

CAUSE NO. D-1-GN-22-001980

STACY R. SCHIFFMAN, <i>et al</i> ,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
NELSON PARTNERS, LLC, NELSON	§	TRAVIS COUNTY, TEXAS
BROTHERS PROPERTY	§	
MANAGEMENT INC. D/B/A NELSON	§	
PARTNERS PROPERTY	§	
MANAGEMENT, INC., NP EQUITY,	§	
LLC, AND PATRICK NELSON,	§	
	§	
<i>Defendants.</i>	§	98th JUDICIAL DISTRICT

**PLAN ADMINISTRATOR GREGORY S. MILLIGAN’S  
VERIFIED APPLICATION FOR TEMPORARY RESTRAINING ORDER AND  
MOTION FOR EXPEDITED DISCOVERY**

Plan Administrator, Gregory S. Milligan (“Milligan” or “Plan Administrator”), files this Verified Application for Temporary Restraining Order and Motion for Expedited Discovery (the “Application”) against Defendants Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc. and Patrick Nelson (“Nelson Parties” or “Defendants”) based on the following grounds:

**I.**  
**INTRODUCTION**

Defendants and their agents must be immediately enjoined from transferring, dissipating, or otherwise absconding with proceeds they improperly obtained from the recent sale of the Sol y Luna property. Specifically, the Nelson Parties improperly took more than \$14 million despite at least two Court orders expressly providing that “any net proceeds flowing to the Nelson Parties cannot be distributed to the Nelson Parties, pending further order of this Court.” Documents recently provided to the Plan Administrator reveal an improper windfall to the Nelson Parties in

violation of these orders. The Nelson Parties also inappropriately justify their actions by relying on the definition of “net proceeds” that is both misinterpreted and contained in a document that pre-dates this Court’s injunction against them.

Notably, the Nelson Parties have a history of absconding with funds, which led to entry of the April 25 Temporary Injunction Order in the first place and, unless this Court orders the Nelson Parties to refrain from moving the \$14 million, there is an imminent risk the Plan Administrator will be unable to fully effectuate the Liquidation Plan, and the Investors will be harmed.

The Plan Administrator further seeks an order from the Court allowing expedited discovery to support the basis for this temporary restraining order request and in furtherance of a previously filed Motion for Contempt and Sanctions. The discovery sought by the Plan Administrator will shed light on matters pertinent to the temporary injunction hearing and is not sought for purposes of harassment or intimidation. Rather, it is highly likely that expedited discovery will produce compelling evidence confirming that the Nelson Parties are in contempt of the April 25 Temporary Injunction Order and Order on Emergency Motion (defined below) and misrepresented the planned distribution of the Sol y Luna sale proceeds to the Plan Administrator and this Court.

Accordingly, the Plan Administrator respectfully requests that this Court enter a temporary restraining order against the Nelson Parties and an order allowing expedited discovery regarding the approximate \$14 million they received from the sale of Sol y Luna.

### **STATEMENT OF FACTS**

1. On April 25, 2022, in cause number D-1-GN-21-000097, *NP Skyloft DST et al v. Burgundy 523 Offshore Fund Ltd., et al*, (the “Original Action”) the Court entered a Preliminary Order of Approval of Liquidation Plan (“Preliminary Plan Order”), which granted preliminary approval of the Stipulation and Plan of Liquidation (“Liquidation Plan”), and appointed Gregory

S. Milligan as administrator (“Plan Administrator”) to implement the Liquidation Plan. *See Declaration of Plan Administrator Gregory S. Milligan in Support of Motion for Contempt and for Sanctions and Request for Show Cause Hearing* (“Milligan Decl.”), attached hereto as **Exhibit A**, ¶ 3.

2. On April 25, 2022, the Court signed an Agreed Temporary Injunction Order, which, among other things, precludes the Nelson Parties from:

- Transferring, or causing any entity under Nelson’s control to assign, encumber or transfer any beneficial interest in any of the Liquidating Properties; or
- Assigning or transferring control of any of the Liquidating Properties to any person or entity, except as authorized by the Plan or expressed approval of the Court.

*See* April 25, 2022 Temporary Injunction, attached hereto as **Exhibit B**.

3. On July 21, 2022, the Court ordered final approval of the Liquidation Plan as to NP Skyloft DST and its beneficial interest holders (the “Investors”). The Liquidation Plan requires the Nelson Parties to sell certain real estate to obtain the total Liquidation Proceeds, as the Plan defines. Milligan Decl., ¶ 4. The relevant real estate, which may be sold in fulfillment of the Plan, are those properties identified in Exhibit A to the Plan (“Liquidating Properties”), one of which is the property called Sol y Luna (“Sol y Luna”), a two-tower, high-rise luxury student housing complex located in Tucson, Arizona. Milligan Decl., ¶ 9.

4. Among other things, the Liquidation Plan provides for the Plan Administrator’s supervision by authorizing him to, among other things, review all documents related to the sale or transfer of any Liquidation Properties:

5. Supervision by the Administrator. The Court shall approve and supervise the Administrator's implementation of this Liquidation Plan. The Administrator shall have all powers and authorities granted to him by the Court. The Administrator's authority shall include, but is not limited to the following:

- (a) Receive and review all documents related to the sale or transfer of any Properties.
- (b) Upon approval of the Court, to promptly distribute Liquidation Proceeds as directed by the Court.
- (c) Maintain records of all communications and transactions of the Liquidation Plan including, but limited to, all documents related to the sale or transfer of the Properties.

See Liquidation Plan, attached hereto as **Exhibit C**, at ¶ 5.

5. On October 5, 2022, the Nelson Parties filed their Fifth Report (the “Fifth Report”) pursuant to the Liquidation Plan, which explained that they engaged a broker to sell and reached an agreement with a buyer to buy Sol y Luna. *See* Milligan Decl., ¶ 7.

6. On October 21, the Nelson Parties represented to the Plan Administrator that following the sale of Sol y Luna, approximately \$18 million would be available to the Plan Administrator to distribute under the Liquidation Plan. Milligan Decl., ¶ 19.

7. To support the representation that \$18 million would be deposited with the Plan Administrator and available to distribute to the Investors, the Nelson Parties provided a draft Combined Settlement Statement (the “Draft Settlement Statement”). *See* Draft Settlement Statement, attached hereto as **Exhibit A-1**.

8. The Draft Settlement Statement did not explain in detail how the funds from the sale of Sol y Luna would flow, but indicates that more than \$59 million of proceeds were “Due Seller.”

Escrow No: 55004328 - 055 KG2		Close Date:	Proration Date:	Disbursement Date:	
Seller Debit	Seller Credit	Description		Buyer Debit	Buyer Credit
550,000.00	450,000.00	450,000.00		450,000.00	550,000.00



144,908,101.82	204,175,804.60	Sub Totals	206,606,579.98	206,851,056.99
59,267,702.78		Proceeds Due Seller	Refund Due Buyer	244,477.01

**Ex. A-1.**

9. On October 21, 2022, the Nelson Parties filed an Unopposed Emergency Motion to Approve Sale of Property for Partial Satisfaction of Joint Stipulation and Liquidation Plan and Partial Release from Temporary Injunction in this Court (the “Emergency Motion”). *See* Emergency Motion, attached hereto as **Exhibit D**.

10. Prior to the Court’s hearing the Emergency Motion in the afternoon of October 21, 2022, the Nelson Parties again represented and confirmed to the Plan Administrator that the Sol y Luna transaction would result in \$18 million being deposited with the Plan Administrator and available for distribution to the Investors. Milligan Decl., ¶ 19.

11. Based on these representations, the Administrator did not oppose the Emergency Motion and at the October 21 Hearing on the Emergency Motion, this Court approved the Emergency Motion. Milligan Decl., ¶¶ 19, 22.<sup>1</sup>

12. The Court’s order allowed the Nelson Parties to sell the Sol y Luna property, but expressly prohibited them from receiving any of the net proceeds from the sale:

2. The Nelson Parties are partially released from the Temporary Injunction so they may close upon the property involved in the Proposed Sale. This Order authorizes Pat Nelson to dispose of and transfer the interests in Property 1, as that term is defined in the Motion.
3. The Court orders that any net proceeds flowing to the Nelson Parties cannot be distributed to the Nelson Parties, pending further order of this Court.

*See* Order on Emergency Motion, attached hereto as **Exhibit E**.

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<sup>1</sup> The hearing occurred at approximately 5:00 p.m. on October 21, 2022, and the Court Reporter had gone home for the day; therefore, there is no transcript of the hearing.

13. On October 27, 2022, however, the Nelson Parties sent the Plan Administrator a Final Combined Settlement Statement (the “Final Settlement Statement”), which was inconsistent with their prior representations and indicated that the Plan Administrator would receive only \$9,544,682.60 in total—barely half of the \$18 million previously promised. *See* October 27 Letter with the Final Settlement Statement, attached hereto as **Exhibit A-2**.

14. The Final Settlement Statement indicates that millions of dollars from the sale of Sol y Luna *were directed to the Nelson Parties* in violation of the Temporary Injunction, in violation of the Order Granting the Emergency Motion, and in violation of numerous representations made to the Plan Administrator about the distribution of sale proceeds.

15. Specifically, the Final Settlement Statement reflected payments totaling ***\$14,760,000 to the Nelson Parties*** as follows:

Escrow No: 55004328 - 055 KG2      Close Date: 10/24/2022      Proration Date: 10/24/2022		
Seller Debit	Seller Credit	Description
3,000,000.00		Principal buy down to SP 180 Fund, LLC.
2,030,000.00		Disposition Fee to NP Sol y Luna Leaseco, LLC
6,090,000.00		Sellers commission to Nelson Partners, LLC
5,670,000.00		Deferred Buyer Commission to Nelson Partners Property Management, Inc.

**Ex. A-2.**

16. Additionally, legal fees totaling \$675,000 were paid to Munsch Hardt and \$357,688.48 to Clyde Snow & Sessions from sale proceeds according to the Final Settlement Statement. *Id.*

500,000.00		Seller legal fees - invoice 10482566 to Munsch Hardt Kopf & Harr, P.C.
175,000.00		Seller legal fees - invoice 10484457 to Munsch Hardt Kopf & Harr, P.C.

357,688.48	invoice balance to Clyde Snow & Sessions
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**Ex. A-2.**

17. It is unclear whether these amounts are solely for work done in furtherance of the sale or whether the Nelson Parties improperly included their litigation fees on the Final Settlement Statement.

18. After receiving the Final Settlement Statement, the Plan Administrator attempted to understand and ascertain (1) the basis for improper payments being made to the Nelson Parties in violation of the Temporary Injunction and Order Granting Emergency Motion, (2) why the Plan Administrator was expected to receive approximately half (\$9.5 million) of the expected distribution for Investors (\$18 million). Milligan Decl., ¶¶ 27, 28.

19. Specifically, on October 31, 2022, the Plan Administrator requested additional information, documents, and support for why funds were paid to various recipients, how the net amount to the Plan Administrator was being calculated, and why the Nelson Parties were expected to receive \$14 million in payments from the Sol y Luna transaction. Milligan Decl., ¶ 28.

20. Finally, instead of \$18 million being deposited with the Plan Administrator as represented on October 21, or the \$9,544,682.60 identified in the October 27 Letter, ***only \$9,317,676.88 was deposited***. Milligan Decl., ¶ 30; *see* Wire Confirmation, attached hereto as **Exhibit A-3**. In fact, although Fidelity National Title Agency prepared the Final Settlement Statement, the \$9,317,676.88 wire transfer was made by Nelson Partners LLC, not Fidelity. *Id.*

### **III.** **CLAIMS**

#### **A. Contempt**

21. Civil contempt is “the process by which a court exerts its judicial authority to compel obedience to some order of the court.” *Ex parte Padron*, 565 S.W.2d 921, 924 (Tex. 1978)

(orig. proceeding). Civil contempt serves two purposes. First, civil contempt enforces compliance with a court order. *Petroleos Mexicanos v. Crawford Enters.*, 826 F.2d 392, 400 (5th Cir. 1987). And second, civil contempt compensates a party that has suffered unnecessary injury or costs because of contemptuous conduct. *Id.* at 400. The movant need not prove that the respondent willfully and intentionally violated a court order; rather, the movant need only show that the respondent's conduct, whether willful or not, violated such an order. *Id.* at 401.

22. After the movant shows that the respondent violated a court order, the respondent can avoid a finding of contempt only by establishing an inability to comply. *Petroleos*, 826 F.2d at 401. If the respondent had sufficient assets to comply with an order to pay money in the recent past, it is not a defense to contempt that the respondent cannot currently comply. *Ex Parte Dean*, 517 S.W.2d 365, 367 (Tex. App.—Houston [1st] 1974, no writ); *see also Smith v. Tex. Farmers Ins. Co.*, No. 2001-CI-06825, 2002 WL 34454055 (Tex. 150th Dist. Ct. Bexar County, May 8, 2002) (Trial Order).

23. The Nelson Parties violated the Court's April 25, 2022 Temporary Injunction, the October 21, 2022 Order Granting Emergency Motion, and Liquidation Plan by: (1) improperly receiving \$14,760,000 from the Sol y Luna sale transaction; (2) misrepresenting amounts to be deposited with the Plan Administrator to be made available to Investors; and (3) refusing to provide records, documents, and information to the Plan Administrator allowing him to exercise his supervision of the Liquidation Plan.

24. The Plan Administrator has already moved for contempt and requested a show cause hearing, which is scheduled for November 18 at 9:00 a.m.

**B. Immediate Risk of Irreparable Harm**

25. This Court appointed the Plan Administrator to administer the Plan in compliance with its terms and the Court's orders. Accordingly, the Plan Administrator has certain duties and obligations to the Court and the Plan's beneficiaries (*i.e.*, the Investors). The Nelson Parties' wrongful taking of the Sol y Luna proceeds hinders and intentionally interferes with the Plan Administrator's ability to carry out his fiduciary duties and administer funds to the Plan's beneficiaries.

26. The interference caused by the Nelson Parties presents an imminent risk of irreparable harm that, if the Plan Administrator is unable to disperse funds obtained in the settlement between the Parties, the Investors will be harmed and the Plan Administrator's relationship with the Court and Investors will be damaged in a manner that money cannot cure.

27. Further, SP 180 Fund, LLC, which received \$3 million, is a Nelson Parties' affiliate. Milligan Decl., ¶ 26. SP 180 Fund, LLC was formed on October 18, 2022 and shares Nelson Partners, LLC's business address. Milligan Decl., ¶ 26. SP 180 Funds, LLC appears to be providing \$1.5 million in debtor-in-possession financing to 5280 Auraria, LLC, another Nelson Partners affiliate that owns Auraria, a student housing project in Colorado, which filed bankruptcy on June 9, 2022. Milligan Decl., ¶ 26. There is a risk of irreparable harm in that SP 180 Fund, LLC could transfer the Sol y Luna funds it received to the debtor-in-possession financing of 5280 Auraria, LLC and such transferred funds would be outside the jurisdiction of this Court.

**C. Temporary Restraining Order**

28. In accordance with Rule 680 of the Texas Rules of Civil Procedure and Chapter 61 of the Texas Civil Practices & Remedies Code, the Plan Administrator seeks a temporary restraining order against the Nelson Parties to prevent them from transferring or otherwise

dissipating the \$14,760,000 received from the Sol y Luna sale. The Plan Administrator ultimately seeks an order compelling the Nelson Parties to disgorge such funds as well and transfer those funds into the Plan Administrator's account.

29. As provided above, section 5 of the Plan provides the Plan Administrator with the powers and authority necessary to effectuate the Plan and disburse the funds to the Plan's beneficiaries. Further, the Plan Administrator is authorized to review all documents related to the sale or transfer of any property scheduled for sale under the Plan. Based on the facts available to the Plan Administrator, injunctive relief is fully warranted due to the misappropriation of funds by the Nelson Parties, threat of them transferring the funds, and the hinderance on the Plan Administrator to fulfill his fiduciary duties.

30. As a proximate cause of Defendants' unlawful conduct as described above, the Investors are harmed by the Nelson Parties' syphoning approximately \$14 million that should have gone to the Plan Administrator for distribution. Further, the Nelson Parties' taking of the funds harms the Plan Administrator's ability to act as a fiduciary.

31. Unless restrained by this Court, the Nelson Parties will inure the benefits from their bad acts and continue their improper and unlawful actions in future real estate sales intended to benefit the Investors, which immediately and irreparably harms them as a result.

32. The threatened harm to the Plan Administrator and Investors outweighs the threatened harm to Defendants. If a TRO (and later, temporary injunction) is not issued, the Plan Administrator loses control over the funds that rightfully should be distributed to the Investors.

33. Moreover, there is no adequate remedy at law to compensate the Plan Administrator for the damage inflicted by the Nelson Parties because their misappropriation of funds prevents

the Plan Administrator from carrying out his fiduciary duties under the Plan thereby irreparably harming the beneficiaries of the Plan, the Investors.

34. Accordingly, as a direct and proximate result of the Nelson Parties' actions, the Plan Administrator has suffered actual damages in an amount that is presently unascertainable. The Plan Administrator has no adequate remedy at law and is, therefore, entitled to an injunction enjoining the Nelson Parties from transferring the \$14,760,000 received from the Sol y Luna sale proceeds and from further unlawful acts.

35. The public interest also weighs in favor of granting a TRO and temporary injunction because that interest includes the need for the Investors to know that they can trust the Plan Administrator with their distributions under the Plan. The Investors rely on the Plan Administrator to appropriately and adequately supervise the real estate sales required under the Plan and protect their interests. Due to the Nelson Parties' misappropriation of sale proceeds, the Plan Administrator may not distribute all the rightful funds intended for the Investors.

36. The Plan Administrator has demonstrated through this pleading and the evidence attached hereto that he will likely succeed on the merits of the case and that he and the Investors will suffer immediate and irreparable injury if the Nelson Parties, and those acting in active concert or participation with them, are not immediately enjoined from transferring the Sol y Luna funds. By virtue of the foregoing, the Plan Administrator has also demonstrated that they have no adequate remedy at law, and that a balancing of the equities favors the issuance of an injunction against the Nelson Parties.

37. The requested injunction will not in any way undermine the public interest, nor will it harm the Nelson Parties in any way because they are only being enjoined from unlawful conduct.

38. The Plan Administrator is, therefore, entitled to a temporary restraining order followed by temporary and permanent injunctive relief enjoining the Nelson Parties from taking any action inconsistent with the Plan.

#### **IV.**

#### **MOTION FOR EXPEDITED DISCOVERY**

##### **A. Legal Authority**

39. Neither the Texas Rules nor the Federal Rules of Civil Procedure provide a standard for the Court to use in determining whether expedited discovery is appropriate. Rather, both sets of rules merely provide that discovery rules may be modified for “good cause.” *See* Tex. R. Civ. Proc. 191.1.

40. Courts addressing the issue of expedited discovery apply a reasonableness test, which focuses on the circumstances of the case, the pending preliminary and/or temporary injunction hearing, the need for discovery, and the breadth of the moving party’s discovery requests. *See, e.g., Elsworth Associates, Inc. v. U.S.*, 917 F.Supp. 841 (D.D.C. 1996); *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. O’Connor*, 194 F.R.D. 618, 624 (N.D. Ill 2000).

41. Expedited discovery is particularly appropriate when a plaintiff seeks injunctive relief because of the expedited nature of injunctive proceedings. *El Pollo Loco, S.A. De C.V. v. El Pollo Loco, Inc.*, 344 F.Supp.2d 986 (S.D. Tex. 2004); *Dayco Prods. V. Walker*, 142 F.R.D. 450, 453 n.2 (S.D. Ohio 1992) (plaintiff, in a case involving misappropriation of trade secrets, entitled to prompt discovery and a prompt hearing on an application for an injunction).

42. As discussed above, the significant differences between the Draft Settlement Statement and Final Settlement Statement reveal the Nelson Parties misappropriated over \$14 million in violation of the Plan and failed to disclose to this Court and the Plan Administrator their intent to allocate the funds to themselves. There is a real and immediate threat that the Plan



Administrator and the Investors will be irreparably harmed by the Nelson Parties' unauthorized taking of the sale proceeds in violation of the Plan. It is therefore imperative that this Court grant a temporary restraining order and a temporary injunction to prohibit the Nelson Parties from transferring the Sol y Luna sale proceeds to prevent further harm to the Plan Administrator and Investors.

43. Pursuant to the Texas Rules of Civil Procedure, if the Court grants the Plan Administrator's Application for a Temporary Restraining Order, it will expire by its terms within fourteen (14) days if a hearing has not been set on the injunction. Tex. R. Civ. P. 680. Similarly, the Plan Administrator previously filed a Motion for Contempt and Request for Show Cause Hearing that it expects to be scheduled in the next 1-2 weeks.

44. To ensure the Plan Administrator can adequately gather and tender all relevant information before the Court is asked to determine whether to grant the Temporary Injunction or to hold the Nelson Parties in contempt, it is necessary that the Court enter an order allowing expedited discovery.

45. The Plan Administrator has already discovered certain facts sufficient to meet the "good cause" requirement to alter the discovery schedule.

46. The discovery sought by the Plan Administrator will shed light on matters pertinent to the injunction hearing, including but not limited to emails, other communications, and records regarding the Sol y Luna sale. It is highly likely that expedited discovery will produce compelling evidence establishing the Nelson Parties' wrongful conduct. Expedited discovery is particularly appropriate in this case to demonstrate the likelihood of future harm to the Plan Administrator, which would be irreparable by monetary damages.

## **B. Proposed Discovery Schedule**

47. For the above-stated reasons, the Plan Administrator asks the Court to enter an order allowing expedited discovery on the issues arising out of the allegations set forth in the Plan Administrator's Application for TRO and Motion for Contempt on the following schedule:

- a. The Plan Administrator shall be entitled to notice, schedule, and take depositions in this matter upon five (5) calendar days' notice in preparation for the hearing on the Plan Administrator's previous request for contempt and show cause and his Application for Temporary Restraining Order. In the event a Defendant is not available for a deposition on such date, they must provide an alternative date that is within three (3) days of the noticed date;
- b. Unless otherwise agreed to by the parties, any party deponent who receives a *duces tecum* with a Notice of Deposition hereunder shall produce by hand-delivery or email to counsel of record for the opposing party, no later than forty-eight (48) hours prior to the deposition, all records, documents, and tangible things responsive to the *duces tecum*;
- c. The Plan Administrator and the Nelson Parties may each serve five (5) requests for production of documents and five (5) interrogatories on the other, and any responses and/or objections, along with responsive documents, to such discovery requests shall be due no later than five (5) calendar days after service of such discovery requests; and
- d. Unless agreed to by the parties, depositions shall occur at the law offices of Wick Phillips Gould & Martin, LLP, located at 3131 McKinney Ave., Suite 500, Dallas, Texas 75204. All depositions will be without waiving any remaining deposition time under the Texas Rules of Civil Procedure, which may be utilized after the hearing on the Plan Administrator's request for preliminary injunction.

## **V. REQUEST FOR RELIEF**

WHEREFORE, the Plan Administrator requests a temporary restraining order barring the Nelson Parties from transferring the \$14,760,000 they obtained from the Sol y Luna sale, an order granting the Plan Administrator's request for expedited discovery, an order setting the Temporary Injunction hearing for 14 days from the date the TRO is granted, and such other and further relief as requested herein or to which Plan Administrator may otherwise be entitled.

Dated: November 17, 2022

Respectfully submitted,

/s/ Rusty J. O'Kane

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3131 McKinney Avenue, Suite 500

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(214) 692-6200

**ATTORNEYS FOR PLAN ADMINISTRATOR**

My name is Gregory S. Milligan. I am over the age of eighteen, competent, of sound mind, and authorized to make this verification. I am the Plan Administrator in this case. I have read the Plan Administrator's Application for Temporary Restraining Order and Motion for Expedited Discovery in the above-entitled cause. The facts stated within paragraphs 3-11 and 13-20 are within my personal knowledge and are true and correct, based upon my status as the Plan Administrator.

My name is Gregory S. Milligan. My date of birth is December 14, 1968, and my address is 8911 N. of Capital Texas Highway, Suite 2120, Austin, Texas 78759. I declare under penalty of perjury that the foregoing verification is true and correct, and that the facts stated within paragraphs 3-11 and 13-20 are within my personal knowledge and are true and correct.

Executed in Travis County, on November 17, 2022.

  
Gregory S. Milligan  
Plan Administrator

# **EXHIBIT A**

STACY R. SCHIFFMAN, <i>et al</i> ,	§	IN THE DISTRICT COURT OF
<i>Plaintiff</i> ,	§	
v.	§	
NELSON PARTNERS, LLC, NELSON	§	
BROTHERS PROPERTY	§	
MANAGEMENT INC. D/B/A NELSON	§	TRAVIS COUNTY, TEXAS
PARTNERS PROPERTY	§	
MANAGEMENT, INC., NP EQUITY,	§	
LLC, AND PATRICK NELSON,	§	
<i>Defendants.</i>	§	98th JUDICIAL DISTRICT

**DECLARATION OF PLAN ADMINISTRATOR GREGORY S. MILLIGAN IN  
SUPPORT OF MOTION FOR CONTEMPT AND FOR SANCTIONS AND REQUEST  
FOR SHOW CAUSE HEARING**

I, Gregory S. Milligan, being duly sworn, state the following under penalty of perjury:

1. My name is Gregory S. Milligan. I am over eighteen (18) years of age, competent, of sound mind, and authorized to make this declaration. The statements contained herein are within my personal knowledge and true and correct.
2. I am an Executive Vice President at HMP Advisory Holdings, LLC d/b/a Harney Partners (“Harney”), a corporate advisory firm with offices in Austin, Texas; Dallas, Texas; Houston, Texas; Chicago, Illinois; and Madison, Wisconsin.
3. On April 25, 2022, in cause number D-1-GN-21-000097, *NP Skyloft DST et al v. Burgundy 523 Offshore Fund Ltd., et al.*, (the “Original Action”) the Court entered a Preliminary Order of Approval of Liquidation Plan (“Preliminary Plan Order”). The Preliminary Order granted the Court’s preliminary approval of the Stipulation and Plan of Liquidation (“Liquidation Plan”) as fair, reasonable and adequate and appointed Gregory S. Milligan as administrator (“Plan Administrator”) to implement the Liquidation Plan.

4. On July 21, 2022, the Court entered an Order of Final Approval of Liquidation Plan (“Final Plan Order”). The Liquidation Plan requires the Nelson Parties to sell certain real estate to obtain the total Liquidation Proceeds, as the Plan defines.

5. On July 21, 2022, the Court entered an Agreed Order on Administrator’s Powers, Authority, and Implementation Procedures Pursuant to Plan of Liquidation Section 5 (“Administrator’s Order”).

6. On October 5, 2022, Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc. and Patrick Nelson (collectively, the “Nelson Parties”) filed their Fifth Report (the “Fifth Report”) to the Court pursuant to the Liquidation Plan.

7. The Fifth Report states that the Nelson Parties engaged a broker to sell certain properties in fulfillment of the Nelson Parties’ obligations under the Liquidation Plan and had reach an agreement with a buyer to buy Sol y Luna.

8. On October 11, 2022, I participated in a telephone conference (the “October 11 Call”) with Greg C. Noschese (“Noschese”), Munsch Hardt Kopf & Harr, P.C., counsel to the Nelson Parties, Brad Cooke (“Cooke”), a representative of Colliers International, the Nelson Parties’ broker, and one of my attorneys in this matter, Jason Rudd.

9. On the October 11 Call, the Nelson Parties representatives and I discussed the Nelson Parties’ sale efforts. Among the properties the Nelson Parties’ broker listed for sale was a property called Sol y Luna (“Sol y Luna”), a two-tower, high-rise luxury student housing complex located in Tucson, Arizona.

10. On the October 11 Call, the Nelson Parties representatives explained to me that the proposed sale of Sol y Luna to Vesper Holdings (“Vesper”) was moving forward. The sale to

Vesper had previously been subject to a contract of sale that Vesper had terminated. The Nelson Parties representatives explained to me that Vesper was again interested in purchasing Sol y Luna.

11. On the October 11 Call, the Nelson Parties representatives informed me that the proposed sale price for Sol y Luna was approximately \$203 million, and that only relatively minor issues remained to be resolved to close the deal.

12. On October 11, 2022, and previously, it was my understanding based upon prior filings in this case, specifically Exhibit A to the Liquidation Plan, that the sale of the Sol y Luna project would generate significant cash that would be provided to the Plan Administrator for distribution according to the Liquidation Plan.

13. On October 21, 2022, I participated in a Zoom conference (the “October 21 Call”) with Noschese, his colleague Courtney Sauer, and counsel for multiple intervenors, Doug Brothers and Robert Brownlie.

14. On the October 21 Call, the Nelson Parties representatives informed me that Vesper was ready to close on its purchase of Sol y Luna and that substantial exigencies related to the deal required immediate closing as soon as possible.

15. On the October 21 Call, the Nelson Parties representatives informed me that, upon their further review of the proposed transaction, the transaction would net \$59MM to the Delaware Statutory Trust, but the amount available to the Plan Administrator would be materially less than the amount reflected in paragraph 12 above.

16. On October 21, 2022, I received a draft Combined Settlement Statement (the “Draft Settlement Statement”) from counsel to the Nelson Parties. A copy of the Draft Settlement Statement is attached hereto as **Exhibit A-1**.



17. The Draft Settlement Statement indicates that it was prepared by Fidelity National Title Agency, Inc. (“Fidelity”), on October 21, 2022 at 2:00 p.m.

18. The Draft Settlement Statement did not explain in detail how the funds from the sale of Sol y Luna would flow, except that Vesper would assume debt against Sol y Luna, and funds from the sale would go to pay a commission to the broker and certain tax prorations, adjustments, deposits, and similar ordinary course closing adjustments. The Draft Settlement Statement indicates that more than \$59 million of proceeds were “Due Seller.”

19. However, I understood from my conversations with the Nelson Parties counsel that certain other investor parties and other necessary payments would be paid from those funds, and that only approximately \$18 million would flow to the Plan Administrator. Based on representations from the Nelson Parties that they would comply with the Court’s Temporary Injunction, refrain from self-dealing, refrain from taking a pecuniary interest in the Sol y Luna sales proceeds, and providing the required documents to the Plan Administrator to review, if needed, I consented to the proposed real property sale.

20. Late in the day on October 21, 2022, the Nelson Parties filed their Unopposed Emergency Motion to Approve Sale of Property for Partial Satisfaction of Joint Stipulation and Liquidation Plan and Partial Release from Temporary Injunction in this Court (the “Sale Motion”). This Court set the Sale Motion for hearing later that day (the “Hearing”), which started at approximately 5:15pm local time.

21. The Nelson Parties representatives, in conferring with my counsel and I prior to the Hearing, including during the October 21 Call, explicitly confirmed my understanding of the Sol y Luna transaction and terms as reflected in the Draft Settlement Statement.

22. At the Hearing, the Nelson Parties representatives made no representations that were inconsistent with my understanding of the Sol y Luna transaction and terms as reflected in the (i) Draft Settlement Statement and (ii) in the Nelson Parties representatives' prior communications with me, including during the October 11 Call and October 21 Call.

23. This Court approved the Sale Motion at the conclusion of the Hearing.

24. On October 27, 2022, my counsel received a letter from Noschese (the "October 27 Letter"). Noschese attached a copy of the Final Combined Settlement Statement (the "Final Settlement Statement") to the October 27 Letter. A copy of the October 27 Letter with the Final Settlement Statement attached is attached hereto as **Exhibit A-2**.

25. The Final Settlement Statement indicates that Fidelity prepared it on October 25, 2022 at 12:35 p.m.

26. The Final Settlement Statement indicates that millions of dollars from the sale of Sol y Luna were directed to: Nelson Partners, LLC (\$6,090,000.00) for a "Sellers Commission;" Nelson Partners Property Management, Inc. (\$5,670,000.00 and \$2,038,667.35) for "Deferred Buyer Commissions" and "AP Invoice," respectively; SP 180 Fund, LLC (\$3,000,000.00) for "Principal buy down;" and NP Sol y Luna Leaseco, LLC (\$2,030,000.00) for "Disposition Fee." Additionally, legal fees to Munsch Hardt (\$500,000.00 and \$175,000.00) and Clyde Snow & Sessions (\$357,688.48) were also paid from sale proceeds according to the Final Settlement Statement. Based on my research, SP 180 Fund, LLC was formed on October 18, 2022 and shares Nelson Partners, LLC's business address listed on the wire transfer confirmation attached hereto as **Exhibit A-3**. SP 180 Funds, LLC also appears to be providing \$1.5 million in debtor-in-possession financing to 5280 Auraria, LLC, a Nelson Partners affiliate that owns Auraria, a student

housing project in Colorado, which filed bankruptcy on June 9, 2022. *See* Article, attached hereto as **Exhibit A-4**.

27. On October 31, 2022, I participated in a telephone conference (the “October 31 Call”) with Noschese and Rudd.

28. On the October 31 Call, Mr. Rudd and I indicated to the Nelson Parties representatives that the Final Settlement Statement provided insufficient detail for me to understand why funds were paid to various recipients and how the net amount to the Plan Administrator was being calculated. Further, I requested additional information, documents, and support for why the Nelson Parties were expected to receive \$14 million in payments from the Sol y Luna transaction.

29. Also during the October 31 Call, Nelson Parties representatives advised that I would receive the total net proceeds in two wires, one from Fidelity and one from a 1031 intermediary for Sol y Luna.

30. On November 3, 2022, the Plan Administrator received a wire transfer in the amount of \$9,317,676.88, \$227,005.72 less than stated in the October 27 Letter. The wire to the Plan Administrator came from Nelson Partners LLC, not Fidelity or the 1031 intermediary for Sol y Luna.

31. On November 7, 2022, I participated in a telephone conference (the “November 7 Call”) with Noschese, Sauer and Rudd.

32. On the November 7 Call, I again advised Noschese and Sauer that I had insufficient detail to understand why funds were paid to various recipients and how the net amount to the Plan Administrator was being calculated. I again requested a detailed waterfall to support the position taken by the Nelson Parties.

33. On the November 7 Call, Noschese committed to providing me with documentation of the basis for the payments described on the Final Settlement Statement on or before November 9, 2022.

34. On November 9, 2022, Noschese sent an email to my counsel stating that he would deliver the requested documents on November 10, 2022 but providing no other information.

35. The Nelson Parties never provided any supporting documents or other information that explained the discrepancies.

This concludes my declaration testimony.

-----

My name is Gregory S. Milligan. My date of birth is December 14, 1968 and my business address is 8911 N. of Capital Texas Highway, Suite 2120, Austin, Texas 78759. I declare under penalty of perjury that the foregoing is true and correct and within my personal knowledge.

Executed in Travis County, State of Texas, on the 14th day of November 2022.

  
\_\_\_\_\_  
Gregory S. Milligan  
Plan Administrator

# **EXHIBIT A-1**

FIDELITY NATIONAL TITLE AGENCY, INC.

14000 N. Pima Road, Suite 100, Department 55, Scottsdale, AZ 85260

Phone: (480) 214-4510 Fax: (602) 926-0415

Combined Settlement Statement  
Pre-Audit

Escrow No: 55004328 - 055 KG2	Close Date:	Proration Date:	Disbursement Date:
-------------------------------	-------------	-----------------	--------------------

**Buyer(s)/Borrower(s):** Vesper SYL Ivy LLC  
Vesper SYL Wildwood LLC  
Vesper SYL 1540 TIC2 (IS) LLC  
Vesper SYL 136 Wyckoff LLC  
Vesper SYL Think Big LLC  
Vesper SYL 1540 TIC3 (EQ) LLC  
Vesper SYL LLC  
Vesper SYL 441 Metropolitan Assoc. LLC

**Seller(s):** NP SOL Y LUNA, DST  
Nelson Partners Student Housing  
180 Avenida La Plata  
San Clemente, CA 92673

**Property:** 1031 N. Park Avenue and 1020 N. Tyndall Avenue  
Tucson, AZ 85719

**Brief Legal:**

Seller Debit	Seller Credit	Description	Buyer Debit	Buyer Credit
	203,000,000.00	<b>TOTAL CONSIDERATION:</b> Total Consideration Return of portion of initial Earnest Money (Termination) Initial Earnest Money Reinstated Earnest Money Additional Earnest Money Closing Extension EM Closing Funds - L.T. Services Corp Escrow Exch. Acct. Intermdairy FBO Vesper SYL Think Big LLC Closing Funds - VESPER TUCSON EQUITY LLC Closing Funds - Royal Abstract Intermediary FBO VESPER USF, LLC Closing Funds - Royal Abstract Intermediary FBO VESPER WILDWOOD, LLC Closing Funds - Royal Abstract Intermediary FBO VESPER 1540 TIC Closing Funds - Royal Abstract Intermediary FBO WYCKOFF 4050 LLC Closing Funds - Royal Abstract Intermediary FBO 441 Metropolitan Assc. Closing Funds - Royal Abstract Intermediary FBO VESPER 1540 TIC	203,000,000.00 800,000.00	1,000,000.00 800,000.00 1,000,000.00 500,000.00 4,834,653.20  6,800,000.00 35,809,093.90 9,821,830.82 1,162,676.04 743,019.52 603,849.00 505,840.74
142,258,001.15		<b>NEW LOAN CHARGES: - Wells Fargo Bank, as Trustee, c</b> Loan Assumption - Principal Balance		142,258,001.15
	460,541.04	Tax Escrow Reserve Balance	460,541.04	
	104,089.60	Insurance Escrow Reserve Balance	104,089.60	
	4,000.00	Repair Reserve Balance	4,000.00	
	148,288.31	Replacement Reserve Balance	148,288.31	
	122,688.82	Cash Collateral Reserve Balance	122,688.82	
	267,589.49	Excess Cash Reserve BALance	267,589.49	
	48,724.32	Lockbox Receipts Reserve Balance	48,724.32	
		Porton of Assumption Fee to 3650 REIT Loan Servicing LLC	355,645.01	
		Portion of Assumption Fee to Midland Loan Services, a Division of PNC Bank, National Association	355,645.01	
25,878.79		Late charge due Master Servicer to Midland Loan Services, a Division of PNC Bank, National Association		
		Processing Fee to 3650 REIT Loan Servicing LLC	15,000.00	
		Credit Review Fee to VCheck Global, LLC	13,227.50	
		Rating Agency Confirmation Fee to S&P Global – Ratings	7,000.00	
		Rating Agency Confirmation Fee and Legal Expenses to Kroll Bond Rating Agency, LLC	17,533.00	
		UCC Filing Expenses to Bilzin Sumberg Baena Price & Axelrod LLP	175.00	
		Lender's Attorney's Fees -- NEED CONFIRMATION IF THIS IS SPLIT FOR CURRENT BWR & NEW to Bilzin Sumberg Baena Price & Axelrod LLP	110,000.00	
		Lender's Attorneys' Costs --NEED CONFIRMATION IF THESE NEED TO BE SPLIT CURRENT & NEW BWR to Bilzin Sumberg Baena Price & Axelrod LLP	500.00	

FIDELITY NATIONAL TITLE AGENCY, INC.

14000 N. Pima Road, Suite 100, Department 55, Scottsdale, AZ 85260

Phone: (480) 214-4510 Fax: (602) 926-0415

Combined Settlement Statement  
Pre-Audit

Escrow No: 55004328 - 055 KG2      Close Date:      Proration Date:      Disbursement Date:

Seller Debit	Seller Credit	Description	Buyer Debit	Buyer Credit
		Lender's REMIC Counsel Fees to Kilpatrick Townsend & Stockton LLP	4,820.00	
		RAC Deposit paid to 3650 REIT Loan Servicing LLC		30,000.00
		Legal Deposit for Attorney's Fees and Costs paid to 3650 REIT Loan Servicing LLC		50,000.00
		Credit Review deposit paid to 3650 REIT Loan Servicing LLC		5,000.00
		Insurance Premium to Marsh USA, Inc.	117,896.15	
		<b>ESCROW CHARGES:</b>		
2,565.00		Escrow Charge to Fidelity National Title Agency, Inc.	2,565.00	
		<b>TITLE CHARGES:</b>		
105,560.00		Owners Policy for \$203,000,000.00 to Fidelity National Title Agency, Inc. --Based on Aggregate Liability \$203,000,000; 2 separate policies to be issued per allocated liability amounts	58,058.00	
		Owners Policy - 2nd for \$205,000,000.00 to Fidelity National Title Agency, Inc.	100.00	
		Endorsements - Owners (x 2) to Fidelity National Title Agency, Inc.	1,400.00	
		Lenders Policy - loan modification endorsement for \$0.00 to Fidelity National Title Agency, Inc.	150.00	
150.00		Inspection Fees to Fidelity National Title Agency, Inc.	150.00	
		<b>RECORDING FEES:</b>		
100.00		Recording Fee to Fidelity National Title Agency, Inc.	100.00	
		UCC Filing Fee (DE SOS x 8) to Fidelity National Title Agency, Inc.	1,600.00	
		<b>ADDITIONAL CHARGES:</b>		
22,798.49		payoff/release of judgment as of 10/24/22 to Imperial Pools & Design		
		buyer legal fees to Wachtel Missry LLP	450,000.00	
		Buyer legal fees (local AZ) to Lewis Roca Rothgerber Christie LLP	13,692.93	
1.00		Seller legal fees - TBD		
4,040.00		Seller legal fees (DE counsel) to Gabell Beaver Attorney Operating Account		
		Corporate services -multiple invoices to United Corporate Services, Inc.	16,220.96	
		PZR & Site expense (both sites - N Tyndall Ave & Park Ave) to The Planning and Zoning Resource Company	2,822.72	
		search fees to CT Corporation System	10,000.00	
		Invoice 22069-1 to Gerald T. Wynne, P.E.	2,400.00	
		Invoice 092232 - 01 to Martin and Associates Building Envelope Consulting	4,320.00	
		Invoice #1315351 to Hustad Companies, INC.	2,000.00	
		Invoice #12209140162 to Real page, Inc.	3,500.00	
		Invoice #G4651590 to NV5, Inc. dba Global Realty Services	5,100.00	
		Invoice #G4651589 to NV5, Inc. dba Global Realty Services	5,100.00	
26,650.00		Bill No. 10192022 to Eversheds Sutherland (US) LLP --split as to capital expense reserve disbursements and current Bwr default issues (Seller expense); and loan assumption in TIC transaction (Buyer expense)	15,850.00	
		2021 tax consulting to FTI Consulting, Inc.	38,204.10	
		<b>PRORATIONS AND ADJUSTMENTS:</b>		
161,031.80		2nd half 2022 property taxes 115-04-480A from 7/1/2022 to 10/21/2022 based on the Annual amount of \$524,791.14		161,031.80
115,242.28		2nd half 2022 property taxes 115-04-490A from 7/1/2022 to 10/21/2022 based on the Annual amount of \$375,566.35		115,242.28
	6,169.01	2022 Personal Property Taxes 21012260219 from 10/21/2022 to 1/1/2023 based on the Annual amount of \$31,273.44	6,169.01	
	7,656.18	2022 Personal Property Taxes 21012260224 from 10/21/2022 to 1/1/2023 based on the Annual amount of \$38,812.58	7,656.18	
375,986.75		Rents Collected from 10/21/2022 to 11/1/2022		375,986.75
17,908.95		Prepaid rents		17,908.95
120,052.34	6,057.83	Service Contracts	6,057.83	120,052.34
136,870.50		Security Deposits		136,870.50
		<b>COMMISSIONS:</b>		
1,015,000.00		\$1,015,000.00 (0.5% of \$203,000,000.00) to Colliers		
		<b>PROPERTY TAXES</b>		





# **EXHIBIT A-2**

October 27, 2022

***Via Email***

Mr. Jason Rudd  
WickPhillips  
3131 McKinney Avenue, Suite 500  
Dallas, Texas 75204  
[jason.rudd@wickphillips.com](mailto:jason.rudd@wickphillips.com)

Re: *Schiffman, et al v. Nelson Partners*, Case No. D-1-GN-22-001980, in the 261<sup>st</sup> Judicial District Court, Travis County, Texas

Dear Counsel:

Attached please find the Final Combined Settlement Statement from the sale of Sol y Luna in Arizona. Net Proceeds due under the Liquidation Plan, in the amount of \$9,544,682.60, are being held pending account information from the plan administrator for transfer.

Should you have any questions please do not hesitate to contact me.

Very truly yours,

/s/ Greg Noschese  
Greg C. Noschese

cc: D. Douglas Brothers  
George Brothers Kincaid & Horton, LLP  
1100 Norwood Tower  
114th West 7th Street  
Austin, Texas 88701  
[DBrothers@gbkh.com](mailto:DBrothers@gbkh.com)

Robert Brownlie  
Brownlie Hansen LLP  
10920 Via Frontera, Suite 550  
San Diego, CA 92127  
[Robert.brownlie@brownliehansen.com](mailto:Robert.brownlie@brownliehansen.com)

Mr. Jason Rudd  
October 27, 2022  
Page 2

Jennifer Lloyd  
500 West 5th Street, Suite 750  
Austin, Texas 78701  
[jlloyd@millerlloyd.com](mailto:jlloyd@millerlloyd.com)

FIDELITY NATIONAL TITLE AGENCY, INC.

14000 N. Pima Road, Suite 100, Department 55, Scottsdale, AZ 85260

Phone: (480) 214-4510 Fax: (602) 926-0415

Combined Settlement Statement  
Final

Escrow No: 55004328 - 055 KG2 Close Date: 10/24/2022 Proration Date: 10/24/2022 Disbursement Date:

Buyer(s)/Borrower(s): Royal Abstract Intermediary LLC as Q.I. on behalf of Vesper SYL Ivy LLC WE DO HEREBY CERTIFY THAT THIS IS A TRUE AND CORRECT COPY OF THE ORIGINAL  
Royal Abstract Intermediary LLC as Q.I. on behalf of Vesper SYL Wildwood LLC  
Royal Abstract Intermediary LLC as Q.I. on behalf of Vesper SYL 1540 TIC2 (IS) LLC  
Royal Abstract Intermediary LLC as Q.I. on behalf of Vesper SYL 136 Wyckoff LLC  
L.T. Service Corp, as WI for Think Big 26th Stree LLC, Exchanger on behalf of Vesper SYL Think Big LLC  
Royal Abstract Intermediary LLC as Q.I. on behalf of Vesper SYL 1540 TIC3 (EQ) LLC  
Vesper SYL LLC  
Royal Abstract Intermediary LLC as Q.I. on behalf of Vesper SYL 441 Metropolitan Assoc. LLC

Seller(s): NP SOL Y LUNA, DST  
Nelson Partners Student Housing  
180 Avenida La Plata  
San Clemente, CA 92673

Property: (Luna Property) 1027 and 1031 N. Park Avenue; and (Sol Property) 1020 N. Tyndall Avenue  
Tucson, AZ 85719

Brief Legal:

Seller Debit	Seller Credit	Description	Buyer Debit	Buyer Credit
	203,000,000.00	<b>TOTAL CONSIDERATION:</b> Total Consideration SOL property - \$81,965,138 LUNA property – \$121,034,862 Return of portion of initial Earnest Money (Termination) Initial Earnest Money - Vesper 1540 TIC2 (IS) Reinstated Earnest Money - ROYAL ABSTRACT INTER MEDIARY LLC VESPER EQUITIES, LLC Additional Earnest Money - ROYAL ABSTRACT INTER MEDIARY LLC FBO Vesper USF LLC Closing Extension EM - Royal Abstract Intermediary LLC FBO Vesper USF LLC Closing Funds - L.T. Services Corp Escrow Exch. Acct. Intermdary FBO Vesper SYL Think Big LLC Closing Funds - VESPER TUCSON EQUITY LLC Closing Funds- Vesper Tuscon Equity 5,863,217 Closing Funds - Vesper SLY Wildwood LLC 165,000 Closing Funds- Buyers-pro-rata based upon TIC % 771,783 Closing Funds - Royal Abstract Intermediary FBO VESPER USF, LLC Closing Funds - Royal Abstract Intermediary FBO VESPER WILDWOOD, LLC Closing Funds - Royal Abstract Intermediary FBO VESPER 1540 TIC3 (EQ), LLC Closing Funds - Royal Abstract Intermediary FBO WYCKOFF 4050 LLC Closing Funds - Royal Abstract Intermediary FBO 441 Metropolitan Assc. Closing Funds - Royal Abstract Intermediary FBO VESPER 1540 TIC2 (IS), LLC	203,000,000.00	
			800,000.00	
				1,000,000.00
				800,000.00
				1,000,000.00
				500,000.00
				4,834,653.20
				6,800,000.00
				35,809,093.90
				9,821,830.82
				1,162,676.04
				743,019.52
				603,849.00
				505,840.74
142,258,001.15		<b>NEW LOAN CHARGES: - Wells Fargo Bank, as Trustee, c</b> Loan Assumption - Principal Balance		142,258,001.15
385,030.00		November Mortgage payment (prorated)		385,030.00
	104,089.60	Insurance Escrow Reserve Balance	104,089.60	
	4,000.00	Repair Reserve Balance	4,000.00	
	189,126.09	Replacement Reserve Balance	189,126.09	
	122,688.82	Cash Collateral Reserve Balance	122,688.82	
	267,589.49	Excess Cash Reserve BALance	267,589.49	
	55,511.32	Lockbox Receipts Reserve Balance	55,511.32	
		Porton of Assumption Fee to 3650 REIT Loan Servicing LLC	355,645.01	
		Portion of Assumption Fee to Midland Loan Services, a Division of PNC Bank, National Association	355,645.01	
138,303.58		Late charge due Master Servicer to Midland Loan Services, a Division of PNC Bank, National Association		
		Processing Fee to 3650 REIT Loan Servicing LLC	15,000.00	
		Credit Review Fee to VCheck Global, LLC	13,227.50	
		Rating Agency Confirmation Fee to S&P Global – Ratings	7,000.00	
		Rating Agency Confirmation Fee and Legal Expenses to Kroll Bond Rating Agency, LLC	17,533.00	

FIDELITY NATIONAL TITLE AGENCY, INC.

14000 N. Pima Road, Suite 100, Department 55, Scottsdale, AZ 85260

Phone: (480) 214-4510    Fax: (602) 926-0415

Combined Settlement Statement  
Final

Escrow No: 55004328 - 055 KG2      Close Date: 10/24/2022      Proration Date: 10/24/2022      Disbursement Date:

Seller Debit	Seller Credit	Description	Buyer Debit	Buyer Credit
		UCC Filing Expenses to Bilzin Sumberg Baena Price & Axelrod LLP	175.00	
		Lender's Attorney's Fees to Bilzin Sumberg Baena Price & Axelrod LLP	110,000.00	
		Lender's Attorneys' Costs to Bilzin Sumberg Baena Price & Axelrod LLP	500.00	
		Lender's REMIC Counsel Fees to Kilpatrick Townsend & Stockton LLP	4,820.00	
		RAC Deposit paid to 3650 REIT Loan Servicing LLC		30,000.00
		Legal Deposit for Attorney's Fees and Costs paid to 3650 REIT Loan Servicing LLC		50,000.00
		Credit Review deposit paid to 3650 REIT Loan Servicing LLC		5,000.00
		Insurance Premium to Marsh USA, Inc.	117,896.15	
		Buyer legal fees to Wachtel Missry LLP	62,000.00	
2,565.00		<b>ESCROW CHARGES:</b> Escrow Charge to Fidelity National Title Agency, Inc.	2,565.00	
105,560.00		<b>TITLE CHARGES:</b> Owners Policy for \$203,000,000.00 to Fidelity National Title Agency, Inc. --Based on Aggregate Liability \$203,000,000; 2 separate policies to be issued per allocated liability amounts Owners Policy - 2nd for \$205,000,000.00 to Fidelity National Title Agency, Inc.	58,058.00	
		Endorsements - Owners (x 2) to Fidelity National Title Agency, Inc.	1,400.00	
		Lenders Policy - loan modification endorsements for \$143,000,000.00 to Fidelity National Title Agency, Inc. --Custom modification - Asgn & Asmp end - \$150 --ALTA 34 - \$250	400.00	
150.00		Inspection Fees to Fidelity National Title Agency, Inc.	150.00	
100.00		<b>RECORDING FEES:</b> Recording Fee to Fidelity National Title Agency, Inc.	100.00	
22,815.56		<b>ADDITIONAL CHARGES:</b> payoff/release of judgment as of 10/26/22 to Imperial Pools & Design buyer legal fees to Wachtel Missry LLP Purchase Transaction:   \$388,000	388,000.00	
		Buyer legal fees (local AZ) to Lewis Roca Rothgerber Christie LLP	13,692.93	
		Legal fees (DE counsel) to Gabell Beaver Attorney Operating Account	4,040.00	
500,000.00		Seller legal fees - invoice 10482566 to Munsch Hardt Kopf & Harr, P.C.		
175,000.00		Seller legal fees - invoice 10484457 to Munsch Hardt Kopf & Harr, P.C.		
		Corporate services -multiple invoices to United Corporate Services, Inc.	16,220.96	
		PZR & Site expense (both sites - N Tyndall Ave & Park Ave) to The Planning and Zoning Resource Company	2,822.72	
		search fees to CT Corporation System	10,000.00	
		Invoice 22069-1 to Gerald T. Wynne, P.E.	2,400.00	
		Invoice 092232 - 01 to Martin and Associates Building Envelope Consulting	5,551.55	
		Invoice #1315351 to Hustad Companies, INC.	2,000.00	
		Invoice #12209140162 to Real page, Inc.	3,500.00	
		Invoice #G4651590 to NV5, Inc. dba Global Realty Services	5,100.00	
		Invoice #G4651589 to NV5, Inc. dba Global Realty Services	5,100.00	
26,650.00		Bill No. 10192022 to Eversheds Sutherland (US) LLP --split as to capital expense reserve disbursements and current Bwr default issues (Seller expense); and loan assumption in TIC transaction (Buyer expense)	15,850.00	
		2021 tax consulting to FTI Consulting, Inc.	38,204.10	
3,000,000.00		Principal buy down to SP 180 Fund, LLC.		
2,030,000.00		Disposition Fee to NP Sol y Luna Leaseco, LLC		
6,090,000.00		Sellers commission to Nelson Partners, LLC		
5,670,000.00		Deferred Buyer Commission to Nelson Partners Property Management, Inc.		
2,038,667.35		AP invoice to Nelson Partners Property Management		
357,688.48		invoice balance to Clyde Snow & Sessions		
27,250,000.00		PE payoff as of 10/24/22 to Arbor Multifamily Lending LLC Receipts Clearing		

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Combined Settlement Statement  
Final

Escrow No: 55004328 - 055 KG2      Close Date: 10/24/2022      Proration Date: 10/24/2022      Disbursement Date:

Seller Debit	Seller Credit	Description	Buyer Debit	Buyer Credit
165,345.15		<b>PRORATIONS AND ADJUSTMENTS:</b> 2nd half 2022 property taxes 115-04-480A from 7/1/2022 to 10/24/2022 based on the Annual amount of \$524,791.14		165,345.15
118,329.12		2nd half 2022 property taxes 115-04-490A from 7/1/2022 to 10/24/2022 based on the Annual amount of \$375,566.35		118,329.12
	5,911.97	2022 Personal Property Taxes 21012260219 from 10/24/2022 to 1/1/2023 based on the Annual amount of \$31,273.44	5,911.97	
	7,337.17	2022 Personal Property Taxes 21012260224 from 10/24/2022 to 1/1/2023 based on the Annual amount of \$38,812.58	7,337.17	
280,941.25		Rents Collected from 10/24/2022 to 11/1/2022		280,941.25
17,908.95		Prepaid rents		17,908.95
113,443.83	12,666.34	Service Contracts	12,666.34	113,443.83
136,870.50		Security Deposits		136,870.50
		<b>COMMISSIONS:</b> \$1,015,000.00 (0.5% of \$203,000,000.00) to Colliers		
1,015,000.00		<b>PROPERTY TAXES</b> 1ST HALF 2022 property taxes 115-04-480A to Pima County Treasurer		
262,395.57		1ST HALF 2022 property taxes 115-04-490A to Pima County Treasurer		
187,783.18		2022 Personal Property Tax 21012260219 to Pima County Treasurer		
31,273.44		2022 Personal Property Taxes 21012260224 to Pima County Treasurer		
38,812.58		.		
7,500,000.00		SELLER PROCEEDS TO EXCHANGE to xCHANGE SOLUTIONS, INC. BUYER OVERAGES REFUNDED to Vesper Tucson Equity LLC	938,215.44	
		.		
		NOTES: --1031 language: All QI cash along with \$5,863,217 from Vesper SLY LLC is only being used to purchase the Property. The additional Buyer cash is solely being used to fund expenses that are not "good" Section 1031 expenses. The mortgage is being used to fund the balance of the purchase of the Property and the remaining expenses.		
199,918,634.69	203,768,920.80	Sub Totals	207,141,833.17	207,141,833.17
3,850,286.11		Proceeds Due Seller		
203,768,920.80	203,768,920.80	Totals	207,141,833.17	207,141,833.17

# **EXHIBIT A-3**

November 03, 2022

Account: [REDACTED] 56 (1-GN-22-001980)

Posting Date: November 03, 2022

Incoming Wire

Amount: USD 9,317,676.88

FX Rate:

Instructed Amount:

IMAD: [REDACTED]

OMAD: [REDACTED]

Originator: [REDACTED] 38 - NELSON PARTNERS LLC  
180 AVENIDA LA PATA 2ND FLOOR  
SAN CLEMENTE CA 92673

Originator FI: [REDACTED] 25 GLACIER BANK

Receiver: [REDACTED] 56 - NP SKYLOFT, DST INVESTOR SETTLEMENT

Sender's Reference:

Reference To Beneficiary:

Additional Information: REFERENCE GREGORY MILLIGAN # [REDACTED] 40



November 03, 2022

**Totals**

**Incoming:** 9,317,676.88 (1)

**Outgoing:** 0.00 (0)

# **EXHIBIT A-4**



([https://www.bankruptcydata.com/?](https://www.bankruptcydata.com/?_hstc=182545209.c0f0f35bac92cf684996c4e0ba83ee4d.1668098770316.1668098770316.1668098770316.1&_hssc=182545209.10.1668098770316&_hsfp=366927706)

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## 5280 Auraria, LLC – Seeks \$1.5mn of Post-Petition Loans from Entity Controlled by Owner Nelson Partners to Fund Renovations at Denver Student Housing Complex

BY NEW GENERATION RESEARCH ([HTTPS://WWW.BANKRUPTCOMPANYNEWS.COM/AUTHOR/NICKREBECCA/](https://www.bankruptcycompanynews.com/author/nickrebecca/)) ON NOVEMBER 9, 2022

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November 4, 2022 – The Debtor requested Court authority to enter into a \$1.5mn Post-Petition Loan Agreement (the “Agreement”) with SP 180 Fund, LLC (“Lender”)\*[Docket No. 227, with a form of the Agreement attached at Exhibit A.]

The proceeds of the debtor-in-possession (“DIP”) financing are to be used to renovate the Debtor's Denver, Colorado off-campus student housing development (the “Property”)...“to make it more attractive to tenants so that the Property could fetch materially higher rents...The resulting improvement to cash flow will dramatically increase the value of the Property [in advance of an expected sale process].”

The Debtor (again) points a finger at Fortress Investment Group (“Fortress”) for delays in renovations, noting that “Prior to Fortress’ exercise of remedies, the Debtor was in the process of renovating and improving the Property...As a result of the receivership and Fortress’ motion to excuse the receiver from turnover of the Debtor’s property, the Renovations have been further delayed.”

Fortress purchased \$51.1mn of secured notes from Cantor Commercial Real Estate Lending, L.P. ("Cantor") in November 2021 and declared that debt to be in default two months later. On January 31, 2022, the Debtor was placed in receivership, with Fortress subsequently pushing for a foreclosure sale in respect of the Property. On June 9th, 2022, hours ahead of a foreclosure sale scheduled for that date, the Debtor filed for bankruptcy noting: **"The primary driver of the Debtor's bankruptcy filing was the foreclosure proceeding..."**

\* **Lender is an entity formed by Patrick Nelson**, the Member of Nelson Partners, LLC, which is the Debtor's Member and Manager.

So why is Patrick Nelson looking to fund the Debtor notwithstanding an overtly hostile relationship with a secured lender holding a \$51.1mn claim? Apparently because it believes that the property as renovated would return value to its equity holders, ie to Mr Nelson and Nelson Partners, LLC. The motion provides: "The sale of the Property, if successfully carried out after completion of the Renovations, is expected to generate proceeds **sufficient to pay all allowed secured and unsecured claims, and generate a return to equity.**"

## Case Status

On June 9, 2022, 5280 Auraria, LLC, d/b/a Auraria Student Lofts, ("Auraria" or the "Debtor") filed for Chapter 11 protection with the U.S. Bankruptcy Court in the District of Colorado, lead case number 22-12059. At filing, the Debtor noted estimated assets between \$50.0mn and \$100.0mn; and estimated liabilities between \$50.0mn and \$100.0mn.

On October 17, 2022, the Debtor filed a Chapter 11 Plan of Reorganization and a related Disclosure Statement [Docket Nos. 201 and 202, respectively].

## The DIP Motion

The post-petition financing motion [Docket No. 227] provides, "Prior to Fortress' exercise of remedies, the Debtor was in the process of renovating and improving the Property to make it more attractive to tenants so that the Property could fetch materially higher rents (the 'Renovations'). The resulting improvement to cash flow will dramatically increase the value of the Property. The original Cantor Loan contemplated that such renovations would occur over a two-year period that would coincide with the scheduled maturity of the Cantor Loan.

As a result of the receivership and Fortress' motion to excuse the receiver from turnover of the Debtor's property, the Renovations have been further delayed. Now that the Debtor is operating the Property, the Debtor will complete the Renovations that began in 2020 and market the Property for the sale, consistent with the terms of the Debtor's Plan of Reorganization filed with the Court on October 17, 2022 (Docket No. 201) (the 'Plan').

The Debtor believes that the Property currently has a value of \$65 million or more. Moreover, the Renovations the Debtor is in the process of resuming should enhance the value significantly. The sale of the Property, if successfully carried out after completion of the Renovations, is expected to generate proceeds sufficient to pay all allowed secured and unsecured claims, and generate a return to equity."

Lender is proposing to loan the Debtor up to \$1,500,000.00 (the 'Loans') for the following purposes, all in accordance with a proposed renovation budget (attached hereto as Exhibit B) (the 'Renovation Budget'), the Cash Collateral Order and the Professional Fee Reserve (defined below):

- a. Costs of completing the Renovations;
- b. The cash shortfall, if any, resulting from ordinary course operations;
- c. Interest or adequate protection payments (to the extent monthly rents are not sufficient) to the Debtor's prepetition lender as ordered by the Bankruptcy Court or required by law; and
- d. the costs of the Debtor's case administration approved by the Bankruptcy Court, including the funding of a professional fee reserve as set forth below and in the Agreement."

## Key Terms of the DIP Financing

- **Borrowers:** 5280 Auraria, LLC

- **Lender:** SP 180 Fund, LLC
- **Borrowing Limit:** \$1,500,000.00
- **New Money:** \$1.5mn
- **Interest Rate:** 10%.
- **Default Rate:** 12%.
- **Use of Loan Proceeds:** The proceeds of the Loan shall be used by the Borrower for the following purposes, all in accordance with an approved budget:
  - a. Costs of completing renovation for the "Property";
  - b. The cash shortfall, if any, resulting from ordinary course operations;
  - c. Interest or adequate protection payments (to the extent monthly rents are not sufficient) to the Debtor's prepetition lender as ordered by the Bankruptcy Court or required by law; and
  - d. the costs of Borrower's Chapter 11 bankruptcy administration approved by the Bankruptcy Court, including the funding of a professional fee reserve as set forth below.
- **Professional Fees:** The Debtor shall deposit \$450,000 into a segregated reserve account for the benefit of professionals employed under Bankruptcy Code section 327, except not brokers (the "Professional Fee Reserve"). The Professional Fee Reserve shall be available as security for the fees payable to Borrower's professionals and shall not be subject to general administrative expense claims or claims of secured lenders.
- **Maturity:** The earliest to occur of: (a) August 31, 2023; (b) the date the Loans are accelerated after an Event of Default; (c) the effective date of any substantial reorganization of the Debtor that is confirmed by the Bankruptcy Court (unless such plan is proposed by the Debtor and repayment of the treatment of the Loan in order of priority from net proceeds of sale of the Debtor's property); (d) the date of dismissal of the Chapter 11 Case; (e) the date of the conversion of the Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code; (f) the date of the appointment of a trustee in the Chapter 11 Case; or (g) a sale of all or substantially all of the Debtor's property under section 363 of the Bankruptcy Code.

## Case Background

### The Fortress Relationship

The Debtor's Disclosure Statement [Docket No. 202] provides: "Fortress Credit Corporation ('Fortress') presented itself to the Debtor as the best refinancing source. After discussions with the Debtor, Fortress negotiated, signed, and delivered a Term Sheet, dated May 18, 2021. The Term Sheet set forth the terms of a contemplated loan from Fortress in the amount of \$56,205,202.00, the proceeds of which would be sufficient to repay both the Cantor Loan, a second mezzanine loan, and to fund certain deferred maintenance and improvements.

The Term Sheet contained specific provisions for the amount of the loan, use of proceeds, maturity, security, interest rate, extension of maturity, reporting and other matters. The terms appeared acceptable to the Debtor. The Term Sheet also required that the Debtor pay Fortress a \$100,000.00 application fee. Consistent with the Term Sheet and in reliance upon the expectations created thereby, the Debtor paid \$100,000.00 to Fortress.

**Unbeknownst to the Debtor, Fortress at some point commenced negotiations to acquire the Cantor Loan.** Fortress acquired the Cantor Loan through an entity it created called DB Auraria, LLC ('DB Auraria'). DB Auraria recorded an Assignment and Assumption Agreement in the real property records of Denver County indicating the Cantor Loan was purchased for \$46 million. Approximately one month thereafter, Fortress provided the Debtor with a payoff letter as of December 14, 2021, demanding \$49,875,161.41. In other words, Fortress demanded almost \$4 million more to pay off the loan than the amount if paid five weeks prior. The payoff figure of \$49,875,161.41 was overstated and designed to prevent the Debtor from paying off the loan through an alternative source. By acquiring the Cantor Loan one month prior to maturity, Fortress calculated it would place the Debtor in a position to which it was vulnerable to its predations. On December 14, 2021, just five days after the loan matured, Fortress sent the Debtor a Notice of Default.

Notwithstanding the Notice of Default, Fortress representatives assured the Debtor that they intended to work with the Debtor and encouraged the Debtor to rely upon Fortress for loan accommodations, rather than seeking third-party financing. In early January 2022, the parties negotiated and executed a Pre-Negotiation Agreement, in which Fortress represented its intent to engage in discussions regarding the Cantor Loan, which could be lengthy. There were no substantive discussions. Instead, within a few weeks, Fortress commenced a Public Trustee foreclosure and separately filed and obtained the appointment of a receiver, thereby depriving the Debtor of any access to the rental revenues while increasing the costs it could append to any payoff.

On January 28, 2022, Fortress filed a Verified Complaint for Ex Parte Appointment of a Receiver in the District Court for the County of Denver ("State Court"), Case No. 2022CV30256....The Receiver took possession of the Real Property on January 31, 2022....**The primary driver of the Debtor's bankruptcy filing was the foreclosure proceeding** in Denver County District Court, Case No. 2022CV031030, filed by Fortress. The foreclosure sale date was set for June 9, 2022 at 10 a.m. The Debtor commenced this bankruptcy case on June 9, 2022, in order to prevent the foreclosure."

**A February 21, 2022 article published by the New York Times (<https://www.nytimes.com/2022/02/21/business/nelson-partners-student-housing.html>)** reports, "A student-housing operator that tenants and investors say has badly mismanaged high-end properties across the country has added a Wall Street colossus to the list of legal opponents.

Fortress Investment Group, an investment firm managing money for institutional and private clients, has mounted an attempt to seize control of a high-rise student apartment building in Denver from Patrick Nelson and his company, Nelson Partners Student Housing.

Nelson Partners, which operates housing complexes in eight states, has been sued by investors who say Mr. Nelson owes them tens of millions of dollars. His tenants say they've been stuck in properties with elevators that are busted, fire alarms that malfunction, utilities that have been shut off for weeks at a time and piles of uncollected trash....

Earlier this month, a company controlled by Fortress filed a legal notice in Denver to begin the process of **foreclosing on a \$46 million loan that Mr. Nelson's firm took out in November 2019 to finance the purchase of the Auraria Student Lofts**. The Fortress affiliate took the action after declaring Mr. Nelson's firm in default on the loan and went to district court in Denver to get a receiver appointed to oversee the property. One of the first steps the receiver took was to replace Mr. Nelson's firm as the property manager for the building."

## About the Debtor

According to the Debtor: "Auraria Lofts off-campus student housing apartments near the University of Colorado, University of Denver, Metropolitan State University and Denver Community College. Auraria Student Lofts provides an enjoyable student housing and social college experience. Two-story clubhouse with game tables, cinema room and so much more. In addition, we have a new management team that is dedicated to our residents and their needs."

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Fast Radius, Inc. – Cloud Manufacturer, Facing Uncertainty as to Financing and Possible In-Court Sale Interest, Seeks Approval of Bidding Procedures for Asset Sale; Aims December 9th Sale Hearing  
(<https://www.bankruptcompanynews.com/fast-radius-inc-cloud-manufacturer-facing-uncertainty-as-to-financing-and-possible-in-court-sale-interest-seeks-approval-of-bidding-procedures-for-asset-sale-aims-december-9th-sale-hear/>)

5280 Auraria, LLC – Seeks \$1.5mn of Post-Petition Loans from Entity Controlled by Owner Nelson Partners to Fund Renovations at Denver Student Housing Complex  
(<https://www.bankruptcompanynews.com/5280-auraria-llc-seeks-1-5mn-of-post-petition-loans-from-entity-controlled-by-owner-nelson-partners-to-fund-renovations-at-denver-student-housing-complex/>)

StorCentric, Inc. – With Support of Newlight Capital, Enceladus Development Venture Finally Prevails In Efforts to Win Court Approval for Its \$35.2mn Acquisition of the Debtors' Assets  
(<https://www.bankruptcompanynews.com/storcentric-inc-with-support-of-newlight-capital-enceladus-development-venture-finally-prevails-in-efforts-to-win-court-approval-for-its-35-2mn-acquisition-of-the-debtors-assets/>)

# **EXHIBIT B**



COPY

Filed In The District Court  
of Travis County, Texas

APR 25 2022 JG

CAUSE NO. D-1-GN-21-000097

At 2:37 P.M.  
Velva L. Price, District Clerk

NP SKYLOFT DST; NP SKYLOFT ST,  
LLC; NP SKYLOFT JV, LLC; NP  
SKYLOFT EQUITY, LLC; and  
NELSON PARTNERS, LLC,  
*Plaintiffs,*

v.

BURGUNDY 523 OFFSHORE FUND,  
LTD.; AXONIC SPECIAL  
OPPORTUNITIES SBL MASTER FUND,  
LP; AXONIC CREDIT OPPORTUNITIES  
MASTER FUND, LP; TCG SKYLOFT  
OWNER, LLC; and DOES 1-10,  
*Defendants,*

v.

NELSON PARTNERS, LLC; NP  
SKYLOFT EQUITY, LLC; NELSON  
BROTHERS PROPERTY  
MANAGEMENT, INC d/b/a NELSON  
PARTNERS PROPERTY  
MANAGEMENT, INC. and PATRICK  
NELSON, INDIVIDUALLY,  
*Counter-Defendants,*

and

STACY R. SCHIFFMAN; ADELAIDA  
MARTINEZ; WILLIAM D. AND SUSAN  
M. MADDEN; A.H. ROOT BUILDING,  
LLC; RYAN AND LISSA ONG LIVING  
TRUST; BLACK TORTUGA GROUP,  
LLC; ALLA INVESTMENTS, LLC; 2M &  
3D LTD, TEXAS LIMITED  
PARTNERSHIP; BUTT RENTALS, LLC;  
HUGH G. DYKES III, TRUSTEE OF THE  
DYKES FAMILY REVOCABLE TRUST  
DATED JULY 7, 2004; SYDNEY CRISP  
AND NICOLA CRISP; DANIEL M. BELL;  
WILLIAM SMITH; PAUL TESSIER, CO-  
TRUSTEE, ANNE T. TESSIER FAMILY

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

261<sup>ST</sup> JUDICIAL DISTRICT

Agreed Temporary Injunction

1

TRUST; DONNA DEKKER, TRUSTEE  
OF THE DEKKER-ROBERTSON  
FAMILY TRUST; HARRY V. AND  
JOANNE P. HANSEN, TRUSTEES OF  
THE HANSEN FAMILY TRUST,  
LAWRENCE K. SAMUELS AND JANE  
HEIDER, TRUSTEES OF THE HEIDER  
SAMUELS FAMILY TRUST DATED  
JUNE 29, 2007; AND JOHN C. POLK and  
JANICE C. POLK,

*Intervenors, Individually and  
Derivatively on behalf of  
Nominal Intervenor,  
NP SKYLOFT DST,*

v.

NP SKYLOFT IB, LLC  
ACO SKYLOFT MANAGER, LLC;  
AXONIC CAPITAL, LLC, AND AXONIC  
CREDIT OPPORTUNITIES MASTER  
FUND, LP,

*Third Party Defendants,*

v.

JAMES V. PARZIALE, Trustee of THE  
PARZIALE FAMILY TRUST derivatively  
on behalf of NP SKYLOFT DST,

*Intervenor,*

v.

CLAYTON DEGIACINTO,

*Third-Party Defendant.*

### AGREED TEMPORARY INJUNCTION

On March 1, 2022, after notice to all parties, the Court held an evidentiary hearing on Schiffman Intervenors' Application for Temporary Restraining Order. Based on the pleadings, the sworn testimony, and the exhibits received by the Court, the Court concluded that a temporary restraining order was warranted. The Temporary Restraining Order was signed by the

Court on February 16, 2022, and the \$10,000.00 bond deposited by the Schiffman Intervenors for the Temporary Restraining Order remained on deposit in the registry of the Court as bond for the Temporary Restraining Order.

The Schiffman Intervenors, Intervenor Parziale (collectively, "Intervenors"), and the Nelson Parties have notified the Court that they have executed a Stipulation and Plan of Liquidation ("the Liquidation Plan"). The Liquidation Plan is conditioned, in part, on the Court's entry of an Agreed Temporary Injunction which enjoins the Nelson Parties from certain actions in violation of the terms of the Liquidation Plan and reduces the amount of required bond from \$10,000.00 to \$500.00. The Nelson Parties have advised the Court that (1) they do not oppose the entry of this Agreed Temporary Injunction; (2) after consultation with their counsel, they consent to the entry of this Agreed Temporary Injunction; and (3) they waive all objections to the Court's entry of the Agreed Temporary Injunction Order in the form below.

In order to preserve the status quo and implement the Court's oversight and supervision of the Liquidation Plan, Intervenors seek and Patrick Nelson consents that he will not, directly or indirectly, (a) transfer, or cause any entity under his control to assign, encumber or transfer any beneficial interests in any of the properties listed in the sealed Exhibit A, which is attached to a sealed copy of this Order, which Order and Exhibit A shall remain under seal subject to further order of this Court; (b) assign or transfer control of any of the properties listed in the sealed Exhibit A to any person or entity, except as authorized by the Plan of Liquidation or expressed approval of this Court; and (c) take any action or assist any other party to take any action in violation of the terms of the Plan of Liquidation.

1. Reasons for the Issuance of an Injunction: Intervenor, at the hearing and in their Fourth Amended Plea in Intervention and Application for Temporary Restraining Order, presented evidence of the following:

- (i) Schiffman Intervenor, and other similarly situated Investors, invested a total of \$74,515,768.42, as a result of an offering sponsored by the Nelson Parties in connection with the Skyloft Property.
- (ii) Most of the Investors' funds were transferred immediately in a Skyloft "Sources and Uses" account, the funds were then disbursed, in large measure, to a Nelson Partners, LLC account.
- (iii) Patrick Nelson was a signatory on the relevant Skyloft investment accounts and had authority to direct transfers out of those accounts.

2. At the hearing for preliminary approval of the Liquidation Plan, Patrick Nelson advised the Court that he does not contest the evidence presented at the hearing and in their Fourth Amended Plea in Intervention and Application for Temporary Restraining Order listed in paragraph 1 above.

3. Based on the evidence presented and Patrick Nelson's consent and waiver of objection, the Court finds that Intervenor have established probable injury. The evidence supports a finding that the harm to Intervenor is imminent, and that Intervenor will suffer irreparable injury if the injunction does not issue. The Court further finds that Intervenor would have no adequate remedy at law if the injunction is not granted. Intervenor will be further harmed if Patrick Nelson is not enjoined and restrained as set forth herein.

4. The Injunction: IT IS ORDERED that Patrick Nelson, his agents, servants, employees, officers, and assigns are hereby enjoined from directly or indirectly, (a) transferring,

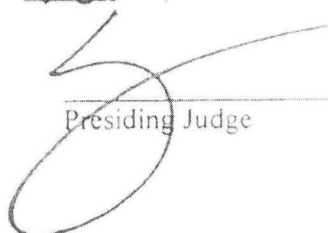
~~or causing any entity under his control from assigning, encumbering or transferring any~~  
beneficial interests in any of the properties listed in the sealed Exhibit A, which is attached to a sealed copy of this Order, which Order and Exhibit A shall remain under seal subject to further order of this Court; (b) assigning or transferring control of any of the properties listed in the sealed Exhibit A to any person or entity, except as authorized by the Plan of Liquidation or prior expressed approval of this Court; and (c) taking any action or assist any other party in taking any action in violation of the terms of the Plan of Liquidation..

5. Trial: IT IS FURTHER ORDERED that trial on the merits of this case be set for bench trial before this Court on October 23, 2023 at 9:00 a.m. This temporary injunction shall remain in effect until final judgment in this cause is entered by this Court.

6. Bond: IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the bond posted with respect to the Temporary Restraining Order in this case shall be reduced from \$10,000.00 to \$500.00, which amount shall serve as sufficient bond for this order. The Court further orders the clerk of this court to refund the \$9,500.00 balance of the bond to Counsel for the Intervenors.

7. The clerk shall issue a temporary injunction in conformity with the law and the terms of this order.

SIGNED on April 25, 2022, at 9:36 am.

  
\_\_\_\_\_  
Presiding Judge

APPROVED AS TO FORM AND SUBSTANCE

/s/ D. Douglas Brothers

D. Douglas Brothers  
GEORGE BROTHERS KINCAID & HORTON L.L.P.

1100 Norwood Tower

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(512) 499-0094 (facsimile)

*Attorneys for Intervenor, Individually and Derivatively on behalf of Nominal Intervenor,  
NP SKYLOFT DST*

/s/ Greg C. Noschese

Greg C. Noschese

James D. Ray, III

Courtney L. Sauer

Munsch Hardt Kopf & Harr, PC

Hartland Plaza

1717 West 6th Street, Suite 250

Austin, Texas 78703-4777

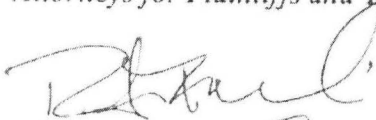
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[csauer@munsch.com](mailto:csauer@munsch.com)

*Attorneys for Plaintiffs and Third-Party Defendant NP Skyloft IB, LLC*



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*Attorneys for Intervenor, Partial*

# **EXHIBIT C**

NP SKYLOFT DST; NP SKYLOFT ST, §  
LLC; NP SKYLOFT JV, LLC; NP §  
SKYLOFT EQUITY, LLC; and §  
NELSON PARTNERS, LLC, §  
*Plaintiffs,* §

v. §

BURGUNDY 523 OFFSHORE FUND, §  
LTD.; AXONIC SPECIAL §  
OPPORTUNITIES SBL MASTER FUND, §  
LP; AXONIC CREDIT OPPORTUNITIES §  
MASTER FUND, LP; TCG SKYLOFT §  
OWNER, LLC; and DOES 1-10, §  
*Defendants,* §

v. §

NELSON PARTNERS, LLC; NP §  
SKYLOFT EQUITY, LLC; NELSON §  
BROTHERS PROPERTY §  
MANAGEMENT, INC d/b/a NELSON §  
PARTNERS PROPERTY §  
MANAGEMENT, INC. and PATRICK §  
NELSON, INDIVIDUALLY, §  
*Counter-Defendants,* §

and §

STACY R. SCHIFFMAN; ADELAIDA §  
MARTINEZ; WILLIAM D. AND SUSAN §  
M. MADDEN; A.H. ROOT BUILDING, §  
LLC; RYAN AND LISSA ONG LIVING §  
TRUST; BLACK TORTUGA GROUP, §  
LLC; ALLA INVESTMENTS, LLC; 2M & §  
3D LTD, TEXAS LIMITED §  
PARTNERSHIP; BUTT RENTALS, LLC; §  
HUGH G. DYKES III, TRUSTEE OF THE §  
DYKES FAMILY REVOCABLE TRUST §  
DATED JULY 7, 2004; SYDNEY CRISP §  
AND NICOLA CRISP; DANIEL M. BELL; §  
WILLIAM SMITH; PAUL TESSIER, CO- §  
TRUSTEE, ANNE T. TESSIER FAMILY §  
TRUST; DONNA DEKKER, TRUSTEE OF §

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

261<sup>st</sup> JUDICIAL DISTRICT



THE DEKKER-ROBERTSON FAMILY §  
 TRUST; HARRY V. AND JOANNE P. §  
 HANSEN, TRUSTEES OF THE HANSEN §  
 FAMILY TRUST, §  
 LAWRENCE K. SAMUELS AND JANE §  
 HEIDER, TRUSTEES OF THE HEIDER §  
 SAMUELS FAMILY TRUST DATED §  
 JUNE 29, 2007; AND JOHN C. POLK and §  
 JANICE C. POLK, §  
     *Intervenors, Individually and* §  
     *Derivatively on behalf of* §  
     *Nominal Intervenor,* §  
     NP SKYLOFT DST, §  
     §  
 v. §  
     §  
 NP SKYLOFT IB, LLC §  
 ACO SKYLOFT MANAGER, LLC; §  
 AXONIC CAPITAL, LLC, AND AXONIC §  
 CREDIT OPPORTUNITIES MASTER §  
 FUND, LP, §  
     *Third Party Defendants,* §  
     §  
 v. §  
     §  
 JAMES V. PARZIALE, Trustee of THE §  
 PARZIALE FAMILY TRUST derivatively §  
 on behalf of NP SKYLOFT DST, §  
     *Intervenor,* §  
     §  
 v. §  
     §  
 CLAYTON DEGIACINTO, §  
     *Third-Party Defendant.* §

## STIPULATION AND PLAN OF LIQUIDATION

This Stipulation and Plan of Liquidation ("Liquidation Plan") is entered into as of \_\_\_\_\_ by, between and among:

(a) Stacy R. Schiffman, Adelaida Martinez, William D. and Susan M. Madden, A.H. Root Building, LLC, Ryan and Lissa Ong Living Trust, Black Tortuga Group, LLC, Alla Investments, LLC, 2M & 3D Ltd., Texas Limited Partnership, Butt Rentals, LLC, Hugh G. Dykes III, Trustee of the Dykes Family Revocable Trust Dated July 7, 2004, Sydney Crisp and Nicola Crisp, Daniel M. Bell, William Smith, Paul Tessier, Co-Trustee, Anne T. Tessier Family Trust, Donna Dekker, Trustee of the Dekker-Robertson Family Trust, and Harry V. and Joanne P. Hansen, Trustees of

the Hansen Family Trust, Lawrence K. Samuels and Jane Heider, Trustees of the Heider Samuels Family Trust Dated June 29, 2007, and John C. Polk and Janice C. Polk, individually and derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust and James Parziale derivatively on behalf of NP Skyloft DST, LLC, a Delaware Statutory Trust (collectively, the "Intervenors"); and

(b) Nelson Partners, LLC, Nelson Brothers Property Management, Inc d/b/a Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC, and Patrick Nelson (collectively, the "Nelson Parties").

Collectively, the Intervenors and the Nelson Parties shall be referred to as the "**Parties.**"

Whereas the Parties are engaged in litigation styled *NP Skyloft DST et al. v. Burgundy 523 Offshore Fund, Ltd.*, Cause No, D-1-GN-21-000097, before the 261<sup>st</sup> Judicial District Court of Travis County, Texas ("Litigation" or "Lawsuit");

Whereas trial in the Litigation is scheduled for April 25, 2022;

Whereas the Parties seek to resolve the dispute between them through a Liquidation Plan that involves the sale of certain real estate aimed to achieve liquidation proceeds sufficient to fulfill the obligation of the Nelson Parties with respect to Intervenors;

Now, therefore, for good and valuable consideration, provided for herein, it is agreed by, between and among the Parties that, subject to Court approval, the plan of liquidation shall consist of the following terms and conditions:

1. Definitions. For purposes of this Liquidation Plan, in addition to terms defined elsewhere in the Liquidation Plan, the following terms shall have the meanings specified herein:

**"Administrator"** means Gregory S. Milligan, Executive Vice President, Harney Partners.

**"Court"** means the 261<sup>st</sup> Judicial District Court of Travis County or any other Travis County court that may be assigned to a hearing in the Litigation.

**"DST"** means NP Skyloft DST.

**"Intervenors"** is defined as indicated above.

**"Intervenors' Counsel"** means George Brothers, Kincaid & Horton, LLP and Brownlie Hansen LLP.

**"Intervenors' Representative"** means Intervenors' Counsel.

**"Investors"** means those persons and entities who own beneficial interests in the DST.

**"Agreed Judgment"** means the judgment referenced in paragraph 8.

**"The Lawsuit"** is defined as indicated above.

**"Liquidation Proceeds"** is defined in paragraph 3 below.

**"Liquidation Plan"** means this Stipulation and Plan of Liquidation, including any permitted and executed amendments and exhibits hereto.

**"Liquidation Assets"** means all assets designated for sale in the Liquidation Plan.

**"Nelson Parties"** is defined as indicated above.

**"Nelson Parties' Counsel"** means the law firm of Munsch Hardt Kopf and Harr, P.C., 500 N. Akard, Suite 3800, Dallas, Texas 75201, Attention: Greg Noschese and Courtney Sauer.

**"Nelson Parties' Representative"** means Patrick Nelson.

**"Net Proceeds"** means total sales price minus any outstanding indebtedness, closing costs, commissions, legal fees, reasonable transaction fees, and operating reserves for the Nelson Parties in an amount not to exceed 2.0% of the net amount that would have been distributed to the Nelson Parties upon sale of the Properties absent this agreement.

**"Axonic Parties"** means BURGUNDY 523 OFFSHORE FUND, LTD.; AXONIC SPECIAL OPPORTUNITIES SBL MASTER FUND, LP; AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; TCG SKYLOFT OWNER, LLC; ACO SKYLOFT MANAGER, LLC; AXONIC CAPITAL, LLC, AND AXONIC and, with respect to conduct occurring on or after May 5, 2020, NP SKYLOFT ST, LLC; and NP SKYLOFT JV, LLC

**"Properties"** means the properties identified in **Exhibit "A"** attached hereto.

2. Purpose of Liquidation Plan. This Liquidation Plan is entered into among the undersigned to, if fully effectuated, resolve certain claims (as described below) that have been or could have been asserted against the among the Parties arising out of or related to any conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Litigation.

3. Liquidation of Assets. The Nelson Parties agree to an orderly liquidation of the Properties such that liquidation yields sufficient proceeds to fulfill the Nelson Parties' obligations under the Liquidation Plan. The liquidation required under this Liquidation Plan shall be capped at \$50,000,000 (fifty million) dollars ("Liquidation Proceeds"). To affect the liquidation, the Nelson Parties shall:

- (a) Use their best efforts to liquidate the Properties in an orderly and expeditious manner.
- (b) Designate listing agent(s) or broker(s) who shall have an obligation of dual reporting to the Nelson Parties' Representative and the Intervenor's Representative.
- (c) Notify all such listing agent(s) or broker(s) of the Intervenor's interest in the liquidation of assets, and the right of Intervenor's Representative's right to request information related to the listing of the Properties or anticipated sale of the Properties.

- (d) Obtain and deliver to Intervenor(s) from the listing agent(s) and broker(s) an acknowledgement of the terms of this Liquidation Plan.
- (e) Ensure the listing agents shall promptly provide Intervenor(s)' Representative with all agreements to sell, transfer, or encumber the Properties, as well as all notices of anticipated real estate closings, and closing statements related to the Properties. The Nelson Parties shall provide all such agreements, notices of closings, and closing statements to Intervenor(s)' Representative within three (3) days of Nelson Parties' receipt and not less than seven (7) days before the closing of any sale or transfer of the Properties.
- (f) Provide to title companies involved in any transaction involving one or more of the Properties instructions that Net Proceeds resulting from the sale of the Properties otherwise payable to any of the Nelson Parties or to any Nelson Entity must be paid to the registry of the Court or to an escrow account designated by the Administrator and ensure that Net Proceeds are paid as required by this Liquidation Plan.
- (g) Provide a written status report to the Court every 30 days from the days of the Court's preliminary approval of the Liquidation Plan, and continuing until further order of the Court.

4. Intervenor(s)' Representative's Control. Neither the Intervenor(s)' Representative nor the Administrator shall have control over the actions of the listing agents, except to require prompt and timely reporting to the Intervenor(s)' Representative of contracts, closings, and closing statements related to the Properties. Intervenor(s)' Representative shall have no obligation to supervise or direct the activities of such listing agents and shall have no liability for any acts or omissions of such listing agents whatsoever.

5. Supervision by the Administrator. The Court shall approve and supervise the Administrator's implementation of this Liquidation Plan. The Administrator shall have all powers and authorities granted to him by the Court. The Administrator's authority shall include, but is not limited to the following:

- (a) Receive and review all documents related to the sale or transfer of any Properties.
- (b) Upon approval of the Court, to promptly distribute Liquidation Proceeds as directed by the Court.
- (c) Maintain records of all communications and transactions of the Liquidation Plan including, but limited to, all documents related to the sale or transfer of the Properties.

6. Funds in Registry of Court or Escrow. Any funds paid into the registry or the Court (or other mutually agreed escrow) pursuant to Section 3 above shall be for the benefit of the DST and derivative claims asserted in the Litigation.

7. Deadlines for Deposit of Liquidation Proceeds. The first \$30 million of Liquidation Proceeds must be received into the Court's registry (or other escrow established by the Administrator) no later than 9 months from the Court's entry of an order granting preliminary approval of the Liquidation Plan and the remaining \$20 million of Liquidation Proceeds must be received into the Court's registry (or other escrow) no later than 18 months from the Court's entry of an order granting preliminary approval of the Liquidation Plan.

8. Final Judgment. As further consideration for this Liquidation Plan, and as security for Nelson Parties' obligations under this Liquidation Plan, the Parties have agreed to the content and form of the Agreed Judgment. The Agreed Judgment is for the total sum of \$50,000,000 (fifty million) dollars. The Parties further agree the Agreed Judgment shall only be presented to the Court if, and only if, the Nelson Parties fail to pay Plaintiff any part of the Liquidation Proceeds from the Properties as required herein. If and when it becomes necessary to have the Agreed Judgment entered as provided herein, the Nelson Parties agree they will not oppose or otherwise interfere with any procedural requisites for the entry and issuance of the Agreed Judgment by the Court and are hereby estopped from opposing or otherwise interfering with any procedural requirements for the entry and issuance of the Agreed Judgment by the Court. Such Agreed Judgment, if ever entered, shall be automatically and unconditionally reduced, if at all, by any funds tendered into the registry of the Court (or other mutually agreed escrow) The Agreed Judgment will contain language to make the judgment non-dischargeable as to all Nelson Parties in the event of bankruptcy.

9. Entry of Temporary Injunction. Simultaneous with the Court's entry of an order granting preliminary approval of the Liquidation Plan, the Court shall enter a temporary injunction prohibiting and enjoining the Nelson Parties from violating any term of this Liquidation Plan or taking any action to transfer or encumber the Properties subject to this Liquidation Plan other than in accordance with this Liquidation Plan. The bond posted for the Court's February 16, 2022 Temporary Restraining Order shall be reduced to \$500 and shall serve as the bond for the Temporary Injunction contemplated by this Liquidation Plan.

10. Distribution of Liquidation Proceeds. Liquidation Proceeds will be distributed by the Administrator only upon order of the Court.

11. Contingency and Settlement Credits. The Parties agree that the Nelson Parties' payment obligations under this Liquidation Plan are contingent upon the sale of the Properties and recognize the uncertainties associated with that contingency; provided, however, that in the event the Nelson Parties fail to satisfy the obligations in Section 7, above, the limitation provided herein shall not apply. The Parties agree that neither the Intervenor nor the Nelson Parties will agree that any remaining party in the Litigation is entitled to a settlement credit for any amount associated with the Liquidation Plan. The Parties agree and understand that this Liquidation Plan does not affect the Intervenor's claims or damages arising out of or connected with the alleged sale of the Skyloft Property in December 2020.

12. Submission of the Liquidation Plan to the Court for Preliminary Approval. The undersigned agree to recommend approval of the Liquidation Plan by the Court as being fair, reasonable, and adequate to the DST and its Investors. In that regard, the Parties agree that, as soon as practicable after execution of the Liquidation Plan, the Parties shall submit the Liquidation Plan,

together with its exhibits (with the Properties being tendered to the Court under seal to protect the marketability and orderly liquidation), to the Court and shall apply for entry of a Preliminary Order of Approval of Liquidation Plan in the form attached as **Exhibit B**, approving the proposed Liquidation Plan. Within 90 days of a Preliminary Order of Approval, Parties shall submit the Liquidation Plan for final Court Approval with notice to all Investors in the subject DST. Such notice to Investors shall be provided by first class mail to the Investors at the last known addresses provided to the Nelson Parties, which notice the Parties agree comply with the requirements of due process. The Nelson Parties will not contact the Investors regarding the subject matter of this Agreement.

13. Intervenors' Attorneys' Fees and Costs. When the Liquidation Plan is submitted to the Court for Preliminary Approval, Intervenors' Counsel simultaneously will apply to the Court for approval of its attorneys' fees of 20% of the Liquidation Proceeds, together with expenses as approved for reimbursement by the Court. The expense reimbursement shall be in addition to the fees approved by the Court. When distribution of the Liquidation Proceeds is sought, Intervenors' Counsel will further seek approval from the Court of the specific amounts to be distributed to Intervenors' Counsel as attorneys' fees and costs. These funds shall be sought to compensate Intervenors' Counsel for fees and expenses incurred in connection with the Litigation.

14. Abatement of Claims. Simultaneously with the entry of a Preliminary Order of Approval, the Parties shall jointly move to sever and abate the claims between them in the Litigation by filing a Motion to Sever and Abate conforming with the form attached as **Exhibit C**. Additionally, within three business days of the entry of a Preliminary Order of Approval, the Nelson Parties shall withdraw the Motion to Compel Arbitration filed in the Litigation and move to dismiss any appeal of the denial of the Motion to Compel Arbitration, including the appeal pending as Case No 03-22-00186-CV before the Third Court of Appeals. Notwithstanding the abatement, the Temporary Restraining Order dated February 16, 2022 and the order extending same shall remain in effect unless the liquidation of Sol y Luna and distribution of proceeds from that liquidation occurs under the terms of this Liquidation Plan.

15. Dismissal of All Claims. Upon execution of this Liquidation Plan, the Nelson Parties shall abandon and dismiss all claims against the Axonic Parties. Upon fulfillment of the payment of the Liquidation Proceeds, Intervenors shall file all pleadings necessary to dismiss all claims and causes of action brought or that could have been brought directly by the Intervenors or derivatively on the DST's behalf with prejudice, taxing all costs against the party incurring same, provided, however, that the Administrators' fees shall be taxed as costs of Court against the Nelson Parties.

16. Preference Avoidance. The Administrator shall not distribute any Liquidation Proceeds sooner than the 91st day after receipt of such proceeds. The Administrator may make distributions thereafter, so long as no proceeding under Title 11 of the United States Code has been commenced by or against the Nelson Parties. Upon distribution: (1) the Intervenors' claims against the Nelson Parties shall be reduced by the total amount of such distributed funds; (2) the Judgment shall be credited by the total amount of such distributed funds; and, (3) the Nelson Parties shall be released of their liability to the Intervenors by the total amount of such distributed funds. The Nelson Parties will remain liable to the Intervenors for the full amount of the Judgment, less any distributed funds above, until the 91st day following receipt by the Intervenors of the full amount



of Liquidation Proceeds provided no proceeding under Title 11 of the United States Code has been commenced by or against the Nelson Parties. All parties agree that the Intervenor, both collectively and individually, are not insiders of the Nelson Parties, as the term "insider" is defined by 11 U.S.C. § 101(31).

17. Effective Date. The "Effective Date" of this Liquidation Plan shall be the date of entry of the Preliminary Order of Approval.

18. No Admission of Wrongdoing. This Liquidation Plan shall not be construed or deemed to be evidence of an admission or concession on the part of any of the Parties with respect to any claim, fault, liability, wrongdoing, or damage whatsoever.

19. No Distribution to the Nelson Parties. The Nelson Parties and their respective affiliates or immediate family members (which shall include children, parents, spouses, and siblings) shall not directly or indirectly receive the proceeds of any payments or distributions made under this Agreement, including any distribution by the DST of funds provided pursuant to this Agreement. Any funds that the Nelson Parties or their respective affiliates or immediate family members would have received from the proceeds of the payments or distributions made under this Agreement shall be distributed to all other Investors in the DST in proportion to their respective holdings in the DST as determined without reference to the holdings of the Nelson Parties and their respective affiliates or immediate family members.

20. Releases.

- (a) 91 days after the Nelson Parties satisfy all obligations of the Judgement entered by the Court, the Intervenor for themselves and for their assigns, agents, representatives, attorneys, heirs, executors, administrators, beneficiaries, and privies, release the Nelson Parties and their respective affiliates, agents, employees, officers, directors, parents, subsidiaries, attorneys, representatives, advisors, administrators, predecessors, successors, insurers, accountants, advisors, or anyone acting on their behalf from any and all causes of action, claims, rights, damages, punitive, or statutory damages, penalties, liabilities, expenses and losses, and issues, that any of the Intervenor have or could have made against the Nelson Parties in the Litigation, which are the result of the Nelson Parties' transfer and use of funds for purposes other than the Skyloft Project.
- (b) Upon execution of this Liquidation Plan, the Nelson Parties and their respective affiliates, agents, employees, officers, directors, parents, subsidiaries, attorneys, representatives, advisors, administrators, predecessors, successors, insurers, accountants, advisors, or anyone acting on their behalf release the Intervenor for themselves and for their assigns, agents, representatives, attorneys, heirs, executors, administrators, beneficiaries, and privies from any and all causes of action, claims, rights, damages, punitive, or statutory damages, penalties, liabilities, expenses and losses, and issues, that any of the Nelson Parties have or could have made against the Intervenor in the Litigation.

- (c) Nothing in this release language nor any other provision of this Liquidation Plan is intended to release any claims or damages arising out of or connected with the sale of the Skyloft Property in December, 2020. Further, nothing in this release language nor any other provision of this Liquidation Plan is intended to release any claims Intervenor has against the Axonic Parties, TCG, any other party to the Lawsuit. Those claims are also expressly and specifically reserved. Except as expressly provided herein, there are no third-party beneficiaries to this Liquidation Plan.

21. Termination. If the Court fails to approve the Liquidation Plan (or any part thereof), the Liquidation Plan will be null and void.

22. Entire Agreement. The recitals set forth at the beginning of this Liquidation Plan are incorporated by reference and made a part of this Liquidation Plan. This Liquidation Plan constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and/or agreements, proposed or otherwise, written or oral, concerning the subject matter hereof, except as otherwise indicated herein. Furthermore, no modification of this Liquidation Plan shall be binding unless in writing and signed by each of the parties hereto.

23. Interpretation. Should any court declare or determine any provision of this Liquidation Plan to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal or invalid part, term, or provision shall be deemed not to be a part of this Liquidation Plan. The headings within this Liquidation Plan are purely for convenience and are not to be used as an aid in interpretation. Moreover, since all parties and their counsel participated in the drafting of this Liquidation Plan and it is a result of lengthy, intensive arm's-length negotiations, the presumption that ambiguities shall be construed against the drafter does not apply. None of the Parties will be deemed the drafter of the Liquidation Plan for purposes of construing its provisions.

24. Governing Law and Choice of Forum. This Liquidation Plan is made and entered into within and shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Texas without regard to the principles of conflicts of laws. Any action to enforce this Liquidation Plan shall be brought only in the district courts of Travis County, Texas.

25. Continuing Jurisdiction and Temporary Injunction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Liquidation Plan for purposes of the administration and enforcement of this Liquidation Plan. The Parties further agree to modify and extend the temporary restraining order previously entered by the Court into a temporary injunction until the date of final judgment entered by the Court, and, in the modification, to prohibit the Nelson Parties from violating any term of this Liquidation Plan or take any action to transfer or encumber the Properties subject to this Liquidation Plan other than in accordance with this Liquidation Plan.

26. Counterparts. This Liquidation Plan may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.



[SIGNATURE PAGES FOLLOW]

Executed as of this \_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Stacy R. Schiffman

\_\_\_\_\_  
Adelaida Martinez

\_\_\_\_\_  
William D. Madden

\_\_\_\_\_  
Susan M. Madden

A.H. ROOT BUILDING, LLC

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

RYAN AND LISSA ONG LIVING TRUST

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

BLACK TORTUGA GROUP, LLC

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

ALLA INVESTMENTS, LLC

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

2M & 3D LTD, TEXAS LIMITED PARTNERSHIP

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

BUTT RENTALS, LLC

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

DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004

By: \_\_\_\_\_  
Hugh G. Dykes III, Trustee

\_\_\_\_\_  
Sydney Crisp

\_\_\_\_\_  
Nicola Crisp

\_\_\_\_\_  
Daniel M. Bell

\_\_\_\_\_  
William Smith

ANNE T. TESSIER FAMILY TRUST

By: \_\_\_\_\_  
Paul Tessier, Co-Trustee

THE DEKKER-ROBERTSON FAMILY TRUST

By: \_\_\_\_\_  
Donna Dekker, Trustee

HANSEN FAMILY TRUST

By: \_\_\_\_\_  
Harry V. Hansen, Trustee

HANSEN FAMILY TRUST

By: \_\_\_\_\_  
Joanne P. Hansen, Trustees

HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007

By: \_\_\_\_\_  
Lawrence K. Samuels, Trustee

HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007

By: \_\_\_\_\_  
Jane Heider, Trustee

\_\_\_\_\_  
John C. Polk

\_\_\_\_\_  
Janice C. Polk, individually

The Parziale Family Trust

\_\_\_\_\_  
By James V. Parziale, Trustee

Nelson Partners, LLC

By: \_\_\_\_\_  
Name: Patrick Nelson, Manager

Nelson Brothers Property Management, Inc.  
d/b/a Nelson Partners Property Management, Inc.

By: \_\_\_\_\_  
Name: Patrick Nelson, authorized officer

NP Skyloft Equity, LLC

By: \_\_\_\_\_  
Name: Patrick Nelson, Manager

\_\_\_\_\_  
Patrick Nelson

# **EXHIBIT D**

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, BLACK TORTUGA GROUP, LLC, ALLA INVESTMENTS, LLC, 2M & 3D LTD., TEXAS LIMITED PARTNERSHIP, BUTT RENTALS, LLC, HUGH G. DYKES III, TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, PAUL TESSIER, CO-TRUSTEE, ANNE T. TESSIER FAMILY TRUST, DONNA DEKKER, TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST, AND HARRY V. AND JOANNE P. HANSEN, TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER, TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, AND JOHN C. POLK AND JANICE C. POLK, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF NP SKY LOFT DST, LLC, A DELAWARE STATUTORY TRUST AND JAMES PARZIALE DERIVATIVELY ON BEHALF OF NP SKY LOFT DST, LLC, A DELAWARE STATUTORY TRUST,

*Plaintiffs,*

Vs.

NELSON PARTNERS, LLC, NELSON BROTHERS PROPERTY MANAGEMENT, INC. D/B/A NELSON PARTNERS PROPERTY MANAGEMENT, INC., AND PATRICK NELSON,

*Defendants*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98<sup>th</sup> JUDICIAL DISTRICT

**UNOPPOSED EMERGENCY MOTION TO APPROVE SALE OF PROPERTY FOR PARTIAL SATISFACTION OF JOINT STIPULATION AND LIQUIDATION PLAN AND PARTIAL RELEASE FROM TEMPORARY INJUNCTION**

Nelson Partners, LLC, Nelson Brothers Property Management, Inc. d/b/a Nelson Partners Property Management, Inc. and Patrick Nelson (collectively, the “*Nelson Parties*”) file this Unopposed Emergency Motion to Approve Sale of Property for Partial Satisfaction of Joint

Stipulation and Liquidation Plan (“Plan”) and Partial Release from Temporary Injunction as follows:

1. **The Plan**: On July 21, 2022, the Court ordered final approval of the Plan, finding it fair, reasonable, and adequate as to NP Skyloft DST and its beneficial interest holders (the “Investors”). The Plan requires the Nelson Parties to sell certain real estate to obtain the total Liquidation Proceeds, as the Plan defines. The relevant real estate, which may be sold in fulfillment of the Plan, are those properties identified in Exhibit A to the Plan (“Liquidating Properties”).

2. **The Proposed Sale**: As noted in the Nelson Parties’ various reports to the Court, the Nelson Parties have diligently attempted to sell the Liquidating Properties to meet their Plan obligations.

3. On June 17, 2022, using their best efforts, the Nelson Parties reached an agreement to sell the first property listed under the “Schedule of Sale” section of Exhibit A to the Plan (“Property I”). After further negotiations, the Nelson Parties and the buyer amended and reinstated the June agreement on August 5, 2022 (“Agreement” or “Proposed Sale”). The buyer’s due diligence period is complete and the buyer has waived its rights to terminate the Agreement.

4. The Nelson Parties advised the Plan Administrator of the Agreement.

5. The Proposed Sale will produce significant proceeds and substantially aid the Nelson Parties in satisfying their obligations under the Plan. Thus, the Court should approve the Proposed Sale.

6. **Temporary Injunction Release**: On April 25, 2022, the Court signed the Agreed Temporary Injunction order. The Temporary Injunction, among other things, precludes Pat Nelson from:



- Transferring, or causing any entity under Nelson's control to assign, encumber or transfer any beneficial interest in any of the Liquidating Properties; or
- Assigning or transferring control of any of the Liquidating Properties to any person or entity, except as authorized by the Plan or expressed approval of the Court.

7. Without the Court's approval, the Temporary Injunction impedes the Proposed Sale from closing. Thus, to effectuate the Proposed Sale, the Nelson Parties request the Court to release the Nelson Parties from the Temporary Injunction *as it applies to Property 1 only*.

### **PRAYER & REQUEST**

Pursuant to the foregoing, the Nelson Parties seek to partially satisfy their Plan obligations and thus request the Court to (i) approve the Proposed Sale and (ii) to partially release Nelson Parties from the Temporary Injunction so they may effectuate the Proposed Sale accordingly.

Respectfully Submitted,

**MUNSCH HARDT KOPF & HARR, P.C.**

By: /s/ Greg C. Noschese

Greg C. Noschese

Texas Bar No. 00797164

[gnoschese@munsch.com](mailto:gnoschese@munsch.com)

Courtney L. Sauer

Texas Bar No. 24066026

[csauer@munsch.com](mailto:csauer@munsch.com)

Brandon Stendara

Texas Bar No. 24121148

[bstendara@munsch.com](mailto:bstendara@munsch.com)

500 N. Akard St, Suite 3800

Dallas, Texas 75201

### **CERTIFICATE OF CONFERENCE**

On October 21, 2022, I conferred via Zoom video conference with Plan Administrator, Jason Rudd of Wick Phillips and Plaintiffs' counsel Doug Brothers and Robert Brownlie. Plaintiffs' counsel indicated they are UNOPPOSED to the relief requested herein.

By: /s/ Greg C. Noschese

Greg Noschese

### **CERTIFICATE OF SERVICE**

The undersigned certifies that, on October 21, 2022, a true and correct copy of this document was served via the court's electronic filing system, on all counsel of record.

By: /s/ Greg C. Noschese

Greg Noschese

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, BLACK TORTUGA GROUP, LLC, ALLA INVESTMENTS, LLC, 2M & 3D LTD., TEXAS LIMITED PARTNERSHIP, BUTT RENTALS, LLC, HUGH G. DYKES III, TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, PAUL TESSIER, CO-TRUSTEE, ANNE T. TESSIER FAMILY TRUST, DONNA DEKKER, TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST, AND HARRY V. AND JOANNE P. HANSEN, TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER, TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, AND JOHN C. POLK AND JANICE C. POLK, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF NP SKY LOFT DST, LLC, A DELAWARE STATUTORY TRUST AND JAMES PARZIALE DERIVATIVELY ON BEHALF OF NP SKY LOFT DST, LLC, A DELAWARE STATUTORY TRUST,

*Plaintiffs,*

Vs.

NELSON PARTNERS, LLC, NELSON BROTHERS PROPERTY MANAGEMENT, INC. D/B/A NELSON PARTNERS PROPERTY MANAGEMENT, INC., AND PATRICK NELSON,

*Defendants*

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

98<sup>th</sup> JUDICIAL DISTRICT

**ORDER**

Before the court is the Unopposed Motion of Defendants Nelson Partners, LLC, Nelson Brothers Property Management Inc., d/b/a Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC and Patrick Nelson (the “Nelson Parties”) to Approve Sale of Property for Partial Satisfaction of Joint Stipulation and Liquidation Plan and Partial Release from Temporary Injunction (“Unopposed Motion”).

The Court, having considered all papers filed and proceedings herein finds the Unopposed Motion by the Nelson Parties is GRANTED. Therefore, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. The Proposed Sale, as that term is defined in the Unopposed Motion, is APPROVED.
2. The Nelson Parties are partially released from the Temporary Injunction so they may close upon the property involved in the Proposed Sale. This Order authorizes Pat Nelson to dispose of and transfer the interests in Property 1, as that term is defined in the Unopposed Motion.
3. The Court orders that any net proceeds flowing to the Nelson Parties cannot be distributed to the Nelson Parties, pending further order of this Court.

It is SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

---

PRESIDING JUDGE

# **EXHIBIT E**

COPY

APR 25 2022 JG

CAUSE NO. D-1-GN-21-000097

At 2:13 P.M.  
Velva L. Price, District Clerk

NP SKYLOFT DST; NP SKYLOFT ST,  
LLC; NP SKYLOFT JV, LLC; NP  
SKYLOFT EQUITY, LLC; and  
NELSON PARTNERS, LLC,  
*Plaintiffs,*

v.

BURGUNDY 523 OFFSHORE FUND,  
LTD.; AXONIC SPECIAL  
OPPORTUNITIES SBL MASTER FUND,  
LP; AXONIC CREDIT OPPORTUNITIES  
MASTER FUND, LP; TCG SKYLOFT  
OWNER, LLC; and DOES 1-10,  
*Defendants,*

v.

NELSON PARTNERS, LLC; NP  
SKYLOFT EQUITY, LLC; NELSON  
BROTHERS PROPERTY  
MANAGEMENT, INC d/b/a NELSON  
PARTNERS PROPERTY  
MANAGEMENT, INC. and PATRICK  
NELSON, INDIVIDUALLY,  
*Counter-Defendants,*

and

STACY R. SCHIFFMAN; ADELAIDA  
MARTINEZ; WILLIAM D. AND SUSAN  
M. MADDEN; A.H. ROOT BUILDING,  
LLC; RYAN AND LISSA ONG LIVING  
TRUST; BLACK TORTUGA GROUP,  
LLC; ALLA INVESTMENTS, LLC; 2M &  
3D LTD, TEXAS LIMITED  
PARTNERSHIP; BUTT RENTALS, LLC;  
HUGH G. DYKES III, TRUSTEE OF THE  
DYKES FAMILY REVOCABLE TRUST  
DATED JULY 7, 2004; SYDNEY CRISP  
AND NICOLA CRISP; DANIEL M. BELL;  
WILLIAM SMITH; PAUL TESSIER, CO-  
TRUSTEE, ANNE T. TESSIER FAMILY  
TRUST; DONNA DEKKER, TRUSTEE

IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

261<sup>st</sup> JUDICIAL DISTRICT

~~OF THE DEKKER-ROBERTSON~~  
FAMILY TRUST; HARRY V. AND  
JOANNE P. HANSEN, TRUSTEES OF  
THE HANSEN FAMILY TRUST,  
LAWRENCE K. SAMUELS AND JANE  
HEIDER, TRUSTEES OF THE HEIDER  
SAMUELS FAMILY TRUST DATED  
JUNE 29, 2007; AND JOHN C. POLK and  
JANICE C. POLK,

*Intervenors, Individually and  
Derivatively on behalf of  
Nominal Intervenor,  
NP SKYLOFT DST,*

v.

NP SKYLOFT IB, LLC  
ACO SKYLOFT MANAGER, LLC;  
AXONIC CAPITAL, LLC, AND AXONIC  
CREDIT OPPORTUNITIES MASTER  
FUND, LP,

*Third Party Defendants,*

v.

JAMES V. PARZIALE, Trustee of THE  
PARZIALE FAMILY TRUST derivatively  
on behalf of NP SKYLOFT DST,

*Intervenor,*

v.

CLAYTON DEGIACINTO,  
*Third-Party Defendant.*

**ORDER OF PRELIMINARY APPROVAL  
OF LIQUIDATION PLAN**

Before the Court is the Joint Motion for Preliminary Approval of Liquidation Plan, filed by Intervenors Stacy R. Schiffman, et al, individually and derivatively on behalf of NP Skyloft DST; Intervenor James V. Parziale, derivatively on behalf of NP Skyloft DST (collectively, the "Intervenors"); and Nelson Partners, LLC, Nelson Brothers Property Management, Inc d/b/a

~~Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC, and Patrick Nelson~~

(collectively, the "Nelson Parties").

Related Orders:

As requested by the parties to the Joint Motion, the Court severs, assigns a new cause number, and abates all claims of Intervenorors against the Nelson Parties, as provided in the Court's Order of Severance and Abatement signed as of this date.

The Court further enters a temporary injunction against the Nelson Parties, as provided in the Court's Preliminary Injunction signed as of this date.

Preliminary Approval of Liquidation Plan:

The Court finds that the Liquidation Plan is fair, reasonable and adequate to NP Skyloft DST ("the Trust") and its Investors and, if fully effectuated by the Nelson Parties, will provide substantial value to the Trust and its Investors. Therefore, the Court hereby GRANTS preliminary approval of the Liquidation Plan.

Notice:

The Administrator shall provide notice to the Investors by first class U.S. mail at the last known addresses provided by Investors to the Nelson Parties and, where feasible, by email. The Court finds such notice is the best notice practicable under the circumstances and complies with the requirements of due process. The Nelson Parties will not contact the Investors regarding the subject matter of the Liquidation Plan or approval of same.

Intervenorors' counsel shall submit the proposed form and content of the Notice for the Court's approval no later than May 17, 2022, and such notice shall be mailed no later than 10 days after the Court's approval of same or May 27, 2022. The notice shall include the material terms



~~of the Liquidation Plan, the amount of attorney's fees sought, the time and manner, in which~~  
objections must be made, and the date for the hearing for final approval.

Other Requirements of the Liquidation Plan

The Nelson Parties shall provide a written status report to the Court every 30 days from the entry of this Order, pursuant to paragraph 3(g) of the Liquidation Plan.

The Court hereby approves of Gregory S. Milligan, Executive Vice President, Harney Partners as the Administrator to implement the Liquidation Plan,

Objections and Final Approval Hearing

Any beneficial owner of an interest in NP Skyloft DST may submit objections to the Liquidation Plan with the Court no later than June 21, 2022, in the manner set forth in the notice. A copy of each such objection shall be served on Intervenor's counsel and counsel for the Nelson Parties concurrently with its filing with the Court. All objections must be timely filed and served by the date set forth above and failure to do so will result in a waiver of the objection and waiver of the right to appear and present objections at the hearing for final approval of the Liquidation Plan.

A hearing for final approval of the Liquidation Plan is set for July 21, 2022, at the Travis County Courthouse, 1000 Guadalupe, Austin, Texas 78701. The Court retains continuing and exclusive jurisdiction over the Parties for purposes of the administration and enforcement of this Liquidation Plan. Pending final determination of whether the Plan of Liquidation should be approved, no NP Skyloft DST investor, either directly, representatively, or in any other capacity,

shall commence or prosecute against any of the Nelson Parties, any action or proceeding in any court or tribunal asserting any of the Released Claims.

Dated: April 25, 2022.



The Honorable Karin Crump, Presiding

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brenda Ramirez on behalf of Rusty OKane  
Bar No. 24088149  
brenda.ramirez@wickphillips.com  
Envelope ID: 70277075  
Status as of 11/18/2022 12:06 PM CST

Associated Case Party: NELSON PARTNERS LLC

Name	BarNumber	Email	TimestampSubmitted	Status
Sharon BLACKSTOCK		sblackstock@munsch.com	11/17/2022 1:55:09 PM	SENT
Amanda Tellez		ATellez@munsch.com	11/17/2022 1:55:09 PM	SENT
Courtney L.Sauer		csauer@munsch.com	11/17/2022 1:55:09 PM	SENT
Aynsley Young		ayoung@munsch.com	11/17/2022 1:55:09 PM	SENT

Associated Case Party: PATRICK NELSON

Name	BarNumber	Email	TimestampSubmitted	Status
Gregory CarrNoschese		gnoschese@munsch.com	11/17/2022 1:55:09 PM	SENT

Associated Case Party: STARYRSCHIFFMAN

Name	BarNumber	Email	TimestampSubmitted	Status
D. Douglas Brothers		dbrothers@gbkh.com	11/17/2022 1:55:09 PM	SENT

Associated Case Party: 2M & 3D LTD TEXAS LIMITED PARTNERSHIP

Name	BarNumber	Email	TimestampSubmitted	Status
D. Douglas Brothers		dbrothers@gbkh.com	11/17/2022 1:55:09 PM	SENT

Associated Case Party: James V. Parziale, Trustee of The Parziale Family Trust

Name	BarNumber	Email	TimestampSubmitted	Status
Jennifer ALloyd		jllloyd@millerlloyd.com	11/17/2022 1:55:09 PM	SENT
Robert Brownlie		robert.brownlie@brownliehansen.com	11/17/2022 1:55:09 PM	SENT

### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brenda Ramirez on behalf of Rusty OKane  
Bar No. 24088149  
brenda.ramirez@wickphillips.com  
Envelope ID: 70277075  
Status as of 11/18/2022 12:06 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Russ Horton		rhorton@gbkh.com	11/17/2022 1:55:09 PM	SENT
Steve Skarnulis		skarnulis@cstrial.com	11/17/2022 1:55:09 PM	SENT
Suzy Nakamura		snakamura@gbkh.com	11/17/2022 1:55:09 PM	SENT
Ann Cardenas		acardenas@gbkh.com	11/17/2022 1:55:09 PM	SENT
Jason Rudd		jason.rudd@wickphillips.com	11/17/2022 1:55:09 PM	SENT
Catherine Curtis		catherine.curtis@wickphillips.com	11/17/2022 1:55:09 PM	SENT
Gregory SMilligan		gmilligan@harneypartners.com	11/17/2022 1:55:09 PM	SENT
Clayton NMatheson		clayton@hfgtx.com	11/17/2022 1:55:09 PM	SENT
Shawn Guilliams		shawn@guilliams.com	11/17/2022 1:55:09 PM	SENT
Benjamin Evans		bevans@cstrial.com	11/17/2022 1:55:09 PM	SENT
Kiara Dial		kdial@cstrial.com	11/17/2022 1:55:09 PM	SENT