

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

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 and expenses in the amount of (a) \$975,000.00 to George Brothers Kincaid & Horton for attorney's fees and \$77,506.22 for expenses; (b) \$975,000.00 to Brownlie Hansen for attorney's fees and \$85,966.02 for expenses; to be paid to Class Counsel from the Settlement Fund within thirty days after the Settlement Fund is funded. The Court further awards attorney's fees of 15% of the Holdback Funds upon the Holdback Termination Date to George Brothers Kincaid & Horton and 15% of the Holdback Funds upon the Holdback Termination Date to Brownlie Hansen. 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 Class Representatives Black Tortuga Group, LLC; and Paul Tessier, Co-Trustee of the Anne T. Tessier Family Trust.

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.

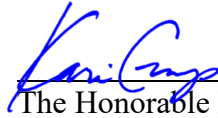
18. **Rule 13 Findings.** The Court finds that the petition in the Action was filed on a good-faith basis in accordance with Rule 13 of the Texas Rules of Civil Procedure based upon all publicly available information. The Court finds that all settling Parties and their counsel have complied with each 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 5th day of December, 2024.



The Honorable Karin Crump
TRAVIS COUNTY DISTRICT JUDGE

**AGREED AS TO FORM AND SUBSTANCE:
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