

CAUSE NO. D-1-GN-24-005548

PAUL TESSIER, AS CO-TRUSTEE OF THE ANNE T. TESSIER FAMILY TRUST, and BLACK TORTUGA GROUP, LLC,
Plaintiffs, on behalf of themselves and all others similarly situated,

AND

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, ALLA INVESTMENTS, LLC, 2M & 3D LTD., BUN RENTALS, LLC, HUGH G. DYKES III AS TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, DONNA DEKKER AS TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST; AND HARRY V. AND JOANNE P. HANSEN AS TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER AS TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, JOHN C. POLK AND JANICE C. POLK, AND JAMES PARZIALE, AS TRUSTEE OF THE PARZIALE FAMILY TRUST,

Plaintiffs, derivatively on behalf of
NP SKYLOFT DST

v.

BURGUNDY 523 OFFSHORE FUND, LTD., AXONIC SPECIAL OPPORUNITIES SBL MASTER FUND LP, AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; ACO SKYLOFT MANAGER LLC; AXONIC CAPITAL, LLC; and CLAYTON DEGIACINTO,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

**MOTION FOR FINAL APPROVAL OF
CLASS AND DERIVATIVE SETTLEMENT**

Pursuant to Rule 42(e) of the Texas Rules of Civil Procedure, Plaintiffs Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust and Black Tortuga Group, LLC (“Class Representatives”) and Defendants ACO Skyloft Manager LLC, Axonic Special Opportunities SBL Master Fund LP, Axonic Credit Opportunities Master Fund, LP, Axonic Capital LLC, Burgundy 523 Offshore Fund Ltd., ACO Skyloft Manager LLC, and Clayton Degiacinto (“Axonic Defendants” or collectively “Axonic”) jointly request final approval of their Stipulation of Settlement and Release (“Settlement Stipulation”).

I. SUMMARY OF RELIEF REQUESTED

Class Representatives request that the Court find that the Settlement is fair, reasonable, adequate, and in the best interests of the Class Members and NP Skyloft DST (the “Trust”); that the Class has been provided with adequate due process; that the attorney’s fees to Class Counsel set forth in the Settlement Stipulation are reasonable; grant final approval of the settlement of the derivative and class claims against the Axonic Defendants; and enter a Final Judgment in the form agreed to by the Parties.

II. BACKGROUND

On May 11, 2022, after a three-week jury trial, a jury rendered a verdict in favor of Plaintiffs on derivative claims on behalf of NP Skyloft DST (the “Trust”) against Axonic in Cause Number D-1-GN-21-000097 (“Original Action”). On October 13, 2022, the court indicated that it would enter a judgment in favor of the Plaintiffs on behalf of the Trust in the amount of \$4,250,000.00 against Axonic.¹ Judgment on that verdict has not yet been entered. Axonic indicated they would vigorously appeal any adverse judgment entered against them by the Court.

On March 15, 2023, Class Counsel and counsel for Axonic conducted a full-day mediation before an experienced mediator. As a result of that mediation and subsequent negotiations over the following

¹ To the extent necessary, the Court can take judicial notice of the pleadings in the two related cases pending in Travis County District Court, the Original Action, D-1-GN-21-000097, and the severed action against the Nelson Parties, D-1-GN-22-1980.

year, Axonic agreed to pay a total of \$9,000,000 to resolve both the derivative claims tried to the Texas jury and direct and class action claims asserted against them arising out of the sale of interests in NP Skyloft DST, including claims asserted in cases pending in California.

On August 22, 2024, the Parties entered the Settlement Stipulation setting forth the specific terms and conditions of the Settlement. **Exhibit 1.** The Settlement provides, in relevant part, for:

- Axonic to pay a total amount of \$9,000,000 to establish a Settlement Fund, Section 3(b);
- The Settlement Fund will be allocated \$4,500,000 to NP Skyloft, DST in full and final settlement of all derivative claims (the “Derivative Claims Settlement”) and \$4,500,000 in full and final settlement of all direct claims that Class Members could have asserted against Axonic or the TCG Parties² (the “Direct Claims Settlement”), Section 3(c);
- NP Skyloft, DST will contribute the funds it receives in connection with the Derivative Claims Settlement to the Direct Claims Settlement for distribution to Class Members, *id.*;
- \$2,500,000 of the Settlement Fund will be subject to a holdback pending resolution of certain covered claims, to the extent any are brought, Section 3(d);
- Dismissals, releases, and covenants not to sue Axonic and the TCG Parties and other related parties as more fully set forth in the definition of “Released Parties”, Section 4;
- Notice to Class Members and opportunity to exclude themselves from the Direct Claims Settlement and to object to the Derivative Claims Settlement, Sections 9-10, 11-12;
- Distribution of the Settlement Fund by the Administrator to the Class Members *pro rata* in proportion to their interests in the Trust pursuant to a Plan of Distribution, Section 6;
- Attorney’s fees to Class Counsel, if approved by the Court, of 30% of the Settlement Fund, Section 5; and
- Dissolution of NP Skyloft, DST and for all assets, claims and causes of action other than Released Claims to be assigned and conveyed to a Liquidating Trust, Section 14.

To implement the Settlement, on August 26, 2024, Plaintiffs filed (1) a Supplemental Class Action Petition (for Settlement Purposes Only) against Axonic, and (2) a Motion to Sever the derivative claims

² “TCG Parties” includes TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC, and Triangle Capital Group, LLC and other as set forth in the definition of “Released Parties” in the Settlement Stipulation.

in the Original Action and class claims against Axonic asserted in the Supplemental Class Action Petition.

Exhibit 3.

On August 27, 2024, in the Original Action, the Court preliminarily approved of the Settlement Stipulation through entry of the Preliminary Class Action Settlement Approval Order (“Preliminary Order”). **Exhibit 2.** The Preliminary Order (1) granted preliminary approval of the settlement with Axonic; (2) certified a Class for settlement purposes only; (3) appointed Class Representatives and Class Counsel, (4) appointed the Administrator of the Settlement, (4) approved the form and manner of notice to the Class Members (“Notice”), and (5) set a Fairness Hearing on December 5, 2024. *Id.* The same day, the Court also granted the Motion to Sever, creating the instant case Cause Number D-1-GN-24-005548.

Exhibit 4.

On September 5, 2024, Axonic completed notice required by the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, to the appropriate state and federal officials, and on November 5, 2024, filed a certificate of service regarding the CAFA Notice. **Exhibit 7.**

On August 30, 2024, as required by the Preliminary Order, the Administrator sent the Notice by first class mail and email to all class members. The Administrator also caused the Notice to be posted to the website www.skyloftsettlement.com. On November 1, 2024, the Administrator filed a certificate of service regarding the Notice provided to the class members. **Exhibit 5, 6.**

On October 21, 2024, the deadline for exclusion requests to the Direct Claims Settlement and objections to the Derivative Claims Settlement passed. No exclusion requests were filed. One objection by Class Member Patenaude Properties LLC was timely filed and has not been withdrawn.

III. JURISDICTION

The Court has jurisdiction over the subject matter of this action pursuant to sections 1 and 8 of Article V of the Texas Constitution.

The Court has personal jurisdiction over all parties to this action, including all Class Members, because each Class Member (1) has been notified of their right to exclude themselves from the class, and (2) had sufficient contacts with the state in that they invested in NP Skyloft, DST, which had the purpose of purchasing the Skyloft Property located in Austin and the claims and controversies in this action related to the manner in which the Axonic Defendants caused the sale of the Skyloft Property. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 814 (1985) (holding that a state court may assert personal jurisdiction over nonresident plaintiff class members and apply its forum’s law provided the class members are notified of their right to seek exclusion from the class, and the forum has “a significant aggregation of contacts’ to the claims asserted by each member of the plaintiff class.”).

Moreover, because the Court has jurisdiction over the state law claims that are the subject of this action, it also has jurisdiction to approve the Settlement Stipulation, including the release of claims solely within the jurisdiction of federal law, like the securities claims asserted against the Axonic Defendants and released by the Settlement Stipulation. *See Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367,375 (1996) (holding that a class-action settlement in state court that released state claims as well as “claims solely within the jurisdiction of the federal courts” prohibited class members from pursuing the federal claims in federal court).

IV. ARGUMENT AND AUTHORITIES

Pursuant to Texas Rule of Civil Procedure 42(e)(1)(A), “the court must approve any settlement, dismissal, or compromise of the claims, issues, or defenses of a certified class.” The trial court must determine that “the settlement is fair, adequate, and reasonable,” and approval is within the sound discretion of the trial court. *Gen. Motors Corp. v. Bloyed*, 916 S.W.2d 949, 955 (Tex. 1996). “Factors the court should consider in determining whether to approve a proposed settlement are: (1) whether the settlement was negotiated at arms’ length or was a product of fraud or collusion; (2) the complexity,

expense, and likely duration of the litigation; (3) the stage of the proceedings, including the status of discovery; (4) the factual and legal obstacles that could prevent the plaintiffs from prevailing on the merits; (5) the possible range of recovery and the certainty of damages; (6) the respective opinions of the participants, including class counsel, class representatives, and the absent class members.” *Id.*

Delaware law, to the extent applicable to the derivative settlement on behalf of NP Skyloft DST, has a similar standard. *See* Del. Chan. Ct. R. 23.1(e); *Polk v. Good*, 507 A.2d 531, 536 (Del. 1986) (in determining whether a derivative settlement is fair, reasonable and adequate, trial court considers (1) the probable validity of the claims, (2) the apparent difficulties in enforcing the claims through the courts, (3) the collectability of any judgment recovered, (4) the delay, expense and trouble of litigation, (5) the amount to be paid as compared with the amount and collectability of a potential judgment, and (6) the views of the parties involved, pro and con).

A. The Settlement is fair, reasonable and adequate.

Each of these factors support approval of the Settlement Stipulation. The Settlement Stipulation was negotiated at arm’s length before an experienced mediator and drafted over many months. The Settlement Stipulation doubles the gross recovery of the proposed Judgment that the Court indicated it would enter, avoids a lengthy and complex appeal to the Texas Supreme Court and also avoids further federal litigation or arbitration of the securities class and individual mass actions, as well as potential lengthy appeals of the outcome of that litigation,³ and guarantees collectability.

While Class Counsel is confident in the viability of securities claims against Axonic and that any judgment of the derivative claims would be upheld on appeal, Axonic’s stated intent to rigorously defend and appeal any adverse rulings, in both Texas court and in connection with the related litigation pending in California state and federal court, is a significant obstacle to the Class’s recovery. Class Counsel, who

³ The procedural and substantive obstacles faced by Class Members based on rulings in the California Related Actions against Axonic are described in the Notice sent to Class Members. *See* Ex. 6, Notice, p. 2.

are experienced in securities and derivative class actions, believe the Settlement is fair and reasonable and within the range of similar recoveries, which is over 10% of the actual loss by Class Members. Only one of over 260 Class Members objected to the Settlement, and then only to its complexity and the attorney's fees provision. In sum, the Court should exercise its discretion to find the Settlement is fair, reasonable and adequate.

B. The Notice complied with due process and is the best notice practicable.

The Notice and manner of notice approved in the Settlement Stipulation and Preliminary Order, and served by the Administrator, complied with Tex. R. Civ. P. 42(c)(2) and Del. Chan. Ct. R. 23.1(d)(3). Class Members were provided with individual notice by U.S. mail and email, and by posting to www.skyloftsettlement.com, the website maintained by the Administrator, which is the "best notice practicable." **Exhibit 5.** The form of Notice approved by the Court included all the information required by Tex. R. Civ. P. 42(c)(2)(B), and was reasonably calculated to apprise potential Class Members of the pendency of the Action, their right to object to the proposed Settlement Stipulation, their right to appear at the Fairness Hearing, and their right to exclude themselves from the Class. **Exhibit 6.** Several Class Members requested and were provided additional information by the Administrator and/or Class Counsel. The adequacy of Notice is further demonstrated by the timely appearance of counsel on behalf of one objector. In sum, the Court should find the form and manner of Notice was reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice and met the requirements of due process.

Separately, the Court should find that the Axonic Defendants complied with the requirements for notice under CAFA, to the extent it applies. CAFA requires that, within ten days after a proposed class action is filed in court, each defendant that is participating in the settlement shall serve on the appropriate state official in each state where a class members resides as well as the appropriate federal official, a notice

of the proposed settlement containing: (1) a copy of the complaint and any materials filed with the complaint and any amended complaints; (2) notice of any scheduled judicial hearing in the class action; (3) any proposed or final notification to class members; (4) any proposed or final class action settlement; (5) any settlement or other agreement contemporaneously made between class counsel and counsel for defendants; (6) any final judgment or notice of dismissal; (7) (A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and (8) any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6). *See* 28 U.S.C. § 1715(b).

Here, as set forth in the Certificate of Service of the CAFA Notice, it was timely served on September 5, 2024. **Exhibit 7.** In addition, the CAFA Notice itself, which was attached to the Certificate of Service, demonstrates compliance with each of the eight requirements set forth in the CAFA. *Id.* Moreover, more than 90 days will have passed since service of the CAFA Notice before entry of the Final Approval Order. *See* 28 U.S.C. § 1715(d). As a result, the Court should find that the Axonic Defendants complied with CAFA's notice requirements.

C. The Attorney's Fees are reasonable.

The Settlement Stipulation provides for attorney's fees of 30% of the Settlement Proceeds, together with expenses, to compensate Class Counsel for fees and expenses incurred in connection with the litigation. **Exhibit 1**, §5(a). By separate Motion, Class Counsel will seek approval of those fees on a percentage basis and submit the information required by Tex. R. Civ. P. 42(h) and (i) sufficient to allow a lodestar cross-check. Only one Class Member has requested a reduction of the amount of the attorney's

fees award in the Settlement Stipulation, which is addressed in the Motion for Attorney's Fees.

D. The objection from Class Member Patenaude Properties LLC should be denied.

Class Member Patenaude Properties LLC timely filed an objection to final approval of the Settlement Stipulation. The objection "requests, at a minimum, that [Class] counsel's share of the Axonic settlement be reduced to 20%" in light of the 20% fee percentage in the pre-trial Liquidation Plan with the Nelson Parties. It further objects that the terms of the Settlement are "so exceedingly complex that they are virtually incomprehensible." Both basis for objection should be denied.

First, as explained in the Motion for Attorney's Fees, an amount of 30% attorney fee from the Settlement Fund is reasonable for a class and derivative settlement in a complex case entered after a full trial. *See* Motion for Attorney's Fees, pp. 9 – 14, citing *In re Activision Blizzard, Inc. Stockholder Litig.*, 124 A.3d 1025, 1070 (Del. Ch. 2015); *In re Dell Techs. Inc. Class V Stockholders Litig.*, 300 A.3d 679, 685 (Del. Ch. 2023); *Crouch v. Tenneco, Inc.*, 853 S.W.2d 643, 646 (Tex. App.—Waco 1993, writ denied). The 30% percentage is also consistent with the lodestar calculation of the actual hours expended by Class Counsel multiplied by a reasonable hourly rate. *See* Motion, pp. 17 – 21, and Brothers and Brownlie Declarations, attached.

Second, while the structure of the Settlement Stipulation is somewhat complex, it is necessary to resolve both the derivative claims asserted against Axonic in the Original Action and direct securities fraud claims and other claims against Axonic in the Related Actions pending in California. The derivative claims were brought on behalf of the Trust; the securities claims are brought on behalf of individual investors in the Trust arising out of statements in the Private Place Memorandum received by investors to induce them to invest in the Trust. These claims will be settled on a class basis, instead of through complex arbitrations or in federal court. As a practical matter, the \$9,000,000 Settlement Fund will benefit the same persons – per *pro rata* payments under the Distribution Schedule previously approved – but the structure

was necessary to fully and finally resolve the claims as required by Axonic. Additionally, both the Holdback amount and terms was required by Axonic and vigorously negotiated between the Parties. For this reason, the Settlement is not exceedingly complex or unfair or unreasonable, and the objection should be denied.

E. The Administrator is competent and the Plan of Distribution is fair and reasonable.

Finally, the Administrator Greg Milligan is prepared to administer the Settlement Fund and disburse the funds in accordance with the Settlement Stipulation, and is competent to do so. The Administrator has previously disbursed funds to the Class Members in connection with the first payment from the Nelson Parties and under the distribution procedures previously approved in Cause No. D-1-GN-22-001980. The Administrator is also prepared and competent to act as Liquidating Trustee to hold any assets and pursue any non-released claims on behalf of NP Skyloft DST after dissolution of the Trust per the terms of the Settlement Stipulation. By separate motion, the Administrator will request the Court grant him specific authority to act as Trustee for the Liquidating Trust, concurrent with the Court's Final Approval.

V. CONCLUSION

For the foregoing reasons, Class Representatives request that the Court approve the Settlement, enter Judgment in the form attached as **Exhibit 8**, and grant such other relief to which the parties may show themselves entitled.

Respectfully submitted,

CLASS COUNSEL:

Dated: November 5, 2024

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By: /s/ D. Douglas Brothers

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COUNSEL FOR AXONIC DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Motion for Final Approval was served by e-service through efile.texas.gov and/or email on the following counsel of record on the 5th of November, 2024 and will be posted to the website www.skyloftsettlement.com.

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_____/s/ Jennifer A. Lloyd_____
Jennifer A. Lloyd

EXHIBITS

Exhibit 1	Settlement Stipulation
Exhibit 2	Preliminary Approval Order
Exhibit 3	Supplemental Class Action Petition (for Settlement Purposes Only)
Exhibit 4	Order of Severance
Exhibit 5	Certificate of Service of Notice on Class Members
Exhibit 6	Class Notice Served on Members
Exhibit 7	Certificate of Service of CAFA Notice
Exhibit 8	[Proposed] Class Action Approval Notice and Final Judgment

EXHIBIT 1

STIPULATION OF SETTLEMENT AND RELEASES

This Stipulation of Settlement and Releases (“**Settlement Stipulation**”) is entered into as of August 22, 2024, between and among (a) Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust and Black Tortuga Group, LLC (collectively, the “**Named Plaintiffs**”), on behalf of themselves and, subject to Court approval, on behalf of all Settlement Class Members (as defined below) and derivatively on behalf of NP Skyloft DST; and (b) Axonic Credit Opportunities Master Fund LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP, ACO Skyloft Manager LLC (“**ACO Manager**”), Axonic Capital LLC, and Clayton DeGiacinto (collectively, the “**Defendants**”), each by and through their undersigned counsel. Named Plaintiffs and Defendants are collectively referred to in this Settlement Stipulation 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 261st Judicial District Court of Travis County, Texas (“**Underlying Litigation**”) wherein claims have been asserted relating to sale of beneficial interests in NP Skyloft DST, the management of the Skyloft Entities (defined below) and the purchase and sale of the Skyloft Property (defined below);

WHEREAS, Class Members have commenced other cases against the Defendants asserting both direct claims and derivative claims on behalf of NP Skyloft DST, arising out of or relating to the sale of beneficial interests in NP Skyloft DST, the management of the Skyloft Entities and the purchase and sale of the Skyloft Property, including (1) *Parziale v. Nelson, et al.*, No. 2:21-cv-01803 (C.D. Cal.); (2) *Puleo, et al. v. Nelson, et al.*, No. 2:21-cv-06443 (C.D. Cal.); (3) *Ames, et al. v. Nelson, et al.*, No. 2:22-cv-09400 (C.D. Cal.); and (4) *Collins v. NP Skyloft ST, LLC, et al.*, No. 30-2021-01184473-CU-MC-CXC (Cal. Sup. Ct., Orange Cnty.) (collectively, the “**Related Actions**”);

WHEREAS, simultaneous with filing this Settlement Stipulation, Named Plaintiffs will file a Supplemental Class Action and Shareholder Derivative Petition (for Settlement Purposes Only) and Motion to Sever (the “**Settlement Action**”) in the Underlying Litigation; and

WHEREAS, Defendants continue to deny that they are liable for any of the claims, whether direct of Class Members or derivative claims on behalf of NP Skyloft DST, asserted against them in the Settlement Action, in the Underlying Litigation, and in the Related Actions, but have agreed to enter into this Settlement Stipulation to avoid further risk, burden, expense, inconvenience, and distraction of further protracted litigation; and

WHEREAS, Named Plaintiffs and Lead Counsel (defined below) have concluded, after due investigation and carefully considering the relevant circumstances, that: (1) it is in the best interests of the Class (defined below) and NP Skyloft DST to enter into this Settlement Stipulation to avoid the uncertainties of litigation and to ensure that the benefits reflected in this Settlement Stipulation are obtained for the Class and derivatively for NP Skyloft DST; and (2) the settlement set forth in this Settlement Stipulation is fair, reasonable, and adequate within the meaning of Texas Rule of Civil Procedure 42 and in the best interests of the Class and NP Skyloft DST.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, it is agreed by, between and among the Parties that, subject to Court

approval, the Settlement Action shall be fully and completely settled, compromised, and dismissed with prejudice, without costs except as stated below, and that releases and covenants not to sue be extended, according to the following terms and conditions:

1. Definitions. For purposes of this Settlement Stipulation, in addition to any terms defined above and below, the following terms shall have the meanings:

“**CAFA Notice**” means the notice of this proposed Settlement in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*

“**Class**” means all Person(s) who purchased or otherwise acquired beneficial interests in NP Skyloft DST, a Delaware statutory trust, and held such interests at any point from November 7, 2018 to the Effective Date.

“**Class Member**” means a member of the Class.

“**Class Representatives**” means the Class Representatives appointed in the Preliminary Approval Order. For purposes of this Settlement Stipulation, the Parties stipulate that the Named Plaintiffs are the Class Representatives; *provided* that Defendants stipulate that the Named Plaintiffs are Class Representatives solely for purposes of this Settlement Stipulation and reserve all rights to seek discovery into the Named Plaintiffs’ adequacy as a Class Representative, or to challenge the Named Plaintiffs’ claim to status as a Class Representative, in the event this Settlement Stipulation is terminated pursuant to Section 20 below.

“**Covered Claims**” has the definition in the Confidential Addendum attached as Exhibit D.

“**Days**” means calendar days.

“**Defendants’ Counsel**” means the following lawyers and their respective law firms:

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10100 Santa Monica Blvd.
Suite 2200
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Bethany D. Simmons
Loeb & Loeb LLP
345 Park Ave.
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-and-

Steve Skarnulis
Ben Evans

Cain & Skarnulis, PLLC
303 Colorado St.
Suite 2850
Austin, TX 78701

“**Derivative Claims Settlement**” means the derivative claims on behalf of NP Skyloft DST that have been or may have been asserted against the Defendants in the Settlement Action, Underlying Action and Related Actions.

“**Direct Claims Settlement**” means the individual direct and class claims that have been or may have been asserted against the Defendants by Class Members in the Settlement Action, Underlying Action and Related Actions.

“**Distribution Checks**” means the checks issued by the Settlement Administrator to Class Members for their respective portions of the Net Settlement Funds.

“**Effective Date**” has the meaning set forth in Section 13 below.

“**Exclusion Deadline**” means the date identified in the Preliminary Approval Order and Settlement Notice by which a Class Member must file or serve an Exclusion Request.

“**Exclusion Request**” means a request by a Class Member to be excluded from the Settlement that meets all of the requirements for exclusion as set out in Section 11 of this Settlement Stipulation, the Settlement Notice, and as ordered by the Court.

“**Execution Date**” means the date this Settlement Stipulation is executed by all Parties or their counsel on their behalf.

“**Fairness Hearing**” means the hearing at which the Court will make a final determination as to whether the terms of the Settlement Stipulation are fair, reasonable, and adequate, and whether the settlement should be finally approved by the Court under Texas Rule of Civil Procedure 42.

“**Final Approval Motion**” means the motion filed by Lead Counsel in advance of the Fairness Hearing requesting the Final Approval Order.

“**Final Approval Order**” means the order entered by the Court after the Fairness Hearing, which must be materially in the form attached as Exhibit B, except to the extent it may be modified by the Court with consent of the Parties or by other agreement of the Parties, that has not been reversed, vacated, materially modified, or dismissed on appeal in whole or in part and that is no longer appealable, and that, among other things, approves the Settlement, dismisses the Settlement Action with prejudice and releases the Released Parties of the Released Claims.

“**Lead Counsel**” has the meaning set forth in the Court’s Preliminary Approval Order, which means the following lawyers and law firms:

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George Brothers Kincaid & Horton, L.L.P.
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Austin, Texas 78701
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-and-

Robert W. Brownlie (Robert.Brownlie@brownliehansen.com)
Brownlie Hansen L.L.P.
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858.877.0322

“Liquidating Trust” means that certain trust named the “Skyloft Liquidating Trust” that will come into existence on the Effective Date, which trust shall be formed pursuant to, and governed by, the provisions of the Liquidating Trust Order and the Liquidating Trust Agreement.

“Liquidating Trust Agreement” means the Skyloft Liquidating Trust Agreement governing the Liquidating Trust dated as of the Effective Date, substantially in the form included as an exhibit to the Liquidating Trust Order.

“Liquidating Trustee” means the trustee of the Liquidating Trust, appointed pursuant to the Liquidating Trust Order and the Liquidating Trust Agreement.

“Liquidating Trust Order” means the order of the Court appointing the Liquidating Trustee, approving the Liquidating Trust Agreement, and effectuating the provisions of Section 14 of this Settlement Stipulation, and which must be materially in the form agreed to by the Parties.

“Nelson Parties” means Nelson Partners, LLC, Nelson Brothers Property Management, Inc d/b/a Nelson Partners Property Management, Inc., NP Skyloft Equity, LLC, and Patrick Nelson, and each of their respective affiliates or immediate family members (which shall include children, parents, spouses, and siblings).

“Net Settlement Funds” means the amount of funds to be paid on behalf of the Defendants referenced in Section 3(c) of this Settlement Stipulation less: (1) attorneys’ fees for Lead Counsel that are approved by the Court, (2) reimbursable expenses of Lead Counsel that are approved by the Court, (3) amounts paid pursuant to Section 6 from the Holdback Funds in connection with Covered Claims, (4) amounts paid for Taxes and Tax Expenses, (5) amounts for payment to the Settlement Administrator and his Retained Personnel, including indemnity advances, allowed pursuant to Section 7, and (6) any costs of notice.

“Objection Deadline” means the date identified in the Preliminary Approval Order and Settlement Notice by which a Class Member must file or serve written objections, if any, to the Settlement in accordance with Section 12 of this Settlement Stipulation. The Objection Deadline shall be no later than forty-five (45) Days before the Fairness Hearing or as the Court may otherwise direct.

“Person(s)” means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and his, her or its spouses, heirs, predecessors, successors, representatives, or assignees.

“Preliminary Approval Order” means the proposed order preliminarily approving the Settlement and directing notice to the Class, and which must be materially in the form attached hereto as Exhibit C, except to the extent modified by the Court with consent of the Parties or by other agreement of the Parties.

“Released Claims” means any and all manner of claims and potential claims, including Unknown Claims, against the Released Parties, including but not limited to any and all known and unknown allegations, charges, complaints, claims, judgments, debts, setoffs, rights of recovery, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, expenses (including attorneys’ fees and costs incurred), punitive or exemplary damages, equitable, declaratory, or other grounds for relief, of any nature whatsoever, known or unknown, contingent or non-contingent, that the Releasing Parties have, that the Releasing Parties may have had, or that have been or may have been made directly or indirectly, by, through or under the Releasing Parties, whether by subrogation, impleader, interpleader, derivatively on behalf of any entity or otherwise, against the Released Parties, whether or not apparent or yet to be discovered, or which may hereafter develop, whether arising in law or in equity including but not limited to under any federal, state, or local law, rule, or regulation, for any conduct, duties, obligations, acts or omissions in connection with or arising out of or relating in any way to any purchase, sale or investment in the beneficial interests in NP Skyloft DST, the management or operation of the Skyloft Entities (including, without limitation relating to taxes, preparation or filing of tax returns or statements related to income and expenses and like matters) and/or in any way related to the Skyloft Property. For avoidance of doubt, the claims and/or causes of action asserted or that could have been asserted in the Settlement Action, Underlying Litigation and the Related Actions against the Released Parties constitute Released Claims. For further avoidance of doubt, Released Claims does not include or refer to any claims by Releasing Parties against (i) any of the broker-dealers, brokers, or registered representatives involved in the marketing or sale of beneficial interests in NP Skyloft DST (**“Brokers”**), and (ii) any of the Nelson Parties, and nothing in this release language nor any other provision of this Stipulation is intended to release any claims Releasing Parties may have against such Brokers and the Nelson Parties.

“Released Parties” means Defendants, TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC, and Triangle Capital Group, LLC, together with each of their respective, past or present directors, officers, employees, partners, member firms or affiliates, principals, agents, predecessors, successors, parents, subsidiaries, divisions, joint ventures, attorneys, accountants, insurers, co-insurers and reinsurers, assigns, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, personal or legal representatives, estates, administrators, predecessors, successors and assigns or other individuals or entities in which Defendants, TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC and/or Triangle Capital Group, LLC have a controlling interest or which is related to or affiliated with any of the Defendants, TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC and/or Triangle Capital Group, LLC. For avoidance of doubt, the reference to “agents” does not include or refer to any of the Brokers, and nothing in this release language nor any other provision of this Settlement Stipulation is intended to release any claims Releasing Parties may have against such Brokers. For further avoidance of doubt, Released Parties does not include any of the Nelson Parties.

“Releasing Parties” means each of the Named Plaintiffs (individually and, with the Court’s approval, in their capacity as Class Representatives and derivatively on behalf of NP Skyloft DST), and the Settlement Class Members who have not excluded themselves from the Settlement pursuant to Section 11, together with any Person(s) claiming by, through, or on behalf of any of the foregoing, and shall include, for avoidance of doubt, natural persons, entities, trusts, or organizations of any kind or nature, as well as the predecessors, successors, heirs, executors, administrators, and assigns of any of the foregoing.

“Settlement” means the Direct Claims Settlement and the Derivative Claims Settlement as set forth in this Settlement Stipulation.

“Settlement Administrator” means, subject to the Court’s approval: Gregory S. Milligan, Executive Vice President, HMP Advisory Holdings, LLC, dba Harney Partners, Westech 360, 8911 Capital of Texas Highway, Suite 2120, Austin, Texas 78759.

“Settlement Administrator Counsel” means, subject to the Court’s approval: Jason M. Rudd and Catherine Curtis, Wick Phillips Gould and Martin, LLP, 3131 McKinney Ave, Suite 500, Dallas, Texas 75204, jason.rudd@wickphillips.com, catherine.curtis@wickphillips.com.

“Settlement Class Members” are those Class Members who do not exclude themselves from the Direct Claims Settlement pursuant to Section 11.

“Settlement Fund” means the escrow account to be treated as a Qualified Settlement Fund within the meaning of Treasury Regulation § 1.468B-1 and established pursuant to Section 3 of this Settlement Stipulation, to be comprised of the Direct Claims Fund the and Derivative Claims Fund, including all monies held in the escrow account in accordance with the terms of this Settlement Stipulation.

“Settlement Notice” means a notice of the proposed Settlement to be provided to the members of the Class, attached as Exhibit A, and to be posted on the website for the case hosted on the Settlement Administrator’s site, <https://www.skyloftsettlement.com/>

“Settlement Payment” means the payment of benefits from the Settlement Fund to Class Members in accordance with Section 7 of this Settlement Stipulation.

“Skyloft Entities” means NP Skyloft DST, NP Skyloft JV, LLC, NP Skyloft ST, LLC, NP Skyloft IB, LLC, and NP Skyloft Leaseco, LLC.

“Skyloft Property” means that certain real property located at 507 W. 23rd Street, Austin, Texas 78705, and all personal property and other rights appurtenant thereto.

“Tax Disclosure” means a disclosure for federal income tax purposes to be provided to Class Members containing sufficient financial information related to NP Skyloft DST and the Skyloft Property for Class Members to use for filing personal federal income taxes related to their beneficial interests in NP Skyloft DST.

“Tax Expenses” means the expenses and costs incurred by Lead Counsel or the Settlement Administrator in connection with determining the amount of, and paying, any taxes owed by the Settlement Fund (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing, or failing to file, tax returns for the Settlement Fund).

“Taxes” means all: (i) taxes or other similar imposts or charges (including any estimated taxes, interest, penalties, or additions to tax) arising with respect to the income earned by the Settlement Fund, including any taxes or tax detriments that may be imposed upon the Released Parties with respect to any income earned by the Settlement Fund for any period during which the Settlement Fund does not qualify as a “Qualified Settlement Fund” within the meaning of Treasury Regulation § 1.468B-1 (or any relevant equivalent for state tax purposes); and (ii) other taxes imposed on or in connection with the Settlement Fund.

“Unknown Claims” means any and all claims that a Releasing Party does not know or suspect to exist in the Releasing Party’s favor as of the Effective Date, which if known by the Releasing Party might have affected such Releasing Party’s decisions with respect to the Settlement. With respect to any and all Released Claims against any and all Released Parties, the Parties stipulate and agree that, by operation of the Final Approval Order, upon the Effective Date, the party providing the release shall have expressly waived the provisions, rights and benefits of California Civil Code § 1542 or any federal, state or foreign law, rule, regulation or common-law doctrine that is similar, comparable, equivalent or identical to, or that has the effect in whole or part of, Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR

HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

2. Submission of the Settlement to the Court for Approval.

(a) The Parties agree to recommend approval of the Settlement by the Court as being fair, reasonable, and adequate. In that regard, the Parties agree that, as soon as practicable after the Execution Date, Lead Counsel shall submit the Settlement Stipulation, together with its exhibits, to the Court and shall apply for entry of the Preliminary Approval Order preliminarily approving the proposed Settlement, certifying the Class, and setting a date for the Fairness Hearing.

(b) Lead Counsel shall request that, after the Settlement Notice is complete, the Court hold the Fairness Hearing to approve the Settlement as set forth in this Settlement Stipulation. The Fairness Hearing shall be scheduled no earlier than ninety (90) Days after the CAFA Notices are mailed to ensure compliance with 28 U.S.C. § 1715.

(c) Before the Fairness Hearing, Lead Counsel shall file the Final Approval Motion, requesting that the Court enter the Final Approval Order. The proposed Final Approval Order that will be filed with the Final Approval Motion shall be in a form agreed upon by Lead Counsel, Defendants' Counsel, and Settlement Administrator's Counsel and shall, among other things:

(i) Determine that the Settlement is fair, adequate, and reasonable;

(ii) Determine that the Settlement Notice provided satisfied due process requirements;

(iii) Dismiss the Settlement Action with prejudice;

(iv) Release the Released Parties from the Released Claims; and

(v) Reserve the Court's continuing and exclusive jurisdiction over Defendants and all Class Members (including any objectors) to administer, supervise, construe, and enforce this Settlement Stipulation and the Final Approval Order in accordance with their terms; and over any action against the Settlement Administrator or any Retained Personnel, in each case in its capacity as such, and upon a motion by the Settlement Administrator, the Court may enter an order relieving the Settlement Administrator, his agents, professionals, and employees of any further duties, discharging, and releasing the Settlement Administrator..

3. Settlement Fund.

(a) The Settlement Administrator, in coordination with Lead Counsel, shall establish or cause to be established an account or accounts to be used in connection with administering the Settlement Fund. Lead Counsel or the Settlement Administrator shall

provide Defendants with all information necessary to complete a wire transfer into the accounts.

(b) Within sixty (60) Days of the Final Approval Order becoming final and non-appealable, Defendants shall deposit or cause to be deposited into the Settlement Fund the amount of Nine Million United States Dollars (\$9,000,000.00). None of the Defendants shall have any liability, obligation, or responsibility whatsoever for making any other payment into the Settlement Fund.

(c) The Settlement Fund shall be allocated into two funds: (1) the first fund shall be allocated to the Derivative Claims Settlement (the “**Derivative Claims Fund**”) and shall be in the amount of Four Million Five Hundred Thousand United States Dollars (\$4,500,000), and (2) the second fund shall be allocated to the Direct Claims Settlement (the “**Direct Claims Fund**”) and shall be in the amount of Four Million Five Hundred Thousand United States Dollars (\$4,500,000). Subject to Court approval, NP Skyloft DST will contribute the Derivative Claims Fund to the Direct Claims Fund for distribution to Class Members.

(d) Two Million Five Hundred Thousand United States Dollars (\$2,500,000) of the Direct Claims Fund shall be held back from distribution out of the Settlement Fund (the “**Holdback Fund**”).

(i) In accordance with the procedures set forth in this subsection (d), the Holdback Fund shall be used to pay (1) any and all attorneys’ fees, costs, and expenses over \$200,000 in the aggregate incurred by the Released Parties after the Effective Date relating to or arising from any Covered Claims, (2) amounts necessary for the Released Parties to settle any Covered Claims, and (3) judgments entered against the Released Parties relating to or arising from any Covered Claims (subsections 1, 2, and 3, collectively, the “**Permitted Uses**”). For avoidance of doubt, Permitted Uses excludes any attorneys’ fees, costs, or expenses incurred by the Released Parties relating to or arising from the Settlement Action, Underlying Action and/or Related Actions; amounts incurred by the Released Parties to settle any claims asserted in the Settlement Action, Underlying Action and/or Related Actions, or judgment entered against the Released Parties in the Settlement Action, Underlying Action and/or Related Actions.

(ii) Any Released Party shall notify Lead Counsel of any Covered Claims within five (5) business days of receiving notice of the existence of a Covered Claim.

(iii) Any Released Party shall notify Lead Counsel within five (5) business days of receiving invoices for attorneys’ fees, expenses and costs arising out of or relating to Covered Claims that exceed the \$200,000 threshold.

(iv) Any Released Party shall notify Lead Counsel and the Settlement Administrator of their intent to use Holdback Funds for Permitted Uses and the amount no less than twenty-one (21) days before any such proposed release of Holdback Funds. Lead Counsel shall state its dispute as to the use of the Holdback Funds for such purposes within fourteen (14) days of receipt of notice of the proposed use. If Lead Counsel does not dispute the use of the Holdback Funds within the required time period, the Settlement Administrator shall release the Holdback Funds to the Released Party that provided the notice by no later than twenty-one days after the initial notice.

(v) Any dispute between any Released Party and Lead Counsel regarding the use of the Holdback Funds for Permitted Uses shall be resolved by the district court in the Settlement Action on an expedited basis. Upon resolution of any dispute related to the use of the Holdback Funds, the Settlement Administrator shall make payments to the Released Parties from the Holdback Fund in accordance with the court's ruling.

(vi) The Settlement Administrator shall maintain the Holdback Fund until the later of (1) January 1, 2027, (2) the date of entry of a final non-appealable order resolving all Covered Claims, and (3) the entry of a final non-appealable order resolving any disputes regarding the use of Holdback Funds for Permitted Uses (the "**Holdback Termination Date**").

(e) The Settlement Fund shall be administered by the Settlement Administrator pursuant to this Settlement Stipulation and subject to the Court's continuing supervision and control. No monies shall be disbursed from the Settlement Fund prior to the Effective Date and without the specific authorization of the Court, except in the event of termination of this Settlement Stipulation and return of the Settlement Fund to the Defendants pursuant to Section 20 (upon termination of this Settlement Stipulation) below.

(f) The Settlement Fund shall be invested by the Settlement Administrator in short-term (up to one year maturity) United States agency or Treasury securities or other instruments backed by the full faith and credit of the United States government or an agency thereof, or fully insured by the United States government or an agency thereof, and the proceeds of these instruments shall be reinvested in similar instruments at their then-current market rates as they mature. In the event that the yield on securities identified herein is negative, in lieu of purchasing such securities, all or any portion of the Settlement Fund held may be deposited in a non-interest bearing account that is fully insured by the Federal Deposit Insurance Corporation. All risks related to the investment of the Settlement Fund in accordance with the investment guidelines set forth in this Section shall be borne by the Settlement Fund.

(g) All funds held by the Settlement Administrator shall be deemed and considered to be in the Court's custody and shall remain subject to the jurisdiction of the Court, until such time as such funds are either returned to Defendants pursuant to Section 20 of this Settlement Stipulation (upon termination of this Settlement Stipulation)

or distributed subsequent to the Effective Date pursuant to the Plan of Distribution (described in Section 6) approved by the Court or pursuant to other orders of the Court.

4. Dismissals, Releases and Covenants Not to Sue.

(a) Releases

(i) Subject to Court approval, Named Plaintiffs, in their individual and representative capacities as Class Representatives on behalf of all Class Members and derivatively on behalf of NP Skyloft DST, agree that this Settlement Stipulation shall be in full and final disposition of: (x) the Settlement Action against the Defendants; (y) any and all Released Claims by all Releasing Parties as against all Released Parties; and (z) the Related Actions, including all claims that were raised or could have been raised therein.

(ii) Upon final approval of the Settlement reflected in this Settlement Stipulation, and as part of the entry of the Final Approval Order, the Settlement Action shall be dismissed with prejudice as to the Defendants.

(iii) Upon the Effective Date, the Releasing Parties hereby release, waive, relinquish, and discharge to the fullest extent permitted by law, the Released Parties for and from any and all Released Claims, that any of the Releasing Parties have or could have made against the Released Parties in any capacity, whether direct, derivative, or otherwise.

(iv) The Releasing Parties acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever release, waive, relinquish and discharge the Released Claims and that, notwithstanding the discovery or existence of any such additional or different facts, as to which the Releasing Parties expressly assume the risk, they freely and voluntarily give the release as set forth above.

(b) Covenant Not to Sue. Upon the Effective Date, the Releasing Parties hereby agree and covenant not to sue any of the Released Parties with respect to any Released Claims or to assist any third party in commencing or maintaining any suit or action against any Released Party related to or arising from the Released Claims. This covenant not to sue extends to asserting, commencing, prosecuting, instituting, or in any way participating in the commencement or prosecution of any action or proceeding, in any forum, relating to the Released Claims against the Released Parties.

(c) Dismissals. For avoidance of doubt, the claims and/or causes of action asserted or that could have been asserted in the Underlying Litigation and the Related Actions against the Released Parties constitute Released Claims. Within seven (7) Days of the Effective Date, the Parties hereto, and their counsel, shall do all things, including, but not limited to, the execution of additional documents, necessary to cause all the claims

asserted in the Underlying Litigation and the Related Actions to be dismissed with prejudice and without costs as against the Released Parties.

5. Attorneys' Fees and Expenses.

(a) At the same time as the filing of the Final Approval Motion, Lead Counsel will apply to the Court for an award of attorneys' fees equal to 30% of the Settlement Fund, together with such expenses incurred as are approved by the Court for reimbursement, subject to approval by the Court. These funds shall be sought to compensate Lead Counsel for fees and expenses incurred in connection with the Underlying Litigation, Related Actions and Settlement Action. Defendants agree not to object to a fee award in this amount. Any fee awarded by the Court shall in no way alter the total amount required to be deposited by Defendants into the Settlement Fund as stated in section 3(b).

(b) Payment of attorneys' fees and expenses approved by the Court shall be made from the Settlement Fund within thirty (30) Days of the Effective Date, and the Released Parties shall have no responsibility or liability for such fees or expenses beyond the initial funding of the Settlement Fund under Section 3. Any application for attorneys' fees and expenses is not a term of this Settlement Stipulation, and it is not a condition of this Settlement Stipulation that any award of attorneys' fees and expenses, or particular amount or particular percentage award of attorneys' fees and expenses, be approved. Any application for attorneys' fees and expenses shall be considered by the Court separate and apart from its consideration of the fairness, reasonableness, and adequacy of the Settlement, and any order or proceeding relating to such applications for fees and expenses, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate to terminate or cancel this Settlement Stipulation or the Settlement as to Defendants, or affect the finality or binding nature of any of the releases set forth in this Settlement Stipulation.

(c) The Class Representatives appointed in the Preliminary Approval Order will be entitled to an incentive payment of \$5,000 each for their service, subject to approval by the Court, which will be paid from the Settlement Funds as a distribution in accordance with Section 6 below.

6. Distribution of Settlement Funds to Settlement Class Members.

(a) Class Members will receive a *pro rata* distribution of the Net Settlement Funds in accordance with the procedures set forth in this Section 6 (the "**Plan of Distribution**"). Each Class Member's *pro rata* distribution will be based on the "Allowed Claim Amount" and "Pro Rata Percentage" set forth in the Notice of First Distribution Schedule and Response Deadline pursuant to the Distribution Procedures dated March 31, 2023, (the "**Prior Distribution Notice**") as informed, supplemented, and amended pursuant to the Unopposed Order Approving Distribution Procedures Pursuant to Plan of Liquidation Sections 5(b) and 10 entered by the Court (the "**Distribution Procedures Order**") in Cause No. D-1-GN-22-001980. Once the Plan of Distribution below is approved by the Court in the Final Approval Order, any order or proceeding relating to the Plan of Distribution, or any appeal of any order relating thereto or reversal or modification thereof, shall not operate

to terminate or cancel this Settlement Stipulation or the Settlement as to Defendants, or affect the finality or binding nature of any of the releases set forth in this Settlement Stipulation.

(b) Except for their obligation to fund the Settlement Fund in Section 3, Defendants shall have no responsibility, obligations, or liabilities whatsoever with respect to the Plan of Distribution or implementation of any plan of distribution, or with respect to any other issue arising out of or relating to the administration or distribution of the Settlement Fund.

(c) The Plan of Distribution shall include the following proposed procedures:

(i) NP Skyloft DST will, with Court approval, contribute the Derivative Claims Fund to the Direct Claims Fund, for distribution to Settlement Class Members. The Settlement Administrator will mail the Distribution Checks corresponding to the Settlement Funds, less the Holdback Funds, less attorneys' fees and expenses as approved by the Court, to the Settlement Class Members eligible for a Settlement Payment within forty-five (45) Days after payment by Defendants into the Settlement Fund.

(ii) Class Members will be entitled to participate in the Settlement and receive Distribution Checks representing each Class Member's *pro rata* share of the Net Settlement Fund based on the Prior Distribution Notice.

(iii) Eligibility for a Distribution Check from the Settlement Fund is limited to Class Members who have not objected to the proposed Distribution Amount by the Settlement Administrator.

(iv) No payment is due to any Class Member until that Class Member meets the requirements of this Section 6, including all subparts. Class Members who do not meet the eligibility requirements to be Class Members have no right to or interest in any relief as to the Settlement Fund, and no debt exists between the Settlement Fund, Defendants, and any such Class Members.

(iv) The Settlement Administrator will mail the Distribution Checks corresponding to the remainder of the Direct Claims Fund, less any Holdback Funds disbursed to the Releasing Parties in connection with Covered Claims, less Lead Counsel's attorneys' fees and expenses as approved by the Court, less paid, incurred, and budgeted reserve for Settlement Administrator's and Retained Personnel fees and expenses, including any indemnity claims, as approved under the procedures set forth in this Settlement

Stipulation without further order of the Court or as otherwise approved by the Court, to the Settlement Class Members eligible for a Distribution Check within thirty (30) days after the Holdback Termination Date.

(vi) The Prior Distribution Notice, as amended and supplemented pursuant to the Distribution Procedures Order and this Settlement Stipulation, shall determine the *pro rata* amounts the Settlement Administrator distributes to Class Members and Settlement Class Members without further order of the Court or notice to the Class Members and Settlement Class Members; *provided however*, the Settlement Administrator is permitted, but not required, to request further orders from the Court regarding distributions and any other matters. To the extent of any inconsistency between the Plan of Distribution and the Distribution Procedures Order, the Plan of Distribution will control.

7. Settlement Administrator.

(a) The Settlement Administrator, under the supervision of Lead Counsel, shall be responsible for dissemination of the Settlement Notice as ordered and approved by the Court, management of Class Member data, tracking, reviewing and approving claims, and distributing appropriate amounts to Class Members with respect to the Derivative Claims Settlement and to Settlement Class Members with respect to the Direct Claims Settlement. The Settlement Administrator shall be paid a fee to perform all responsibilities as set forth in the Settlement Stipulation at the Settlement Administrator's ordinary hourly rate of \$600.00. The Settlement Administrator may retain and reasonably compensate counsel and other professionals, including accountants and claims agent as needed, to assist in his duties as Settlement Administrator (the "**Retained Personnel**") on such terms as the Settlement Administrator deems appropriate without further Court approval. The Settlement Administrator shall pay his compensation and expenses, the costs and expenses for Retained Personnel, the costs of claims administration, and the Settlement Notice from the Settlement Fund without further order of the Court. For avoidance of doubt, the Settlement Administrator's retention of the following professionals is approved: (i) HMP Advisory Holdings, LLC d/b/a Harney Partners as financial advisors with the following rates: Erik White, managing director at \$525.00; and (ii) Wick Phillips Gould and Martin, LLP as counsel with the following rates: Jason M. Rudd, partner at \$695.00 per hour, Catherine Curtis, associate at \$550.00 per hour.

(b) The Settlement Administrator, the Retained Personnel, and the Settlement Administrator's agents (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), shall not be liable for actions taken or omitted in its capacity as, or on behalf of, the Settlement Administrator, except those acts arising out of its or their own willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts, and each shall be entitled to indemnification and reimbursement for fees and

expenses in defending any and all of its actions or inactions in its capacity as, or on behalf of, the Settlement Administrator, provided, however, such indemnity shall not apply to the extent it is found in a final judgment by a court of competent jurisdiction (not subject to further appeal) to have resulted from the willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. The Settlement Administrator shall pay any indemnification claim of the Indemnified Parties from the Settlement Fund. Any Indemnified Party shall be entitled to advances from the Settlement Fund to cover its actual and reasonably anticipated expenses of defending itself in any action threatened against or brought against it as a result of any act or omission, actual or alleged, of the Indemnified Party in its capacity as such. The Indemnified Party shall provide an undertaking to repay promptly any amounts so paid, advanced, or reimbursed upon the entry of a final order finding that such Indemnified Party was not entitled to indemnity under this Settlement Stipulation.

(c) The Settlement Administrator will be responsible for administering the Settlement Fund, including payment of all Distribution Checks as described in Section 6. The Settlement Administrator may establish and withhold from any distribution of the Settlement Fund such reserves that the Settlement Administrator determines in his sole judgment.

(d) The Settlement Administrator is entitled to rely, in good faith, on the advice of his Retained Personnel and on information provided by the Defendants and their counsel and the Lead Counsel. The Settlement Administrator is authorized to seek further orders from the Court as the Settlement Administrator deems appropriate in his sole judgment.

(e) Any Class Member who fails to submit to the Settlement Administrator paperwork reasonably necessary for the Settlement Administrator to make a Settlement Payment to such Class Member shall be barred from any participation in distributions from the Settlement Fund, but otherwise shall be bound by all of the terms of this Settlement Stipulation and the Settlement, including the terms of the Final Approval Order, and shall be Releasing Parties barred from bringing any action against any Released Parties concerning any Released Claims.

(f) The Released Parties shall have no liability, obligation, or responsibility for reviewing or challenging claims, or administering, settling, or disbursing claim distributions from the Settlement Fund.

(g) If there is any balance remaining in the Settlement Fund after a reasonable period of time after the initial date of distribution of the Settlement Fund, the Settlement Administrator shall, if feasible, allocate such balance among authorized Settlement Class Members in an equitable and economic fashion. These redistributions shall be repeated until the remaining balance in the Settlement Fund is negligible, and any such remaining balance shall be donated to an appropriate 501(c)(3) non-profit organization selected by Lead Counsel and approved by the Court.

8. Taxes Related to Settlement Fund.

(a) The Parties agree that the Settlement Fund is intended to be treated at all times as a “**Qualified Settlement Fund**” within the meaning of Treasury Regulation § 1.468B-1 and agree not to take any position for Tax purposes inconsistent therewith. The Settlement Administrator shall timely make such elections as necessary or advisable to carry out the provisions of this Section 8 of this Settlement Stipulation including the “relation-back election” (as defined in Treasury Regulation § 1.468B-1) back to the earliest permissible date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Settlement Administrator to timely and properly prepare and deliver the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing(s) to occur.

(b) For purposes Section 1.468B of the Internal Revenue Code and the Treasury regulations thereunder, the Settlement Administrator shall be designated as the “administrator” of the Settlement Fund. The Settlement Administrator shall timely and properly file all income, informational, and other tax returns necessary or advisable with respect to the Settlement Fund (including, without limitation, the returns described in Treasury Regulation § 1.468B-2(k)). Such returns shall be consistent with this Section 8 and in all events shall reflect that all Taxes on the income earned by the Settlement Fund shall be paid out of the Settlement Fund as provided herein.

(c) All Taxes and Tax Expenses shall promptly be paid out of the Settlement Fund by the Settlement Administrator without prior order from the Court. Taxes shall be treated as, and considered to be, a cost of administration of the Settlement Fund, and the Settlement Administrator shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Settlement Class Member authorized by the Court any funds necessary to pay such amounts including the establishment of adequate reserves for any Taxes (as well as any amounts that may be required to be withheld under Treasury Regulation § 1.468B-2(1)(2)). The Parties agree to cooperate with the Settlement Administrator, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Section.

(d) Neither the Parties nor their counsel shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the Settlement Administrator or any other person, or any of their respective designees or agents, in connection with the administration of the Settlement Fund or otherwise; (ii) any plan of distribution; (iii) the determination, administration, calculation, or payment of any claims asserted against the Settlement Fund; (iv) any losses suffered by, or fluctuations in the value of, the Settlement Fund; or (v) the payment or withholding of any Taxes and/or costs incurred in connection with the taxation of the Settlement Fund or the filing of any returns.

9. Notice to the Class. The Settlement Notice shall be approved by the Court prior to distribution and shall set forth a summary of the terms of the Settlement Stipulation (including a description of the Released Claims), the proposed Plan of Distribution, Lead Counsel’s request for attorneys’ fees and expenses, the date and time of the Fairness

Hearing, the right to object to the Settlement, and the right to request exclusion from the Settlement.

10. CAFA Notice. Within ten (10) Days following the filing of the Motion for Preliminary Approval, the Defendants shall serve the CAFA Notice in compliance with the requirements of the federal Class Action Fairness Act, 28 U.S.C. § 1711 *et seq.*
11. Requests for Exclusion from the Settlement. Any member of the Class may opt out of the Direct Claims Settlement by submitting a written Exclusion Request to the Settlement Administrator at the address set out in the Settlement Notice prior to the Exclusion Deadline. Exclusion Requests must state the Class Member's full name, address, and telephone number; a statement that the Class Member wishes to be excluded from the Direct Claims Settlement; the case name and case number; and the amount of beneficial interests in NP Skyloft DST held by the Class Member. Every Class Member who does not timely and properly submit an Exclusion Request shall be bound by all proceedings, orders, and judgments in the Settlement Action. Class Members who timely submit Exclusion Requests have the right to revoke their Exclusion Request in writing up to seven (7) Days before the Fairness Hearing.
12. Objections to the Settlement. Class Members who have not excluded themselves from the Direct Claims Settlement pursuant to Section 11 may object to the proposed Direct Claims Settlement by submitting a written statement noting the Class Member's objection to the Court and served on all counsel of record prior to the Objection Deadline. Likewise, any Class Member may object to the proposed Derivative Claims Settlement by submitting a written statement noting the Class Member's objection to the Court and served on all counsel of record prior to the Objection Deadline. A written objection must state the objecting Class Member's full name, address, and telephone number, and that of the Class Member's counsel, if any; the grounds for all objections, stated with specificity, and any evidence the objecting Class Member wishes to introduce in support of the objections; whether the objection applies only to the objector, to a specific subset of the Class, to the entire Class, or to the proposed Derivative Claims Settlement; proof of membership in the Class; a statement as to whether the Class Member intends to appear at the Fairness Hearing, either individually or through the Class Member's counsel; the Class Member's signature; and the case name and case number. Any Class Member who fails to comply with the provisions of this Section shall waive and forfeit any and all rights the Class Member may have to appear separately and/or to object, and shall be bound by all the terms of the Settlement Stipulation and by all proceedings, orders, and judgments in the Settlement Action.
13. Effective Date. The Effective Date of this Settlement shall be the date when all the following have occurred:
 - (a) entry of the Preliminary Approval Order;
 - (b) the Fairness Hearing, approval by the Court of the Settlement, and issuance of the Final Approval Order, as prescribed by Texas Rule of Civil Procedure 42 and

issuance by the Court of a judgment and Final Approval Order without material change to the Parties' agreed-upon proposed Final Approval Order as described in Section 2(c); and

(c) the time for seeking appellate or other review of the Final Approval Order has expired, and no appeal or petition for rehearing or review has been timely filed; or the Settlement is affirmed on appeal or review without material change, no other appeal or petition for rehearing or review is pending, and the time period during which further petition for hearing, review, appeal, or certiorari could be taken has finally expired.

The Effective Date shall not be affected by any appeal or other proceeding regarding solely an application for attorneys' fees and expenses by Lead Counsel.

14. Assignment of Claims by NP Skyloft DST to Skyloft Liquidating Trust. As of the Effective Date, all claims and causes of action held by NP Skyloft DST other than Released Claims against Released Parties are assigned and conveyed to a Liquidating Trust pursuant to 12 Del. C. § 3808(d), as further set forth in the Liquidating Trust Order and the Liquidating Trust Agreement. Lead Counsel, Defendant's Counsel, and the Settlement Administrator's Counsel shall agree on a proposed form of Liquidating Trust Order, which shall attach a proposed form of the Liquidating Trust Agreement and will be filed at least fourteen (14) Days before the Fairness Hearing. The Liquidating Trust Order shall appoint the Liquidating Trustee, which can be the Settlement Administrator.
15. Dissolution of NP Skyloft DST. The Parties acknowledge and agree, and the Final Order shall make a finding, that the sale of the Skyloft Property constituted a dissolution under the terms of the NP Skyloft DST Trust Agreement and 12 Del. C. § 3808(c)(2). The Parties further represent that they have no knowledge of any obligations that NP Skyloft DST owes to third parties other than to the Class Members, which are being resolved pursuant to this Stipulation of Settlement. The Parties further acknowledge and agree that any claims or causes of action against third parties that are owned by NP Skyloft DST, with the exception of Released Claims against Released Parties, are assigned to a Liquidation Trust under Section 14 hereto. Within 15 Days after the payment pursuant to Section 3(b) being made to the Settlement Fund, the Axonic Parties will cause NP Skyloft ST, LLC, the signatory trustee of NP Skyloft DST, to file a Certificate of Cancellation of NP Skyloft DST with the Delaware Secretary of State.
16. No Admission of Wrongdoing. This Settlement Stipulation shall not be construed or deemed to be evidence of an admission or concession on the part of any of the Released Parties with respect to any actual or potential claim, fault, liability, wrongdoing, or damage whatsoever. The Released Parties expressly deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts, or omissions alleged, or that could have been alleged, in the Settlement Action or arising out of or related to the Released Claims, and the Defendants continue to believe the claims asserted against them in the Settlement Action are without merit. Notwithstanding these denials, the Defendants have concluded that continuing to litigate the Settlement Action would be protracted and expensive and that, in light of its cost, risk, and uncertainty, it is desirable that the Settlement Action be fully and finally resolved pursuant to the terms set forth in this Settlement Stipulation.

17. Tax Disclosure to Class Members. ACO Manager will provide a draft of the Tax Disclosure to Lead Counsel within thirty days after entry of the Preliminary Approval Order. Lead Counsel shall then have fourteen days to object to the sufficiency of the Tax Disclosure. If Lead Counsel objects to the sufficiency of the Tax Disclosure, the Parties shall confer in good faith. If there remains disagreement as to the adequacy of the Tax Disclosure, the Parties shall submit the dispute, on an expedited basis, to a neutral third party accountant or other tax professional hired by Lead Counsel and consented to by Defendants, which consent shall not be unreasonably withheld or delayed. If the Defendants, in their sole good faith discretion, are dissatisfied with the results of the dispute resolution process with the neutral third party, the Defendants may terminate this agreement in accordance with Section 20. If the Parties are able to agree on the form of the Tax Disclosure and the Effective Date occurs, ACO Manager shall mail the Tax Disclosure to all Class Members within fourteen days of the Effective Date. The Settlement Administrator shall provide its current mailing list of Class Members to Defendants for purpose of this Tax Disclosure.
18. No Distribution or Credit to Nelson Parties or NP Skyloft IB, LLC. NP Skyloft IB, LLC, 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 (1) the proceeds of any payments or distributions from the Settlement Fund, nor (2) any credit as a result of this Agreement to any amounts owed by the Nelson Parties under the Joint Stipulation and Liquidation Plan approved in an Order dated July 21, 2022, the Agreed Judgment dated September 26, 2023, or any other Judgments or Orders entered by the Court against the Nelson Parties in Cause No. D-1-GN-22-001980.
19. Privacy of Documents and Information. All agreements made and orders entered during the course of this Settlement Action relating to the confidentiality of documents and information exchanged during the course of the Settlement Action shall survive this Settlement.
20. Termination.
 - (a) This Settlement Stipulation is entered into only for purposes of effectuating the Settlement. This Settlement Stipulation will be null and void, and the Parties will return to their respective positions as if this Settlement Stipulation was never negotiated, drafted, or executed, in the event that: (i) the Court fails to finally approve the Settlement Stipulation or enter the Final Approval Order; (ii) judgment is not entered for any reason other than Lead Counsel's request for attorneys' fees and expenses; or (iii) an appellate court enters an order declining to enter, reversing, vacating, or materially modifying, in whole or in part, the Final Approval Order or Settlement for any reason other than the Lead Counsel's request for attorneys' fees and expenses.
 - (b) Each of the Defendants shall have the right to unilaterally terminate this Settlement Stipulation by providing written notice to Lead Counsel of the Defendant's election to do so if the total amount of beneficial interests in NP Skyloft DST held by all persons or entities that timely submitted Exclusion Requests is more than a threshold amount separately agreed to by the Parties. The Parties have agreed to keep the amount of

the Holdback Fund and this threshold confidential as set forth in Exhibit D unless ordered otherwise by the Court.

(c) Each of the Defendants shall have the right to unilaterally terminate this Settlement Stipulation by providing written notice to Lead Counsel of the Defendant's election to do so if there is a disagreement between Defendants and Lead Counsel about the form of the Tax Disclosure to be provided by ACO Manager to Class Members within seven days after conclusion of the dispute resolution set forth in Section 17.

(d) Within fifteen (15) Days following any such termination being delivered to Lead Counsel, the Settlement Fund shall be returned in its entirety to Defendants (including any accrued interest thereon), less any Taxes due, if any. At the request of Defendants' Counsel, the Settlement Administrator shall apply for any tax refund owed on the Settlement Fund, net of the Settlement Administrator's fees and expenses, and pay the proceeds to the Defendants.

21. Entire Agreement. The recitals set forth at the beginning of this Settlement Stipulation are incorporated by reference and made a part of this Settlement Stipulation. Other than the confidentiality agreements described in Section 19, which is incorporated herein by reference, this Settlement Stipulation and its Exhibits A-D constitute 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. Furthermore, no modification of this Settlement Stipulation shall be binding unless in writing and signed by each Party hereto.
22. Interpretation. The terms of this Settlement Stipulation are not severable, but are interdependent and have been agreed to only as a whole by the Parties. The headings within this Settlement Stipulation 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 Settlement Stipulation 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 Settlement Stipulation for purposes of construing its provisions.
23. Governing Law and Choice of Forum. This Settlement Stipulation 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 Settlement Stipulation shall be brought only in the Judicial District Courts of Travis County, Texas.
24. Continuing Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Stipulation, including the Class Representatives and all Class Members, for purposes of the administration and enforcement of this Settlement Stipulation.
25. Third-Party Beneficiaries. Each of the Released Parties is intended to be and is a third-party beneficiary of this Settlement Stipulation and is authorized to enforce the provisions

of this Settlement Stipulation, including without limitation the release of Released Claims against the Released Parties and covenant not to sue the Released Parties, and such other provisions of this Settlement Stipulation as are applicable to each Released Party.

26. Authority. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Stipulation, subject to Court approval, and the undersigned Lead Counsel represent that they are authorized to execute this Settlement Stipulation on behalf of each of the Class Representatives and, subject to Court approval, enter into this Settlement Stipulation on behalf of the Class Members.
27. Notice. All notices hereunder shall be in writing. Any notice hereunder shall be deemed effective the day after it is sent by any air express courier company and addressed to the intended recipients as set in Section 1, with a copy also sent concurrently by electronic mail to the electronic mail addresses of such intended recipients. Any Party may change the address to which notices are to be delivered to such Party by giving notice in the manner set forth in this Agreement.
28. Counterparts. This Settlement Stipulation 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 PAGE FOLLOWS]

IN WITNESS HEREOF, the Parties hereby execute and cause this Settlement Stipulation to be executed, by themselves or their duly authorized representatives, as of the date(s) indicated on the lines below.

LEAD COUNSEL

Date: August 22, 2024

D. Doug Brothers
(dbrothers@gbkh.com)
George Brothers Kincaid & Horton, L.L.P.
1100 Norwood Tower
114 West 7th Street, Suite 1100
Austin, Texas 78701
(512) 495-1400

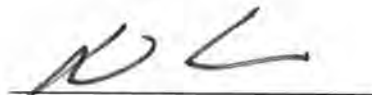


Robert W. Brownlie (rbrownlie@brownliehansen.com)
Brownlie Hansen L.L.P. *Robert Brownlie*
10920 Via Frontera
Suite 550
San Diego, CA 92127
858.877.0322

IN WITNESS HEREOF, the Parties hereby execute and cause this Settlement Stipulation to be executed, by themselves or their duly authorized representatives, as of the date(s) indicated on the lines below.

LEAD COUNSEL

Date: August 22, 2024



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(dbrothers@gbkh.com)
George Brothers Kincaid & Horton, L.L.P.
1100 Norwood Tower
114 West 7th Street, Suite 1100
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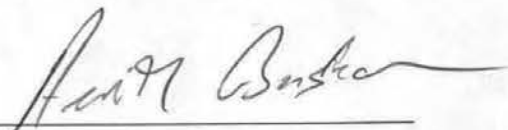
Robert W. Brownlie (rbrownlie@brownliehansen.com)
Brownlie Hansen L.L.P.
10920 Via Frontera
Suite 550
San Diego, CA 92127
858.877.0322

PLAINTIFFS

ANNE T. TESSIER FAMILY TRUST

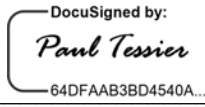
By: _____
Paul Tessier, Co-Trustee

BLACK TORTUGA GROUP, LLC

By:  _____
Heath Basham, Manager

PLAINTIFFS

ANNE T. TESSIER FAMILY TRUST

By:  _____
Paul Tessier, Co-Trustee

BLACK TORTUGA GROUP, LLC

By: _____
Heath Basham, Manager

DEFENDANTS' COUNSEL

Date: August 22, 2024



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ATTORNEYS FOR DEFENDANTS

Exhibit A: Settlement Notice

Exhibit B: Proposed Final Approval Order and Final Judgment

Exhibit C: Proposed Preliminary Approval Order

Exhibit D: Confidential Addendum

EXHIBIT 2

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

NP SKYLOFT DST, *et al*,
Plaintiffs,

v.

BURGUNDY 523 OFFSHORE, LTD., *et al*,
Defendants,

STACY R. SCHIFFMAN, *et al*,
Plaintiffs/Intervenors,

JOHN C. POLK and JANICE C. POLK,
Plaintiffs/Intervenors,

v.

NP SKYLOFT 1B, LLC, *et al*,
Third-Party Defendants

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

v.

NP SKYLOFT ST, LLC; TCG SKYLOFT
 OWNER, LLC; NP SKYLOFT JV, LLC;
 ACO SKYLOFT MANAGER LLC;
 AXONIC CREDIT OPPORTUNITIES
 MASTER FUND, LP; AXONIC CAPITAL,
 LLC; NELSON PARTNERS, LLC; NP
 SKYLOFT EQUITY, LLC; and PATRICK
 NELSON,
Defendants.

and CLAYTON DEGLACINTO,
Third-Party Defendant.

§ IN THE DISTRICT COURT OF

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§ TRAVIS COUNTY, TEXAS

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§ 261ST JUDICIAL DISTRICT

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PRELIMINARY CLASS ACTION SETTLEMENT APPROVAL ORDER

The Class Representatives (as defined below) on behalf of the Class (as defined below) have applied to the Court pursuant to Rule 42 of the Texas Rules of Civil Procedure for an order preliminarily approving the settlement of the above-captioned litigation (the “**Action**”) in accordance with the Stipulation of Class Action Settlement and Releases on file in this matter (the “**Settlement Stipulation**” or “**Stipulation**”), which, together with the attached exhibits, sets forth the terms and conditions for a proposed settlement of the Action against Defendants and for dismissal of the Action with prejudice upon the terms and conditions in the Settlement Stipulation. The Court having read and considered the Settlement Stipulation and its exhibits and the pleadings and papers submitted in connection with this Preliminary Class Action Settlement Approval Order; and the Court being familiar with the facts and claims asserted in the litigation styled *NP Skyloft DST et al. v. Burgundy 523 Offshore Fund, Ltd.*, Cause No, D-1-GN-21-000097, also pending before this Court;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows¹:

- 1. Certification of Class Solely for Purposes of Settlement.** Pursuant to Rule 42 of the Texas Rules of Civil Procedure, this Court certifies, solely for purposes of effectuating the Settlement Stipulation, this Action as a class action on behalf of a Settlement **Class** defined as: “all Person(s) who purchased or otherwise acquired beneficial interests in NP Skyloft DST, a Delaware statutory trust, and held such interests at any point from November 7, 2018 to the Effective Date of the Settlement Stipulation.” “**Class Member**” means, for purposes of the Settlement, a member of the Class as defined herein. “**Settlement Class Members**” are those Class Members who did not timely exclude themselves from the Settlement.
- 2. Class Representative and Class Counsel Appointment.** Further, Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust, and Black Tortuga Group, LLC are appointed for purposes of the Settlement only as Class Representatives, and the law firms of Brownlie Hansen LLP and George Brothers Kincaid & Horton LLP are appointed Class Counsel for purposes of settlement only pursuant to Rule 42 of the Texas Rules of Civil Procedure. For purposes of these Settlement approval proceedings only, the Court finds that the Class Representatives will fairly and adequately represent the interests of the Class and that Class Counsel are competent and capable of exercising their responsibilities as Class Counsel and have fairly and adequately represented the interests of the Settlement Class Members for Settlement purposes.
- 3. Preliminary Certification of the Class.** For Settlement purposes only and conditioned upon the entry of this Order, the Final Approval Order and the occurrence of the Effective Date, the Court preliminarily finds that this matter and the Class satisfy the applicable requirements for class action treatment under Rule 42 of the Texas Rules of Civil Procedure.
- 4. Preliminary Findings on Proposed Settlement.** The Court preliminarily finds that the proposed Settlement evidenced by the Settlement Stipulation is within the range of possible approval, meaning that it is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Class and scheduling a hearing for further review of the proposed Settlement. By the time of that hearing, the Court will have had the benefit of any submissions from Class Members concerning the proposed Settlement.
- 5. Fairness Hearing.** Pursuant to Texas Rule of Civil Procedure 42(e), the Court will hold a hearing (the “**Fairness Hearing**”) on December 5, 2024, at 9:00 a.m., in Courtroom 9B

¹ Terms not defined in this Order shall have the definitions ascribed to them in the Settlement Stipulation.

of the Travis County Civil and Family Courts Facility, 1700 Guadalupe, Austin, Texas 78701. The Court may adjourn the Fairness Hearing and reconvene it at some other date without further notice to Class Members, and may approve the Settlement, at or after the Fairness Hearing with such modifications as may be consented to by the parties to the Stipulation and without further notice to the Class. The Fairness Hearing will consider, among other things:

- a) whether the proposed Settlement should be approved as fair, reasonable, and adequate;
- b) whether an Order and Final Judgment, should be entered dismissing the Action on the merits and with prejudice as to Defendants, and whether the Releasing Parties' release of the Released Claims, as set forth in the Settlement Stipulation, should be provided to the Released Parties;
- c) whether the proposed Plan of Distribution is fair and reasonable and should be approved by the Court;
- d) whether the Notice and notice methodology implemented pursuant to the Settlement Stipulation and this Order (i) constituted the best practicable notice, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise potential Class Members of the pendency of the Action, their right to object to the proposed Settlement, their right to appear at the Fairness Hearing, and their right to exclude themselves from the Class, (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice, and (iv) met all applicable requirements of the Texas Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and any other applicable law;
- e) whether Class Counsel's request for fees and reimbursement of their expenses should be approved by the Court; and
- f) any other matters that the Court may deem appropriate.

4. Form and Content of Notice to Class Members. The Court approves, as to form and content, the Class Notice attached as Exhibit A-1. The Court finds that the delivery by first class United States Mail of the Notice and email of the Notice and the Settlement Stipulation in substantially the manner and form set forth in this Preliminary Approval Order meet the requirements of due process and Rule 42 of the Texas Rules of Civil Procedure, and constitute the best notice practicable under the circumstances and shall constitute due and sufficient notice to all Class Members.

5. Notice. The Settlement Administrator shall mail or cause to be mailed the Notice (Exhibit A-1) and shall cause both to be posted to the following website: www.skyloftsettlement.com. The Notice shall be sent, by (1) email and (2) first-class mail, postage prepaid, no later than thirty (30) days after entry of this Preliminary Approval Order, to all potential Class Members at the address of each such person as set forth in the Investor Schedule referenced in the Order Approving Distribution Procedures dated February 23, 2023, in the litigation styled *Stacy Schiffman, et al v. Nelson Partners, LLC*, Cause No. D-1-GN-22-001980 or who are identified by further reasonable efforts. The out-of-pocket cost of notice to potential Class

Members will be paid by Class Counsel, which may seek reimbursement of such expenses at the Fairness Hearing. Class Counsel is empowered to supervise and administer the notice procedure.

6. Administration.

- a) **Retention of Claims Administrator.** The Court approves the Class Representatives' selection of Gregory S. Milligan, Harney Partners, 8911 Capital of Texas Highway, Suite 2120, Austin, Texas 78759 to serve as administrator of the Settlement Fund and as Liquidating Trustee (the "**Settlement Administrator**") or seek other claims administration as may be approved by the Court for the purposes of, among other things, effectuating the Class Notice and website, processing distributions, and distributing payments to Class Members from the Net Settlement Funds. The Settlement Administrator shall be responsible for the receipt of all responses from potential Class Members and shall preserve all written communications from potential Class Members, nominees, or any other person in response to the Notice until one year following the date of distribution of the proceeds of the Net Settlement Funds to Class Members or pursuant to further order of the Court.
- b) **Notice and Administration Costs.** As provided in the Settlement Stipulation, all reasonable costs incurred in identifying and notifying potential Class Members, as well as administering the Settlement, shall be paid as set forth in the Settlement Stipulation without further order of the Court.

7. Exclusion from Direct Claims Settlement. Any member of the Class who wishes to exclude themselves from the Direct Claims Settlement must submit a timely, written request for exclusion to the Settlement Administrator by October 21, 2024. The exclusion request must include the following information: the Class Member's full name, address, and telephone number; a statement that the Class Member wishes to be excluded from the Direct Claims Settlement; the case name and case number; and the amount of beneficial interests in NP Skyloft DST held by the Class Member. To be valid, any request for exclusion must be in writing, must contain all the required information, and must be received by the Settlement Administrator as stated on the Notice. If the proposed Settlement is approved, any potential Class Member who has not filed a timely and valid written request for exclusion from the Class (and his, her, or its heirs, executors, administrators, predecessors, successors, affiliates and assigns) shall be bound by the release provided for in the Stipulation and by all proceedings, orders, and judgments in the Action, even if he, she, or it has pending, or subsequently initiates, any litigation, arbitration, or other proceeding, or has any other claim, against any or all of the Released Parties relating to any of the Released Claims. At or before the Fairness Hearing, the Settlement Administrator shall provide to the Court a list of the persons and entities, if any, who have validly and timely requested exclusion from the Class. Persons requesting exclusion from the Class shall not be entitled to receive any payment out of the Net Settlement Funds.

8. Objections to Settlement. Class Members who have not excluded themselves from the Direct Claims Settlement may object to the proposed Direct Claims Settlement by submitting a written statement noting the Class Member's objection to the Court and served on Settlement Administrator by October 21, 2024. The Settlement Administrator shall provide a copy of any objection he may receive from any Class Member to Class Counsel and Defendant's Counsel within two business days of receiving such an objection. Likewise, any Class Member may object to the proposed Derivative Claims Settlement by submitting a written statement noting the Class Member's objection to the Court and served on all counsel of record by October _____, 2024. A written objection must state the objecting Class Member's full name, address, and telephone number, and that of the Class Member's counsel, if any; the grounds for all objections, stated with

specificity, and any evidence the objecting Class Member wishes to introduce in support of the objections; whether the objection applies only to the objector, to a specific subset of the Class, to the entire Class, or to the proposed Derivative Claims Settlement; proof of membership in the Class; a statement as to whether the Class Member intends to appear at the Fairness Hearing, either individually or through the Class Member's counsel; the Class Member's signature; and the case name and case number.

9. Preliminary Injunction. Pending final determination of whether the Settlement should be approved:

- a) Class Representatives and all Class Members (and their heirs, executors, administrators, predecessors, successors, affiliates, and assigns) who have not validly and timely requested exclusion from the Class are preliminarily enjoined from filing, commencing, prosecuting, intervening in, participating in, as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction, as to the Released Parties based on or relating in any way to (i) the claims and causes of action, or the facts and circumstances relating thereto, in the Action; and/or (ii) the Released Claims; and
- b) All persons are preliminarily enjoined from filing, commencing, or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of any Class Members as to the Released Parties, if such other lawsuit is based on or related in any way to the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Claims.

10. Appearance at Fairness Hearing. Any Class Member who files and serves a timely, written objection in accordance with paragraph 8 above may also appear at the Fairness Hearing either in person or through counsel retained at the Class Member's expense. Class Members or their attorneys intending to appear at the Fairness Hearing must serve a notice of intention to appear, setting forth, among other things, the name, address, and telephone number of the Class Member (and, if applicable, the name, address, and telephone number of the Class Member's attorney), on Class Counsel and Defendants' Counsel (at the address set forth in the Settlement Notice) and file it with the Court by the date set in the Notice. Any Class Member who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

11. Filing of Papers. All papers in support of the Settlement Stipulation shall be filed and served at least thirty (30) days before the Fairness Hearing.

12. Settlement Fund. The Settlement Fund shall be considered a Qualified Settlement Fund *in custodia legis* of the Court, in accordance with the meaning of Treasury Regulation § 1.468B-1.

13. Termination of Settlement. This Order shall become null and void, and shall be without prejudice to the rights of the settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the proposed Settlement is not finally approved by the Court, or does not become final, pursuant to the terms of the Settlement Stipulation; or if the proposed Settlement is terminated in accordance with the terms of the Settlement Stipulation or does not become effective as required by the terms of the Settlement Stipulation for any other reason. In such event, the Settlement Stipulation and paragraph 1 of this Order shall become null and void and of no further force and effect, and shall not be used or referred to for any purpose whatsoever.

14. Use of Order. This Order shall be of no force or effect if the Settlement Stipulation does not become Final. This Order shall not be construed or used as an admission, concession, or declaration by or against the Released Parties of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Class Representative or the Class Members that their claims lack merit or that the relief requested in the Petition is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it might have.

15. Continuance of Hearing. The Court reserves the right to adjourn the date of the Fairness Hearing without further notice to Class Members, except notice of any adjournment shall be posted to the Settlement Website. Any other deadlines set in this Preliminary Approval Order may be extended by order of this Court.

16. Retention of Jurisdiction. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement Stipulation.

SO ORDERED.

Dated this 27th day of August, 2024.

TRAVIS COUNTY DISTRICT JUDGE

KARIN CRUMP
250th DISTRICT COURT

AGREED:

BROWNLIE HANSEN LLP

ROBERT W. BROWNLIE
California Bar No. 138793
10920 Via Frontera, Suite 550
San Diego, California 92127
Tel: 858.357.8001
Robert.Brownlie@brownliehansen.com

MILLER LLOYD P.C.

/s/ Jennifer A. Lloyd
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Fax: 512.532.6882

**LEAD COUNSEL AND ATTORNEYS
FOR INTERVENOR JAMES V.
PARZIALE, TRUSTEE OF THE
PARZIALE FAMILY TRUST.**

By: /s/ D. Douglas Brothers
D. Douglas Brothers
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**ATTORNEYS FOR AXONIC
DEFENDANTS**

EXHIBIT 3

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

NP SKYLOFT DST, <i>et al</i> , <i>Plaintiffs</i> ,	§	IN THE DISTRICT COURT OF
	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
BURGUNDY 523 OFFSHORE, LTD., <i>et al</i> , <i>Defendants</i> ,	§	
	§	
	§	261 ST JUDICIAL DISTRICT
<hr/>		
STACY R. SCHIFFMAN, <i>et al</i> , <i>Plaintiffs/Intervenors</i> ,	§	
	§	
	§	
JOHN C. POLK and JANICE C. POLK, <i>Plaintiffs/Intervenors</i> ,	§	
	§	
	§	
v.	§	
	§	
NP SKYLOFT 1B, LLC, <i>et al</i> , <i>Third-Party Defendants</i>	§	
	§	
<hr/>		
JAMES V. PARZIALE, Trustee of THE PARZIALE FAMILY TRUST derivatively on behalf of NP SKYLOFT DST, <i>Intervenor</i> ,	§	
	§	
	§	
	§	
v.	§	
	§	
NP SKYLOFT ST, LLC; TCG SKYLOFT OWNER, LLC; NP SKYLOFT JV, LLC; ACO SKYLOFT MANAGER LLC; AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; AXONIC CAPITAL, LLC; NELSON PARTNERS, LLC; NP SKYLOFT EQUITY, LLC; and PATRICK NELSON, <i>Defendants</i> .	§	
	§	
	§	
<i>and</i> CLAYTON DEGIACINTO, <i>Third-Party Defendant</i> .	§	
	§	

**SUPPLEMENTAL CLASS ACTION PETITION
(FOR SETTLEMENT PURPOSES ONLY)**

Plaintiffs/Intervenors Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust and Black Tortuga Group, LLC, (“Plaintiffs/Intervenors” or “Class Representatives”), on behalf of themselves and all others similarly situated pursuant to Tex. R. Civ. P. 42, files this *Supplemental Class Action Petition for Settlement Purposes Only*, against Defendants Axonic Credit Opportunities Master Fund, LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP (the “Axonic Funds”) and Third Party Defendants ACO Skyloft Manager LLC, Axonic Capital LLC, and Clayton DeGiacinto.

I. INTRODUCTION

This Petition is brought for settlement purposes only, pursuant to a Stipulation of Settlement and Releases (the “Settlement Stipulation”), to allege causes of action for federal and Texas state securities fraud, common law fraud, negligent misrepresentation, and conspiracy to defraud, on behalf of a settlement class of purchasers of interests in NP Skyloft, DST, a Delaware Statutory Trust.

II. DISCOVERY CONTROL PLAN

1. Intervenor intends to conduct discovery under Level 3 of Texas Rule of Civil Procedure 190.4.

III. PARTIES

A. Plaintiffs/Intervenors and Class Representatives

2. Plaintiff/Intervenor Paul Tessier is the Co-Trustee of the Anne T. Tessier Family Trust, which is a beneficiary of and an investor in NP Skyloft, DST (“the Trust”). Plaintiff/Intervenor Black Tortuga Group, LLC is a beneficiary of and an investor in the Trust. They are referred to as “Intervenor” or “Plaintiff” or “Class Representative.”

B. The Axonic Parties

3. Defendant ACO Skyloft Manager LLC (“ACO”) is a Delaware limited liability company and in May 2020, replaced NP Skyloft Equity, LLC (“Equity”) as the manager of NP Skyloft JV, LLC (“JV”).

4. Defendant Axonic Credit Opportunities Master Fund, LP (“Master Fund”) is a Cayman Island limited partnership and is the managing member of ACO.

5. Defendant Axonic Capital LLC (“Axonic”) is a Delaware limited liability company and is an investment advisor and/or hedge fund or hedge fund manager that managed Master Fund and ACO.

6. Defendant Burgundy 523 Offshore Fund Ltd. (“Burgundy Fund”) is a limited partnership. Defendant Axonic Special Opportunities SBL Master Fund LP (“SBL Fund”) is a limited partnership.

7. Clayton DeGiacinto (“DeGiacinto”) is a resident of the state of New York. DeGiacinto is the Managing Member and Chief Investment Officer of Axonic.

8. Defendants are collectively referred to as the “Axonic Parties.”

IV. JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over this dispute to

grant the relief requested by Intervenor and the Class. The amount in controversy is within the jurisdictional limits of this Court. Defendants have subjected themselves to personal jurisdiction in Travis County by their appearance in this Court.

10. Venue is proper in this Court under Sections 15.002(a)(1), 15.003, 15.005, and 15.011 of the Texas Civil Practice and Remedies Code. A substantial part of the events or omissions giving rise to the claim occurred in Travis County, Texas.

11. In accordance with Texas Rule of Civil Procedure 47, the Class seeks monetary relief of over \$1,000,000 in the amount of the settlement agreed to by Defendants.

V. CLASS DEFINITION

12. This action is brought, for settlement purposes only, by Class Representative as a class action on their own behalf, and on behalf of all others similarly situated, under Rule 42 of the Texas Rules of Civil Procedure.

13. The class represented by Intervenor in this action, and of which Intervenor is a member, consists of:

All Person(s) who purchased or otherwise acquired beneficial interests in NP Skyloft, DST, a Delaware statutory trust, and held such interests at any point from November 7, 2018 to the Effective Date of the Settlement Stipulation.

(the “Class”).

VI. CLASS ALLEGATIONS

14. The Class identified above is composed of approximately 260 members. Therefore, the class is so numerous that joinder of individual members is

impracticable, per Tex. R. Civ. P. 42(a)(1).

15. There are common questions of law and fact in the action that relate to and affect the rights of each member of the Class, and the relief sought is common to the entire Class, per Tex. R. Civ. P. 42(a)(2).

16. The claims of the Class Representatives are typical of the claims of the Class, in that the claims of all members of the Class depend on the showing of the acts or omissions of the Axonic Parties giving rise to the right of plaintiffs to the relief sought here, per Tex. R. Civ. P. 42(a)(3).

17. The Class Representatives will fairly and adequately protect the interests of the class, per Tex. R. Civ. P. 42(a)(4).

18. The attorneys for the Class Representatives, George Brothers Kincaid & Horton LLP and Brownlie Hansen LLP, will fairly and adequately represent the interests of the Class, per Tex. R. Civ. P. 42(g), and are experienced and capable in litigation in the field of securities and derivative litigation and have successfully represented claimants in other litigation of this nature.

19. This action is properly maintained as a class action for settlement purposes in that the prosecution of separate actions by individual members of the Class would create a risk of (a) inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class, and (b) adjudications with respect to individual members of the Class that would as a practical matter be dispositive of the interest of the other members not parties to the adjudications or substantially impair

or impede their ability to protect their interests, per Tex. R. Civ. P. 42(b).

VII. FACTUAL BACKGROUND

A. The Private Placement Memorandum

20. In 2019 through February 2020, Nelson Partners LLC (“Nelson Partners”) sponsored an offering of beneficial interests (“Interests”) in NP Skyloft, DST (the “Trust”), through a confidential private placement memorandum, dated December 19, 2018 (“PPM”). The PPM represented that “[t]he Trust will acquire the high-rise, student-housing apartment complex commonly known as SkyLoft, located near the University of Texas at Austin at 507 West 23rd Street, Austin, Texas” (the “Trust Property”). The purchasers of the Interests in the Trust, including Intervenor, who are the beneficiaries of the Trust, are referred to herein as the “Investors.” The PPM represented that “[t]he investment objectives of the Trust are to acquire and manage the [Trust] Property to generate income with tax benefits, preserve principal and provide the potential for long-term growth.”

B. Representations about the Preferred Equity Provider.

21. According to the PPM, in order to close the acquisition of the Trust Property, a preferred equity provider (the “Preferred Equity Provider”) may provide capital through beneficiaries of the Trust, which capital would be used to close the acquisition. However, the proceeds from the sale of Interests to Investors was to be used to repay the Preferred Equity Provider. The Preferred Equity Provider would provide capital to the Trust through JV, a joint venture between an affiliate of Nelson Partners and the Preferred Equity Provider. According to this risk factor, in the

event the Preferred Equity Provider was not repaid in full, Investors should not expect to receive distributions until it is paid in full. Further, according to the PPM, the worst potential outcome that could result if the capital provided by the Preferred Equity Provider was not repaid would be a reduction of “cash flow available to operate the [Trust] Property and to pay distributions to the Investors.”

22. Certain Delaware limited liability companies affiliated with the Axonic Parties were the initial Preferred Equity Provider and their successors in interest are the Axonic Funds, all of whom were managed by Axonic Capital.

C. The JV LLC Agreement.

23. An affiliate of Nelson Partners LLC, Equity, and the Axonic Funds entered into a Limited Liability Agreement of NP Skyloft JV, LLC, dated February 26, 2019 (the “JV LLC Agreement”). The Axonic Funds made a \$35,000,000 capital contribution to JV and, in exchange for the \$35,000,000 capital contribution, the Axonic Funds became “Special Members” of JV and received “Special Member Interests” in JV. The JV LLC Agreement further required JV to redeem the Axonic Funds’ Special Member Interests as Interests in the Trust were sold, but by no later than February 25, 2020 (the “Mandatory Redemption”).

24. The JV LLC Agreement provided the Axonic Funds, in the event of a default, the right to take control of the JV, which in turn controlled NP Skyloft ST, LLC (the “Signatory Trustee”), the signatory trustee of the Trust, and to cause the Trust to sell the Trust Property (the “Forced Sale Right”).

25. In Section 13.20 of the JV LLC Agreement, the Nelson Defendants

and the Axonic Parties through their control of the Axonic Preferred Equity Providers agreed to keep the JV LLC Agreement and its terms secret, including the default remedies provided to the Axonic Parties.

26. While JV is obligated under the JV LLC Agreement to repay the Axonic Funds and Patrick Nelson guaranteed JV's obligation to repay the Axonic Funds, Intervenor is unaware of (1) any agreement obligating the Trust or the Signatory Trustee to repay the Axonic Funds or (2) any agreement to which the Trust or the Signatory Trustee is a party obligating or authorizing the Trust or the Signatory Trustee to sell Trust Property to repay a debt owed by JV or Patrick Nelson.

D. The PPM Supplement.

27. Four days after the JV LLC Agreement's effective date, Nelson Partners issued a Supplement to the Private Placement Memorandum, dated March 2, 2019 (the "Supplement"). The Supplement confirmed that "a preferred equity provider contributed \$35,000,000 of capital to the Trust." The Supplement represented that "[t]hree special purpose entities, each owned by a separate investment fund managed by Axonic Capital, provided the preferred capital." The Supplement represented that "[u]pon the sale of the Interest, the net proceeds, less commissions and fees paid to the broker-dealers and their representatives, will be used to repay the capital contributed by the Preferred Equity Provider."

28. The PPM and Supplement contain material misrepresentations and omissions of fact, including regarding the JV LLC Agreement and the Forced Sale Right held by the Axonic Funds thereunder. Plaintiffs/Intervenors and the Class

members relied on the misrepresentations and omissions in the PPM and Supplement in purchasing their interests in the Trust, and were damaged thereby.

E. The Forced Sale

29. In May 2020, the Axonic Parties took control of the JV, thereby allowing them to control the Signatory Trustee of the Trust.

30. In December 2020, the Axonic Parties caused the Trust to sell the Trust Property.

31. Through the exercise of the undisclosed Forced Sale Right and the sale of the Trust Property, Plaintiffs/Intervenors and the Class members suffered damages.

VIII. SUPPLEMENTAL CLASS ACTION CAUSES OF ACTION¹

First Cause of Action: VIOLATION OF SECTION 10(b) AND RULE 10b-5 OF THE EXCHANGE ACT, 15 U.S.C. §78j (Against Axonic Parties)

32. The failure to disclose the Forced Sale Right in the PPM and the Supplement and the misrepresentation regarding the consequences of a failure to repay the Preferred Equity Providers constitute untrue statements of material fact and an omission of material facts necessary to make the statements made in the PPM and Supplement not misleading.

33. The JV LLC Agreement gave Axonic Parties the right to control the content of the Supplement. Consequently, the Axonic Parties are makers of the false

¹ The claims asserted herein do not include any claims that class members may have against any party other than the Axonic Parties.

and misleading statements in the PPM and the Supplement.

34. The Axonic Parties knew that the Supplement failed to disclose the Forced Sale Rights.

35. Plaintiffs/Intervenors and the Class members relied on the PPM and Supplement in purchasing the Interests in the Trust, which interests are securities.

36. Plaintiffs/Intervenors and the Class members suffered damages as a result of the sale of the Trust Property.

Second Cause of Action: FRAUD (Against Axonic Parties)

37. As alleged above, the Axonic Parties intentionally made the false representations and omissions alleged above to Plaintiffs/Intervenors and the Class.

38. The Axonic Parties intended for Plaintiffs/Intervenors and the Class to rely on their misrepresentations and omissions alleged herein.

39. Plaintiffs/Intervenors and the Class were unaware of the falsity of the Axonic Parties' misrepresentations and omissions alleged above.

40. Plaintiffs/Intervenors and the Class reasonably relied on the Axonic Parties' misrepresentations and omissions alleged above.

41. As a proximate result of the Axonic Parties' acts, Plaintiffs/Intervenors and the Class have been damaged in amounts to be determined at trial.

Third Cause of Action: NEGLIGENT MISPRESENTATION (Against Axonic Parties)

42. As alleged above, the Axonic Parties made false representations to

Plaintiffs/Intervenors and the Class. The Axonic Parties had no reasonable grounds for believing these representations were true and intended to induce the Class members' reliance on the representations by purchasing the Interests in the Trust.

43. The Class members were ignorant of the truth and justifiably relied on these misrepresentations by purchasing the Interests in the Trust.

44. As a proximate result of the Axonic Parties' negligent misrepresentations and omissions, Plaintiffs/Intervenors and the Class were damaged in an amount to be determined at trial.

**Fourth Cause of Action: CONSPIRACY TO COMMIT FRAUD
(Against Axonic Parties)**

45. The Axonic Parties did knowingly and willfully conspire and agree among themselves to make misrepresentations and omissions to Plaintiffs/Intervenors and the Class, as described in more detail above.

46. In furtherance of said conspiracy and agreement, the Axonic Parties engaged in fraudulent representations, omissions of facts, and statements calculated to retain the funds and property invested in and owned by the Trust for the Axonic Parties' own benefit.

47. As a proximate result of the wrongful acts herein alleged, Plaintiffs/Intervenors and the Class have suffered damages in the amount of the investment in the Trust, approximately \$75,500,000.

**Fifth Cause of Action: VIOLATION OF TEXAS SECURITIES ACT,
TEXAS CIVIL STATUTES ART. 581-33 (recodified at TEX. GOV'T
CODE § 4008.051 et seq)**

48. Plaintiffs/Intervenor Black Tortuga Group, LLC and other Members of the Class were residents of the State of Texas at the time they purchased their respective interests in the Trust.

49. In connection with the sale and purchase of the investments and securities — the interests in the Trust — the Axonic Parties made untrue statements of material fact in the PPM and Supplement alleged above and omitted the material facts alleged above that were necessary to make the statements in the PPM and Supplement, in the light of the circumstances under which they are made, not misleading.

50. The Axonic Parties in the exercise of reasonable care could have known of the untruths and omissions in the PPM and Supplement.

51. The Class justifiably relied on the misrepresentations and omissions by the Axonic Parties in investing in the Trust and did not know of the untruths and omissions in the PPM and Supplement.

52. The Axonic Parties, through their preparation or control of the content of the PPM and Supplement, acted as agents of the direct seller of the securities.

53. As alleged above, the Axonic Parties' false representations in the PPM and the Supplement and the representations made misleading as a result of the Axonic Parties' failure to disclose the omitted facts in the PPM and Supplement have

caused Plaintiffs/Intervenors and the Class to suffer damages, which includes the entire value of their respective investments in the Trust.

54. Thus, the Axonic Parties violated Texas Civil Statutes Art. 581-33 (recodified at Tex. Gov't Code 4008.051 et seq) and are liable thereunder for damages, interest, costs and reasonable attorneys' fees.

IX. ATTORNEY'S FEES

55. The firms of George Brothers Kincaid and Horton LLP and Brownlie Hansen LLP have prosecuted this action on behalf of the Class and seek reasonable and necessary attorney's fees as permitted by law and ask approval by the Court under Tex. R. Civ. P. 42(h) and (i).

X. PRAYER

Plaintiffs/Intervenors and the Class request that the Court:

- (i) certify the Class,
 - (ii) approve the settlement between the Class and the Axonic Parties,
 - (iii) award attorney's fees pursuant to the settlement between the Class and the Axonic Parties,
 - (iv) supervise the administration of the settlement between the Class and the Axonic Parties,
 - (v) enter the final judgment as requested by the Class and the Axonic Parties,
- and
- (vi) grant all other relief available in law and in equity to which representative parties and the Class may be entitled.

Respectfully submitted,

Dated: August 26, 2024

CLASS COUNSEL

By: /s/ D. Douglas Brothers

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I certify under Tex. R. Civ. P. 21a that a copy of Supplemental Class Action Petition (for Settlement Purposes only) was served on the parties by electronic service on counsel of record.

____/s/Jennifer A. Lloyd_____

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.

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Filing Code Description: Amended Filing

Filing Description: SUPPLEMENTAL CLASS ACTION PETITION (FOR SETTLEMENT PURPOSES ONLY)

Status as of 8/28/2024 9:12 AM CST

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Filing Code Description: Amended Filing

Filing Description: SUPPLEMENTAL CLASS ACTION PETITION (FOR SETTLEMENT PURPOSES ONLY)

Status as of 8/28/2024 9:12 AM CST

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Associated Case Party: JAMES V PARZIALE TRUSTEE OF THE PARZIALE FAMILY TRUST

Automated Certificate of eService

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Jennifer Lloyd

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Envelope ID: 91333997

Filing Code Description: Amended Filing

Filing Description: SUPPLEMENTAL CLASS ACTION PETITION (FOR SETTLEMENT PURPOSES ONLY)

Status as of 8/28/2024 9:12 AM CST

Associated Case Party: JAMES V PARZIALE TRUSTEE OF THE PARZIALE FAMILY TRUST

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Kori Kempton		kori.kempton@brownliehansen.com	8/26/2024 3:48:11 PM	SENT

EXHIBIT 4

AGREED ORDER OF SEVERANCE

Before the Court is the Agreed Motion to Sever filed by Intervenors and the Axonic Defendants.

The Court finds that the Motion should be, and hereby is, GRANTED.

The Clerk is therefore directed to sever and to assign a new cause number to all claims asserted in this case by and between Intervenors 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., Bun Rentals, LLC, Hugh G. Dykes III as Trustee of the Dykes Family Revocable Trust Dated July 7, 2004, Sydney Crisp and Nicola Crisp, Daniel M. Bell, William Smith, Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust, Donna Dekker as Trustee of the Dekker-Robertson Family Trust; and Harry V. and Joanne P. Hansen as Trustees of the Hansen Family Trust, Lawrence K. Samuels and Jane Heider as 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, and James Parziale as Trustee of the Parziale Family Trust, derivatively on behalf of NP Skyloft DST, LLC (collectively "Intervenors") and Defendants ACO Skyloft Manager LLC, Axonic Credit Opportunities Master Fund, LP, Axonic Capital LLC, Burgundy 523 Offshore Fund Ltd., and Clayton DeGiacinto (collectively "Axonic Parties"). The severed claims shall include, without limitation, the class claims asserted in the Supplemental Class Action Petition (for Settlement Purposes Only) and settled in the Settlement Stipulation, recently filed in the instant cause.

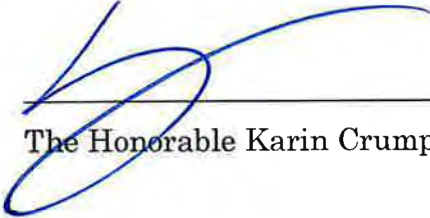
The District Clerk is directed to assign a separate cause number and establish a separate docket sheet so that said claims can proceed as an independent action.

**D-1-GN-24-005548
261ST**

The Parties are directed to file all papers related to the Settlement Stipulation in the severed case.

SO ORDERED.

Dated August 27, 2024



The Honorable Karin Crump

AGREED:

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PARZIALE FAMILY TRUST.**

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**ATTORNEYS FOR AXONIC
DEFENDANTS**

EXHIBIT 5

CAUSE NO. D-1-GN-24-005548

PAUL TESSIER, AS CO-TRUSTEE OF THE ANNE T. TESSIER FAMILY TRUST, and BLACK TORTUGA GROUP, LLC,

Plaintiffs, on behalf of themselves and all others similarly situated,

AND

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, ALLA INVESTMENTS, LLC, 2M & 3D LTD., BUN RENTALS, LLC, HUGH G. DYKES III AS TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7,2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, DONNA DEKKER AS TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST; AND HARRY V. AND JOANNE P. HANSEN AS TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER AS TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, JOHN C. POLK AND JANICE C. POLK, AND JAMES PARZIALE, AS TRUSTEE OF THE PARZIALE FAMILY TRUST,

Plaintiffs, derivatively on behalf of

NP SKYLOFT DST

v.

BURGUNDY 523 OFFSHORE FUND, LTD., AXONIC SPECIAL OPPORUNITIES SBL MASTER FUND LP, AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; ACO SKYLOFT MANAGER LLC; AXONIC CAPITAL, LLC; and CLAYTON DEGIACINTO,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

CERTIFICATE OF SERVICE

The undersigned counsel to the Administrator hereby certifies that on August 30, 2024, a true and correct copy of (i) *Notice of Proposed Derivative and Class Action Settlement* and (ii) *Stipulation of Settlement and Releases* (together, the “Notice and Stipulation”) was served by first-class mail at the last known addresses provided by Investors to the Nelson Parties, as updated pursuant to change of address notices provided by Investors since April 25, 2022, and where feasible by email pursuant to the Texas Rules of Civil Procedure and the Order of Preliminary Approval Liquidation Plan (“Preliminary Order”) entered in Cause No. D-1-GN-21-000097 in Travis County, Texas on April 25, 2022. Further, on September 17, 2024, the Administrator posted the Notice and Stipulation on the website he maintains at www.skyloftsettlement.com with an explanatory update to Investors.

Dated: November 4, 2024

Respectfully Submitted,

/s/ Jason M. Rudd

Jason M. Rudd, Tex. Bar No. 24028786
Catherine A. Curtis, Tex. Bar No. 24095708
WICK PHILLIPS GOULD & MARTIN, LLP
3131 McKinney Avenue, Suite 500
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Phone: (214) 692-6200
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**COUNSEL FOR GREGORY S. MILLIGAN,
ADMINISTRATOR FOR AXONIC LITIGATION
SETTLEMENT**

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 Jason Rudd
Bar No. 24028786
brenda.ramirez@wickphillips.com
Envelope ID: 93874137
Filing Code Description: No Fee Documents
Filing Description: CERTIFICATE OF SERVICE
Status as of 11/4/2024 9:19 AM CST

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Jason Rudd		jason.rudd@wickphillips.com	11/4/2024 9:12:27 AM	SENT

EXHIBIT 6

NOTICE OF PROPOSED DERIVATIVE AND CLASS ACTION SETTLEMENT

TO: ALL PERSONS WHO PURCHASED OR OTHERWISE ACQUIRED BENEFICIAL INTERESTS IN NP SKYLOFT, DST (THE “TRUST”), AND HELD SUCH INTERESTS AT ANY POINT FROM NOVEMBER 7, 2018 TO PRESENT (THE “INVESTORS”)

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THE ACTIONS.

PLEASE TAKE NOTICE that a legal action is being resolved on the terms set forth in a Stipulation of Settlement and Releases, dated August 22, 2024 (the “Settlement Agreement” or “Settlement”), attached hereto, between Named Plaintiffs¹ and Axonic Credit Opportunities Master Fund LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP, ACO Skyloft Manager LLC, Axonic Capital LLC, and Clayton DeGiacinto (collectively, the “Axonic Parties”).

The purpose of this Notice is to inform you of:

- the existence of the above-captioned action *Stacy R. Schiffman, et al v. Nelson Partners, LLC, et al*, Cause No. D-1-GN-21-000097, Before the 98th Judicial Court of Travis County, Texas, asserting derivative claims against the Axonic Parties, which have been severed into a separate action Cause No. D-1-GN-24-005548 (the “Texas Action”);
- the existence of the Supplemental Petition for Class Action, filed on August 26, 2024 in the Texas Action, asserting additional claims for settlement purposes only against the Axonic Parties on behalf of a class of purchasers of beneficial interests in the Trust;
- the proposed settlement of the derivative and class claims between Named Plaintiffs and the Axonic Parties reached in the Texas Action;
- the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the Settlement; and
- Class Counsels’ application for fees and expenses.

This Notice describes what steps you may take in relation to the Settlement. This Notice is not an expression of any opinion by the Court about the truth or merits of Named Plaintiffs’ claims or the Axonic Parties’ defenses. This Notice is solely to advise you of the proposed Settlement of the derivative and class claims in the Texas Action and of your rights in connection with the proposed Settlement.

Summary

On August 22, 2024, Named Plaintiffs and the Axonic Parties entered into the Stipulation of Settlement and Releases in the Texas Action. The Settlement Agreement was the result of a mediation conducted between Named Plaintiffs and the Axonic Parties after the trial of derivative claims against the Axonic Parties and the Court’s ruling on post-trial motions.

Pursuant to the Settlement Agreement, the Axonic Parties have agreed to pay \$9,000,000 to resolve derivative and direct and class action claims with respect to NP Skyloft, DST and its Investors against the Axonic Parties as well as TCG Skyloft Owner, LLC (“TCG Skyloft Owner”). The Settlement Agreement, subject to the approval of the Court, is intended to fully, finally, and forever compromise, resolve, discharge, and settle all claims on behalf of

¹ All capitalized terms used herein shall have the definition assigned in the Settlement Agreement, unless otherwise defined.

NP Skyloft, DST and its Investors against the Axonic Parties and TCG Skyloft Owner, TCG Skyloft JV, LLC, and Triangle Capital Group, LLC (the “TCG Parties”) to result in the dismissal of all asserted claims in the Texas Action or that could have been asserted in the Texas Action against the Axonic Parties and TCG Parties with prejudice and release of the Axonic Parties and TCG Parties upon fulfillment of the Settlement Agreement and payment of the amounts due thereunder, upon the terms and subject to the conditions set forth in the Settlement Agreement.

On August 27, 2024, the Court in the Texas Action entered an order of preliminary approval of the Settlement, certifying a class solely for the purposes of effectuating the Settlement, appointing Class Counsel and an Administrator, and providing for notice to all Investors.

What is the Background of the Claims that are the subject of the Settlement?

The Derivative Claims

Named Plaintiffs brought derivative claims in the Texas Action on behalf of nominal party NP Skyloft, DST and alleged that the Axonic Parties engaged in self-dealing in the sale of the Skyloft Apartments in December 2020. Named Plaintiffs’ petitions in the Texas Action alleged that the Axonic Parties breached their fiduciary duties to the Trust, breached the Trust Agreement of NP Skyloft, DST, breached the covenant of good faith and fair dealing, and for declaratory judgment of rescission of the sale of the Skyloft Apartments. Named Plaintiffs also asserted that TCG Skyloft Owner aided and abetted the Axonic Parties’ alleged breaches of fiduciary duties.

Starting in late April 2022, Named Plaintiffs conducted a three-week trial before a jury of the claims against the Axonic Parties and TCG Skyloft Owner. On May 9, 2022, the jury rendered a verdict in favor of the Trust against the Axonic Parties on counts of breach of fiduciary duty by gross negligence and breach of the covenant of good faith and fair dealing and apportioning responsibility between the Axonic Parties and Patrick Nelson and certain entities related to him (the “Nelson Parties”). The jury’s verdict found that TCG Skyloft Owner was not liable for aiding and abetting a breach of fiduciary duty by any of the Axonic Parties. After extensive post-trial briefing, the Court ruled on October 13, 2022 that it would enter a judgment in favor of the Named Plaintiffs on behalf of the Trust in the amount of \$4,250,000.00 against the Axonic Parties and would deny rescission of the sale of the Skyloft Apartments to TCG Skyloft Owner. The Axonic Parties indicated they would vigorously appeal any adverse judgment entered against them by the Court.

A separate case styled *Collins v. NP Skyloft ST, LLC et al.*, Case No. 30-2021-01184473-CU-MC-CXC, was filed in the Superior Court of California, Orange County (the “*Collins Case*”) on February 21, 2021, asserting derivative claims on behalf of the Trust against the Nelson Parties, the Axonic Parties, certain of the TCG Parties, and others, seeking declaratory relief and damages for an alleged breach of the Trust Agreement, breaches of fiduciary duty, and aiding and abetting breaches of fiduciary duty. The *Collins Case* was stayed in favor of the Texas Action on June 20, 2021.

The Individual Direct and Class Claims in Federal Court

On February 21, 2021, certain investors filed a class action styled *Parziale et al v. Patrick Nelson, et al.*, Case No. 2:21-cv-01803-CBM-JEM, before the United States District Court for the Central District of California, against the Axonic Parties and Patrick Nelson and certain Nelson entities (the “Federal Class Action”). The class action Complaint alleged federal and state securities fraud and common law fraud on behalf of a class of all purchasers of interests in NP Skyloft, DST. The Complaint alleged false and misleading representations in the offering and sale of the interest in NP Skyloft, DST, specifically, that the private placement memorandum (the “PPM”) and supplement to the PPM (the “Supplement”) misrepresented the consequences of a failure by Nelson Partners to repay the preferred equity provided by certain of the Axonic Parties and failed to disclose certain of the Axonic Parties right to force a sale of the Skyloft Apartments. The Federal Class Action was dismissed by the Court on September 17, 2021 because the Court found that the Trust should be joined as an indispensable party. The plaintiffs in the Federal Class Action appealed that dismissal to the U.S. Court of Appeals for the Ninth Circuit, which appeal was eventually dismissed in July 2022 as a result of the settlement with the Nelson Parties.

On August 10, 2021, certain investors filed *Puleo, et al. v. Nelson, et al.*, Case No. 2:21-CV-06443-CBM-JEM (the “*Puleo Case*”), before the United States District Court for the Central District of California. The

Complaint alleged individual claims for federal and state securities fraud, common law fraud and for some investors elder financial abuse. The *Puleo* Case was brought on behalf of certain individual investors against the Axonic Parties, Patrick Nelson and certain Nelson entities, and NP Skyloft, DST. On August 29, 2022, the Court ordered the claims alleged in the *Puleo* Case by individual investors against NP Skyloft, DST to be referred to arbitration. The Court stayed the claims against the Axonic Parties and Nelson Parties until the conclusion of arbitration.

On December 28, 2022, certain investors filed *Ames et al. v. Nelson et al.*, Case No. 2:22-cv-09400-CBM-AGR (the “*Ames* Case”), before the United States District Court for the Central District of California. The Complaint alleges claims similar to those alleged in the *Puleo* Case against the Axonic Parties, Patrick Nelson and certain Nelson entities, and NP Skyloft, DST. On October 12, 2023, the Court ordered the claims alleged in the *Ames* Case by individual investors against NP Skyloft, DST to be referred to mediation and stayed the claims against the Axonic Parties and Nelson Parties until the conclusion of arbitration.

The Mediation

On March 15, 2023, counsel for the Named Plaintiffs in the Texas Action, the *Collins* Case, the *Puleo* Case and the *Ames* Case, on the one side, and the Axonic Parties, on the other side, conducted a full-day mediation by Zoom teleconference before Robert A. Meyer, Esq. As a result of that mediation and subsequent negotiations over the following year, the Axonic Parties agreed to pay a total of \$9,000,000 to resolve both the derivative claims tried to the Texas jury and direct and class action claims asserted against them arising out of the sale of interests in NP Skyloft, DST, including those claims asserted in the *Collins* Case, *Puleo* Case and *Ames* Case and that could have been asserted in the Federal Class Action. The settling parties entered the Settlement Agreement setting forth the specific terms and conditions of the Settlement. A Supplemental Petition alleging a class action for settlement purposes only against the Axonic Parties was filed in the Texas Action to effectuate the Settlement.

Why is there a Proposed Settlement?

The trial of the derivative claims will result in a judgment, subject to appeal, of \$4,250,000. The Federal Class Action was dismissed and the individual direct fraud claims in the *Puleo* Case and *Ames* Case against the Axonic Parties remain pending but are stayed. Class Counsel believe that the derivative and class claims have substantial merit, and the Settlement is not intended to be and shall not be construed as an admission as to the relative strengths or weaknesses of the claims asserted in the Texas Action, the *Collins* Case, the Federal Class Action, the *Puleo* Case, or the *Ames* Case. Class Counsel recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the derivative and class claims against the Axonic Parties through appeal, especially in complex cases such as this one.

As part of the Settlement, the Axonic Parties deny allegations of wrongdoing or liability arising out of or relating in any way to the events, conduct, statements, acts, or omissions alleged in the Texas Action, the *Collins* Case, the Federal Class Action, the *Puleo* Case and the *Ames* Case. Nonetheless, the Axonic Parties have entered into the Settlement Agreement, without admitting or conceding any fault, liability, wrongdoing, or damage whatsoever, in order to avoid the expense, distraction, and uncertainty of further litigation.

Based on Class Counsel’s thorough review and analysis of the relevant facts, allegations, defenses, controlling legal principals, and court rulings in the Texas and Federal Actions, counsel believe that the Settlement is fair, reasonable, and adequate and substantially benefits the Trust and its Investors.

What will the Trust and its Investors receive?

If the Settlement Agreement is fully effectuated, the Axonic Parties will pay a total amount of \$9,000,000 to establish a Settlement Fund, which will be held in an escrow account controlled by the Administrator approved by the Court, in full resolution of the derivative, direct, and class action claims in the Texas Action, the *Collins* Case, the Federal Class Action, the *Puleo* Case and the *Ames* Case. The Settlement Fund will be comprised of two parts. First, \$4,500,000 of the Settlement Fund will be contributed to NP Skyloft, DST in full and final settlement of all derivative claims that could have been asserted on behalf of NP Skyloft, DST against the Axonic Parties and the TCG Parties as well as certain other related parties, all as set forth in more detail in the Settlement Agreement (the “Derivative Claims Settlement”). Second, \$4,500,000 of the Settlement Fund will be contributed in full and final

settlement of all direct claims that the Investors could have asserted in in the Texas Action, the *Collins* Case, the Federal Class Action, the *Puleo* Case and the *Ames* Case against the Axonic Parties or TCG Parties (the “Direct Claims Settlement”). Under the Settlement Agreement, NP Skyloft, DST will contribute the funds it receives in connection with the Derivative Claims Settlement to the Direct Claims Settlement for distribution to Investors. \$2,500,000 of the Settlement Fund contributed to the Direct Claims Settlement will be subject to a holdback pending resolution of certain covered claims, to the extent any are brought against the Released Parties (the “Holdback”). The exact nature of the claims covered by the Holdback is confidential to avoid incentivizing meritless claims against the Settlement Fund. Once all covered claims are resolved or the statute of limitations passes with respect thereto, the remainder of the funds subject to the Holdback, if any, will be distributed to the Investors pursuant to the Plan of Distribution. Upon approval of the Court, the Administrator appointed by the Court, Gregory S. Milligan (“Administrator”), will distribute the Settlement Fund *pro rata* to the Investors in proportion to their interests in the Trust pursuant to the Plan of Distribution. The Class Representatives named by the Court will also be entitled to an incentive payment of \$5,000 each.

The Settlement Agreement also provides for the dissolution of NP Skyloft, DST and for all claims and causes of action held by it, other than Released Claims against Released Parties (both as defined in the Settlement Agreement), to be assigned and conveyed to a Liquidating Trust. The Administrator will also serve as the Liquidating Trustee and will have the power and authority to pursue the claims and causes of action assigned to it by NP Skyloft, DST.

The Settlement Agreement is conditioned upon (1) final approval of the Settlement by the Court following notice and a Settlement Hearing, (2) Court entry of judgment, in a form satisfactory to the Axonic Parties, approving the Settlement and dismissing with prejudice the derivative and class claims against the Axonic Parties and TCG Skyloft Owner, which judgment is final and non-appealable; (3) approval of the Fee and Expense Amount (discussed below), and (4) signed releases by the persons named as individual parties in the Texas Action. Once effectuated, the derivative claims on behalf of NP Skyloft DST against the Axonic Parties and TCG Parties and direct claims for federal and state securities and common law fraud on behalf of a class of all purchasers of interests in NP Skyloft DST against the Axonic Parties will be dismissed with prejudice and released, including those claims asserted in the Federal Class Action, the *Collins* Case, the *Puleo* Case, and the *Ames* Case.

How will the Class Counsel be Paid?

Class Counsel will apply to the Court for an award of attorney’s fees in the amount of Thirty Percent (30%) of the Settlement Fund, or \$2,700,000.00, together with expenses (the “Fee and Expense Amount”), which is subject to Court approval. The Fee and Expense Amount will compensate Class Counsel for their efforts in prosecuting the actions against the Axonic Parties and the substantial benefits achieved for Investors. Expenses of administration of the Settlement Agreement, including notice to all Investors, will be paid from the Settlement Fund.

The Settlement Hearing

The Court will hold a hearing (the “Settlement Hearing”) on **December 5, 2024 at 9:00 a.m.** (Central Time) before the Honorable Karin Crump, District Judge, at the Travis County Civil and Family Courts Facility, Courtroom 9B, located at 1700 Guadalupe, Austin, Texas 78701, to, among other things: (i) determine whether the proposed settlement is fair, reasonable and adequate and in the best interests of the Trust and its Investors; (ii) consider any objections to the Settlement submitted in accordance with this Notice; (iii) determine whether the Court should approve the Fee and Expense Amount; and (iv) consider any other matters that may properly be brought before the Court in connection with the Settlement.

The Court may, in its discretion, change the date and/or time of the Settlement Hearing without further notice to you. The Court also has reserved the right to hold the Settlement Hearing telephonically or by videoconference without further notice to you. If you intend to attend the Settlement Hearing, please consult the Travis County District Court Administrators’ Office (Warren Vavra) at phone number (512) 854-2484 for any change in date, time or format of the Settlement Hearing.

Your Right Exclude Yourself from the Direct Claims Settlement

Any Investor who wishes to exclude themselves from the Direct Claims Settlement must submit a timely, written request for exclusion to the Settlement Administrator by **October 21, 2024**. The exclusion request must include the following information: the Investor's full name, address, and telephone number; a statement that the Investor wishes to be excluded from the Direct Claims Settlement; the case name and case number; and the amount of beneficial interests in NP Skyloft DST held by the Investor.

Your Right to Object to the Settlement

Any Investor who wishes to object to the fairness, reasonableness, or adequacy of the proposed settlement as set forth in the Settlement Agreement, or to the Fee and Expense Amount, shall make a written objection to the Settlement by **October 21, 2024**. The objection shall be filed with the Clerk of the Court and served (either by hand delivery or by first class mail) upon the below listed counsel and Administrator and set forth (a) the objecting Investor's full name, address, and telephone number, and that of their counsel, if any; (b) the grounds for all objections, stated with specificity; (c) any evidence the objecting Investor wishes to introduce in support of the objections; (d) whether the objection applies only to the objector, to a specific subset of the Class, to the entire Class, or to the proposed Derivative Claims Settlement; (e) proof of membership in the Class; and (f) a statement as to whether the Investor intends to appear at the Settlement Hearing, either individually or through their counsel; the Investor's signature; and the case name and case number.

Any objector who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall be foreclosed from raising any objection to the Settlement and shall not be permitted to appear at the Settlement Hearing, except for good cause shown.

IF YOU MAKE A WRITTEN OBJECTION, IT MUST BE ON FILE WITH THE CLERK OF THE COURT NO LATER THAN OCTOBER 21, 2024.

The Clerk's address is:

Travis County District Clerk
Travis County Civil and Family Courts Facility
1700 Guadalupe Street
Austin, Texas 78701
Mailing Address: P.O. Box 679003, Austin, TX 78767-9003

YOU ALSO MUST DELIVER COPIES OF THE MATERIALS TO THE ADMINISTRATOR, ADMINISTRATOR'S COUNSEL, CLASS COUNSEL AND AXONIC PARTIES' COUNSEL SO THEY ARE RECEIVED NO LATER THAN OCTOBER 21, 2024.

The Administrator's address is:

Administrator:
Gregory S. Milligan
HARNEY PARTNERS
8911 Capital of Texas Highway, Suite 2120
Austin, Texas 78759
gmilligan@harneypartners.com

Counsel's addresses are:

Counsel for Administrator:
Jason M. Rudd
WICK PHILLIPS
3131 McKinney Ave, Suite 500
Dallas, Texas 75218
With a copy by email: jason.rudd@wickphillips.com

Counsel for Named Plaintiffs and the Class:

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D. Douglas Brothers
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Counsel for Axonic Parties:

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Bethany D. Simmons
LOEB & LOEB LLP
345 Park Avenue
New York, NY 10154
(212) 407-4000
bsimmons@loeb.com

Any current Investor in NP Skyloft, DST who does not timely file and serve a written objection complying with the above terms shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

Any objector who files and serves a timely, written objection in accordance with the instructions above, may appear at the Settlement Hearing either in person or through counsel retained at the objector's expense. Objectors need not attend the Settlement Hearing, however, in order to have their objections considered by the Court.

If you are an Investor and do not take steps to appear in this action and object to the proposed Settlement, you will be bound by the Judgment of the Court and will forever be barred from raising an objection to the Settlement and from pursuing any of the released claims.

INVESTORS WHO HAVE NO OBJECTION TO THE SETTLEMENT DO NOT NEED TO APPEAR AT THE SETTLEMENT HEARING OR TAKE ANY OTHER ACTION.

Scope of the Notice

This notice is a summary only and does not describe all of the details of the proposed Settlement. For full details of the matters discussed in this summary, please see the attached Settlement Agreement, the pleadings filed in the Texas Action, available from the Clerk's Office or at <http://research.Txcourts.gov>, or contact Class Counsel at the addresses listed above.

Please Do Not Call the Court or Clerk's Office with Questions About the Proposed Settlement.

EXHIBIT 7

PAUL TESSIER, AS CO-TRUSTEE OF THE ANNE T. TESSIER FAMILY TRUST, and BLACK TORTUGA GROUP, LLC,

Plaintiffs, on behalf of themselves and all others similarly situated,

AND

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, ALLA INVESTMENTS, LLC, 2M & 3D LTD., BUN RENTALS, LLC, HUGH G. DYKES III AS TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7,2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, DONNA DEKKER AS TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST; AND HARRY V. AND JOANNE P. HANSEN AS TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER AS TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, JOHN C. POLK AND JANICE C. POLK, AND JAMES PARZIALE, AS TRUSTEE OF THE PARZIALE FAMILY TRUST,

Plaintiffs, derivatively on behalf of
NP SKYLOFT DST

v.

BURGUNDY 523 OFFSHORE FUND, LTD., AXONIC SPECIAL OPPORUNITIES SBL MASTER FUND LP, AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; ACO SKYLOFT MANAGER LLC; AXONIC CAPITAL, LLC; and CLAYTON DEGIACINTO,

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

**CERTIFICATE OF SERVICE REGARDING NOTICES TO
ATTORNEYS GENERAL PURSUANT TO THE CLASS ACTION FAIRNESS ACT**

I, BETHANY D. SIMMONS, declare as follows:

1. I am an attorney at the law firm of Loeb & Loeb LLP (“Loeb & Loeb”), counsel to

Defendants Axonic Credit Opportunities Master Fund LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP, ACO Skyloft Manager LLC, Axonic Capital LLC, and Clayton DeGiacinto (“Axonic Parties”) in the above-captioned matter. I am a member in good standing of the State Bars of New York and Pennsylvania and am admitted *pro hac vice* herein. I have personal knowledge of the matters set forth herein and would competently testify thereto under oath if called as a witness. I submit this declaration in connection with the Stipulation of Settlement and Releases filed with the Court on August 26, 2024, and further to the Preliminary Approval Hearing held by the Court on August 27, 2024.¹

2. The Class Action Fairness Act (“CAFA”) requires notice to be sent to the Attorneys General of the States of the United States wherein class members reside as well the Attorney General of the United States whenever a proposed settlement of a class action is filed in court.

3. On September 5, 2024, I caused a Notice of Proposed Class Action Settlement (the “Notice”) to be mailed via United States Postal Service (“USPS”) Express Mail to the Attorneys General of the States of the United States wherein Settlement Class Members reside, the Attorney General of the District of Columbia, as well as the Attorney General of the United States. Included with each Notice to the Attorneys General on an enclosed flash drive were electronic copies of all of the following documents:

- Copies of the petition and amended petitions filed by the Nelson Parties in *NP Skyloft DST et al. v. Burgundy 523 Offshore Fund, Ltd. et al.*, No. D-1-GN-21-000097, which was filed in the 261st Judicial District Court of Travis County, Texas (the “Original Case”);
- The Schiffman Intervenor’s plea and amended pleas in intervention filed in

¹ Capitalized terms not otherwise defined herein shall have the same meanings as described to them in the Stipulation of Settlement and Releases.

the Original Case;

- The petition in intervention and amendments thereto filed by John C. Polk and Janice C. Polk in the Original Case;
- The petition in intervention filed by James V. Parziale, as Trustee of the Parziale Family Trust in the Original Case;
- The Severance Order entered on August 27, 2024 in the Original Case;
- The complaint and amended complaints filed in *Collins v. NP Skyloft ST, LLC et al.*, No. 30-2021-01184473-CU-MC-CXC in the Superior Court of Orange County, California;
- The complaint and amended complaint filed in *Puleo et al. v. Nelson et al.*, No. 2:21-cv-06443-CBM in the United States District Court for the Central District of California;
- The complaint filed in *Ames et al. v. Nelson et al.*, No. 2:22-09400-CMB in the United States District Court for the Central District of California;
- The Preliminary Approval Order;
- The Notice of Proposed Derivative and Class Action Settlement; and
- The Stipulation of Settlement and Releases (with exhibits).

(with the Notice, the “Notice Package”).

4. A true and correct copy of an exemplar Notice that was mailed to each of the Attorneys General by using a mail merge computer program that added each of their individual addresses and salutations, is attached hereto as **Exhibit 1**.

5. Each of the Notice Packages was electronically tracked by USPS. I have confirmed that all of the Notice Packages were delivered to the addresses to which they were sent, with the exception of the packages sent to the Attorneys General for Colorado and Florida. Attached hereto as **Exhibit 2** is a chart containing the tracking delivery confirmation retrieved from the USPS, confirming said delivery.

6. As a result of the delay in delivery by the USPS to the Attorneys General for

Colorado and Florida, I caused an additional Notice Package to be sent to each by Federal Express on October 1, 2024. Exhibit 2 contains the tracking delivery confirmation retrieved from Federal Express, confirming said delivery.

I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Dated: November 5, 2024.

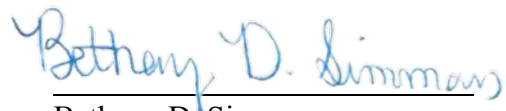

Bethany D. Simmons
Bethany D. Simmons

EXHIBIT 1



BERNARD R. GIVEN II
Partner

10100 Santa Monica Blvd.
Suite 2200
Los Angeles, CA 90067

Direct 310.282.2235
Main 310.282.2000
Fax 310.282.2200
bgiven@loeb.com

Via Priority Mail

September 5, 2024

[Recipient Name and Address]

Re: Notice of Proposed Class Action Settlement in *NP Skyloft DST, et al. v. Burgundy Offshore, Ltd., et al.*, Cause No. D-1-GN-24-005548 (Tex. Dist. Ct. 2024)

Dear Sir or Madam:

We are writing on behalf of our clients Axonic Credit Opportunities Master Fund LP, Burgundy 523 Offshore Fund Ltd., Axonic Special Opportunities SBL Master Fund LP, ACO Skyloft Manager LLC, Axonic Capital LLC, and Clayton DeGiacinto (together, the “Defendants”), to advise your office of a proposed class action settlement (the “Settlement”) in the above-referenced action (the “Texas Action”) currently pending in the 261st Judicial District Court of Travis County, Texas (the “Court”). Under the Class Action Fairness Act of 2005 (“CAFA”), each defendant participating in a proposed class action settlement in federal court is required to serve a notice on the Attorney General of the United States and the appropriate state official of each state in which a settlement class member resides. See 28 U.S.C. § 1715(b). While the Texas Action is pending in Texas state court, we are providing this notice to you on behalf of the Defendants in compliance with 28 U.S.C. § 1715 out of an abundance of caution and pursuant to the terms of the Settlement.

Compliance with 28 U.S.C. § 1715

28 U.S.C. § 1715(b) lists eight items that must be provided to you in connection with any proposed class action settlement. Each of these items is addressed below:

1. 28 U.S.C. § 1715 (b)(1) - a copy of the complaint and any materials filed with the complaint and any amended complaints.

While approval of the Settlement is being sought in the Texas Action, it will result in the settlement and dismissal of all of the claims against the Axonic Defendants in and relating to the following cases: (1) *NP Skyloft DST et al. v. Burgundy 523 Offshore Fund, Ltd. et al.*, No. D-1-GN-21-000097, filed in the District Court for Travis County, Texas on January 8, 2021 (the “Original Texas Case”); (2) *Collins v. NP Skyloft ST, LLC et al.*, No. 30-2021-01184473-CU-MC-CXC, filed in the Superior Court of Orange County, California on February 17, 2021 (the “Collins Case”); (3) *Puleo et al. v. Nelson et al.*, No. 2:21-cv-06443-CBM, filed in the United States District Court for the Central District of California on August 21, 2021 (the “Puleo Case”), and (4) *Ames et al. v. Nelson et al.*, No. 2:22-09400-CMB, filed in the United States District Court for the Central District of California on December 28, 2023 (the “Ames Case”).

Texas Action

The Original Texas Case was filed in January 2021 by Patrick Nelson and certain parties related to him (the "Nelson Parties") against certain of the Defendants as well as TCG Skyloft Owner, LLC ("TCG Skyloft"), asserting both direct claims and derivative claims on behalf of NP Skyloft, DST (the "DST"). Copies of the petition and amended petitions filed by the Nelson Parties in the Original Texas Case are enclosed as Exhibits A-1 – A-5.

Shortly after the Nelson Parties filed the Original Texas Case, TCG Skyloft filed a separate case against the Nelson Parties. In February 2021, certain investors in the DST (the "Schiffman Intervenors"), intervened in TCG Skyloft's case, to assert direct claims as well as derivative claims on behalf of the DST. A copy of the Schiffman Intervenor's plea in intervention is enclosed as Exhibit A-6. TCG Skyloft's case was later consolidated with the Original Texas Case. The Schiffman Intervenors later filed amended pleas in intervention in the Original Texas Case, which are enclosed as Exhibits A-7 – A-10.

In July 2021, John C. Polk and Janice C. Polk intervened in the Original Texas Case to assert direct claims and derivative claims on behalf of the DST against certain of the Defendants and others. A copy of the Polks' petition in intervention and amendments thereto are enclosed as Exhibits A-12 – A-14.

In September 2021, James V. Parziale, as Trustee of the Parziale Family Trust, intervened in the Original Texas Case, to assert derivative claims on behalf of the DST against certain of the Defendants and others. A copy of Mr. Parziale's Petition in Intervention is enclosed as Exhibit A-11.

In connection with the Settlement, on August 26, 2024, Paul Tessier as Co-Trustee of the Anne T. Tessier Family Trust and Black Tortuga Group, LLC, on behalf of themselves and all others similarly situated, filed a Supplemental Class Action Petition (for Settlement Purposes Only) in the Original Texas Case. A copy of the Supplemental Class Action Petition is enclosed as Exhibit A-15.

The derivative claims asserted against the Defendants as well as the class claims asserted against the Defendants in the Supplemental Class Action Petition in the Original Texas Case were severed into the Texas Action by order of the Court entered on August 27, 2024 (the "Severance Order"). A copy of the Severance Order is enclosed as Exhibit B.

Other Settled Cases

Separately, in February 2021, an investor in the DST named Douglas J. Collins filed the Collins Case against the Defendants and others, asserting derivative claims on behalf of the DST. A copy of the complaint and amended complaints filed in the Collins Case are enclosed as Exhibits A-16 – A-18.

In August 2021, Stephen Puleo and certain other investors in the DST filed the Puleo Case, asserting direct claims against the Defendants and others. A copy of the complaint and amended complaint filed in the Puleo Case are enclosed as Exhibits A-19 – A-20.

In December 2022, Rick Ames and certain other investors in the DST filed the Ames Case, asserting direct claims against the Defendants and others. A copy of the complaint filed in the Ames Case is enclosed as Exhibit A-21.

2. 28 U.S.C. § 1715 (b)(2) - notice of any scheduled judicial hearing in the class action.

On August 27, 2024, the Court held a hearing to preliminarily certify a class, preliminarily approve the settlement, set a hearing on final approval of the settlement, and to approve the form and content of the notice of the settlement to class members, which resulted in entry of the Preliminary Class Action Settlement Approval Order (the "Preliminary Approval Order"). A copy of the Preliminary Approval Order is enclosed as Exhibit C. Pursuant to the Preliminary Approval Order, the Court has set a hearing on final approval of the settlement for December 5, 2024 at 9:00 a.m. (CT).

3. 28 U.S.C. § 1715(b)(3) - any proposed or final notification to class members.

A copy of the Notice of Proposed Derivative and Class Action Settlement (the "Notice"), which was approved by the Court in connection with entry of its Preliminary Approval Order, is enclosed as Exhibit D. Defendants understand that a copy of the Notice was provided to all class members by mail and email (where available) on August 30, 2024. The Notice will also be made available on the website created for the administration of settlements in the Texas Action, www.skyloftsettlement.com. The Notice describes the class members' rights to exclude themselves from the Settlement class.

4. 28 U.S.C. § 1715(b)(4) - any proposed or final class action settlement.

The proposed Settlement is set forth in the Stipulation of Settlement and Releases (with exhibits) (the "Settlement Agreement"), a copy of which is enclosed as Exhibit E.

5. 28 U.S.C. § 1715(b)(5) - any settlement or other agreement contemporaneously made between class counsel and counsel for defendants.

There are no other settlements or other agreements between class counsel and counsel for Defendants beyond what is set forth in the Settlement Agreement. However, the parties have agreed to maintain as confidential Exhibit D to the Settlement Agreement.

6. 28 U.S.C. § 1715(b)(6) - any final judgment or notice of dismissal.

There has been no final judgment or notice of dismissal in the Texas Action. Accordingly, no such document is presently available.

7. 28 U.S.C. § 1715(b)(7) – (A) If feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or (B) if the provision of the information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and



the estimated proportionate share of the claims of such members to the entire settlement.

A list of the names of the class members that reside in your state and the estimated proportionate share of the claims of such members to the entire Settlement is enclosed as Exhibit F.

8. 28 U.S.C. § 1715(b)(8) - any written judicial opinion relating to the materials described in 28 U.S.C. § 1715(b) subparagraphs (3) through (6).

On August 27, 2024, the Court entered the Preliminary Approval Order. A copy of the Preliminary Approval order is enclosed as Exhibit C. On August 27, 2024, the Court also entered the Severance Order. A copy of the Severance Order is enclosed as Exhibit B.

Timeliness of this Notice

Section 1715 provides two deadlines for service of the CAFA notice, and the Defendants have complied with both of these deadlines. First, section 1715(b) provides that a defendant must serve this notice “not later than 10 days after a proposed settlement of a class action is filed in court.” Defendants have complied with this deadline because the Settlement was filed with the Court on August 26, 2024, and this notice is being served by priority mail on September 5, 2024.

Second, section 1715(b) provides that “[a]n order giving final approval of a proposed settlement may not be issued earlier than 90 days after” service of the notice on the appropriate state official. This notice complies with that deadline as well because the Court has set a final approval hearing for December 5, 2024.

Should you have any questions regarding this matter, please do not hesitate to contact us directly.

Respectfully,

Bernard R. Given II
Partner

Enclosures

EXHIBIT 2

State	Addressee	Tracking Number	Delivery Date
Alabama	Office of the Alabama Attorney General Attn: Class Action Fairness Act Notices 501 Washington Avenue Montgomery, AL 36104	9488 8178 9820 3260 9621 65	9/12/2024
Arkansas	Office of the Arkansas Attorney General Attn: Class Action Fairness Act Notices 323 Center Street, Suite 200 Little Rock, AR 72201	9488 8178 9820 3260 9621 34	9/9/2024
Arizona	Office of the Arizona Attorney General Attn: Class Action Fairness Act Notices 2005 N Central Ave Phoenix, AZ 85004-2926	9488 8178 9820 3260 9621 41	9/9/2024
California	CAFA Coordinator Office of the California Attorney General Consumer Law Section 455 Golden Gate Avenue Suite 11000 San Francisco, CA 94102	9488 8178 9820 3260 9620 97	9/10/2024
Colorado	Office of the Colorado Attorney General Attn: Class Action Fairness Act Notices Ralph L. Carr Colorado Judicial Center 1300 Broadway, 10th Floor Denver, Colorado 80203	9488 8178 9820 3260 9623 63 280133202110	still in process Out for Delivery 9/25 10/2/2024 delivered via FedEx
Connecticut	Office of the Connecticut Attorney General Attn: Class Action Fairness Act Notices 165 Capitol Avenue Hartford, CT 06106 AG.CAFA@CT.GOV	9488 8178 9820 3260 9623 56	9/9/2024

State	Addressee	Tracking Number	Delivery Date
D.C.	Attorney General for the District of Columbia Attn: Class Action Fairness Act Notices 400 6th Street, NW Washington, DC 20001	9488 8178 9820 3260 9623 32	9/10/2024
Florida	Office of the Attorney General State of Florida Attn: Class Action Fairness Act Notices The Capital, PL-01 Tallahassee, FL 32399	9488 8178 9820 3260 9623 87 280132903303	In transit- 9/17/2024 10/2/2024 delivered via FedEx
Georgia	Office of the Georgia Attorney General Attn: Class Action Fairness Act Notices 47 Trinity Street, SW Atlanta, GA 30334	9488 8178 9820 3260 9623 70	9/16/2024
Hawaii	Department of the Hawaii Attorney General Attn: Class Action Fairness Act Notices 425 Queen Street Honolulu, HI 96813	9488 8178 9820 3260 9624 00	9/9/2024
Iowa	Office of the Iowa Attorney General Attn: Class Action Fairness Act Notices Hoover State Office Building 1305 E. Walnut Street Des Moines IA 50319	9488 8178 9820 3260 9624 24	9/10/2024

State	Addressee	Tracking Number	Delivery Date
Idaho	Office of the Idaho Attorney General Attn: Class Action Fairness Act Notices 700 W. Jefferson Street, Suite 210 P.O. Box 83720 Boise, Idaho 83720-0010	9488 8178 9820 3260 9624 17	9/9/2024
Illinois	Office of Illinois Attorney General Attn: Class Action Fairness Act Notices 500 South Second Street Springfield, IL 62706	9488 8178 9820 3260 9624 48	9/12/2024
Kansas	Office of the Kansas Attorney General Attn: Class Action Fairness Act Notices 120 SW 10th Ave., 2nd Floor Topeka, KS 66612	9488 8178 9820 3260 9622 33	9/9/2024
Louisiana	Office of the Louisiana Attorney General Attn: Class Action Fairness Act Notices 1885 North Third Street Baton Rouge, LA 70804	9488 8178 9820 3260 9622 64	9/10/2024
Massachusetts	Office of the Massachusetts Attorney General Attn: CAFA Coordinator/ General Counsel's Office One Ashburton Place Boston, MA 02108	9488 8178 9820 3260 9622 57	9/13/2024
Maryland	Office of the Maryland Attorney General Attn: Class Action Fairness Act Notices 200 St. Paul Place Baltimore, MD 21202	9488 8178 9820 3260 9622 88	9/10/2024

State	Addressee	Tracking Number	Delivery Date
Minnesota	Office of the Minnesota Attorney General Attn: Class Action Fairness Act Notices 445 Minnesota Street Suite 1200 St. Paul, MN 55101	9488 8178 9820 3260 9622 71	9/9/2024
Missouri	Office of the Missouri Attorney General Attn: Class Action Fairness Act Notices 207 W. High St. Jefferson City, MO 65101	9488 8178 9820 3260 9623 01	9/9/2024
Montana	Office of the Montana Attorney General Attn: Class Action Fairness Act Notices Justice Building, Third Floor 215 North Sanders P.O. Box 201401 Helena, MT 59620-1401	9488 8178 9820 3260 9622 95	9/10/2024
Nebraska	Office of the Nebraska Attorney General Attn: Class Action Fairness Act Notices 2115 State Capitol Building Lincoln, NE 68509	9488 8178 9820 3260 9623 25	9/10/2024
Nevada	CAFA Coordinator Office of the Nevada Attorney General Bureau of Consumer Protection 100 N. Carson Street Carson City, NV 89701 NVAGCAFAnotices@aq.nv.gov	9488 8178 9820 3260 9623 18	9/9/2024

State	Addressee	Tracking Number	Delivery Date
New Hampshire	Office of the New Hampshire Attorney General Attn: Class Action Fairness Act Notices 1 Granite Place South Concord, NH 03301	9488 8178 9820 3260 9620 73	9/10/2024
New Jersey	Office of the New Jersey Attorney General Attn: Class Action Fairness Act Notices P.O. Box 080 25 Market Street Trenton, NJ 08625	9488 8178 9820 3260 9620 80	9/9/2024
New York	CAFA Coordinator Office of the New York State Attorney General 28 Liberty Street, 15th Floor New York NY 10005	9488 8178 9820 3260 9625 09	9/9/2024
North Carolina	Office of the North Carolina Attorney General Attn: Class Action Fairness Act Notices 9001 Mail Service Center Raleigh, NC 27699	9488 8178 9820 3260 9624 93	9/9/2024
North Dakota	Office of the North Dakota Attorney General Attn: Class Action Fairness Act Notices 600 E. Boulevard Avenue Dept. 125 Bismarck, ND 58505	9488 8178 9820 3260 9620 66	9/9/2024

State	Addressee	Tracking Number	Delivery Date
Ohio	Office of the Ohio Attorney General Attn: Class Action Fairness Act Notices 30 East Broad Street, 14th Floor Columbus, OH 43215	9488 8178 9820 3260 9623 49	9/9/2024
Oklahoma	Office of the Oklahoma Attorney General Attn: Class Action Fairness Act Notices 313 Northeast 21st Street Oklahoma City, OK 73105	9488 8178 9820 3260 9621 10	9/9/2024
Oregon	Office of the Oregon Attorney General Attn: Class Action Fairness Act Notices 1162 Courts Street, NE Salem, OR 97301	9488 8178 9820 3260 9621 27	9/9/2024
Pennsylvania	Office of the Pennsylvania Attorney General Attn: Class Action Fairness Act Notices 15th Floor, Strawberry Square Harrisburg, PA 17120		9/9/2024
Rhode Island	Office of the Rhode Island Attorney General Attn: Class Action Fairness Act Notices 150 South Main Street Providence, RI 02903	9488 8178 9820 3260 9621 72	9/9/2024
Tennessee	Office of the Tennessee Attorney General Attn: Class Action Fairness Act Notices P.O. Box 20207 Nashville, TN 37202-0207	9488 8178 9820 3260 9621 89	9/9/2024

State	Addressee	Tracking Number	Delivery Date
Texas	Office of the Texas Attorney General Attn: Class Action Fairness Act Notices P.O. Box 12548 Austin, TX 78711-2548	9488 8178 9820 3260 9623 94	9/9/2024
Utah	Office of the Utah Attorney General Attn: Class Action Fairness Act Notices P.O. Box 142320 Salt Lake City, UT 84114	9488 8178 9820 3260 9621 58	9/9/2024
Virginia	Office of the Virginia Attorney General Attn: Class Action Fairness Act Notices 202 North Ninth Street Richmond, VA 23219	9488 8178 9820 3260 9622 40	9/10/2024
Vermont	Office of the Vermont Attorney General Attn: Class Action Fairness Act Notices 109 State Street Montpelier, VT 05609	9488 8178 9820 3260 9622 19	9/10/2024
Washington	Office of the Washington Attorney General Attn: Class Action Fairness Act Notices P.O. Box 40100 Olympia, WA 98504-0100	9488 8178 9820 3260 9621 96	9/9/2024
Wisconsin	Office of the Wisconsin Attorney General Attn: Class Action Fairness Act Notices P.O. Box 7857 Madison, WI 53703	9488 8178 9820 3260 9622 26	9/9/2024

State	Addressee	Tracking Number	Delivery Date
United States	Office of the United States Attorney General U.S. Department of Justice Attn: Class Action Fairness Act Notices 950 Pennsylvania Avenue, NW Washington, DC 20530-0001	9488 8178 9820 3260 9622 02	9/9/2024

EXHIBIT 8

PAUL TESSIER, AS CO-TRUSTEE OF THE ANNE T. TESSIER FAMILY TRUST, and BLACK TORTUGA GROUP, LLC,
Plaintiffs, on behalf of themselves and all others similarly situated,

AND

STACY R. SCHIFFMAN, ADELAIDA MARTINEZ, WILLIAM D. AND SUSAN M. MADDEN, A.H. ROOT BUILDING, LLC, RYAN AND LISSA ONG LIVING TRUST, ALLA INVESTMENTS, LLC, 2M & 3D LTD., BUN RENTALS, LLC, HUGH G. DYKES III AS TRUSTEE OF THE DYKES FAMILY REVOCABLE TRUST DATED JULY 7, 2004, SYDNEY CRISP AND NICOLA CRISP, DANIEL M. BELL, WILLIAM SMITH, DONNA DEKKER AS TRUSTEE OF THE DEKKER-ROBERTSON FAMILY TRUST; AND HARRY V. AND JOANNE P. HANSEN AS TRUSTEES OF THE HANSEN FAMILY TRUST, LAWRENCE K. SAMUELS AND JANE HEIDER AS TRUSTEES OF THE HEIDER SAMUELS FAMILY TRUST DATED JUNE 29, 2007, JOHN C. POLK AND JANICE C. POLK, AND JAMES PARZIALE, AS TRUSTEE OF THE PARZIALE FAMILY TRUST,
Plaintiffs, derivatively on behalf of NP SKYLOFT DST

v.

BURGUNDY 523 OFFSHORE FUND, LTD., AXONIC SPECIAL OPPORUNITIES SBL MASTER FUND LP, AXONIC CREDIT OPPORTUNITIES MASTER FUND, LP; ACO SKYLOFT MANAGER LLC; AXONIC CAPITAL, LLC; and CLAYTON DEGIACINTO,
Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

CLASS ACTION SETTLEMENT APPROVAL ORDER AND FINAL JUDGMENT

On the 5th day of December, 2024, a hearing having been held before this Court to determine: (1) whether the proposed Settlement should be approved as fair, reasonable, and adequate; (2) whether a Judgment should be entered dismissing the above-captioned action (“**Action**”) on the merits and with prejudice against all Defendants; (3) whether the Releasing Parties’ release of the Released Claims, as set forth in the Stipulation of Settlement and Releases executed by the Parties on August 22, 2024 (“**Settlement Stipulation**”), should be provided to the Released Parties; (4) whether the proposed Plan of Distribution is fair and reasonable and should be approved by the Court; (5) whether the Settlement Notice and the notice methodology implemented pursuant to the Settlement Stipulation and the Preliminary Approval Order of August 27, 2024, (“**Preliminary Approval Order**”): (a) constituted the best practicable notice, (b) constituted notice that was reasonably calculated, under the circumstances, to apprise potential Class Members of the pendency of the Action, their right to object to the proposed Settlement, their right to appear at the Fairness Hearing, and their right to exclude themselves from the Class, (c) were reasonable and constituted due, adequate, and sufficient notice to all persons entitled to notice, and (d) met all applicable requirements of the Texas Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and any other applicable law; and (6) the amount of reasonable attorneys’ fees and reimbursement of costs to be paid to Class Counsel; and the Court having considered all matters submitted to it at the hearing and otherwise; and it appearing that the Settlement Notice substantially in the form approved by the Court was sent to all reasonably identifiable potential Class Members, as shown by the records of the Administrator at the respective addresses set forth in such records, that the Settlement Notice provided sufficient and adequate notice of the hearing and that the Settlement Notice was sent to the potential Class Members and published on the Settlement Website pursuant to the Preliminary Approval Order.

THE COURT FINDS AND ORDERS AS FOLLOWS:

1. **Settlement Stipulation Incorporated.** This Judgment incorporates herein and makes a part hereof the Settlement Stipulation and the Preliminary Approval Order. Unless otherwise provided herein, the capitalized terms used herein shall have the meanings and/or definition given to them in the Preliminary Approval Order and Settlement Stipulation.

2. **Jurisdiction.** The Court has jurisdiction over the subject matter of the above-captioned action, the Class Representatives, and all Class Members, and has jurisdiction to enter this Class Action Settlement Approval Order and Final Judgment (the “**Judgment**”).

3. **Class.** For purposes of this Judgment (and for Settlement purposes only), the “Class” means the Class certified solely for purposes of Settlement under the Preliminary Approval Order, consisting of: “all Persons who purchased or otherwise acquired beneficial interests in NP Skyloft, DST and held such interests at any point from November 7, 2018 to the Effective Date of the Settlement Stipulation.” “**Class Member**” means, for purposes of this Judgment (and for Settlement purposes only), a member of the Class. “**Settlement Class Members**” are those Class Members who did not timely exclude themselves from the Settlement. Certification of the Class is hereby reaffirmed as a final Class pursuant to Rule 42 of the Texas Rules of Civil Procedure. This Court finds, on the record before it, that the Action, for purposes of the Settlement, may be maintained as a class action on behalf of the Class.

4. **Class Representatives.** In the Preliminary Approval Order, this Court previously appointed the Named Plaintiffs as Class Representatives. The Court hereby reaffirms that

appointment, finding, on the record before it, that the Class Representatives have and continue to adequately represent the Settlement Class Members.

5. **Class Counsel.** In the Preliminary Approval Order, this Court previously appointed the law firms of Brownlie Hansen LLP and George Brothers Kincaid & Horton LLP as Class Counsel for settlement purposes only and hereby reaffirms that appointment, finding, on the record before it, that Class Counsel have and continue to adequately and fairly represent the Settlement Class Members.

6. **Settlement Notice.** The Court finds that the distribution and publication of the Settlement Notice and the notice methodology as set forth in the Preliminary Approval Order all were implemented in accordance with the Preliminary Approval Order. The Court further finds that, as required by the Preliminary Approval Order, the Settlement Notice was directed individually to a list of all persons potentially within the Class by first class United States Mail. The Court further finds that the Settlement Notice was posted to the Settlement Website. The Court further finds that the Settlement Notice, and the notice methodology implemented pursuant to the Preliminary Approval Order (i) constituted the best notice practicable under Rule 42 of the Texas Rules of Civil Procedure, (ii) constituted notice that was reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action, of the effect of the Settlement Stipulation (including the release of claims), of their right to object to the proposed Settlement, of their right to exclude themselves from the Class, and of their right to appear at the Fairness Hearing, (iii) were reasonable and constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice, and (iv) met all applicable requirements of the Texas Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), and any other applicable law. No Exclusion Requests were submitted.

7. **CAFA Notices.** Defendants properly and timely notified the appropriate government officials of the Settlement pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendants’ notice and finds that it complied with all applicable CAFA requirements. Further, Defendants’ CAFA notice preceded the Fairness Hearing by more than 90 days.

8. **Final Settlement Approval.** The Settlement, as set forth in the Settlement Stipulation, is fully and finally approved as fair, reasonable, and adequate, consistent and in full compliance with all applicable requirements of the Texas Rules of Civil Procedure, the United States Constitution (including the Due Process Clause) and the Class Action Fairness Act, and in the best interests of each of the Class Members. The Court finds that the Settlement is fair, reasonable, and adequate and that (A) the Class Representatives and Class Counsel have adequately represented the Class; (B) the Settlement Stipulation was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of the Plan of Distribution and the relief it provides to the Settlement Class Members, (iii) the terms of the award of attorneys’ fees, including the timing of payment, and (iv) the agreement identified under Rule 42(e); and (D) the Settlement treats Class members equitably relative to each other. The settling Parties are directed to implement and consummate the Settlement Stipulation in accordance with its terms and provisions. The Court approves the documents submitted to the Court in connection with the implementation of the Settlement Stipulation. Accordingly, the Settlement shall be consummated in accordance with the terms and provisions of the Settlement Stipulation, with each Settlement Class Member bound by the Settlement Stipulation, including any releases therein.

9. **Attorneys' Fees and Expenses.** The Court awards Class Counsel attorney's fees in the amount of \$_____ and expenses in the amount of \$_____ to be paid to Class Counsel from the Settlement Fund within thirty days after the Settlement Fund is funded. The Court finds these amounts to be reasonable. Class Counsel presented an application for attorney's fees justifying their fees on the basis of their work and the results achieved. Except as otherwise set forth in this order, the Parties shall bear their own costs and attorneys' fees. The Court approves an incentive payment of \$5,000 each from the Settlement Fund for each of the Class Representatives.

10. **Dismissal of Action.** The Action, including all Class claims that have been asserted, is dismissed on the merits and with prejudice, without fees or costs to any Party except as provided in the Settlement Stipulation.

11. **Dismissal of Underlying Litigation and Related Litigation.** Within seven (7) Days of the Effective Date, Defendants and Class Counsel shall do all things, including, but not limited to, the execution of additional documents, necessary to cause all the claims asserted in the Related Actions to be dismissed with prejudice and without costs as against the Released Parties.

12. **Dissolution of NP Skyloft DST.** Pursuant to the Settlement Stipulation, the Court finds that the sale of the Trust Property, the Skyloft Apartments at 527 West 23rd Street, Austin, Texas 78703, consisted a dissolution under the terms of the NP Skyloft DST Trust Agreement and 12 Del. C. § 3808(c).

13. **Releases.** The releases as set forth in the Settlement Stipulation are expressly incorporated and approved in all respects. For avoidance of doubt:

- a. **"Releasing Parties"** means each of the Named Plaintiffs (individually and, with the Court's approval, in their capacity as Class Representatives and derivatively on behalf of NP Skyloft DST), and the Settlement Class Members who have not excluded themselves from the Settlement, together with any Person(s) claiming by, through, or on behalf of any of the foregoing, and shall include, for avoidance of doubt, natural persons, entities, trusts, or organizations of any kind or nature, as well as the predecessors, successors, heirs, executors, administrators, and assigns of any of the foregoing.
- b. **"Released Parties"** means Defendants, TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC, and Triangle Capital Group, LLC, together with each of their respective, past or present directors, officers, employees, partners, member firms or affiliates, principals, agents, predecessors, successors, parents, subsidiaries, divisions, joint ventures, attorneys, accountants, insurers, co-insurers and reinsurers, assigns, heirs, executors, trustees, general or limited partners or partnerships, limited liability companies, members, personal or legal representatives, estates, administrators, predecessors, successors and assigns or other individuals or entities in which Defendants, TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC and/or Triangle Capital Group, LLC have a controlling interest or which is related to or affiliated with any of the Defendants, TCG Skyloft Owner, LLC, TCG Skyloft JV, LLC and/or Triangle Capital Group, LLC. For avoidance of doubt, the reference to "agents" does not include or refer to any of the Brokers, and nothing in this release language nor any other provision of this Settlement Stipulation is intended to release any claims Releasing Parties may have against such Brokers. For further avoidance of doubt, Released Parties does not include any of the Nelson Parties.

- c. **“Released Claims”** means any and all manner of claims and potential claims, including Unknown Claims, against the Released Parties, including but not limited to any and all known and unknown allegations, charges, complaints, claims, judgments, debts, setoffs, rights of recovery, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, expenses (including attorneys’ fees and costs incurred), punitive or exemplary damages, equitable, declaratory, or other grounds for relief, of any nature whatsoever, known or unknown, contingent or non-contingent, that the Releasing Parties have, that the Releasing Parties may have had, or that have been or may have been made directly or indirectly, by, through or under the Releasing Parties, whether by subrogation, impleader, interpleader, derivatively on behalf of any entity or otherwise, against the Released Parties, whether or not apparent or yet to be discovered, or which may hereafter develop, whether arising in law or in equity including but not limited to under any federal, state, or local law, rule, or regulation, for any conduct, duties, obligations, acts or omissions in connection with or arising out of or relating in any way to any purchase, sale or investment in the beneficial interests in NP Skyloft DST, the management or operation of the Skyloft Entities (including, without limitation relating to taxes, preparation or filing of tax returns or statements related to income and expenses and like matters) and/or in any way related to the Skyloft Property. For avoidance of doubt, the claims and/or causes of action asserted or that could have been asserted in the Settlement Action, Underlying Litigation and the Related Actions against the Released Parties constitute Released Claims. For further avoidance of doubt, Released Claims does not include or refer to any claims by Releasing Parties against (i) any of the broker-dealers, brokers, or registered representatives involved in the marketing or sale of beneficial interests in NP Skyloft DST (“Brokers”), and (ii) any of the Nelson Parties, and nothing in this release language nor any other provision of this Stipulation is intended to release any claims Releasing Parties may have against such Brokers and the Nelson Parties. On the Effective Date of the Settlement Stipulation, the Releasing Parties shall release, waive, relinquish, and discharge to the fullest extent permitted by law, the Released Parties for and from any and all Released Claims, that any of the Releasing Parties have or could have made against the Released Parties in any capacity, whether direct, derivative, or otherwise.

14. **Permanent Injunction.** The Court bars and enjoins (i) the Releasing Parties from filing, commencing, prosecuting, intervening in, participating in (as Class Members or otherwise), or receiving any benefits or other relief from any other lawsuit, arbitration, or other proceeding or order in any jurisdiction that is based upon, arises out of, or relates to any Released Claims as to any Released Party, and (ii) all persons and entities from organizing any Releasing Party for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit that is based upon, arises out of, or relates to any Released Claims as to any Released Party, including, but not limited to, any claim that is based upon, arises out of, or relates to the Action or the transactions and occurrences referred to in the Petition filed to commence the Action.

15. **No Admissions.** This Order and Final Judgment, the Settlement Stipulation, and compliance with this Judgment or the Settlement Stipulation shall not be construed or deemed to be evidence of an admission or concession on the part of any Released Party with respect to any actual or potential claim, fault, liability, wrongdoing, or damage whatsoever.

16. **Modification of Settlement Stipulation.** Without further approval from the Court, the settling Parties are authorized to agree to and adopt such amendments, modifications, and expansions of the Settlement Stipulation and all exhibits attached to the Settlement Stipulation as (i) are not materially inconsistent with the Judgment and (ii) do not materially limit the rights of Class Members under the Settlement Stipulation.

17. **Retention of Jurisdiction.** Without in any way affecting the finality of this Judgment, the Court expressly retains continuing and exclusive jurisdiction over the settling Parties and the Class Members for all matters relating to the Action, including the administration, consummation, interpretation, effectuation, or enforcement of the Settlement Stipulation and of this Judgment, and for any other reasonably necessary purpose, including, without limitation:

- a) enforcing the terms and conditions of the Settlement Stipulation (including, without limitation, enforcing the permanent injunction);
- b) resolving any disputes, claims, or causes of action that, in whole or in part, are related to or arise out of the Settlement Stipulation or this Judgment (including, without limitation, whether a person or entity is or is not a Class Member, and whether claims or causes of action allegedly related to the Action are or are not barred by this Judgment or the releases);
- c) entering such additional orders as may be necessary or appropriate to protect or effectuate this Judgment, and
- d) entering any other necessary or appropriate orders to protect and effectuate this Court's retention of continuing jurisdiction.

18. **Rule 13 Findings.** The Court finds that the petition in the Action was filed on a good-faith basis in accordance with Rule 13 of the Texas Rules of Civil Procedure based upon all publicly available information. The Court finds that all settling Parties and their counsel have complied with each requirement of Rule 13 of the Texas Rules of Civil Procedure as to all proceedings in this litigation.

19. **Termination.** In the event that the Settlement does not become final in accordance with the terms of the Settlement Stipulation, certification of the Class shall be automatically vacated and this Judgment shall be rendered null and void to the extent provided by and in accordance with the Settlement Stipulation, shall be of no further force and effect, and the Parties' rights and defenses shall be restored, without prejudice, to their respective positions as if the Settlement Stipulation had never been executed.

20. **Entry of Judgment.** There is no just reason to delay the entry of this Order and Final Judgment, and immediate entry by the Clerk of the Court is expressly directed.

SO ORDERED.

Dated this ___ day of _____, 2024.

The Honorable Karin Crump
TRAVIS COUNTY DISTRICT JUDGE

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Filing Code Description: Motion (No Fee)

Filing Description: MOTION FOR FINAL APPROVAL OF CLASS AND DERIVATIVE SETTLEMENT

Status as of 11/7/2024 1:34 PM CST

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