

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FEDERAL TRADE COMMISSION, and
STATE OF MINNESOTA, by its Attorney
General, Keith Ellison,

Plaintiffs,

v.

SELLERS PLAYBOOK, INC., a corporation,

EXPOSURE MARKETING COMPANY, a
corporation also, d/b/a Sellers Online and
Sellers Systems,

JESSIE CONNERS TIEVA, individually and
as an officer of SELLERS PLAYBOOK, INC.
and EXPOSURE MARKETING COMPANY,
and

MATTHEW R. TIEVA, individually and as an
officer of SELLERS PLAYBOOK, INC. and
EXPOSURE MARKETING COMPANY,

Defendants.

CASE NO. 18-cv-02207-DWF-TNL

**RECEIVER'S MOTION FOR
ORDER APPROVING
SETTLEMENT AGREEMENT
WITH CAPSOURCE, INC.**

TO: ALL ABOVE-NAMED PARTIES THROUGH THEIR COUNSEL OF
RECORD:

The Court-Appointed Receiver, Robb Evans & Associates LLC, by its counsel,
moves for an Order approving the Settlement Agreement it has reached with CapSource,

Inc. This motion is made based on the supporting memorandum of law and declaration of Brick Kane filed herewith, and all the files, records, pleadings and proceedings herein. A copy of the Settlement Agreement, without exhibits, is attached as Exhibit 1 to the declaration of Brick Kane.

Dated: June 14, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)
225 South Sixth Street, Suite 2800
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and

By: /s/ Gary Owen Caris

Gary Owen Caris
California Attorney SBN 088918
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Attorneys for Receiver
ROBB EVANS & ASSOCIATES LLC

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CASE NO. 18-cv-02207-DWF-TNL

**NOTICE OF HEARING ON
RECEIVER'S MOTION FOR
ORDER APPROVING
SETTLEMENT AGREEMENT
WITH CAPSOURCE, INC.**

PLEASE TAKE NOTICE that on August 1, 2019 at 1:30 p.m. before the Honorable Donovan W. Frank, in Courtroom 7C in the Warren Burger Federal Building and U.S. Courthouse, 316 North Robert Street, St. Paul, MN 55101, the Court will hear the Receiver's Motion for Order Approving Settlement Agreement with CapSource, Inc.

Dated: June 14, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402
(612) 333-2111

and

By: /s/ Gary Owen Caris

Gary Owen Caris
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Attorneys for Receiver
ROBB EVANS & ASSOCIATES LLC

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CASE NO. 18-cv-02207-DWF-TNL

**MEMORANDUM OF LAW IN
SUPPORT OF RECEIVER'S
MOTION FOR ORDER
APPROVING SETTLEMENT
AGREEMENT WITH
CAPSOURCE, INC.**

MEMORANDUM OF LAW

I. INTRODUCTION

This lawsuit was commenced by the Federal Trade Commission (“FTC”) and the State of Minnesota (“Minnesota”) with a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) (“Complaint”) on July 30, 2018 against Sellers Playbook, Inc. (“Sellers Playbook”), Exposure Marketing Company (“Exposure Marketing”), Jessie

Connors Tieva (“Jessie Tieva”), individually and as an officer of those entities, and Matthew R. Tieva (“Matthew Tieva”), individually and as an officer of those entities (collectively, the “Defendants”). Under the Temporary Restraining Order (Doc. 29) (“TRO”) entered on July 30, 2018, the Receiver became temporary receiver over the “Receivership Entities,” defined in the TRO to mean Sellers Playbook, Exposure Marketing, and each of their subsidiaries, affiliates, successors and assigns, and “any other entity that the Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants’ advertising, marketing, distributing, promoting, or selling of business opportunities, (2) commingled or pooled assets with any Defendant, or (3) otherwise participated in the transfer of assets stemming from the advertising, marketing, distributing, promoting, or selling of business opportunities.” (Definition M) The TRO was extended pursuant to a stipulated Order Extending the Duration of the Temporary Restraining Order and Postponing Preliminary Injunction Hearing (Doc. 39) (“Order Extending TRO”) until the Court issued a ruling on the Plaintiffs’ request for a preliminary injunction or further order of the Court.

Prior to the rescheduled preliminary injunction hearing, the parties entered into a global settlement of the litigation pursuant to the Amended Stipulated Order for Permanent Injunction and Monetary Judgment (Doc. 64) (“Stipulated Judgment”) which was entered on November 28, 2018. Under the Stipulated Judgment, the Receiver became the permanent equity receiver over Sellers Playbook and Exposure Marketing and their successors and assigns (collectively, the “Corporate Defendants”). Pursuant to Sections IV.C and IV.D of the Stipulated Judgment, the Receiver was to take possession

of the assets identified in Section IV.B of the Stipulated Judgment to the extent the assets were not already in the possession of the Receiver, and to commence the sale of the unliquidated assets identified therein as soon as practicable using a commercially reasonable procedure, and hold the surrendered assets and the proceeds from the sale of the unliquidated assets for future transfer in accordance with further instructions from the Court. Pursuant to Section VII of the Stipulated Judgment, the Receiver was authorized to pursue collection actions regarding the assets not already in its possession and enter into compromises with respect to the receivership estate, subject to notice to the FTC and Minnesota and their opportunity to object.

Pursuant to the Stipulated Judgment, the Receiver has entered into a settlement agreement with CapSource, Inc. (“CapSource”), a pre-receivership secured creditor of JC Commercial Holdings, LLC (“JC Commercial”), the holder of record title on certain real estate subject to the Stipulated Judgment, as more particularly described below. The FTC, Minnesota and defendants Jessie Tieva and Matthew Tieva (collectively, the “Tievas”) do not object to the settlement. While the Stipulated Judgment does not require Court approval before the Receiver may consummate settlements when the FTC and Minnesota have no objection, CapSource has requested Court approval as a condition to the settlement.

II. TERMS OF THE SETTLEMENT AGREEMENT

JC Commercial is the mortgagor under a mortgage in favor of CapSource (“Mortgage”), creating a lien on the commercial real property commonly known as 135 Century Avenue, St. Paul, Minnesota (“Real Property”). The Real Property became property of the receivership estate pursuant to Section IV.B.18 of the Stipulated Judgment. After the Stipulated Judgment, CapSource commenced an action to foreclose the Mortgage based on an asserted default on the Mortgage. CapSource asserts that the amount due under the Mortgage is \$1,558,932.50 as of January 23, 2019, plus interest accruing thereafter at the rate of \$335.56 per day. The Tievas guaranteed the debt secured by the Mortgage. The foreclosure action was dismissed without prejudice upon request of the Receiver.

Disputes and differences have arisen between the Receiver and CapSource concerning the validity and enforceability of the Mortgage. The Receiver has asserted that the Mortgage may not constitute a bona fide, enforceable lien against the Real Property because the principals of CapSource became shareholders in Sellers Playbook and the money loaned by CapSource which is secured by the Mortgage was used to finance and fund Sellers Playbook’s fraudulent operations. CapSource disputes these obligations and contends that the financing came from unrelated third party investors.

If the Mortgage is a valid encumbrance, there will be no value in the Real Property for the receivership estate. CapSource and the Receiver agree that the value of the Real Property is worth substantially less than the debt secured by the Mortgage, with the tax

value listed at \$487,900 and the Receiver having obtained a broker's opinion of value that places the value of the property at less than that.

The Receiver and CapSource have entered into a Settlement Agreement, also executed by JC Commercial and the Tievas, which provides that: (a) CapSource pay to the Receiver the sum of \$125,000 upon Court approval of the settlement in full settlement of all claims that the Receiver otherwise has to the Real Property; (b) the Receiver and CapSource enter into mutual releases; (c) JC Commercial and the Tievas provide CapSource a limited warranty deed and a voluntary foreclosure agreement, providing CapSource the alternative of accepting the deed in lieu of foreclosure or alternatively proceeding to foreclose on the Real Property; and (d) CapSource, on the one hand, and JC Commercial and the Tievas, on the other, enter into mutual releases. A copy of the executed Settlement Agreement, without exhibits, is attached to the accompanying declaration of Brick Kane as Exhibit 1.

III. THE SETTLEMENT IS FAIR AND EQUITABLE AND SHOULD BE APPROVED FORTHWITH

The leading treatise on receivership law states:

The only justification for the compromise of claims is that it is done for the best interests of the receivership and the estate under the control and possession of the court.

3 Clark on Receivers § 655 (3d ed. 1992).

The court appointing a receiver must use its discretion in determining whether it is for the best interests of the estate that the receiver be authorized to compromise a claim, and when the appointing court has not abused its discretion in giving instructions to the receiver, its orders will not be disturbed or reviewed in the appellate court.

3 *Clark on Receivers* § 770 (3d ed. 1992).

Under Rule 9019 of the Federal Rules of Bankruptcy Procedure and Local Rule 9019-1, the court in a bankruptcy case may approve a proposed compromise of controversies after notice and an opportunity for hearing. Eighth Circuit decisions in *In re Flight Transp. Corp.* 730 F.2d 1128, 1135 (8th Cir. 1984) and *Drexel v. Loomis* 35 F.2d 800, 806 (8th Cir. 1929) establish four factors the court must consider in ruling on the approval of compromises in bankruptcy:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re Flight Transp. Corp. 730 F.2d at 1135, *Drexel*, 25 F.2d at 806.

The foregoing factors have been examined by courts in receiverships in approving settlements, but the court in a federal equity receivership has even broader authority to approve proposed settlements by a receiver and to look to other factors in determining that the settlement should be approved. *See Gordon v. Dadante*, 336 Fed. Appx. 540 (6th Cir. 2009) (settlement by receiver in a federal equity receivership within the receiver's discretion and should be approved if it is fair); *Securities and Exchange Commission v. Credit Bancorp, Ltd.*, No. 99 Civ. 11395, 2002 WL 1792053 at *4-5 (S.D.N.Y. Aug. 2, 2002); *Securities and Exchange Commission v. Princeton Economic International, Inc.*, No. 99 Civ. 9667, 2002 WL 206990 at *1 (S.D.N.Y. Feb. 8, 2002). “[R]eceptors benefit from the general presumption that district courts favor settlements.” *Sterling v. Stewart*, 158 F.3d 1199, 1202 (11th Cir. 1998). The District Court's determination of the fairness of a settlement by the Receiver is subject to the sound discretion of the Court and will only be overturned based on a clear showing of abuse of discretion. *Gordon v. Dadante*, 336 Fed. Appx. at 545 (holding that district court did not abuse its discretion in approving settlement agreement entered into by a receiver); *Sterling v. Stewart*, 158 F.3d at 1202 (quoting *Bennett v. Behring*, 737 F.2d 982, 986 (11th Cir. 1984)); *Securities and Exchange Commission v. Arkansas Loan and Thrift Corp.*, 427 F.2d 1171, 1172 (8th Cir. 1970) (court finds no abuse of discretion in trial court's approval of receiver's settlement on fidelity bond claim).

The settlement is a favorable resolution of the dispute between the Receiver and CapSource. While the Receiver believes that it has a legitimate argument that the Mortgage may not constitute a bona fide, enforceable lien against the Real Property

because the principals of CapSource became shareholders in Sellers Playbook and the money loaned by CapSource which is secured by the Mortgage was used to finance and fund Sellers Playbook's fraudulent operations, there are strong countervailing considerations. First, the Mortgage is presumptively valid under Minnesota law. See *Thomas v. Miller*, 39 Minn. 339, 40 N.W. 358 (1888), holding that a promissory note and mortgage are presumptively valid, if given for consideration and not shown to be for an unreasonable amount or a cover for usury. Second, CapSource has provided evidence that the funding was made by unrelated, innocent third party investors. Third, the value of the Real Property is worth significantly less than the debt and worth no more than the tax value of the property which is \$487,900, and the Receiver obtained a broker's opinion of value that places the value of the property at less than that. Therefore, if the Mortgage is deemed valid, there will be no value in the Real Property for the receivership estate and the \$125,000 settlement represents a significant percentage of the value of the Real Property. The Receiver recognizes the uncertainty and difficulty facing a challenge to CapSource's Mortgage. Therefore, the Receiver has determined that the Settlement Agreement is fair and reasonable and the settlement avoids the costs, delays and risks of litigation. Declaration of Brick Kane in Support of Motion to Approve Settlement ¶10. Further, the FTC and Minnesota, the principal creditors in the estate and the parties seeking to maximize value for defrauded consumers, support the settlement.

Therefore, the Settlement Agreement is clearly beneficial within the four factors in the *In re Flight Transp. Corp.* decision and is fair and reasonable under the circumstances.

IV. CONCLUSION

For the reasons set forth herein, it is respectfully requested that the Court grant the Receiver's motion to approve the Settlement Agreement with CapSource in its entirety.

Dated: June 14, 2019

Respectfully submitted,

BARNES & THORNBURG LLP

Christopher Lynch (#0284154)
225 South Sixth Street, Suite 2800
Minneapolis, MN 55402
(612) 333-2111

and

By: /s/ Gary Owen Caris

Gary Owen Caris
California Attorney SBN 088918
Admitted Pro Hac Vice
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Attorneys for Receiver
ROBB EVANS & ASSOCIATES LLC

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**DECLARATION OF BRICK KANE
IN SUPPORT OF RECEIVER'S
MOTION FOR ORDER
APPROVING SETTLEMENT
AGREEMENT WITH
CAPSOURCE, INC.**

I, Brick Kane, declare

1. I am President and Chief Operating Officer of Robb Evans & Associates LLC (“Receiver”), the Receiver as defined under the Temporary Restraining Order over the assets of Sellers Playbook, Inc. (“Sellers Playbook”), Exposure Marketing Company (“Exposure Marketing”), Jessie Connors Tieva (“Jessie Tieva”), individually and as an officer of those entities, and Matthew R. Tieva (“Matthew Tieva”), individually and as an

officer of those entities (collectively, the “Defendants”). I am one of the members of the Receiver with primary responsibility for the daily administration, supervision, and management of the receivership estate. I have personal knowledge of the matters set forth in this declaration or I have gained knowledge of these matters through other members and deputies of the Receiver during my supervision and management in this matter. If called upon to testify as to these matters I could and would competently testify thereto.

2. This lawsuit was commenced by the Federal Trade Commission (“FTC”) and the State of Minnesota (“Minnesota”) with a Complaint for Permanent Injunction and Other Equitable Relief on July 30, 2018 against the Defendants.

3. Under the Temporary Restraining Order (“TRO”) entered on July 30, 2018, the Receiver became temporary receiver over the “Receivership Entities,” defined in the TRO to mean Sellers Playbook, Exposure Marketing, and each of their subsidiaries, affiliates, successors and assigns, and “any other entity that the Receiver determines is controlled or owned by any Defendant and (1) conducted any business related to Defendants’ advertising, marketing, distributing, promoting, or selling of business opportunities, (2) commingled or pooled assets with any Defendant, or (3) otherwise participated in the transfer of assets stemming from the advertising, marketing, distributing, promoting, or selling of business opportunities.” The TRO was extended pursuant to a stipulated Order Extending the Duration of the Temporary Restraining Order and Postponing Preliminary Injunction Hearing (“Order Extending TRO”) until the

Court issued a ruling on the Plaintiffs' request for a preliminary injunction or further order of the Court.

4. Prior to the rescheduled preliminary injunction hearing, the parties entered into a global settlement of the litigation pursuant to the Amended Stipulated Order for Permanent Injunction and Monetary Judgment ("Stipulated Judgment") which was entered on November 28, 2018. Under the Stipulated Judgment, the Receiver became the permanent equity receiver over Sellers Playbook and Exposure Marketing and their successors and assigns (collectively, the "Corporate Defendants"). Pursuant to Sections IV.C and IV.D of the Stipulated Judgment, the Receiver was to take possession of the assets identified in Section IV.B of the Stipulated Judgment to the extent the assets were not already in the possession of the Receiver, and to commence the sale of the unliquidated assets identified therein as soon as practicable using a commercially reasonable procedure, and hold the surrendered assets and the proceeds from the sale of the unliquidated assets for future transfer in accordance with further instructions from the Court. Pursuant to Section VII of the Stipulated Judgment, the Receiver was authorized to pursue collection actions regarding the assets not already in its possession and enter into compromises with respect to the receivership estate, subject to notice to the FTC and Minnesota and their opportunity to object.

5. Since the entry of the Stipulated Judgment, the Receiver has been in the process of complying with Sections IV.C and IV.D therein by taking possession of the assets identified in Section IV.B of the Judgment to the extent not already in the Receiver's possession and selling the unliquidated assets identified in Section IV.B.

6. JC Commercial Holdings, LLC (“JC Commercial”) is the mortgagor under a mortgage in favor of CapSource (“Mortgage”), creating a lien on the commercial real property commonly known as 135 Century Avenue, St. Paul, Minnesota (“Real Property”). The Real Property became property of the receivership estate pursuant to Section IV.B.18 of the Stipulated Judgment. After the Stipulated Judgment, CapSource commenced an action to foreclose the Mortgage based on an asserted default on the Mortgage. CapSource asserts that the amount due under the Mortgage is \$1,558,932.50 as of January 23, 2019, plus interest accruing thereafter at the rate of \$335.56 per day. Defendants Jesse Tieva and Matt Tieva (collectively, the “Tievas”) guarantied the debt secured by the Mortgage. The foreclosure action was dismissed without prejudice upon request of the Receiver.

7. Disputes and differences have arisen between the Receiver and CapSource concerning the validity and enforceability of the Mortgage. The Receiver has asserted that the Mortgage may not constitute a bona fide, enforceable lien against the Real Property because the principals of CapSource became shareholders in Sellers Playbook and the money loaned by CapSource which is secured by the Mortgage was used to finance and fund Sellers Playbook’s fraudulent operations. CapSource disputes these obligations and contends that the financing came from unrelated third party investors.

8. If the Mortgage is a valid encumbrance, there will be no value in the Real Property for the receivership estate. CapSource and the Receiver agree that the value of the Real Property is worth substantially less than the debt secured by the Mortgage, with

the tax value listed at \$487,900. The Receiver obtained a broker's opinion of value that places the value of the property at less than that amount.

9. The Receiver and CapSource have entered into a Settlement Agreement, also executed by JC Commercial and the Tievas, which provides that: (a) CapSource pay to the Receiver the sum of \$125,000 upon Court approval of the settlement in full settlement of all claims that the Receiver otherwise has to the Real Property; (b) the Receiver and CapSource enter into mutual releases; (c) JC Commercial and the Tievas provide CapSource a limited warranty deed and a voluntary foreclosure agreement, providing CapSource the alternative of accepting the deed in lieu of foreclosure or alternatively proceeding to foreclose on the Real Property; and (d) CapSource, on the one hand, and JC Commercial and the Tievas, on the other, enter into mutual releases. A true and correct copy of the Settlement Agreement, without exhibits, is attached hereto as Exhibit 1.

10. The settlement is a favorable resolution of the dispute between the Receiver and CapSource for the receivership estate. While the Receiver believes that it has a legitimate argument that the Mortgage may not constitute a bona fide, enforceable lien against the Real Property because the principals of CapSource became shareholders in Sellers Playbook and the money loaned by CapSource which is secured by the Mortgage was used to finance and fund Sellers Playbook's fraudulent operations, there are strong countervailing considerations. First, I am advised that the Mortgage is presumptively valid under Minnesota law. Second, CapSource has provided evidence that the funding was made by unrelated, innocent third party investors. Third, the value of the Real

Property is worth significantly less than the debt and worth no more than the tax value of the property which is \$487,900. Therefore, if the Mortgage is deemed valid, there will be no value in the Real Property for the receivership estate. In any event, the \$125,000 settlement represents a significant percentage of the value of the Real Property. The Receiver recognizes the uncertainty and difficulty facing a challenge to CapSource's Mortgage. Therefore, the Receiver has determined that the Settlement Agreement is fair and reasonable and the settlement avoids the costs, delays and risks of litigation.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 12, 2019, at Sun Valley, California.



BRICK KANE

EXHIBIT 1

SETTLEMENT AGREEMENT

This Agreement (the "Agreement") is entered into this 1st day of June, 2019 2019, between Robb Evans & Associates LLC, as Receiver appointed in Court File No. 18-2207, United States District Court, District of Minnesota (the "Receiver"), CapSource, Inc., a Nevada corporation, as litigation agent for the mortgagees listed on mortgage document T02596608 recorded with the Ramsey County Registrar of Titles on September 13, 2017 ("CapSource"), and JC Commercial Holdings, LLC, a Minnesota limited liability company and Jessie and Matt Tieva, (collectively, the "Debtor"). The Receiver, CapSource, and the Debtor shall be collectively referred to as the "Parties."

RECITALS

A. The Debtor is the mortgagor in the mortgage dated September 8, 2017, and recorded with the Ramsey County Registrar of Titles on September 13, 2017 as document number T02596608 (the "Mortgage").

B. The Mortgage describes the following real property in Ramsey County, Minnesota:

See Exhibit A.

(the "Property").

C. The Property became part of the receivership estate of the Receiver pursuant to a court order dated November 28, 2018 in Court File No. 18-2207, United States District Court, District of Minnesota (Doc. No. 64) (the "Receivership Order").

D. CapSource commenced an action to foreclose the Mortgage pending in state

court, State of Minnesota, County of Ramsey, Court File No. 62-CV-19-481 (the “Foreclosure Action”). The Foreclosure Action was dismissed without prejudice by notice filed with the court on February 22, 2019.

E. The Mortgage is in default and CapSource desires to recommence the Foreclosure Action to foreclose the Mortgage.

F. The Receivership Order authorizes the Receiver to sell the Property using a commercially reasonable procedure.

G. The Receivership Order also authorizes the Receiver to institute actions or proceedings in state, federal, or foreign courts that the Receiver deems necessary and advisable to carry out the Receiver’s mandate under the Receivership Order, including actions challenging fraudulent or voidable transfers.

H. The Receiver has claimed that the Mortgage on the Property is voidable and has expressed an interest in commencing an action to avoid the Mortgage. CapSource denies the Receiver’s claims.

I. The Receiver and CapSource wish to settle their dispute without litigation, and enter into this Agreement, which has been freely negotiated between the parties.

J. The Debtor supports this Agreement and wishes to convey whatever interest it maintains in the Property to CapSource.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is mutually acknowledged, the parties agree as follows:

1. The foregoing recitals are true and correct, and are incorporated into this

Agreement by this reference.

2. Immediately upon the execution of this Settlement Agreement, the Receiver shall comply with the notification requirements set forth in Section VII.F. of the Receivership Order. Although not specifically required by the Receivership Order, the Receiver agrees to notice the settlement for court approval.

3. Within ten (10) days of court approval of this settlement, CapSource agrees to convey \$125,000 in good funds to the Receiver either by wire transfer or certified funds, per instructions provided by the Receiver.

4. Upon payment of the settlement funds described above, the Debtor agrees to execute and deliver to CapSource the following:

a. A limited warranty deed for the Property (the "Deed"), attached to this Agreement as **Exhibit B**, and

b. A voluntary foreclosure agreement, attached this Agreement as **Exhibit C**.

5. Upon delivery of Exhibits B and C, CapSource has the sole discretion whether to record the Deed(s) in Exhibit B, or pursue the voluntary foreclosure as described in Exhibit C.

6. Upon court approval of this Agreement and payment of the settlement funds, the Property will no longer be part of the receivership estate, and the Receiver will have no right, title, or interest in the Property.

7. Except only for the right to enforce any right, term, condition, obligation, or

defense under this Agreement, the right for CapSource to enforce the non-monetary covenants in the Mortgage against the Debtor, and subject to court approval and payment of the settlement funds, the Debtor and CapSource, on behalf of themselves, and on behalf of each and all of their respective past and present representatives, attorneys, agents, heirs, successors, and assigns, shall and do hereby fully and finally release each other, and each and all of their respective past and present representatives, attorneys, agents, heirs, successors, and assigns, from all demands, damages, claims, counterclaims, causes of action, defenses, or damages, whether direct, incidental, or consequential, of whatever other kind or nature, whether such claims and damages sound in contract, tort, or warranty, whether based in law or equity, that they may have, or may claim *to have*, against each other arising out of or related to the dealings between them, including all claims that were asserted, or that could be asserted, and further including all claims that in any way arise out of or relate to the Property. This mutual release is intended to be full, final, and global between CapSource and the Debtor for all of their dealings of any kind up through the date of this Agreement.

8. Except only for the right to enforce any right, term, condition, obligation, or defense under this Agreement, and subject to court approval and payment of the settlement funds, the Receiver and CapSource, on behalf of themselves, and on behalf of each and all of their respective past and present representatives, attorneys, agents, heirs, successors, and assigns, shall and do hereby fully and finally release each other, and each and all of their respective past and present representatives, attorneys, agents, heirs,

successors, and assigns, from all demands, damages, claims, counterclaims, causes of action, defenses, or damages, whether direct, incidental, or consequential, of whatever other kind or nature, whether such claims and damages sound in contract, tort, or warranty, whether based in law or equity, that they may have, or may claim *to* have, against each other arising out of or related to the dealings between them, including all claims that were asserted, or that could be asserted, and further including all claims that in any way arise out of or relate to the Property, the Mortgage, and the debt secured by the Mortgage, including without limitation any claims that could be brought in the receivership. This mutual release is intended to be full, final, and global between CapSource and the Receiver for all of their dealings of any kind up through the date of this Agreement.

9. CapSource specifically retains the right to file a proof of claim in any bankruptcy proceeding filed by any of the Debtors.

10. If CapSource elects to record the Deed, the Debtor shall be released by CapSource from any further obligation under the Mortgage and the related promissory note, *provided* that CapSource has acquired, through the recording of the Deed, fee simple absolute title to the Property, which is subject to no liens or encumbrances other than those described in the Deeds and in the Affidavit Regarding Seller of even date herewith provided by Debtor to CapSource.

11. The execution, delivery, acceptance and recording of the Deed shall not create or affect a merger of the Mortgage and the interest conveyed by the Deed.

Notwithstanding acceptance and recording of the Deed, CapSource retains the right to foreclose the Mortgage upon the property by action or by advertisement, and retains the right to foreclose the Mortgage pursuant to the voluntary foreclosure agreement set forth in Exhibit C. The foreclosure shall be at no cost to the Debtor or the Receiver.

12. The Debtor represent that Jackson Enterprise LLC is in possession of the Property and no other party is in possession of the Property. The Receiver represents that Receiver has not entered into any other agreement, oral or written, for the sale, lease or encumbrance of the Property, and to the best of its knowledge, believes that Jackson Enterprises LLC is in possession of the Property. Debtor agrees to execute the Affidavit of Grantor and Estoppel Affidavit of even date herewith, attached to this Agreement as **Exhibit D and Exhibit E** and to present the Tenant Estoppel Certificate attached to this agreement as **Exhibit F** to the tenant. Debtor represents that it has turned over to CapSource copies of any existing leases and contact information for any lessee that it has in its possession. Receiver represents that it has turned over to CapSource copies of any existing leases and contact information for any lessee that it has in its possession.

13. Debtor acknowledges that the Deeds are intended to convey to CapSource all right, title and their respective interest in the Property; and the Deeds are not given for purposes of security.

14. Debtor specifically acknowledges that CapSource has paid full and fair value for the Property by reason of the agreements set forth herein. The Receiver acknowledges that CapSource has paid full and fair value for settlement of this matter by

reason of the agreements set forth herein.

15. Debtor acknowledges that it is in default on the Mortgage, and the amount due to CapSource on the note secured by the Mortgage is \$1,558,932.50 as of January 23, 2019, plus interest accruing thereafter at the rate of \$335.56 per day. Debtor specifically acknowledges that, absent a conveyance of the Property to CapSource and agreement by CapSource to release Debtor from the amounts due under the Mortgage, Debtor would be unconditionally liable for the obligations described in the Mortgage; and that there is no defense, offset, counterclaim or recoupment against the Mortgage or the indebtedness secured by the Mortgage, except as provided by bankruptcy law.

16. Debtor specifically acknowledges that Debtor is not liable for any claim of any other persons with regard to the Property, and that CapSource is not assuming any responsibilities or any liabilities of Debtor, or claims of persons against Debtor, with regard to the Property, except as set forth herein. Debtor warrants that to the best of Debtor's knowledge there are no unsatisfied claims by any persons related to the Property, except for the Mortgage.

17. The Parties specifically acknowledge that they have read this Agreement and the documents delivered herewith, and have obtained such advice from counsel as they have deemed necessary; and that they have freely and voluntarily entered into this Agreement, without duress or undue influence.

18. Debtor and Receiver acknowledge that CapSource has made no promise or representations to them, except as specifically stated herein.

19. Debtor will provide to CapSource copies of all insurance policies and title documents related to the Property in its possession. The Receiver will provide to CapSource copies of all insurance policies and title documents related to the Property in its possession.

20. There are no oral or side agreements between Debtor and CapSource. This Agreement and the documents delivered with this Agreement represent the entire agreement between Debtor and CapSource relative to the subject matter of this Agreement, and cannot be modified except by written instrument executed by all the parties to this Agreement.

21. Debtor is not aware of any violations of any governmental rule or regulation with regard to the Property, including any regulation by any local governing body, zoning board, building inspector or any other violation of any health code, building code, or any other land-use regulation. Debtor is not aware of any structural, mechanical, plumbing, electrical defects or other problems on the Property, including, but not limited to, any roof leaks, basement leaks, plumbing leaks and any deferred maintenance. Debtor is not aware of any environmental issues with the Property that could result in remedial action or other enforcement by state or federal regulatory authorities.

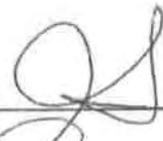
22. Simultaneously with the execution and delivery of the Deeds, Debtor and Receiver will deliver to CapSource any abstracts, keys, surveys, plans, specifications, blueprints, owner's manuals, warranty information or other documents or items related to the Property in their respective possession; and except as specifically provided herein,

Debtor and Receiver specifically acknowledge that all electrical and gas appliances, plumbing fixtures, electrical fixtures, heating and air-conditioning equipment, and any other fixtures shall remain in the Property; and that Debtor and Receiver do not own any personal property located on the Property.

23. Debtor acknowledges that any of the Debtor's personal property remaining in or on the Property after the date of this Agreement will become the property of CapSource; and CapSource may dispose of any such property in any manner it deems fit.

24. Upon approval of this settlement and payment of the settlement funds set forth herein, and in the event the Deed is recorded, Debtor will transfer possession of the Property to CapSource, subject to the existing lease, and Debtor and Receiver will not claim any right to possession of the Property. Furthermore, Debtor represents that there are no tenants or other persons with any right to possession of the Property, except as identified in the Tenant Estoppel Certificate, executed of even date herewith.

DEBTOR:
JC Commercial Holdings, LLC

By: 
xxx
Its: Chief Manager

CapSource:
CapSource, Inc. as litigation agent

By: _____
Its:

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DEBTOR:
JC Commercial Holdings, LLC

By: _____
xxx
Its: Chief Manager

CapSource:
CapSource, Inc. as litigation agent

By: 
STEPHEN J BYRNE
Its: PRESIDENT

RECEIVER:
Robb Evans & Associates LLC

Jessie Tieva

RECEIVER:
Robb Evans & Associates LLC



Jessie Tieva

By: _____



Matt Tieva

Its:

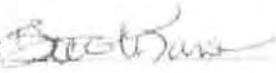
APPROVED AS TO CONTENT AND FORM:

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730 Second Avenue South
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Attorneys for CapSource, Inc.

RECEIVER:
Robb Evans & Associates LLC

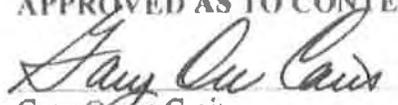

Jessie Tieva

By: 


Matt Tieva

Its: Deputy to the Receiver

APPROVED AS TO CONTENT AND FORM:


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RECEIVER:

Robb Evans & Associates LLC

Jessie Tieva

By: _____

Matt Tieva

Its:

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