise proceeded in good faith in all respects in connection with the Sale in that, *inter alia*, (i) the Buyer recognized that the Trustee was free to deal with any other party interested in acquiring the Property; (ii) the Buyer complied in all respects with the provisions in the Bid Procedures Order, the Bidding Procedures and any other applicable order of the Court; (iii) the Buyer's bid was subjected to the competitive bidding procedures set forth in the Bid Procedures Order and the Bidding Procedures and the Auction; (iv) all payments to be made by the Buyer and other agreements or arrangements entered into by the Buyer in connection with the Sale have been disclosed; (v) no common identity of members exists between the Buyer and the Debtor; and (vi) the negotiation and execution of the Purchase Agreement and Transaction Documents were at arm's length and in good faith. The Purchase Agreement contemplates that in connection with the Closing, Buyer contemplates a reverse 1031 exchange and that as a consequence, the sole membership in the Buyer will be assigned and held at Closing (through the 180 day exchange period) to Asset Preservation Inc. serving as "Qualified Intermediary" as that term is used in IRC Section 1031 and such Qualified Intermediary has no common identity with the Buyer or the Debtor. Accordingly, the reversal or modification on appeal of any provision of this Sale Order shall not affect the validity of the Sale (including the assumption and assignment of the Assumed Contracts), unless this Sale Order is duly stayed pending such appeal.

T. None of the Trustee, the Debtor, the Buyer, or any of their respective representatives has engaged in any conduct that would cause or permit (i) the Purchase Agreement or the consummation of the Sale, to be avoidable or avoided, or (ii) costs or damages to be imposed, under section 363(n) of the Bankruptcy Code, or acted in bad faith or in any improper or collusive manner with any Entity in connection therewith.

U. **No Successor or Other Derivative Liability.** Upon Closing, and to the greatest extent allowed by applicable law, the Buyer (and its successors and assigns) shall not have any liability (including, but not limited to, any successor liability) or other obligation of the Debtor arising under or related to the sale and transfer of the Property to the Buyer, *provided* that, upon Closing, the Buyer shall remain liable for the Assumed Obligations (as defined and otherwise expressly provided for in the Purchase Agreement). Without limiting the generality of the foregoing, and except as otherwise expressly provided herein or in the Purchase Agreement, Buyer (and its successors and assigns) shall not be liable for any Encumbrances (as defined herein) in, to or against the Debtor, the Trustee, any of their respective predecessors or affiliates, or the Property or interests in property of any of the foregoing Entities, and Buyer (and its successors and assigns) shall have no successor or vicarious liabilities of any kind or character, including, without limitation, under any theory of antitrust, environmental, successor, or transfer liability, breach of contract, labor law, de facto merger, mere continuation, or substantial continuity, whether known or unknown as of Closing under the Purchase Agreement, now existing, or hereafter arising, whether fixed or contingent, whether asserted or un-asserted, whether legal or equitable, whether liquidated or unliquidated, including, without limitation, liabilities on account of warranties, intercompany loans, receivables among the Debtor and its affiliates, environmental liabilities, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to

the operation or ownership of any of the Property prior to such Closing. For the avoidance of doubt, the Debtor is deemed to release and forever discharge the Buyer and any of its affiliates, successors, and assigns from any and all Encumbrances, claims, causes of action, obligations, liabilities, demands, losses, costs, and expenses of any kind, character, or nature whatsoever, known or unknown, fixed or contingent, relating to the Sale or operation of the Property prior to Closing of the Buyer's Purchase Agreement, except for the Assumed Obligations assumed pursuant to the Purchase Agreement. The Buyer is not, and the consummation of the Sale will not render the Buyer, a mere continuation, and the Buyer is not holding themselves out as a mere continuation, of the Debtor or its estate, enterprise, or operations, and there is no continuity or common identity between the Buyer and the Debtor. Accordingly, the Sale does not amount to a consolidation, merger, or de facto merger of the Buyer with or into the Debtor or its estate and the Buyer is not, and shall not be deemed to be, a successor to the Debtor or its estate as a result of the consummation of the Sale.

V. **Good Faith.** The Sale and Transaction Documents were negotiated, proposed, and entered into, and are being undertaken by the Trustee, the Debtor and the Buyer in good faith, without collusion, and from arm's-length bargaining positions. Likewise, the value that the Debtor and its estate will receive on consummation of the Sale is the product of arm's-length negotiations between the Trustee, the Buyer and their respective counsel. The Buyer is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. The Buyer has proceeded in good faith in all respects in that, among other things, (i) the Buyer complied with the provisions of the Bid Procedures Order, including compliance with confidentiality obligations and restrictions under the Bidding Procedures and any applicable non-disclosure or confidentiality agreement, (ii) the Buyer's bid was subjected to

competitive Bidding Procedures as set forth in the Bid Procedures Order and the Auction, and (iii) all consideration to be provided by Buyer and all other material agreements or arrangements entered into by Buyer and the Debtor (or the Trustee on the Debtor's behalf) in connection with the Sale have been disclosed and are appropriate. The Purchase Price in respect of the Property was not controlled by any agreement among potential bidders. Neither the Trustee, the Debtor, nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. The Transaction Documents were not entered into and the Sale is not being consummated for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtor. All consideration to be provided by Buyer in connection with the Sale has been disclosed. Neither the Trustee, nor the Debtor, nor the Buyer is entering into the Transaction Documents, or proposing to consummate the Sale, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

W. Notice of Assumption. As evidenced by the applicable certificates of service filed with this Court in accordance with the Assumption and Assignment Procedures contained in the Bid Procedures Order (*see* Docket. Nos. 253, 275 and 281), the Trustee has served the Assumption Notice, which provide notice of the Debtor's executory contracts and unexpired leases available for assumption and assignment to Buyer (the "Available Contracts") and of the related proposed Cure Amounts (as defined herein) upon each non-Debtor counterparty to such Available Contract (each, a "Contract Counterparty"). A list of the Available Contracts is set forth on **Exhibit A** hereto. The service of the Assumption Notice was timely, good, sufficient, and appropriate under the circumstances and no further notice need be given with respect to the Cure Amounts for the

assumption and assignment of the Available Contracts. All Contract Counterparties to the Available Contracts have had a reasonable opportunity to object both to the Cure Amounts for their respective Available Contracts on the Assumption Notice, and to the assumption and assignment of any Available Contract to the Buyer. No defaults exist in the performance of the Debtor (or to the extent applicable, the Trustee) under the Available Contracts as of the date of this Order other than the failure to pay the Cure Amounts, as may be required, or such defaults that are not required to be cured. Pursuant to Rule 6006(c) of the Bankruptcy Rules, the Court finds that the service of the Assumption Notice was adequate, sufficient, and appropriate under the circumstances and in compliance with the Assumption and Assignment Procedures and other requirements of the Bid Procedures Order, and, except as expressly provided in this Sale Order, no further or other notice need be given in respect of the proposed assumption and assignment to the Buyer of any Assumed Contract.

X. Satisfaction of Section 363(f) Standards. The Trustee, for and on behalf of the Debtor, is authorized to sell the Property to the Buyer in accordance with the terms of this Sale Order and the Purchase Agreement, free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), property interests, rights, liabilities, encumbrances, pledges, and other interests of any kind or nature whatsoever against the Debtor or the Property, including, without limitation, any debts, claims, rights, causes of action, and/or suits arising under or out of, in connection with, or in any way relating to, any acts, omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, employee retirement or benefit plan claims, workers’ compensation claims, severance claims, retiree healthcare or life insurance claims, and/or claims for taxes of or against the Debtor and/or the Property to the maximum extent available

under applicable law, and any derivative, vicarious, transferee, or successor liability claims, rights, or causes of action (whether in law or in equity, under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior or subsequent to the commencement of this Bankruptcy Case, whether known or unknown, whether fixed or contingent, whether anticipated or unanticipated, whether yet accrued or not, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtor, the Debtor's interests in the Property, the operation of Debtor's businesses before the Closing, or the transfer of the Property to the Buyer (collectively, all such liens, claims, interests and other matters described above in this Paragraph, the "Encumbrances"), other than the Assumed Obligations and Permitted Liens (as defined under the Purchase Agreement), because, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Encumbrances who did not object (or who ultimately withdrew their objections, if any) to the Sale or the Sale Motion have either consented to or are deemed to have consented to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code. In addition, one or more of the other subsections of section 363(f) of the Bankruptcy Code apply and, therefore, holders of Encumbrances with an interest in the Property are adequately protected by having their Encumbrances that constitute interests in such Property attach solely to the proceeds of the Sale in the same order of priority and with the same extent, validity, force, and effect that such holders had prior to the Sale and by providing for the distributions provided for herein. Except as expressly provided in this Sale Order, all Entities having Encumbrances of any kind or nature whatsoever against the Debtor or the Property shall be forever barred, estopped, and permanently enjoined from pursuing or asserting such

Encumbrances against the Buyer or any of its assets, property, affiliates, successors, assigns, or the Property.

Y. The Buyer would not have entered into the Purchase Agreement and would not consummate the Sale contemplated thereby, thus adversely affecting the Debtor and its estate and its creditors, (i) if the sale of the Property was not free and clear of all Encumbrances and other interests, including, without limitation, any rights or Encumbrances based on any successor or transferee liability (other than the Assumed Obligations and Permitted Liens, as defined under the Purchase Agreement), or (ii) if the Buyer or its successors would, or in the future could, be liable for any such Encumbrances, including, without limitation, any rights or Encumbrances based on any successor or transferee liability (other than the Assumed Obligations and the Permitted Liens). The Buyer will not consummate the Sale unless this Court expressly orders that the Buyer, its affiliates and successors, its present or contemplated members or shareholders, or the Property will not have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Encumbrances and other interests, including rights or claims based on any successor or transferee liability, other than as expressly provided herein or in such Buyer's Purchase Agreement. A sale of the Property, other than one free and clear of all Encumbrances, would yield substantially less value for the Debtor's estate.

Z. The total consideration to be provided under the Purchase Agreement reflects the Buyer's reliance on this Sale Order to provide them with title to and possession of the Property free and clear of all Encumbrances pursuant to sections 105(a) and 363(f) of the Bankruptcy Code.

AA. Assumption and Assignment of Available Contracts. The assumption and assignment of the Available Contracts is integral to the Sale, is in the best interests of the Debtor

and its estate, and represent the valid and reasonable exercise of the Trustee's sound business judgment. Specifically, the assumption and assignment of the Available Contracts (i) is necessary to sell the Property to Buyer, (ii) is an integral part of the Property being purchased by the Buyer, (iii) limits the losses suffered by non-Debtor counterparties to the Available Contracts, and (iv) maximizes the recoveries to other creditors of the Debtor by limiting the amount of claims against the Debtor's estate by avoiding the rejection of the Available Contracts; and, in light of the foregoing, such assumption and assignment of the Available Contracts is reasonable, and enhances the value of the Debtor's estate.

BB. With respect to each of the Available Contracts, the Debtor and Trustee have met all requirements of section 365(b) of the Bankruptcy Code because Buyer has agreed to cure or will cure on or before the Closing under the Purchase Agreement any monetary default required to be cured with respect to the Available Contracts that will actually be assumed and assigned to the Buyer under section 365(b)(1) of the Bankruptcy Code (collectively, the "Assumed Contracts"), and such Buyer has provided adequate assurance of future performance under the Assumed Contracts in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code to the extent that any such assurance is required.

CC. Accordingly, the Available Contracts may be assumed by the Debtor and assigned to the Buyer as provided for in Buyer's Purchase Agreement and herein. The assumption and assignment of each Available Contract is approved notwithstanding any provision in such Available Contract or other restrictions prohibiting its assignment or transfer. The applicable Notice of Assumption provided by the Trustee is sufficient to advise the Contract Counterparties that, pursuant to the Purchase Agreement, the Buyer's decision on which Available Contracts will be assumed and assigned to such Buyer may not be made until after the entry of this Sale Order.

DD. The authority hereunder for the Debtor to assume and assign any Available Contract to the Buyer includes the authority to assume and assign an Available Contract, as amended.

EE. The assignments by the Debtor of each of the Assumed Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

FF. Validity of Transfer. As of the Closing, the transfer of the Property to the Buyer will be a legal, valid, and effective transfer of the Property, and will vest such Buyer with all any legal, equitable and beneficial right, title, and interest of the Debtor in and to such Property, free and clear of all Encumbrances (other than Assumed Obligations and Permitted Liens). The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale.

GG. The Transaction Documents are valid and binding contracts between the Debtor, Trustee and the Buyer and shall be enforceable pursuant to their terms. None of the Transaction Documents were entered into and none of the Debtor, the Trustee, or the Buyer has entered into the Purchase Agreement or proposed to consummate the Sale for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States, any state, territory, possession, or the District of Columbia. The Transaction Documents, the Sale itself, and the consummation thereof, shall be specifically enforceable against and binding upon (without posting any bond) the Debtor, and any chapter 7 or chapter 11 trustee appointed or elected in this Bankruptcy Case for the Debtor, and shall not be subject to rejection or avoidance by the foregoing parties, their successors, or any other Entity. None of the Trustee, nor the Debtor nor the

Buyer entered into the Purchase Agreement or proposed to consummate the Sale fraudulently for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, or any other applicable jurisdiction with laws substantially similar to any of the foregoing.

HH. The sale of the Property does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtor, (ii) impair or circumvent voting rights with respect to any plan proposed by the Trustee, the Debtor, or any other Entity, (iii) circumvent chapter 11 safeguards, including those set forth in sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests.

II. Waiver of Bankruptcy Rules 6004(h) and 6006(d). The sale of the Property (including the assumption and assignment of those Assumed Contracts that are acquired by the Buyer at the Closing) must be approved and consummated promptly in order to preserve the value of the Property and to the Debtor's estate. Therefore, time is of the essence in consummating the Sale, and the Trustee and the Buyer intend to close the Sale as soon as reasonably practicable pursuant to the terms of the Purchase Agreement. The Trustee has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale as contemplated by the Purchase Agreement. Accordingly, there is sufficient cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regard to the transactions contemplated by this Order.

JJ. Legal and Factual Bases. The legal and factual bases set forth in the Sale Motion, and at the Sale Hearing establish just cause for the relief granted herein.

KK. Necessity of Sale Order. The Buyer would not consummate the Sale absent the relief provided by this Sale Order.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Sale Motion is Granted.** To the extent not already approved pursuant to the Bid Procedures Order, the Sale Motion is granted and approved as set forth herein.

2. **Objections Overruled.** All objections to the Sale Motion or the relief granted herein that have not been previously overruled, withdrawn with prejudice, waived, or settled as announced to this Court at the Sale Hearing, or as provided in this Sale Order, and all reservations of rights included therein, are hereby overruled on the merits and with prejudice.

3. **Cure Objections.** As noted on **Exhibit A**, Cure Disputes were filed by Airship Syndicate Entertainment, Inc. ("Airship Syndicate") and Smith & Nephew, Inc. ("S&N") [Docket Nos. 286 and 285, respectively] with respect to their respective leases (the "Disputed Contracts"). Following review of the Disputed Contracts and related negotiations, the Trustee has fully resolved the Cure Disputes. As a result, Airship Syndicate shall have an allowed Cure Amount of \$134,437.50 and S&N shall have an allowed Cure Amount of \$18,113.83. Further, with respect to Airship Syndicate, the Trustee agrees to use reasonable efforts to facilitate written confirmation from the property manager as to the status of prior expense reconciliations for the lease years 2018 to 2021.

4. In the event the Buyer elects to assume any of the Disputed Contracts, the Buyer shall pay the allowed Cure Amounts upon assumption, as set forth herein. Notwithstanding the foregoing and for the avoidance of doubt, the Airship Syndicate Cure Amount arises from an unpaid security deposit reduction, which deposit the Trustee will turn over to Buyer at Closing of the Sale, pursuant to the Purchase Agreement, if Buyer assumes Airship Syndicate's Disputed

Contract. Until Closing, the Buyer shall have the option to (a) pay the allowed Cure Amount for such Disputed Contracts as agreed to by the parties (and receive the deposit related to Airship Syndicate's Disputed Contract), and the Trustee shall be permitted to assume the Disputed Contracts and assign such contract to the Buyer in accordance with the terms of the Purchase Agreement, or (b) designate the Disputed Contracts not to be acquired by the Buyer as part of the Sale (such a contract or lease, an "Excluded Contract") and Buyer shall not be responsible for such Cure Amount.

5. **Notice.** Notice of the Sale Motion and Sale Hearing was adequate, appropriate, fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006 and the Bid Procedures Order.

6. **Fair Purchase Price.** The consideration provided by the Buyer under the Purchase Agreement is fair and reasonable, is the highest or otherwise best offer for the Property to be acquired by the Buyer, and constitutes (a) reasonably equivalent value under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, and the Uniform Voidable Transactions Act; (b) fair consideration under the Uniform Fraudulent Conveyance Act; and (c) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession or the District of Columbia.

7. **Approval of the Transaction Documents.** The Purchase Agreement and transactions contemplated thereby, including the Transaction Documents and all of the terms and conditions thereof, are hereby approved in their entirety. The failure specifically to include any particular provision of the Transaction Documents in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Transaction

Documents, and the Debtor's and Trustee's entry therein, be authorized and approved in their entirety.

8. **Consummation of Sale.** Pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the Trustee, on behalf of the Debtor, is authorized and empowered to transfer the Property in accordance with the terms substantially in the form of the Purchase Agreement and the terms of this Sale Order. The Trustee, as well as her respective professionals and agents, are authorized to execute, deliver, and perform their obligations under and comply with the terms of the Transaction Documents and to consummate the Sale , including by taking any and all actions as may be reasonably necessary or desirable to implement the Sale pursuant to and in accordance with the terms and conditions of the Purchase Agreement and this Sale Order. For the avoidance of doubt, all Entities (including, for the avoidance of doubt, any managers, officers, employees, professionals, or agents of the Debtor or its affiliates) are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of (i) the Trustee to transfer the Property to the Buyer and (ii) the Buyer taking possession and control of the Property, in each case in accordance with the terms of the Buyer's Purchase Agreement and this Sale Order.

9. The Trustee and her professionals and agents are authorized to execute and deliver, and authorized to perform under, consummate, and implement all additional notices, assumptions, conveyances, releases, acquittances, instruments and documents that may be reasonably necessary or desirable to implement the Sale, including the transfer and, as applicable, the assignment of all the Property, the assumption of the Assumed Obligations, and the assumption and assignment of all the Available Contracts, and to take all further actions as may be reasonably requested by the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to such Buyer, or reducing to such Buyer's possession, the Property without further order of this Court.

10. To the maximum extent allowed under applicable law, all Entities that are currently in possession of some or all of the Property (other than Contract Counterparties to Assumed Contracts to the extent permitted under such Assumed Contract) are hereby directed to surrender possession of such Property to the Buyer immediately upon the occurrence of the Closing under the Purchase Agreement or at such later time as such Buyer reasonably requests.

11. The Buyer has provided or will provide, as applicable, adequate assurance of future performance of and under the Available Contracts, within the meaning of 365(b)(1) and 365(f)(2) of the Bankruptcy Code. Debtor's creditors and the holders of any Encumbrances are authorized and directed to execute such documents and take all other actions as may be necessary to terminate, discharge or release their Encumbrances in the Property, if any, as such Encumbrances may otherwise exist. To the extent necessary, Buyer (or its successors) may apply to this Court for appropriate orders enforcing this obligation on Debtor's creditors.

12. **Transfer of Property Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code, the Trustee and the Debtor are authorized to transfer the Property in accordance with the terms of the Purchase Agreement and this Sale Order. Upon the Closing of the Purchase Agreement, the transfer of the Property to Buyer shall (a) be valid, legal, binding, and effective; (b) vest such Buyer with all right, title, and interest of the Debtor in and to the Property; and (c) be free and clear of all Encumbrances against the Debtor and the Property (including Encumbrances of any "governmental unit," as defined in section 101(27) of the Bankruptcy Code) in accordance with section 363(f) of the Bankruptcy Code (other than Assumed Obligations and Permitted Liens) and subject to any claims and defenses the Debtor may possess with respect thereto immediately before the Closing under the Purchase Agreement.

13. Except as otherwise provided in a Purchase Agreement or herein, all Entities (and their respective successors and assigns) including, without limitation, the Trustee, the Debtor, the Debtor's estate, all debt security holders, equity holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trustees, trade creditors, and any other creditors (or agent of any of the foregoing) who may or do hold Encumbrances (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated) against the Debtor or the Property arising under or out of, in connection with, or in any way relating to, the Debtor, the Property, the operation of the Property by the Trustee or the Debtor prior to the Closing under the Purchase Agreement, are hereby forever barred, estopped, and permanently enjoined from asserting or pursuing such Encumbrances against the Buyer, its affiliates, successors, assigns, its property or the Property, including, without limitation, taking any of the following actions with respect to any Encumbrances: (a) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Buyer, its affiliates, successors, assigns, assets (including the Property), and/or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer, its affiliates, successors, assigns, assets (including the Property), and/or properties; (c) creating, perfecting, or enforcing any claim against the Buyer, its affiliates, successors, assigns, assets (including the Property), and/or properties; (d) asserting an Encumbrance as a setoff, right of subrogation, or recoupment of any kind against any obligation due against Buyer, its affiliates, successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or

actions contemplated or taken in respect thereof. No such Entity shall assert or pursue against the Buyer or its affiliates, successors or assigns any such Encumbrances.

14. This Sale Order (a) shall be effective as a determination that, as of the Closing under the Purchase Agreement, except as otherwise expressly provided in such Purchase Agreement as to Permitted Liens or Assumed Obligations, all Encumbrances have been unconditionally released, discharged and terminated as to the Buyer (and its successors and assigns) and the Property being acquired by such Buyer, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all Entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county and local officials and all other Entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that such Buyer is the assignee and owner of such Property, and ownership of the Property is free and clear of all Encumbrances or who may be required to report or insure any title or state of title in or to any lease (all such Entities being referred to as "Recording Officers"). All Recording Officers are authorized to strike recorded Encumbrances, claims, liens, and other interests against the Property recorded prior to the date of this Sale Order. A certified copy of this Sale Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded Encumbrances, claims, liens, pledges, and other interests against the Property recorded prior to the date of this Order. All Recording Officers are hereby authorized to accept for filing any and all of the documents and instruments necessary, advisable, or appropriate to consummate the transactions contemplated by the Purchase Agreement.

15. Following the Closing under a Purchase Agreement, except as otherwise expressly provided in such Purchase Agreement as to Permitted Liens or Assumed Obligations, no holder of any Encumbrances shall interfere with the Buyer's title (or that of any of Buyer's successors or assigns) to or use or enjoyment of the Property acquired by such Buyer based on or related to any Encumbrance or based on any actions or omissions by the Debtor or the Trustee, including any actions or omissions the Debtor or the Trustee may take in this Bankruptcy Case.

16. Except as expressly set forth in the Purchase Agreement as to Permitted Liens or Assumed Obligations, the Buyer and its affiliates, successors, assigns, members, partners, officers, directors, principals, and shareholders shall have no liability whatsoever for any Encumbrances, whether known or unknown as of the Closing under such Purchase Agreement, now existing or hereafter arising, whether fixed or contingent, whether liquidated or unliquidated, whether asserted derivatively or vicariously, whether asserted based on such Buyer's status as a transferee, successor, or otherwise, of any kind, nature, or character whatsoever, including Encumbrances based on, relating to, and/or arising under, without limitation, (a) any employment or labor agreement; (b) any pension, welfare, compensation or other employee benefits or retirement plan, agreements, practices, and programs, including, without limitation, any pension or employee benefits or retirement plan of or related to the Debtor or any of Debtor's affiliates or predecessors or any current or former employees of any of the foregoing; (c) the Debtor's business operations or the cessation thereof; (d) any litigation involving the Debtor; (e) any employee, workers' compensation, occupational disease or unemployment or temporary disability related law, including, without limitation, any claims, rights, or causes of action that might arise under or pursuant to any state, local, or federal laws, regulations or rules relating to, wages, benefits, employment, or termination of employment with the Debtor; (f) any antitrust laws; (g) any product

liability or similar laws, whether state, federal, or otherwise; (h) any environmental laws, rules, or regulations (subject to Paragraph 17); (i) any bulk sales or similar laws; (j) any federal, state, or local tax statutes, rules, regulations, or ordinances; and (k) any common law doctrine of *de facto* merger, successor, transferee, or vicarious liability, substantial continuity liability, successor-in-interest liability theory, and/or any other theory of or related to successor liability.

17. Nothing in this Sale Order or the Purchase Agreement releases, nullifies, or enjoins the enforcement of any liability to a governmental unit under environmental statutes or regulations (or any associated liabilities for penalties, damages, cost recovery or injunctive relief) that any Entity would be subject to as the owner or operator of property after the Closing. Notwithstanding the foregoing sentence, nothing in this Sale Order shall be interpreted to deem the Buyer as successor to the Debtor under any state law successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to entry of this Sale Order or for liabilities relating to off-site disposal of wastes by the Debtor prior to entry of this Sale Order. Nothing in this Paragraph should be construed to create for any governmental unit any substantive right that does not already exist under applicable law.

18. Upon the occurrence of the Closing under the Purchase Agreement, as to the Property subject to such Purchase Agreement, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Property acquired by such Buyer, transferring good and indefeasible title and interest in all of such Property to the Buyer (subject to Assumed Obligations and Permitted Liens) with effect at such Closing in accordance with the Transaction Documents.

19. All Entities are prohibited from taking any action to adversely affect or interfere with the ability of the Trustee and the Debtor to transfer the Property to the Buyer in accordance

with the Purchase Agreement and this Sale Order, provided that the foregoing restriction shall not prevent any party from appealing this Sale Order in accordance with applicable law or opposing any appeal of this Sale Order.

20. **No Successor or Other Derivative Liability.** By virtue of the Sale, neither the Buyer nor any of its members, successors or affiliates shall be deemed to (a) be a legal successor, or otherwise deemed to be a successor, to the Debtor under any theory of law or equity; (b) have, *de facto* or otherwise, merged with or into the Debtor or its estate; (c) have a common identity or a continuity of enterprise with the Debtor; or (d) be a mere continuation or substantial continuation, or be holding itself out as a mere continuation, of the Debtor or any business, enterprise, or operation of the Debtor. Upon the Closing under a Purchase Agreement, to the maximum extent available under applicable law, such Buyer's acquisition of the Property pursuant to such Purchase Agreement shall be free and clear of any "successor liability" claims and other types of transferee liability of any nature whatsoever, whether known or unknown and whether asserted or un-asserted at the time of such liabilities (other than, to the extent applicable, any Assumed Obligations or Permitted Liens), and the Property shall not be subject to any claims arising under or in connection with any excluded asset, including any non-assigned contract or lease or excluded liability. The operations of the Buyer and its affiliates shall not be deemed a continuation of the Debtor's businesses as a result of the acquisition of the Property.

21. **Assumption and Assignment of Assumed Contracts.** The Trustee is hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Available Contracts to the Buyer pursuant to the terms of the Purchase Agreement, free and clear of all claims, and to execute and deliver to Buyer such documents or other instruments as may be necessary to assign and transfer the Available Contracts to such Buyer as provided in

the Purchase Agreement. Upon Closing, the Buyer shall be fully and irrevocably vested with all right, title, and interest of Debtor in, to, and under the Assumed Contracts acquired pursuant to such Purchase Agreement and, pursuant to section 365(k) of the Bankruptcy Code, the Debtor shall be relieved from any further liability with respect to such Assumed Contracts.

22. **Exhibit A** sets forth all Cure Amounts that must be paid by the Buyer in connection with the assumption and assignment of the Available Contracts pursuant to the Purchase Agreement and this Order. Assumption and payment of the Cure Amounts by the Buyer shall be in full satisfaction and cure of any and all defaults under the Assumed Contracts acquired by Buyer and is deemed to fully satisfy the Debtor's obligations under sections 365(b) and 365(f) of the Bankruptcy Code, and all other defaults under the Available Contracts existing as of the date of the Sale Hearing shall be deemed waived. Upon the assumption by Debtor and the assignment to Buyer of any Available Contract, and the payment of any applicable Cure Amounts, each Contract Counterparty to such Available Contract is forever barred, estopped, and permanently enjoined from (a) asserting against the Debtor or the Buyer, their affiliates, successors, or assigns, or the property of any of them, any default existing as of the date of the Sale Hearing, and (b) exercising any rights or remedies against the Debtor or the Buyer based on an asserted default that occurred on or prior to the Sale Hearing, or as a result of, the Closing under such Purchase Agreement, including the type of default specified in section 365(b)(1)(A) of the Bankruptcy Code. The Buyer has provided adequate assurance of future performance under the Available Contracts within the meaning of sections 365(b)(1)(c) and 365(f)(2)(B) of the Bankruptcy Code. Accordingly, all of the requirements of sections 365(b) and 365(f) of the Bankruptcy Code have been satisfied for the assumption by the Debtor, and the assignment by the Debtor to Buyer, of each of the Available Contracts.

23. To the extent a Contract Counterparty failed to timely object to a Cure Amount, such Cure Amount has been and shall be deemed to be finally determined as set forth on **Exhibit A**, and any such Contract Counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Amount at any time. Consistent with the Bid Procedures Order, the Contract Counterparty to an Available Contract is forever bound by the applicable Cure Amount and, upon payment of such Cure Amount as provided herein and in the Purchase Agreement, is hereby enjoined from taking any action against the Buyer (or any successor to Buyer) with respect to any claim for cure under the Available Contract as of the Sale Hearing. To the extent no timely objection has been filed and served in accordance with the procedures set forth in the Bid Procedures Order with respect to an Available Contract, the Contract Counterparty to such Available Contract is deemed to have consented to the assumption and assignment of the Available Contract to the Buyer. The terms “Cure Cost” and “Cure Amounts” as used in this Order refer to the amount necessary, if any, to cure all defaults, if any, pursuant to section 365(b)(1)(A) of the Bankruptcy Code under the Available Contracts existing as of entry of this Sale Order without prejudice of any Contract Counterparty to assert additional amounts are owing for monetary defaults, if any, first arising under Available Contracts after entry of this Sale Order.

24. The assignments of each of the Available Contracts are made in good faith under sections 363(b) and (m) of the Bankruptcy Code.

25. **Ipsa Facto Clauses**. Except as otherwise specifically provided for by order of this Court, the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, Buyer in accordance with their respective terms, including all rights of such Buyer as the assignee of the Assumed Contracts acquired under the Purchase Agreement, notwithstanding any provision in any Available Contract (including, without limitation, those of the type described

in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer, including any provision that prohibits or conditions the assignment or sublease of an Available Contract (including without limitation, the granting of a lien therein) or allows the Contract Counterparty thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, which shall constitute an unenforceable anti-assignment provision that is void and of no force and effect.

26. There shall be no, and all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtor, the Trustee or the Buyer (or any successor to the Buyer) any default, breach, termination, claim, penalty, pecuniary loss, rent or other acceleration of amount due thereunder, escalation, assignment fee, increase, or any other fee charged to the Buyer or the Debtor as a result of (a) Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Available Contracts; or (b) the assumption or assignment of any of the Available Contracts.

27. The failure of the Trustee, the Debtor or the Buyer to enforce at any time one or more terms or conditions of any of the Available Contracts shall not be a waiver of such terms or conditions, or of the Trustee's, Debtor's or the Buyer's rights to enforce every term and condition of the Available Contracts.

28. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's-length and, accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale and Sale shall neither affect the validity of the Sale and Sale nor the transfer of the Property to the Buyer free and clear of Encumbrances, unless, as to a specific Buyer, such authorization is duly

stayed before the occurrence of the Closing under the Buyer's Purchase Agreement pending such appeal. The Buyer is a good faith purchaser of the Property being acquired under the Purchase Agreement and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Trustee and Buyer will be acting in good faith if they proceed to consummate the Sale at any time after entry of this Sale Order.

29. **Travis County.** Notwithstanding anything to the contrary herein, the 2022 Travis Central Appraisal District ("TCAD") property tax appraisals are currently under protest. Therefore, Travis County's claim filed against the Debtor as Proof of Claim No. 11 (and as may be amended, "Travis County Claim") for tax year 2022 will be resolved in two stages. First, a payment by the Trustee on behalf of the Debtor of the undisputed portion of Travis County's Claim in the amount of \$2,622,052.17 has been received by the Travis County Tax Office on behalf of TCAD as of January 31, 2023. Second, \$874,017.38 will be placed in escrow by the Trustee pending the resolution of the tax appraisal protest. Travis County shall amend its proof of claim within 30 days of receiving the final resolved appraisal from TCAD, and the Trustee shall pay the remaining balance, if any, of the amended claim for 2022 within 30 days of the filing of the amended proof of claim from the proceeds of sale. If the final resolved appraisal results in an overpayment by the Debtor of the undisputed amount paid, Travis County shall refund any overpayment to the Trustee, for the benefit of the Debtor's estate within 30 days. Buyer shall not be responsible for the payment of such Travis County Claim for the 2022 tax year. The right of the Trustee to object to the Travis County Claim is not waived by this provision. Travis County's statutory lien for 2022 attaches to the funds held in escrow until the full amount of the Travis County Claim is resolved and paid in full, as amended.

30. **Modification of Purchase Agreement.** The Purchase Agreement and Transaction Documents may be modified, amended, or supplemented in a writing signed by the parties thereto, and in accordance with the terms thereof, provided that that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate or its creditors, without further notice or order of this Court.

31. **Back-Up Bid.** The Back-Up Bid shall remain open pursuant to the terms of the Bid Procedures Order. In the event that the Successful Bidder cannot or refuses to consummate the Sale on or before the Closing Date under the Purchase Agreement, or breaches the Purchase Agreement or this Sale Order by some other act or omission following entry of a Sale Order, the Back-Up Bidder shall be deemed to be the Successful Bidder in accordance with the Bidding Procedures, and all references herein to the Buyer and the Purchase Agreement shall be deemed to refer to the Back-Up Bidder and Back-Up Bid, respectively, without further order of the Court. The Trustee shall be authorized, but not directed, to proceed with the Sale to the Back-Up Bidder, subject to the terms of the Back-Up Bid, and shall promptly file a supplemental notice regarding her intent to proceed with the Sale to the Back-Up Bidder.

32. **Payment of Marketing Agent.** The Trustee shall be authorized to pay the Marketing Agent, Keen-Summit Capital Partners LLC ("Keen-Summit") at Closing from proceeds from the Sale any and all compensation and expense reimbursement due to Keen-Summit pursuant to the terms of Keen-Summit's engagement approved by this Court by its *Order Granting Trustee's Application to Employ Marketing Agent*, entered on October 31, 2022 [Docket No. 211].

33. **Payment of Mortgage Lender.** The Trustee shall be authorized to pay any and all amounts due to ATX as prepetition lender to the Debtor pursuant to that certain prepetition loan agreement between Debtor and ATX, as assignee, in the original principal amount of \$71,000,000,

and secured by the Properties and proceeds, including rents, generated therefrom (the “Mortgage Loan”). Specifically, the Trustee is authorized to pay \$75,533,240.00 to ATX at Closing, which amount is comprised of \$72,870,133.00 due under the Mortgage Loan as of the Petition Date, plus \$2,563,107 in accrued and unpaid post-petition interest and \$100,000 in accrued and unpaid servicer fees.

34. **Transfer Tax and Bulk Sales Law.** No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale. There shall be no transfer taxes or other similar fees or charges under federal law or the laws of any state, or any political subdivision thereof, required to be paid in connection with the Sale.

35. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale and the Trustee and the Buyer intend to close the Sale as soon as practicable pursuant to the terms of the Purchase Agreement. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing under the Purchase Agreement, or risk its appeal will be foreclosed as moot.

36. **Binding Effect of this Sale Order.** The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon, or shall inure to the benefit of the Trustee, the Debtor’s estate and its creditors, the Buyer and its affiliates, successors, and assigns, and any affected third parties, including all Entities asserting Encumbrances, notwithstanding any subsequent appointment of any trustee, examiner, or receiver under any

chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee, examiner, or receiver and shall not be subject to rejection or avoidance by the Trustee, the Debtor, the Debtor's estate or creditors, or any trustee, examiner, or receiver. Any trustee appointed for the Debtor under any provision of the Bankruptcy Code, whether the Debtor is proceeding under chapter 7 or chapter 11 of the Bankruptcy Code, shall be authorized to (a) operate the businesses of the Debtor to the fullest extent necessary to permit compliance with the terms of the Transaction Documents and (b) perform under the Transaction Documents without the need for further order of this Court.

37. Nothing in this Sale Order shall modify or waive any closing conditions or termination rights set forth in the Purchase Agreement, and all such conditions and rights shall remain in full force and effect in accordance with their terms.

38. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Sale Order and the terms of the Transaction Documents, the terms of this Sale Order shall control.

39. **Automatic Stay.** No Buyer shall be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Transaction Documents or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the provisions of this Sale Order.

40. **Provisions Non-Severable.** The provisions of this Order are nonseverable and mutually dependent.

41. **Retention of Jurisdiction.** This Court shall retain jurisdiction to, among other things, (a) interpret, enforce, and implement the terms and provisions of this Sale Order and the

Purchase Agreement (including all amendments thereto, any waivers and consents thereunder, and of each of the agreements and other documents executed in connection therewith) and (b) adjudicate disputes related to this Sale Order and the Purchase Agreement (including all amendments thereto, any waivers and consents thereunder, and each of the agreements and other documents executed in connection therewith).

END OF ORDER

Order submitted by:

/s/ Nancy Ribaldo

Nancy Ribaldo

Texas Bar I.D. 24026066

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EXHIBIT A

AVAILABLE CONTRACTS AND CURE AMOUNTS

<u>Contract Counterparty</u>	<u>Cure Amount</u>
Action Behavior Centers, LLC	\$0.00
ADT Security Services Inc.	\$0.00
Airship Syndicate Entertainment, Inc.	\$134,437.50
Aptara, Inc.	\$0.00
Arrow Electronics, Inc.	\$0.00
Atkins North America Inc.	\$0.00
Caffrey & Company LLC	\$0.00
CallFire Inc.	\$0.00
Central Security Group, Inc., Alert 360 Opco, Inc., d/b/a Alert 360	\$0.00
Clarus Vision LLC	\$0.00
David C. Simmons	\$0.00
Double Line Inc.	\$0.00
Excel Fitness Holdings Inc. dba Planet Fitness	\$0.00
George P. Johnson Company	\$0.00
Gursel, LLC dba Maki Toki Sushi	\$0.00
Halal Brothers LLC	\$0.00
HGR Industrial Surplus Inc.	\$0.00
Honor Technology Inc.	\$0.00
Howmedica Ostenocis Corp.d/b/a Styker Orthopaedics	\$0.00
Image API, Inc.	\$0.00
J. Wales Enterprises LLC	\$0.00
Kibo Software Inc.	\$0.00
Kinetics Systems, Inc.	\$0.00
Kroem Land/b/a Central Donut	\$0.00
Lite-On Inc.	\$0.00
Lone Star Capital Bank, N.A.	\$0.00
MCRT Gulf Coast Southwest Construction LLC	\$0.00
Merch Revolution LLC d/b/a Haute Rock Creative	\$0.00
Motoza LLC	\$0.00
ONLINEMEDED, LLC	\$0.00
Owlchemy Labs Inc.	\$0.00
Rainbow Pizza LLC d/b/a Domino's Pizza B4 Pizza, LLC	\$0.00
Raymond Construction Co., Inc.	\$0.00

<u>Contract Counterparty</u>	<u>Cure Amount</u>
Smith & Nephew Inc.	\$18,113.83
Subway Real Estate Corp.	\$0.00
The Terminix International Company LP	\$0.00
United Technologies Corporation	\$0.00
Virtuix Inc.	\$0.00