

UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**MOTION FOR EXPEDITED ENTRY OF ORDER APPROVING SETTLEMENT  
AGREEMENT AND RELEASE BETWEEN RECEIVER AND MATTHEW NUNEZ**

Receiver Robb Evans & Associates LLC (“Receiver”) hereby moves the Court for an order approving the Settlement Agreement and Release (“Agreement”) entered into between the Receiver, on the one hand and Matthew Nunez, Mindi Nunez and Archimedes Land Development LLC (“Archimedes”), on the other. A copy of the Agreement is attached to the accompanying Declaration of Gary Owen Caris (“Caris Declaration”) as Exhibit 1.

Throughout the receivership, the Receiver has asserted control over the property located at 104 Kings Place, Newport Beach, California (“Kings Place Property”), held in the name of James W. Chittenden, as Family Trustee, and Alliance Trust Company, as Independent Trustee, of the AAC Family HYCET Trust Dated October 7, 2015 (“AAC Trust”), but which is specifically identified as an asset of the receivership estate in the TRO and Preliminary Injunction, as those capitalized terms are defined in the Agreement. Pursuant to the Stipulated Order for Final Judgment Against Relief Defendants Angela Chittenden and Beach Bunny Holdings LLC (Doc. 819), the Kings Place Property became an undisputed asset of the receivership estate.

The Trustees of the AAC Trust entered into a post-receivership Residential Lease With Purchase Option (“Lease”) on the property. The Receiver contends that the Lease was entered into without the Receiver’s knowledge or permission. The lessee under the Lease is Matthew Nunez, who resided in the property with his wife Mindi Nunez (collectively “Nunez” and, together with Archimedes, the “Nunez Parties”) and their three minor children, since on or about November 13, 2018. Subsequently, Archimedes, which is Matthew Nunez’s wholly owned company, acquired the second trust deed note on the Kings Place Property (“Second Priority Note”).

The Receiver and the Nunez Parties have entered into the Agreement which resolves all disputes and differences they may have against one another. The Agreement, as more particularly described in the accompanying Memorandum of Points and Authorities and the Agreement itself, Exhibit 1 to the Caris Declaration, provides among other things:

1. Nunez and their minor children shall Vacate (as defined below) the Kings Place Property not later than September 30, 2021, except as that “Surrender Date,” defined in the Agreement, may be extended for a fifteen-day period through October 15, 2021. Matthew Nunez and his family vacated the Kings Place Property on September 30, 2021, rendering the extension inapplicable. “Vacate” means turning over and delivering possession of the Kings Place Property by: (a) delivering to the Receiver all house keys and all other keys which access any portion of the Kings Place Property; (b) delivering to the Receiver all garage door openers; (c) providing all security codes and alarm codes with respect to all or any portion of the Kings Place Property; (d) delivering possession of the Kings Place Property in its condition as of August 16, 2021; and (e) delivering possession of the Kings Place Property in “broom swept clean” condition and Vacant. “Vacant” means empty and unoccupied, with all furniture, except for built-in furniture, televisions, potted plants, and other similar personal property and effects

being removed from the Kings Place Property. Effective on the Surrender Date, Matthew Nunez surrenders all rights in, to, or under the Lease and the leasehold estate created under the Lease.

2. Provided that Nunez and their minor children Vacate timely and otherwise comply with the terms of the Agreement, Matthew Nunez shall have no further obligation to pay rent except as otherwise set forth in the Agreement.

3. Provided that Nunez and their minor children Vacate timely and otherwise comply with the terms of the Agreement, within six business days after they Vacate, the Receiver shall pay the total sum of \$73,818 to Matthew Nunez, in care of his attorneys, comprised of the return of the \$25,000 Security Deposit and the return of \$52,000 heretofore paid by Matthew Nunez for July 2021 rent, less \$3,182 which is the portion of Unpaid Maintenance Invoices (as those capitalized terms are defined in the Agreement) agreed to be the responsibility of Matthew Nunez. No other payments shall be paid by the Receiver to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise and there shall be no other reimbursements of any kind to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise. Promptly after execution of the Agreement, the Receiver shall pay \$782 to No Worries Pool Service, Inc. and \$9,400 to Campo Landscaping to satisfy the Unpaid Maintenance Invoices.

4. Matthew Nunez withdraws any offer to purchase the Kings Place Property and Nunez shall make no subsequent offer to purchase the Kings Place Property from the Receiver or the receivership estate. The Receiver shall not sell the Kings Place Property to any of the Nunez Parties. Nunez shall take no action to object to or otherwise obstruct or delay in any manner the sale of the Kings Place Property by the Receiver to any other persons or entities.

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5. The Receiver shall continue to pay Archimedes monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% per annum until the Kings Place Property is sold. At the time the Kings Place Property is sold, the Receiver shall pay Archimedes the entire unpaid principal balance, plus any accrued and unpaid interest at the non-default rate of 10.5% at the close of escrow, and upon such payment in full, the trust deed taken as security for the Second Priority Note shall be reconveyed and the Second Priority Note shall be canceled. No further interest shall be recoverable for any period of time in which the original holders of the Second Priority Note or Archimedes have already accepted monthly payments of interest. In the event Nunez and their minor children fail to timely Vacate or Nunez otherwise fail to comply with the terms of the Agreement or the Lease, the amount due under the Second Priority Note shall be reduced in the manner provided in the Agreement.

6. General, mutual releases are entered into between the Nunez Parties and the Receiver.

7. Within a reasonable time after the execution of the Agreement by all parties, the Receiver shall bring a motion in this action seeking an order approving the Agreement. To the extent possible, the Receiver shall seek an expedited order approving the Agreement in light of the time deadlines in the Agreement. The effective date of the Agreement shall be the first date on which: (a) all parties to this Agreement execute it; and (b) this Court enters an order approving this Agreement. However, from the date the Agreement is executed by all of the parties to the Agreement, the parties are required to perform pursuant to its terms and shall continue to perform under the Agreement until or unless the Agreement is disapproved by the Court.

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For the reasons set forth in the accompanying Memorandum of Points and Authorities and Caris Declaration, the Receiver believes that the Agreement is fair and reasonable, beneficial to the receivership estate and should be approved. It resolves all disputes and differences that the Receiver has with Nunez Parties with a minimal payment to Matthew Nunez and paves the way for the Receiver to sell the Kings Place Property without continued disputes or litigation with Matthew Nunez, which will be of substantial benefit to the receivership estate.

The Agreement was executed on September 30, 2021 and Nunez and their minor children Vacated, as defined in the Agreement, on that date. The Receiver intends on paying Matthew Nunez \$73,818 on or before October 8, 2021 pursuant to the Agreement. Given that the parties are to operate under the terms of the Agreement even prior to the Court's approval of same, and that the Receiver has entered into a sales contract with a third party buyer for the sale of the Kings Place Property, it is important that the Agreement be approved as soon as possible. It is essential that the Court rule upon and grant the motion prior to the time that the Kings Place Property is sold so that there is certainty in terms of the Receiver's obligations under the Second Priority Note. Therefore, the Receiver respectfully requests that the Court expedite consideration of this Motion and grant it as soon as possible, particularly in light of the fact that the FTC has reviewed the Agreement and advised the Receiver that it has no objection to the Agreement. Defendants should have no interest in or objection to the requested relief.

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This Motion is made and based upon the accompanying Memorandum of Points and Authorities and Caris Declaration, along with the Agreement attached thereto as Exhibit 1.

Dated: October 5, 2021

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UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR  
EXPEDITED ENTRY OF ORDER APPROVING SETTLEMENT AGREEMENT AND  
RELEASE BETWEEN RECEIVER AND MATTHEW NUNEZ**

**I. INTRODUCTION AND STATEMENT OF FACTS**

This lawsuit was commenced on October 31, 2018 by the Federal Trade Commission (“FTC”) with its filing of a Complaint for Permanent Injunction and Other Equitable Relief (Doc. 1) (“Complaint”). The lawsuit named 17 entity defendants and seven individual defendants, in addition to five relief defendants. On November 5, 2018, the Court issued an Ex Parte Temporary Restraining Order With Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”). Under the TRO, the Receiver became temporary receiver over all entity defendants except for Atlantic International Bank Limited (“AIBL”) and over the assets of Andris Pukke (“Pukke”) and Peter Baker (“Baker”) valued at \$1,000 or more. The Court extended the duration of the TRO pursuant to the Interim Preliminary Injunction on November 20, 2018.

The FTC filed a motion to amend the Complaint and a proposed Amended Complaint for Permanent Injunction and Other Equitable Relief (“Amended Complaint”) on December 28,

2018 (Doc. 87) adding Michael Santos and Newport Land Group, LLC (“NLG”) as defendants. The Court granted the motion to amend on January 11, 2019 (Doc. 107). On February 13, 2019, the Court entered a Stipulated Preliminary Injunction as to Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox LLC, Michael Santos, Angela Chittenden, and Beach Bunny Holdings LLC (Doc. 195) (“Stipulated Preliminary Injunction”). Under the Stipulated Preliminary Injunction, the Receiver remained as receiver over the stipulating Receivership Entities BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners, and NLG was expressly added as a named Receivership Entity.<sup>1</sup>

On October 3, 2019, the Court issued the Preliminary Injunction as to Defendants Andris Pukke, Peter Baker, Luke Chadwick, John Usher, Certain Corporate Defendants, and the Estate of John Pukke (Doc. 615) (“Pukke Preliminary Injunction”). Under the Pukke Preliminary Injunction, the Receiver was named as permanent receiver over at least 16 Receivership Entities and over Pukke’s, Baker’s and Luke Chadwick’s (“Chadwick”) assets valued at \$1,000 or more.

On November 6, 2019, a Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendants Frank Costanzo and Ecological Fox LLC and Relief Defendant Deborah Connelly (Doc. 668) (“Costanzo Judgment”) was entered. Among other things, the Receiver remained as permanent receiver over Ecological Fox LLC under the Costanzo Judgment. Subsequently, several other stipulated judgments were entered against various Defendants and Relief Defendants, each of which vested certain duties, powers and authority in the Receiver, including the Stipulated Order for Permanent Injunction and Monetary Judgment

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<sup>1</sup> The Receiver had already determined that NLG was a non-party Receivership Entity, in addition to previously determining that two other non-party entities, 2729 Bristol LLC and 3905 Marcus, LLC, were Receivership Entities, pursuant to Sections XVI.W and X of the TRO.



Against Defendants Brandi Greenfield and BG Marketing, LLC (Doc. 788) (“Greenfield Judgment”); Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendants Rod Kazazi and Foundation Partners (Doc. 789) (“Kazazi Judgment”); Stipulated Order for Final Judgment Against Relief Defendants Angela Chittenden and Beach Bunny Holdings LLC (Doc. 819) (“Chittenden Judgment”); and Stipulated Order for Permanent Injunction and Monetary Judgment Against Defendant Michael Santos (Doc. 820) (“Santos Judgment”) (collectively, these four judgments and the Costanzo Judgment are referred to as the “Stipulated Judgments”).

On October 8, 2020 the Receiver brought its Application for Extension of Term of Receiver Pursuant to Stipulated Judgments (Doc. 1061) (“Extension Application”), seeking an extension of the term of the Receiver under the Stipulated Judgments through October 10, 2021. The Court entered an Order granting the Extension Application on October 29, 2020 (Doc. 1072).

On January 13, 2021, the Court entered its Order for Permanent Injunction and Monetary Judgment Against Defaulting Defendants John Usher et al. (Doc. 1112) (“Default Judgment”). Pursuant to the Default Judgment, the Receiver remained as permanent receiver over the Defaulting Corporate Defendants, as defined therein, and John Usher (“Usher”) was ordered to transfer his assets to the Receiver, which would become assets of the receivership estate, with limited exceptions as set forth in the Default Judgment. On March 24, 2021, the Court entered its Amended Final Order for Permanent Injunction and Monetary Judgment Against Defendants Andris Pukke, Peter Baker and Luke Chadwick (Doc. 1194) (“Pukke Final Judgment”). The Receiver remained as permanent receiver over the assets of Pukke, Baker and Chadwick, with limited exceptions as set forth in the Pukke Final Judgment.

Throughout the receivership, the Receiver has asserted control over the property located at 104 Kings Place, Newport Beach, California (“Kings Place Property”), held in the name of James W. Chittenden, as Family Trustee, and Alliance Trust Company, as Independent Trustee, of the AAC Family HYCET Trust Dated October 7, 2015 (“AAC Trust”),<sup>2</sup> but which is specifically identified as an asset of the receivership estate in the TRO and Preliminary Injunction. Pursuant to the Chittenden Judgment, the Kings Place Property became an undisputed asset of the receivership estate.

The Trustees of the AAC Trust entered into a post-receivership Residential Lease With Purchase Option (“Lease”) on the property. The Receiver contends that the Lease was entered into without the Receiver’s knowledge or permission. The lessee under the Lease was Matthew Nunez, who resided in the property with his wife Mindi Nunez (collectively referred to herein as “Nunez”) and their three minor children, since on or about November 13, 2018. (Matthew Nunez, Mindi Nunez and Archimedes Land Development LLC, discussed below, are collectively referred to herein as the “Nunez Parties”). Matthew Nunez contends that he was unaware that the Kings Place Property was subject to the TRO when he entered the Lease. The Lease provides that it is for a term of three years, through November 12, 2021.

Rent under the Lease is \$52,000 per month, due on the first day of each month. At the beginning of the Lease, on November 13, 2018, after the inception of the receivership, Matthew Nunez paid \$390,000 to one of the Trustees of the AAC Trust, comprised of a security deposit of \$25,000 (“Security Deposit”), the pro-rated first month’s rent, six months’ pre-paid rent through May 31, 2019 and one option payment of \$20,000. On January 8, 2019 only a portion of this

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<sup>2</sup> The AAC Trust is a purported asset protection trust for the benefit of the minor children of Pukke and Chittenden. AAC are Chittenden’s initials. HYCET stands for “have your cake and eat it too.”

payment, \$177,435, was turned over to the Receiver by one of the Trustees of the AAC Trust. The Receiver contends that the balance of the \$390,000 payment was used and/or transferred without the Receiver's knowledge or consent.

The Receiver met with Matthew Nunez on or about January 11, 2019 and made him expressly aware of the fact that the Kings Place Property was property of the receivership estate. The Receiver permitted Nunez and their minor children to reside in the Kings Place Property pursuant to the terms of the Lease as long as Matthew Nunez complied with the terms of the Lease and made all future payments due under the Lease, beginning June 1, 2019, directly to the Receiver, which Nunez agreed to do.

From June 2019 through July 31, 2021, Matthew Nunez paid the monthly rental payments directly to the Receiver. Starting in September 2020, Matthew Nunez regularly fell behind in the payment of monthly rent, at one point being three months in arrears. Matthew Nunez has not paid any rent for the period from August 1, 2021 through the present.

The Lease also provides Matthew Nunez with an option to acquire the Kings Place Property for \$16 million ("Purchase Option"), provided that, among other things, six periodic option payments totaling \$1,270,000 are paid, comprised of an initial \$20,000 payment and five payments of \$250,000 each (collectively, the "Option Payments"). The Lease provides that if the Purchase Option is exercised, various credits toward the purchase price are applied, including the Option Payments and \$20,000 for each monthly rental payment made. Matthew Nunez only paid the first two Option Payments, totaling \$270,000, and defaulted on the payment of all other Option Payments. On August 27, 2020, pursuant to the terms of the Lease and the Purchase Option therein, the Receiver advised Matthew Nunez that the Purchase Option had lapsed and was of no further force and effect as a result of his default in payment of the Option Payments.

From time to time, the Receiver and Matthew Nunez discussed his possible acquisition of the Kings Place Property at a sum below the Purchase Option price. In connection with a potential acquisition of the property, the Receiver contends that Nunez has not provided all of the documentation and information requested by the FTC and Nunez disputes this contention. The Receiver contends it was not feasible to continue to negotiate with Matthew Nunez concerning a sale of the Kings Place Property to him in light of this dispute.

Prior to the receivership, on or about April 23, 2018 the Trustees of the AAC Trust made, executed and delivered a \$675,000 promissory note secured by a second priority deed of trust on the Kings Place Property to Colleen K. Schumacher Trust, Eric Kalter, Douglass L. Killian and Sommer L. Killian Family Trust, Sunwest Trust FBO Robert W. Hanley IRA etc., and Kristi Gavin Trust Dated December 7, 2017 (“Second Priority Note”). The Second Priority Note matured on April 12, 2019. The non-default interest rate on the Second Priority Note is 10.5% per annum. The default interest rate on the Second Priority Note is 25% per annum. The Receiver has continued to pay monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% pursuant to its agreement with the original note holders. Around late May 2021, the Second Priority Note was assigned to Archimedes Land Development LLC (“Archimedes”). Matthew Nunez is and at all relevant times has been the sole managing member and 100% owner of Archimedes. Archimedes has continued to accept monthly interest-only payments at the non-default interest rate under the Second Priority Note from the Receiver. Interest is paid current on the Second Priority Note through September 30, 2021, the last payment having been paid shortly after the Agreement was executed.

There are unpaid invoices for gardening and landscape services and for pool maintenance and repairs in connection with the Kings Place Property totaling \$10,182 (“Unpaid Maintenance

Invoices”). The Unpaid Maintenance Invoices consist of \$782 owed to No Worries Pool Service, Inc. and \$9,400 owed to Campo Landscaping. The parties are in dispute over how much of the Unpaid Maintenance Invoices are the responsibility of Matthew Nunez and how much of the Unpaid Maintenance Invoices are the responsibility of the Receiver.

Matthew Nunez has made several contentions against the Receiver in connection with the Kings Place Property and Archimedes has made at least one contention against the Receiver in connection with the Second Priority Note. These contentions include, without limitation, the following: (a) the Receiver’s threatened contempt applications, made when Matthew Nunez fell behind in the payment of rent under the Lease, were prohibited, extortionate tactics; (b) Matthew Nunez has requested that various repairs be made to the Kings Place Property which have not been made timely or at all; (c) the Receiver improperly sought access to the Kings Place Property for the purpose of marketing it for sale; (d) Matthew Nunez produced sufficient documentation to the FTC and he should be permitted to acquire the Kings Place Property without the FTC or the Receiver objecting to his acquisition; (e) Matthew Nunez justifiably relied on the Receiver’s alleged promise to sell the Kings Place Property to him and that in reliance thereon Matthew Nunez continued to make rental payments of \$52,000 per month and one Option Payment of \$250,000; (f) Matthew Nunez is entitled to a refund of at least \$270,000 representing the total of the Option Payments he made under the Lease, as well as a refund of some portion of the lease payments he paid under the Lease; and (g) Archimedes is entitled to recover interest at the default rate of 25% per annum under the Second Priority Note from the time it matured on April 12, 2019. All of the contentions made by Nunez against the Receiver are denied and disputed by the Receiver.

The Receiver has made several contentions against Matthew Nunez in connection with the Kings Place Property. These contentions include, without limitation, the following: (a) the Lease was entered into by Matthew Nunez without the Receiver's knowledge or permission and with Matthew Nunez's actual or constructive knowledge of the TRO; and (b) the Receiver has sustained damages, including substantial legal fees, as a result of Matthew Nunez's multiple defaults under the Lease since September 2020, including without limitation his failure to make the monthly Lease payments due for August 2021 and September 2021 and his failure to cooperate with respect to the Receiver's marketing of the Kings Place Property for sale and providing access to the Kings Place Property for this purpose. All of the contentions made by the Receiver against Matthew Nunez are denied and disputed by Matthew Nunez.

**II. THE PROPOSED SETTLEMENT BETWEEN THE RECEIVER AND THE NUNEZ PARTIES**

The Receiver and the Nunez Parties have entered into extensive negotiations in order to resolve their disputes and differences, which has led to the execution of the Settlement Agreement and Releases ("Agreement"), attached as Exhibit 1 to the Caris Declaration which accompanies this motion. The Agreement was executed by the parties on September 30, 2021. The key provisions of the Agreement are as follows:

1. Nunez and their minor children shall Vacate (as defined below) the Kings Place Property not later than September 30, 2021, except as that "Surrender Date," defined in the Agreement, may be extended for a fifteen-day period through October 15, 2021. Matthew Nunez and his family did vacate on September 30, 2021, rendering the extension inapplicable. "Vacate" means turning over and delivering possession of the Kings Place Property by: (a) delivering to the Receiver all house keys and all other keys which access any portion of the

Kings Place Property; (b) delivering to the Receiver all garage door openers; (c) providing all security codes and alarm codes with respect to all or any portion of the Kings Place Property; (d) delivering possession of the Kings Place Property in its condition as of August 16, 2021; and (e) delivering possession of the Kings Place Property in “broom swept clean” condition and Vacant. “Vacant” means empty and unoccupied, with all furniture, except for built-in furniture, televisions, potted plants, and other similar personal property and effects being removed from the Kings Place Property. Effective on the Surrender Date, Matthew Nunez surrenders all rights in, to, or under the Lease and the leasehold estate created under the Lease.

2. Provided that Nunez and their minor children Vacate timely and otherwise comply with the terms of the Agreement, Matthew Nunez shall have no further obligation to pay rent except as otherwise set forth in the Agreement.

3. Provided that Nunez and their minor children Vacate timely and otherwise comply with the terms of the Agreement, within six business days after they Vacate, the Receiver shall pay the total sum of \$73,818 to Matthew Nunez, in care of his attorneys, comprised of the return of the \$25,000 Security Deposit and the return of \$52,000 heretofore paid by Matthew Nunez for July 2021 rent, less \$3,182 which is the portion of Unpaid Maintenance Invoices agreed to be the responsibility of Matthew Nunez. No other payments shall be paid by the Receiver to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise and there shall be no other reimbursements of any kind to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise. Promptly after execution of the Agreement, the Receiver shall pay \$782 to No Worries Pool Service, Inc. and \$9,400 to Campo Landscaping, to satisfy the Unpaid Maintenance Invoices.

4. Matthew Nunez withdraws any offer to purchase the Kings Place Property and Nunez shall make no subsequent offer to purchase the Kings Place Property from the Receiver or the receivership estate. The Receiver shall not sell the Kings Place Property to any of the Nunez Parties. Nunez shall take no action to object to or otherwise obstruct or delay in any manner the sale of the Kings Place Property by the Receiver to any other persons or entities.

5. The Receiver shall continue to pay Archimedes monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% per annum until the Kings Place Property is sold. At the time the Kings Place Property is sold, the Receiver shall pay Archimedes the entire unpaid principal balance, plus any accrued and unpaid interest at the non-default rate of 10.5% at the close of escrow, and upon such payment in full, the trust deed taken as security for the Second Priority Note shall be reconveyed and the Second Priority Note shall be canceled. No further interest shall be recoverable for any period of time in which the original holders of the Second Priority Note or Archimedes have already accepted monthly payments of interest. In the event Nunez and their minor children fail to timely Vacate or Nunez otherwise fails to comply with the terms of the Agreement or the Lease, the amount due under the Second Priority Note shall be reduced in the manner provided in the Agreement.

6. General, mutual releases are entered into between the Nunez Parties and the Receiver.

7. Within a reasonable time after the execution of the Agreement by all parties, the Receiver shall bring a motion in the FTC Action seeking an order approving the Agreement. To the extent possible, the Receiver shall seek an expedited order approving the Agreement in light of the time deadlines in the Agreement. The effective date of the Agreement shall be the first date on which: (a) all parties to this Agreement execute it; and (b) this Court enters an order



approving this Agreement. However, from the date the Agreement is executed by all of the parties to this Agreement, the parties are required to perform pursuant to its terms and shall continue to perform under the Agreement until or unless the Agreement is disapproved by the Court.

**III. THE SETTLEMENT IS FAIR AND REASONABLE AND SHOULD BE APPROVED UNDER THE APPLICABLE LEGAL STANDARDS**

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.

*Id.* at § 770.

Under Rule 9019 of the Federal Rules of Bankruptcy Procedure, the court in a bankruptcy case may approve a proposed compromise of controversies after notice and an opportunity for hearing. In the Fourth Circuit, courts have adopted a four-part test in evaluating compromises in bankruptcy:

In order to approve a settlement . . . , a court must consider the following factors: (1) the probability of success in litigation; (2) the

likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors. *Will v. Northwestern Univ. (In re Nutraquest, Inc.)*, 434 F.3d 639, 644 (3d Cir. 2006) (citation omitted); *see also In re Bowman*, 181 B.R. 836, 843 (Bankr.D.Md.1995).

*In Re Final Analysis, Inc.*, 417 B.R. 332, 341 (Bankr. D. Md. 2009); *see also In re Bowman*, 181 B.R. 836 (Bankr. D. Md. 1995), adopting this four-part standard and citing other Circuit Courts of Appeal, including the Seventh Circuit in *In re American Reserve Corp.*, 841 F.2d 159, 161 (7th Cir. 1987) and the Ninth Circuit in *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

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); *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); *see also Sterling v. Stewart*, 158 F.3d at 1204 (affirming the district court's approval of a settlement because "the court did not abuse its discretion in concluding that the settlement decision was fair.")

Courts in the Fourth Circuit have held that there is a strong presumption in favor of finding a settlement fair. *See, e.g., Lomascolo v. Parsons Brinckerhoff, Inc.*, 2009 WL 3094955, at \*10 (E.D.Va. Sept. 28, 2009) (noting the "strong presumption in favor of finding a settlement fair" in the context of a class action settlement) (internal quotation omitted). Because a settlement hearing is not a trial, the court's role is more "balancing of likelihoods rather than an actual determination of the facts and law in passing upon ... the proposed settlement." *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 479 (D. Md. 2014) (quoting *Flynn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975) (internal quotations omitted).)

The settlement between the Receiver and the Nunez Parties is a very favorable resolution for the estate and should be approved under the foregoing authorities. Matthew Nunez has made several contentions against the Receiver in connection with the Kings Place Property and Archimedes has made at least one contention against the Receiver in connection with the Second Priority Note. These contentions include, without limitation, the following: (a) the Receiver's threatened contempt applications were prohibited, extortionate tactics; (b) Matthew Nunez has requested that various repairs be made to the Kings Place Property which have not been made timely or at all; (c) the Receiver improperly sought access to the Kings Place Property for the

purpose of marketing it for sale; (d) Matthew Nunez produced sufficient documentation to the FTC and he should be permitted to acquire the Kings Place Property without the FTC or the Receiver objecting to his acquisition; (e) Matthew Nunez justifiably relied on the Receiver's alleged promise to sell the Kings Place Property to him and that in reliance thereon Matthew Nunez continued to make rental payments of \$52,000 per month and one Option Payment of \$250,000; (f) Matthew Nunez is entitled to a refund of at least \$270,000 representing the total of the Option Payments he made under the Lease, as well as a refund of some portion of the lease payments he paid under the Lease; and (g) Archimedes is entitled to recover interest at the default rate under the Second Priority Note from the time it matured. While all of the contentions made by Nunez against the Receiver are denied and disputed, the fact remains that Matthew Nunez has made various assertions against the Receiver seeking to recover substantial amounts of money based on several allegations, including that the Receiver misled him into continuing to perform under the Lease. He also has threatened to impede the Receiver's efforts to sell the Kings Place Property to a third party by asserting he has the right to acquire it without the FTC or Receiver objecting.

This settlement resolves all of his allegations without the need to incur any further expense litigating Matthew Nunez's contentions. Equally important, Nunez timely vacated the Kings Place Property pursuant to the terms of the Agreement on September 30, 2021. Meanwhile, the Receiver has entered into a sales contract for the sale of the Kings Place Property to a third party, arm's length purchaser. It is hoped that all contingencies surrounding that sale will be removed and that in the near future the Receiver will be able to seek Court approval for the sale under the terms and conditions of the sale contract, which is a very beneficial sale for the receivership estate. Having Nunez vacate the property timely and leave it in good condition has

made the Receiver's efforts to complete the sale of the Kings Place Property much easier than if Nunez refused to timely vacate or otherwise impeded the Receiver's efforts to sell the property to a third party. Additionally, Archimedes drops any claim to recover default interest under the Second Priority Note since the date it matured. If default interest was permitted from the date of maturity, the amount owed under the Second Priority Note would increase by more than \$240,000 in additional interest. Expediting entry of an order approving this Agreement will eliminate any dispute with Archimedes at the time the property is sold and the Second Priority Note is paid off.

In exchange, the Receiver only had to agree to return one month's rent (and Matthew Nunez's security deposit), essentially allowing Nunez to live in the property rent-free for the last three months of his tenancy. Deducting from this sum, Matthew Nunez was required to pay his fair share of the Unpaid Maintenance Invoices, so that a total of only \$73,818 is being paid to him under the Agreement. Given that Nunez made total payments under the Lease of over \$2 million, including monthly rent which was likely above the market value of the leasehold, two Option Payments and the Security Deposit, of which the Receiver was paid in excess of \$1.8 million, this is a highly beneficial result to the receivership estate.

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**IV. CONCLUSION**

Based on the Motion, this Memorandum of Points and Authorities, and Caris Declaration, it is respectfully requested that the Court grant this Motion to approve the Agreement in its entirety, and enter the proposed order submitted concurrently herewith.

Dated: October 5, 2021

Respectfully submitted,

/s/ Gary Owen Caris  
Gary Owen Caris, Calif. Bar No. 088918  
*Admitted Pro Hac Vice 11/30/18*  
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*and*

/s/ James E. Van Horn  
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Attorneys for Receiver, Robb Evans &  
Associates LLC

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UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND  
SOUTHERN DIVISION

*In re* SANCTUARY BELIZE LITIGATION

No: 18-cv-3309-PJM

**DECLARATION OF GARY OWEN CARIS IN SUPPORT OF MOTION FOR  
EXPEDITED ENTRY OF ORDER APPROVING SETTLEMENT AGREEMENT AND  
RELEASE BETWEEN RECEIVER AND MATTHEW NUNEZ**

I, Gary Owen Caris, declare:

1. I am an attorney at law duly licensed to practice before all courts of the State of California and admitted *pro hac vice* before this Court in this matter. Since the inception of the receivership estate, I have been the attorney at Barnes & Thornburg LLP (“Barnes & Thornburg”) primarily responsible for representing the receiver, Robb Evans & Associates LLC (“Receiver”) on this matter and its lead counsel. I have personal knowledge of the matters set forth in this declaration or have gained knowledge of these matters based on my work as counsel for the Receiver on this matter. I have been the person primarily responsible for negotiating the settlement agreement on behalf of the Receiver which is the subject of the Motion which this declaration supports. If I were called upon to testify as to these matters I could and would competently testify thereto.

2. The background facts as to the underlying litigation and orders appointing the Receiver are generally set forth in the Memorandum of Points and Authorities in support of this Motion and will not be repeated here.

3. Throughout the receivership, the Receiver has asserted control over the property located at 104 Kings Place, Newport Beach, California (“Kings Place Property”), held in the name of James W. Chittenden, as Family Trustee, and Alliance Trust Company, as Independent Trustee, of the AAC Family HYCET Trust Dated October 7, 2015 (“AAC Trust”), but which is specifically identified as an asset of the receivership estate in the TRO and Preliminary Injunction, as those two terms are defined in the subject settlement agreement. Pursuant to the Chittenden Judgment, as defined in the Memorandum of Points and Authorities, the Kings Place Property became an undisputed asset of the receivership estate.

4. The Trustees of the AAC Trust entered into a post-receivership Residential Lease With Purchase Option (“Lease”) on the property. I have reviewed the Lease and I am familiar with its terms. The Receiver contends that the Lease was entered into without the Receiver’s knowledge or permission. The lessee under the Lease was Matthew Nunez, who resided in the property with his wife Mindi Nunez (collectively referred to herein as “Nunez”) and their three minor children, since on or about November 13, 2018. (Matthew Nunez, Mindi Nunez and Archimedes Land Development LLC, discussed below, are collectively referred to herein as the “Nunez Parties”). Matthew Nunez contends that he was unaware that the Kings Place Property was subject to the TRO when he entered the Lease. The Lease provides that it is for a term of three years, through November 12, 2021.

5. Rent under the Lease is \$52,000 per month, due on the first day of each month. Based on documentation supplied by the AAC Trust which I have reviewed, at the beginning of the Lease, on November 13, 2018, after the inception of the receivership, Matthew Nunez paid \$390,000 to one of the Trustees of the AAC Trust, comprised of a security deposit of \$25,000 (“Security Deposit”), the pro-rated first month’s rent, six months’ pre-paid rent through May 31,



2019 and one option payment of \$20,000. On January 8, 2019 only a portion of this payment, \$177,435, was turned over to the Receiver by one of the Trustees of the AAC Trust. The Receiver contends that the balance of the \$390,000 payment was used and/or transferred without the Receiver's knowledge or consent.

6. I am advised that the Receiver met with Matthew Nunez on or about January 11, 2019 and made him expressly aware of the fact that the Kings Place Property was property of the receivership estate. The Receiver permitted Nunez and their minor children to reside in the Kings Place Property pursuant to the terms of the Lease as long as Matthew Nunez complied with the terms of the Lease and made all future payments due under the Lease, beginning June 1, 2019, directly to the Receiver, which Nunez agreed to do.

7. From June 2019 through July 31, 2021, Matthew Nunez paid the monthly rental payments directly to the Receiver. Starting in September 2020, Matthew Nunez regularly fell behind in the payment of monthly rent, at one point being three months in arrears. Matthew Nunez has not paid any rent for the period from August 1, 2021 through the present. I was tasked with drafting and sending several demand letters to counsel for Matthew Nunez for the payment of rent which was in arrears.

8. The Lease also provides Matthew Nunez with an option to acquire the Kings Place Property for \$16 million ("Purchase Option"), provided that, among other things, six periodic option payments totaling \$1,270,000 are paid, comprised of an initial \$20,000 payment and five payments of \$250,000 each (collectively, the "Option Payments"). The Lease provides that if the Purchase Option is exercised, various credits toward the purchase price are applied, including the Option Payments and \$20,000 for each monthly rental payment made. I am advised that Matthew Nunez only paid the first two Option Payments, totaling \$270,000, and

defaulted on the payment of all other Option Payments. On August 27, 2020, pursuant to the terms of the Lease and the Purchase Option therein, on behalf of the Receiver I wrote a letter to counsel for Matthew Nunez, which advised Matthew Nunez that the Purchase Option had lapsed and was of no further force and effect as a result of his default in payment of the Option Payments.

9. From time to time, the Receiver and Matthew Nunez discussed his possible acquisition of the Kings Place Property at a sum below the Purchase Option price. The Receiver contends that, in connection with a potential sale of the property to him, Nunez has not provided all of the documentation and information requested by the Federal Trade Commission (“FTC”) and Nunez disputes this contention. The Receiver contends it was not feasible to continue to negotiate with Matthew Nunez concerning a sale of the Kings Place Property to him in light of this dispute.

10. Before the receivership, on or about April 23, 2018 the Trustees of the AAC Trust made, executed and delivered a \$675,000 promissory note secured by a second priority deed of trust on the Kings Place Property to Colleen K. Schumacher Trust, Eric Kalter, Douglass L. Killian and Sommer L. Killian Family Trust, Sunwest Trust FBO Robert W. Hanley IRA etc., and Kristi Gavin Trust Dated December 7, 2017 (“Second Priority Note”). I have reviewed the Second Priority Note. The Second Priority Note matured on April 12, 2019. The non-default interest rate on the Second Priority Note is 10.5% per annum. The default interest rate on the Second Priority Note is 25% per annum. The Receiver has continued to pay monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% pursuant to its agreement with the original note holders. I was advised by counsel for Matthew Nunez that around late May 2021, the Second Priority Note was assigned to Archimedes Land Development

LLC (“Archimedes”). I am advised that Matthew Nunez is and at all relevant times has been the sole managing member and 100% owner of Archimedes. Archimedes has continued to accept monthly interest-only payments at the non-default interest rate under the Second Priority Note from the Receiver. Interest is paid current on the Second Priority Note through September 30, 2021, the last payment having been paid shortly after the Agreement was executed.

11. The Receiver learned that there are unpaid invoices for gardening and landscape services and for pool maintenance and repairs in connection with the Kings Place Property totaling \$10,182 (“Unpaid Maintenance Invoices”). The Unpaid Maintenance Invoices, which I have reviewed, consist of \$782 owed to No Worries Pool Service, Inc. and \$9,400 owed to Campo Landscaping. The parties are in dispute over how much of the Unpaid Maintenance Invoices are the responsibility of Matthew Nunez and how much of the Unpaid Maintenance Invoices are the responsibility of the Receiver.

12. Matthew Nunez has made several contentions against the Receiver in connection with the Kings Place Property and Archimedes has made at least one contention against the Receiver in connection with the Second Priority Note, as set forth in the agreement which is the subject of the Motion this declaration supports. These contentions include, without limitation, the following: (a) the Receiver’s threats to seek contempt against Matthew Nunez, made when he fell behind in the payment of rent under the Lease, were prohibited, extortionate tactics; (b) Matthew Nunez has requested that various repairs be made to the Kings Place Property which have not been made timely or at all; (c) the Receiver improperly sought access to the Kings Place Property for the purpose of marketing it for sale; (d) Matthew Nunez produced sufficient documentation to the FTC and he should be permitted to acquire the Kings Place Property without the FTC or the Receiver objecting to his acquisition; (e) Matthew Nunez justifiably

relied on the Receiver's alleged promise to sell the Kings Place Property to him and that in reliance thereon Matthew Nunez continued to make rental payments of \$52,000 per month and one Option Payment of \$250,000; (f) Matthew Nunez is entitled to a refund of at least \$270,000 representing the total of the Option Payments he made under the Lease, as well as a refund of some portion of the lease payments he paid under the Lease; and (g) Archimedes is entitled to recover interest at the default rate of 25% per annum under the Second Priority Note from the time it matured on April 12, 2019. All of the contentions made by Nunez against the Receiver are denied and disputed by the Receiver.

13. The Receiver has made several contentions against Matthew Nunez in connection with the Kings Place Property which are also set forth in the agreement which is the subject of the Motion this declaration supports. These contentions include, without limitation, the following: (a) the Lease was entered into by Matthew Nunez without the Receiver's knowledge or permission and with Matthew Nunez's actual or constructive knowledge of the TRO; and (b) the Receiver has sustained damages, including substantial legal fees, as a result of Matthew Nunez's multiple defaults under the Lease since September 2020, including without limitation his failure to make the monthly Lease payments due for August 2021 and September 2021 and his failure to cooperate with respect to the Receiver's marketing of the Kings Place Property for sale and providing access to the Kings Place Property for this purpose. All of the contentions made by the Receiver against Matthew Nunez are denied and disputed by Matthew Nunez.

14. The Receiver, through me, and the Nunez Parties have entered into extensive negotiations in order to resolve their disputes and differences, which has led to the execution of the Settlement Agreement and Releases ("Agreement") attached hereto as Exhibit 1. The Agreement was executed by the parties on September 30, 2021. The key provisions of the

Agreement are as follows: (a) Nunez and their minor children shall Vacate (as defined in the Agreement) the Kings Place Property not later than September 30, 2021, except as that “Surrender Date,” defined in the Agreement, may be extended for a fifteen-day period through October 15, 2021. Matthew Nunez and his family did vacate on September 30, 2021, rendering the extension inapplicable. Effective on the Surrender Date, Matthew Nunez surrenders all rights in, to, or under the Lease and the leasehold estate created under the Lease; (b) provided that Nunez and their minor children Vacate timely and otherwise comply with the terms of the Agreement, Matthew Nunez shall have no further obligation to pay rent except as otherwise set forth in the Agreement; (c) provided that Nunez and their minor children Vacate timely and otherwise comply with the terms of the Agreement, within six business days after they Vacate, the Receiver shall pay the total sum of \$73,818 to Matthew Nunez, in care of his attorneys, comprised of the return of the \$25,000 Security Deposit and the return of \$52,000 heretofore paid by Matthew Nunez for July 2021 rent, less \$3,182 which is the portion of Unpaid Maintenance Invoices agreed to be the responsibility of Matthew Nunez. No other payments shall be paid by the Receiver to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise and there shall be no other reimbursements of any kind to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise. Promptly after execution of the Agreement, the Receiver shall pay \$782 to No Worries Pool Service, Inc. and \$9,400 to Campo Landscaping, to satisfy the Unpaid Maintenance Invoices; (d) Matthew Nunez withdraws any offer to purchase the Kings Place Property and Nunez shall make no subsequent offer to purchase the Kings Place Property from the Receiver or the receivership estate. The Receiver shall not sell the Kings Place Property to any of the Nunez Parties. Nunez shall take no action to object to or otherwise obstruct or delay

in any manner the sale of the Kings Place Property by the Receiver to any other persons or entities: (e) the Receiver shall continue to pay Archimedes monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% per annum until the Kings Place Property is sold. At the time the Kings Place Property is sold, the Receiver shall pay Archimedes the entire unpaid principal balance, plus any accrued and unpaid interest at the non-default rate of 10.5% at the close of escrow, and upon such payment in full, the trust deed taken as security for the Second Priority Note shall be reconveyed and the Second Priority Note shall be canceled. No further interest shall be recoverable for any period of time in which the original holders of the Second Priority Note or Archimedes have already accepted monthly payments of interest. In the event Nunez and their minor children fail to timely Vacate or Nunez otherwise fails to comply with the terms of the Agreement or the Lease, the amount due under the Second Priority Note shall be reduced in the manner provided in the Agreement; (f) general, mutual releases are entered into between the Nunez Parties and the Receiver: and (g) within a reasonable time after the execution of the Agreement by all parties, the Receiver shall bring a motion in the FTC Action seeking an order approving the Agreement. To the extent possible, the Receiver is to seek an expedited order approving the Agreement in light of the time deadlines in the Agreement. The effective date of the Agreement shall be the first date on which: (a) all parties to this Agreement execute it; and (b) this Court enters an order approving this Agreement. However, from the date the Agreement is executed by all of the parties to this Agreement, the parties are required to perform pursuant to its terms and shall continue to perform under the Agreement until or unless the Agreement is disapproved by the Court.

15. In my opinion, the settlement between the Receiver and the Nunez Parties is a very favorable resolution for the estate and should be approved under the foregoing authorities.

Matthew Nunez has made several contentions against the Receiver in connection with the Kings Place Property and Archimedes has made at least one contention against the Receiver in connection with the Second Priority Note, as described above. While all of the contentions made by Nunez against the Receiver are denied and disputed, the fact remains that Matthew Nunez has made various assertions against the Receiver, seeking to recover substantial amounts of money based on these allegations, including the allegation that the Receiver misled him into continuing to perform under the Lease. He also has threatened to impede the Receiver's efforts to sell the Kings Place Property to a third party by asserting he has the right to acquire it without the FTC or Receiver objecting.

16. This settlement resolves all of his allegations without the need to incur any expense litigating Matthew Nunez's contentions. Equally important, Nunez timely vacated the Kings Place Property pursuant to the terms of the Agreement on September 30, 2021. Meanwhile, the Receiver has entered into a sales contract for the sale of the Kings Place Property to a third party, arm's length purchaser. It is hoped that all contingencies surrounding that sale will be removed and that in the near future the Receiver will be able to seek Court approval for the sale under the terms and conditions of the sale contract, which is a very beneficial sale for the receivership estate. Having Nunez vacate the property timely and leave it in good condition has made the Receiver's efforts to complete the sale of the Kings Place Property much easier than if Nunez refused to timely vacate or otherwise impeded the Receiver's efforts to sell the property to a third party. Additionally, Archimedes drops any claim to recover default interest under the Second Priority Note since the date it matured. If default interest was permitted from the date of maturity, the amount owed under the Second Priority Note would increase by more than \$240,000 in additional interest. Expediting entry of an order approving this Agreement will

eliminate any dispute with Archimedes at the time the property is sold and the Second Priority Note is paid off.

17. In exchange, the Receiver only had to agree to return one month's rent (and Matthew Nunez's security deposit), essentially allowing Nunez to live in the property rent-free for the last three months of his tenancy. Deducting from this sum, Matthew Nunez was required to pay his fair share of the Unpaid Maintenance Invoices, so that a total of only \$73,818 is being paid to him under the Agreement. Given that Nunez made total payments under the Lease of over \$2 million, including monthly rent which I have been advised was likely above the market value of the leasehold, two Option Payments and the Security Deposit, of which the Receiver was paid in excess of \$1.8 million, this is a highly beneficial result to the receivership estate.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 5, 2021 at Solvang, California.

  
GARY OWEN CARIS

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# EXHIBIT 1

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made as of this 30th day of September, 2021, by and between Robb Evans & Associates LLC (“Receiver”), as Receiver over Ecological Fox, LLC and other Receivership Entities as more particularly described and defined below, and over the assets of Andris Pukke (“Pukke”), Peter Baker (“Baker”) and Luke Chadwick (“Chadwick”), as more particularly described below, on the one hand, and Matthew Nunez, Mindi Nunez (Matthew Nunez and Mindi Nunez are referred to herein collectively as “Nunez”) and Archimedes Land Development LLC (“Archimedes”) (collectively, Nunez and Archimedes are referred to as the “Nunez Parties”), on the other, in reference to and in consideration of the following:

### RECITALS

A. The Receiver was appointed Temporary Receiver over the Receivership Entities (as defined in and pursuant to the Ex Parte Temporary Restraining Order With Asset Freeze, Writs *Ne Exeat*, Appointment of a Temporary Receiver, and Other Equitable Relief, and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“TRO”)) entered on November 5, 2018 in the case of *Federal Trade Commission v. Ecological Fox, LLC et al.* Case No. 18-cv-3309-PJM (“FTC Action”), in the United States District Court, District of Maryland (“District Court”). Pursuant to the TRO, the Receiver also was appointed Temporary Receiver over the assets of Pukke and Baker valued by the Receiver at \$1,000.00 or more. The FTC Action has been re-designated as *In re Sanctuary Belize Litigation*. “Receivership Entities,” as defined in the TRO, means the Corporate Defendants (as defined therein), except for Atlantic International Bank, Ltd. (“AIBL”), including nonparty subsidiaries, affiliates, successors, and assigns, as well as any other entity that is located at, registered to, or operated from 3333 Michelson Drive, Suite 500, Irvine, California and assists, facilitates, or otherwise conducts business related to the acts identified in the Findings of Fact in the TRO, and is owned or controlled by any Defendant; or Assets, as defined in the TRO, that are otherwise in the receivership and that are corporations or other legal entities. The real property commonly known as 104 Kings Place, Newport Beach California (“Kings Place Property”) is specifically identified as an asset of the receivership estate in the TRO. The TRO remained in effect pursuant to the Extension of Temporary Restraining Order and Interim Preliminary Injunction entered November 20, 2018.

B. The Receiver became permanent receiver over BG Marketing, LLC, Ecological Fox, LLC, and Foundation Partners and each of their subsidiaries, affiliates, successors and assigns pursuant to the Stipulated Preliminary Injunction as to Defendants Rod Kazazi, Foundation Partners, Brandi Greenfield, BG Marketing LLC, Frank Costanzo, Deborah Connelly, Ecological Fox, LLC, Michael Santos, Angela Chittenden and Beach Bunny Holdings LLC (“Stipulated Preliminary Injunction”) entered on February 9, 2019.

C. Pursuant to the Preliminary Injunction as to Defendants Andris Pukke, Peter Baker, Luke Chadwick, John Usher, Certain Corporate Defendants, and the Estate of John Pukke (“Preliminary Injunction”) entered October 3, 2019, the Receiver became permanent receiver over Global Property Alliance, Inc., Sittee River Wildlife Reserve, Buy Belize, LLC, Buy International, Inc., Foundation Development Management, Inc., Eco-Futures Development, Eco-Futures Belize, Limited, Power Haus Marketing, Newport Land Group LLC, Sanctuary Belize

Property Owners' Association, Prodigy Management Group LLC, Belize Real Estate Affiliates LLC, Exotic Investor LLC, and Southern Belize Realty, LLC, and each of their subsidiaries, affiliates, successors and assigns, together with 2729 Bristol LLC, 3905 Marcus, LLC, as well as any other entity that is located at, registered to, or operated from 3333 Michelson Drive, Suite 500, Irvine, California and assists, facilitates, or otherwise conducts business related to the sale of real estate in Belize; assists, facilitates, or otherwise conducts business related to the acts identified in the Findings of Fact in the Preliminary Injunction, and is owned or controlled by any Defendant; or are identified as Assets, as defined in the Preliminary Injunction, that are otherwise in the receivership and that are corporations or other legal entities. Pursuant to the Preliminary Injunction, the Receiver was also appointed as Receiver over the assets of Pukke, Baker and Chadwick valued by the Receiver at \$1,000.00 or more. The Kings Place Property is specifically identified as an asset of the receivership estate pursuant to the Preliminary Injunction.

D. The Kings Place Property is held in the name of James W. Chittenden, as Family Trustee and Alliance Trust Company, as Independent Trustee of the AAC Family HYCET Trust Dated October 7, 2015 ("AAC Trust"). The Receiver contends that the AAC Trust is a purported asset protection trust for the benefit of the minor children of Pukke and Relief Defendant Angela Chittenden ("Chittenden"). The Receiver contends that Pukke and Chittenden lived together for many years and had two children together.

E. The District Court entered the Stipulated Order for Final Judgment Against Relief Defendants Angela Chittenden and Beach Bunny Holdings LLC ("Stipulated Judgment") on January 14, 2020. The Stipulated Judgment resolved the Federal Trade Commission's ("FTC") claims against Chittenden. The Stipulated Judgment was also approved and executed by the Trustee of the AAC Trust. Pursuant to the terms of the Stipulated Judgment, the Receiver is directed and authorized to take exclusive control, custody and possession of all receivership assets, specifically defined to include the Kings Place Property.

F. The District Court entered its Order for Permanent Injunction and Monetary Judgment Against Defaulting Defendants John Usher et al. ("Default Judgment") on January 13, 2021. Pursuant to the Default Judgment, the Receiver remained as permanent receiver over the Defaulting Corporate Defendants, as defined therein, and John Usher ("Usher") was ordered to transfer his assets to the Receiver, which would become assets of the receivership estate, with limited exceptions as set forth in the Default Judgment.

G. The District Court entered its Amended Final Order for Permanent Injunction and Monetary Judgment Against Defendants Andris Pukke, Peter Baker and Luke Chadwick ("Pukke Final Judgment") on March 24, 2021. The Receiver remained as permanent receiver over the assets of Pukke, Baker and Chadwick, with limited exceptions as set forth in the Pukke Final Judgment.

H. Matthew Nunez is and at all relevant times has been the sole managing member and 100% owner of Archimedes.

I. On or about November 13, 2018, after the entry of the TRO and the inception of the receivership in the FTC Action, the Trustees of the AAC Trust, as lessor, entered into the

Residential Lease With Purchase Option (“Lease”) with Matthew Nunez, as lessee, pertaining to the Kings Place Property. The Receiver contends that the Lease was entered into without the Receiver’s knowledge or permission. Matthew Nunez contends that he was unaware that the Kings Place Property was subject to the TRO when he entered the Lease. The Lease provides that it is for a term of three years, through November 12, 2021. Nunez and their three minor children have resided in the Kings Place Property since approximately November 13, 2018.

J. Rent under the Lease is \$52,000 per month, due on the first day of each month. At the beginning of the Lease, on November 13, 2018, after the inception of the receivership, Matthew Nunez paid \$390,000 to one of the Trustees of the AAC Trust, comprised of a security deposit of \$25,000 (“Security Deposit”), the pro-rated first month’s rent, six months’ pre-paid rent through May 31, 2019 and one option payment (described more particularly below at Recital M) of \$20,000. On January 8, 2019 only a portion of this payment, \$177,435, was turned over to the Receiver by one of the Trustees of the AAC Trust. The Receiver contends that the balance of the \$390,000 payment was used and/or transferred without the Receiver’s knowledge or consent.

K. The Receiver met with Matthew Nunez on or about January 11, 2019 and made him expressly aware of the fact that the Kings Place Property was property of the receivership estate. The Receiver permitted Nunez and their minor children to reside in the Kings Place Property pursuant to the terms of the Lease as long as Matthew Nunez complied with the terms of the Lease and made all future payments due under the Lease, beginning June 1, 2019, directly to the Receiver, which Nunez agreed to do.

L. From June 2019 through July 31, 2021, Matthew Nunez paid the monthly rental payments directly to the Receiver. Matthew Nunez has not paid any rent for the period from August 1, 2021 through the present.

M. The Lease also provides Matthew Nunez with an option to acquire the Kings Place Property for \$16 million (“Purchase Option”), provided that, among other things, six periodic option payments totaling \$1,270,000 are paid, comprised of an initial \$20,000 payment and five payments of \$250,000 each (collectively, the “Option Payments”). The Lease provides that if the Purchase Option is exercised, various credits toward the purchase price are applied, including the Option Payments and \$20,000 for each monthly rental payment made. Matthew Nunez only paid the first two Option Payments, totaling \$270,000, and defaulted on the payment of all other Option Payments. On August 27, 2020, pursuant to the terms of the Lease and the Purchase Option therein, the Receiver advised Matthew Nunez that the Purchase Option had lapsed and was of no further force and effect as a result of his default in payment of the Option Payments.

N. From time to time, the Receiver and Matthew Nunez discussed his possible acquisition of the Kings Place Property at a sum below the Purchase Option price. The Receiver contends that Nunez has not provided all of the documentation and information requested by the FTC and Nunez disputes this contention. The Receiver contends it was not feasible to continue to negotiate with Matthew Nunez concerning a sale of the Kings Place Property to him in light of this dispute.

O. On or about April 23, 2018 the Trustees of the AAC Trust made, executed and delivered a \$675,000 promissory note secured by a second priority deed of trust on the Kings Place Property to Colleen K. Schumacher Trust, Eric Kalter, Douglass L. Killian and Sommer L. Killian Family Trust, Sunwest Trust FBO Robert W. Hanley IRA etc., and Kristi Gavin Trust Dated December 7, 2017 (“Second Priority Note”). The Second Priority Note matured on April 12, 2019. The non-default interest rate on the Second Priority Note is 10.5% per annum. The default interest rate on the Second Priority Note is 25% per annum. The Receiver has continued to pay monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% pursuant to its agreement with the original note holders. Around late May 2021, the Second Priority Note was assigned to Archimedes. Archimedes has continued to accept monthly interest-only payments at the non-default interest rate under the Second Priority Note from the Receiver. Interest is paid current on the Second Priority Note through August 31, 2021.

P. There are unpaid invoices for gardening and landscape services and for pool maintenance in connection with the Kings Place Property totaling \$10,182 (“Unpaid Maintenance Invoices”). The Unpaid Maintenance Invoices consist of \$782 owed to No Worries Pool Service, Inc. and \$9,400 owed to Campo Landscaping. The parties are in dispute over how much of the Unpaid Maintenance Invoices is the responsibility of Matthew Nunez and how much of the Unpaid Maintenance Invoices is the responsibility of the Receiver.

Q. Matthew Nunez has made several contentions against the Receiver in connection with the Kings Place Property and Archimedes has made at least one contention against the Receiver in connection with the Second Priority Note. These contentions include, without limitation, the following: (a) the Receiver’s threatened contempt applications were prohibited, extortionate tactics; (b) Matthew Nunez has requested that various repairs be made to the Kings Place Property which have not been made timely or at all; (c) the Receiver improperly sought access to the Kings Place Property for the purpose of marketing it for sale; (d) Matthew Nunez produced sufficient documentation to the FTC and he should be permitted to acquire the Kings Place Property without the FTC or the Receiver objecting to his acquisition; (e) Matthew Nunez justifiably relied on the Receiver’s alleged promise to sell the Kings Place Property to him and that in reliance thereon Matthew Nunez continued to make rental payments of \$52,000 per month and one Option Payment of \$250,000; (f) Matthew Nunez is entitled to a refund of at least \$270,000 representing the total of the Option Payments he made under the Lease, as well as a refund of some portion of the lease payments he paid under the Lease; and (g) Archimedes is entitled to recover interest at the default rate under the Second Priority Note from the time it matured. All of the contentions made by Nunez against the Receiver, including without limitation the contentions set forth in this Recital Q, are denied and disputed by the Receiver.

R. The Receiver has made several contentions against Matthew Nunez in connection with the Kings Place Property. These contentions include, without limitation, the following: (a) the Lease was entered into by Matthew Nunez without the Receiver’s knowledge or permission and with Matthew Nunez’s actual or constructive knowledge of the TRO; and (b) the Receiver has sustained damages, including substantial legal fees, as a result of Matthew Nunez’s multiple defaults under the Lease since September 2020, including without limitation his failure to make the monthly Lease payments due for August 2021 and September 2021 and his failure to cooperate with respect to the Receiver’s marketing of the Kings Place Property for sale and providing access to the Kings Place Property for this purpose. All of the contentions made by

the Receiver against Matthew Nunez, including without limitation the contentions set forth in this Recital R, are denied and disputed by Matthew Nunez.

S. The parties to this Agreement desire to resolve all disputes and differences among them concerning the events and circumstances described in these Recitals, including, without limitation, any disputes and differences that may pertain in any way to the Kings Place Property, the Lease, the Purchase Option contained in the Lease, the Second Priority Note, the Unpaid Maintenance Invoices and the contentions made against one another, including without limitation those set forth above in Recitals P and Q. Matthew Nunez agrees to surrender his interest in the Lease, the leasehold estate created thereby, and all rights to possession of the Kings Place Property, and to release the Receiver from any obligations under the Lease, and the Receiver agrees to accept this surrender and to release Matthew Nunez from his obligations under the Lease, all as provided hereunder.

NOW THEREFORE, in reference to the foregoing and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do stipulate and agree as follows:

#### AGREEMENT

1. Recitals. The Recitals set forth above are true and correct according to their terms and are incorporated into and form a part of this Agreement.

2. Surrender of Kings Place Property; Vacating the Kings Place Property; Termination of Lease. Nunez and their minor children shall Vacate (as defined in the next sentence) the Kings Place Property not later than September 30, 2021, except as the Surrender Date may be extended as expressly provided in paragraph 3, below (as applicable, the “Surrender Date”). “Vacate” means turning over and delivering possession of the Kings Place Property by: (a) delivering to the Receiver all house keys and all other keys which access any portion of the Kings Place Property; (b) delivering to the Receiver all garage door openers; (c) providing all security codes and alarm codes with respect to all or any portion of the Kings Place Property; (d) delivering possession of the Kings Place Property in its condition as of August 16, 2021; and (e) delivering possession of the Kings Place Property in “broom swept clean” condition and Vacant. “Vacant” means empty and unoccupied, with all furniture, except for built-in furniture, televisions, potted plants, and other similar personal property and effects being removed from the Kings Place Property. Effective on the Surrender Date, Matthew Nunez surrenders all rights in, to, or under the Lease and the leasehold estate created under the Lease. The Receiver and Matthew Nunez agree to terminate the Lease effective as of the Surrender Date, subject to Nunez’s fulfillment of the Vacate provisions of this paragraph and paragraph 3 below, if applicable.

3. Extension Period. Nunez and their minor children may remain in possession of the Kings Place Property for a period of not more than 15 additional days, through and including October 15, 2021 (“Extension Period”) provided that not later than September 30, 2021, Matthew Nunez provides the Receiver with written notice of the Nunez’s intention to remain in the Kings Place Property for all or a portion of the Extension Period. During the Extension Period, through and including the day Nunez and their minor children Vacate the Kings Place Property, Matthew Nunez shall pay per diem rent of \$1,677.42 per day, payable as a

reduction in the amount to be paid to Matthew Nunez as provided in paragraph 5, below, and shall comply with all of Matthew Nunez's other obligations under the Lease. On or prior to October 15, 2021, Nunez and their minor children shall vacate the Kings Place Property, as provided in paragraph 2 of the Agreement.

4. No Further Rent Due. Provided that Nunez and their minor children Vacate timely, as provided in paragraph 2, above, or during the Extension Period, as provided in paragraph 3, above, and otherwise comply with the terms of this Agreement, Matthew Nunez shall have no further obligation to pay rent except as otherwise set forth in this Agreement.

5. Payment to Matthew Nunez. Provided that Nunez and their minor children Vacate timely, as provided in paragraph 2, above, or during the Extension Period, as provided in paragraph 3, above, and otherwise comply with the terms of this Agreement, within six business days after they Vacate, the Receiver shall pay the total sum of \$73,818 to Matthew Nunez, in care of his attorneys, comprised of the return of the \$25,000 Security Deposit and the return of \$52,000 heretofore paid by Matthew Nunez for July 2021 rent, less \$3,182 which is the portion of Unpaid Maintenance Invoices agreed to be the responsibility of Matthew Nunez. This amount shall be further reduced for any per diem rent which is due for their occupancy during the Extension Period, if any. No other payments shall be paid by the Receiver to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise and there shall be no other reimbursements of any kind to Matthew Nunez, whether on account of the Lease, or Purchase Option contained therein, or otherwise. Promptly after execution of this Agreement, the Receiver shall pay \$782 to No Worries Pool Service, Inc. and \$9,400 to Campo Landscaping, to satisfy the Unpaid Maintenance Invoices.

6. Effect of Failure to Timely Vacate and/or Nunez's Breach of the Agreement. In the event that Nunez and their minor children do not timely Vacate, as provided in paragraph 2 above, or during the Extension Period, as provided in paragraph 3, above, or otherwise fail to comply with the terms of this Agreement or the Lease, Matthew Nunez shall forfeit his right to receive \$73,818 as provided in paragraph 5, above and no payments shall be paid by the Receiver to Nunez. In addition, in the event of such default, the outstanding principal balance and all accrued interest under the Second Priority Note shall be reduced by: (a) \$52,000 per month from August 1, 2021 until such time as Nunez and their minor children Vacate; (b) \$3,182 representing the portion of the Unpaid Maintenance Invoices agreed to be the responsibility of Matthew Nunez; and (c) any other damages, costs and attorneys' fees incurred by the Receiver in connection with Nunez and their minor children's failure to timely Vacate or Nunez's failure to otherwise comply with the terms of this Agreement or the Lease.

7. No Sale of Kings Place Property to Matthew Nunez. Matthew Nunez withdraws any offer to purchase the Kings Place Property and Nunez shall make no subsequent offer to purchase the Kings Place Property from the Receiver or the receivership estate. The Receiver shall not sell the Kings Place Property to any of the Nunez Parties. Nunez shall take no action to object to or otherwise obstruct or delay in any manner the sale of the Kings Place Property by the Receiver to any other persons or entities.

8. Access to Kings Place Property for Marketing Purposes. The Receiver agrees that there will be no further showings of the Kings Place Property through September 30,

2021, and prior to it being Vacated by Nunez and their minor children. In the event that Nunez and their minor children remain in the Kings Place Property during the Extension Period, Matthew Nunez shall grant access to the Receiver and the Receiver's agents to show the property for sale on every Friday and Saturday during the Extension Period from 11 a.m. to 2 p.m. without further notice.

9. Payment of Second Priority Note. The Receiver shall continue to pay Archimedes monthly interest-only payments on the Second Priority Note at the non-default rate of 10.5% per annum until the Kings Place Property is sold. At the time the Kings Place Property is sold, the Receiver shall pay Archimedes the entire unpaid principal balance, plus any accrued and unpaid interest at the non-default rate of 10.5% at the close of escrow, and upon such payment in full, the trust deed taken as security for the Second Priority Note shall be reconveyed and the Second Priority Note shall be canceled, provided that Nunez and their minor children have timely Vacated and otherwise complied with the terms of this Agreement and the Lease. No further interest shall be recoverable for any period of time in which the original holders of the Second Priority Note or Archimedes have already accepted monthly payments of interest. In the event Nunez and their minor children fail to timely Vacate or Nunez otherwise fails to comply with the terms of this Agreement or the Lease, the amount due under the Second Priority Note shall be reduced in the manner provided at paragraph 6, above.

10. General Release of Receiver and Receivership Estate. Effective on the Effective Date, excepting all of the obligations imposed or created by this Agreement and except as otherwise expressly set forth in this Agreement, the Nunez Parties, and each of them, do hereby forever relieve, release and discharge the Receiver, in its corporate capacity and as Receiver in the FTC Action, and the receivership estate created in the FTC Action, and the Receiver's officers, directors, shareholders, members, managers, employees, deputies, agents, associates, partners, past or present attorneys, representatives and administrators, jointly and severally, from any and all lawsuits, debts, losses, claims, liens, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, attorneys' fees, damages, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, arising from the beginning of time through the Effective Date, that each of them had, has or may have against the parties being released in this paragraph, which arise out of, relate to, or pertain in any way to the facts, occurrences or contentions set forth in the Recitals herein, the FTC Action, the Kings Place Property, the Lease, the Purchase Option contained in the Lease, the Unpaid Maintenance Invoices, the Second Priority Note and the receivership estate (individually and collectively the "Nunez Claims").

11. Effect of General Release of Nunez Claims. The Nunez Parties, and each of them, expressly waive any and all rights under Section 1542 of the Civil Code of the State of California which provides as follows:

**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.**



The Nunez Parties, and each of them, expressly waive and release any rights or benefits that they may have under Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that it may waive all such rights and benefits pertaining to the Nunez Claims. The Nunez Parties, and each of them, acknowledge that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true pertaining to the Nunez Claims. Nevertheless, it is the intention of the Nunez Parties, and each of them, through this Agreement, to fully, finally and forever release all of the Nunez Claims. The releases herein given shall be and remain in effect as a full and complete release of the Nunez Claims notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

12. No Assignment of Nunez Claims. The Nunez Parties, and each of them, represent and warrant that they are the sole and lawful owner of all legal or beneficial right, title and interest in and to each of the claims released herein and that they have not heretofore assigned, hypothecated or transferred, or purported to assign, hypothecate or transfer, to any individual, partnership, corporation, firm, trust, estate or entity, any of the claims released herein, in whole or in part. The Nunez Parties, and each of them, hereby agree to indemnify, defend and hold harmless the Receiver and the receivership estate from and against all claims based upon or arising out of or in connection with any assignment, hypothecation or transfer or purported assignment, hypothecation or transfer of any of the Nunez Claims.

13. General Release of Nunez Parties. Effective on the later of the Effective Date or Surrender Date and provided that Nunez and their minor children timely Vacate, excepting all of the obligations imposed or created by this Agreement, and except as otherwise expressly set forth in this Agreement, the Receiver does hereby forever relieve, release and discharge the Nunez Parties, and each of their trustees, officers, directors, shareholders, members, managers, employees, deputies, agents, associates, partners, past or present attorneys, representatives and administrators, jointly and severally, from any and all lawsuits, debts, losses, claims, liens, liabilities, demands, obligations, promises, acts, agreements, costs, expenses, attorneys' fees, damages, actions and causes of action, of whatever kind or nature, whether known or unknown, suspected or unsuspected, contingent or fixed, arising from the beginning of time through the Effective Date, that the Receiver had, has or may have against the parties being released in this paragraph, which arise out of, relate to, or pertain in any way to the facts, occurrences or contentions set forth in the Recitals herein, the FTC Action, the Kings Place Property, the Lease, the Purchase Option contained in the Lease, the Unpaid Maintenance Invoices, the Second Priority Note and the receivership estate (individually and collectively the "Receiver Claims"). Notwithstanding the foregoing, this release does not include any amounts owed or outstanding for works of improvement, goods, services, repairs and/or maintenance incurred by Nunez in connection with the Kings Place Property for which a lien could be placed on the Kings Place Property, if any exist, other than the Unpaid Maintenance Invoices.

14. Effect of General Release of the Receiver Claims. The Receiver expressly waives any and all rights under Section 1542 of the Civil Code of the State of California which provides as follows:

**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.**

The Receiver expressly waives and releases any rights or benefits that it may have under Section 1542 of the Civil Code of the State of California, and any similar statute, code, law or regulation of any state, territory, commonwealth or possession of the United States, or the United States, to the full extent that it may waive all such rights and benefits pertaining to the Receiver Claims. The Receiver acknowledges that it is aware that it may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that it now knows or believes to be true pertaining to the Receiver Claims. Nevertheless, it is the intention of the Receiver through this Agreement, to fully, finally and forever release all of the Receiver Claims. The releases herein given shall be and remain in effect as a full and complete release of the Receiver Claims notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

15. No Assignment of Receiver Claims. The Receiver represents and warrants that the Receiver is the sole and lawful owner of all right, title and interest in and to each of the claims released herein and it has not heretofore assigned, hypothecated or transferred, or purported to assign, hypothecate or transfer, to any individual, partnership, corporation, firm, estate or entity, any of the claims released herein. The Receiver hereby agrees to indemnify, defend and hold harmless the Nunez Parties, and each of them, from and against all claims based upon or arising out of or in connection with any assignment or transfer, hypothecation or purported assignment, hypothecation or transfer of any of the Receiver Claims. Notwithstanding the foregoing, the Receiver makes no such representation or warranty with respect to any claims held by the FTC (which are not being released hereunder), regardless of whether such may arise out of, relate to, or pertain in any way to the Receiver Claims.

16. District Court Approval. Within a reasonable time after the execution of this Agreement by all parties hereto, the Receiver shall bring a motion in the FTC Action seeking an order approving this Agreement. To the extent possible, the Receiver shall seek an expedited order approving this Agreement in light of the time deadlines set forth herein.

17. Effective Date of the Agreement. The effective date of this Agreement (the "Effective Date") shall be the first date on which: (a) all parties to this Agreement execute it; and (b) the District Court in the FTC Action enters an order approving this Agreement. Notwithstanding the foregoing, from the date this Agreement is executed by all of the parties to this Agreement, the parties to this Agreement shall perform pursuant to its terms and shall continue to perform hereunder until or unless this Agreement is disapproved by the District Court in the FTC Action.

18. Time is of the Essence. Time is of the essence with respect to any act, payment or performance under this Agreement.

19. Default. In the event that any party to this Agreement defaults in the payment or performance of their obligations hereunder, then the non-defaulting party may exercise any and all rights and remedies available to it at law or in equity.

20. Notices. All notices and other communications which are required or may be given hereunder shall be in writing and shall be duly given if sent by overnight courier, postage prepaid and addressed to the other party or if sent by electronic transmission (email) at the addresses set forth herein:

If to the Receiver: Robb Evans & Associates LLC  
11450 Sheldon Street  
Sun Valley, CA 91352-1121  
Attention: Brick Kane  
[bkane@robbevans.com](mailto:bkane@robbevans.com)

with a copy to: Barnes & Thornburg LLP  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067  
Attention: Gary Owen Caris, Esq.  
[gcaris@btlaw.com](mailto:gcaris@btlaw.com)

If to the Nunez Parties: Matthew Nunez  
104 Kings Place  
Newport Beach, CA 92663-5703  
[mattnunez@catalystbioholdings.com](mailto:mattnunez@catalystbioholdings.com)

with a copy to: Buchalter, A Professional Corporation  
1000 Wilshire Blvd., Suite 1000  
Los Angeles, CA 90017  
Robert Little, Esq.  
[rlittle@buchalter.com](mailto:rlittle@buchalter.com)

Copies of notices to Buchalter, A Professional Corporation are for courtesy purposes only. All notices will be deemed given and received on the next business day following the day such notice is sent by overnight courier or electronic transmission.

21. No Waiver. No failure or delay on the part of any party to this Agreement in the exercise of any right, power, or privilege hereunder, shall operate as a waiver thereof, and no single or partial exercise of any such right, power, or privilege shall preclude a further exercise thereof or of any other right, power or privilege.

22. Opportunity for Consultation with Counsel. Each of the parties hereto has had an opportunity to consult with legal counsel of their own choosing with respect to the advisability of entering into this Agreement and granting the releases provided herein, and with respect to the advisability of executing this Agreement, and prior to its execution, each of the

parties hereto had the opportunity to make any desired change. Each of the parties and their legal counsel and other advisors have made such investigation of the facts pertaining to the Agreement, and all matters pertaining thereto, as they deem necessary. This Agreement has been carefully read by, the contents hereof are known by, and it has been signed freely by each person executing this Agreement.

23. Neutral Interpretation. This Agreement is the product of the negotiations between the parties, and in the interpretation and/or enforcement hereof is not to be interpreted more strongly in favor of one party or the other.

24. Representations and Warranties. Each of the parties hereto hereby represents and warrants to one another and covenants and agrees with one another as follows:

(a) Each party executing this Agreement has the full legal right, power and authority to enter into and perform this Agreement. This Agreement is a valid and binding obligation of each of the parties hereto, and enforceable against each of them in accordance with its terms. Each person executing this Agreement in a representative capacity has been duly authorized to do so by all appropriate actions.

(b) Except as expressly stated in this Agreement, no party hereto nor any other person has made any statement or representation to any party to this Agreement regarding the facts relied upon by such party in entering into this Agreement, and no party hereto has relied upon any statement, representation or promise of any other person or entity in executing this Agreement except as expressly stated in this Agreement.

(c) The terms of this Agreement are contractual and not a mere recital.

25. Nunez Representations and Warranties. Without limiting the generality of the foregoing paragraph 24, Matthew Nunez represents and warrants that: (i) he is the sole managing member and 100% owner of Archimedes and that no consent or permission of any third person is required for Archimedes to execute this Agreement and perform hereunder; (ii) he has made no assignment, sublease, transfer or other disposition of the Lease, or any rights or causes of action arising out of the Lease; and (iii) there are no unpaid amounts owed or outstanding for works of improvement, goods, services, repairs and/or maintenance incurred by Nunez in connection with the Kings Place Property for which a lien could be placed on the Kings Place Property other than the Unpaid Maintenance Invoices. Nunez further represent and warrant that other than their minor children, there are no other persons who occupy the Kings Place Property. Breach of any of the representations and warranties in this paragraph shall be deemed to be a material default of this Agreement by the Nunez Parties and each of them.

26. Integration/Modification in Writing. This Agreement together constitutes the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes all other agreements, oral or written, between the parties hereto with respect to the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Agreement. No claim of waiver, modification, consent, or acquiescence with respect to any provision of this Agreement shall be made against any party hereto, except upon the basis of a written instrument executed by or on behalf of such party.

27. Survival. All covenants, representations, warranties and agreements contained in this Agreement shall survive the execution of this Agreement by the parties hereto, the delivery of documents and any performance on account of the obligations set forth herein.

28. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors-in-interest and assigns.

29. Governing Law and Jurisdiction. This Agreement has been entered into by the parties in the State of California. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any dispute arising out of or relating to the interpretation and enforcement of this Agreement or the parties' performance under this Agreement shall be resolved exclusively by the District Court in the FTC Action.

30. Attorneys' Fees. If a material default occurs under this Agreement, and a party to this Agreement employs an attorney to bring suit on account of such default or to otherwise enforce the Agreement, the prevailing party in such action, suit or proceeding shall be entitled to be reimbursed for all attorneys' fees and costs incurred, including without limitation those incurred in each and every action, suit or proceeding, including any and all appeals and petitions therefrom.

31. Headings. The headings of paragraphs of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit or aid in the construction or interpretation of any term or provision hereof.

32. Counterparts. This Agreement may be executed and delivered by electronic transmission in any number of counterparts, each of which, when executed and delivered, shall be original, and all of which together shall constitute the same Agreement.

33. No Unnamed Third Party Beneficiaries. There are no unnamed third party beneficiaries to this Agreement. Without limiting the generality of the preceding sentence, this Agreement shall not affect any of the Receiver's rights and claims against any person or entity that is not a party to this Agreement.

34. Conflict Between Lease and Agreement. In the event of any conflict between the terms and provisions of the Lease and the terms and provisions of this Agreement, this Agreement shall prevail.

35. Further Documents. The parties to this Agreement agree that they shall execute and deliver such additional documents or instruments necessary or appropriate to effectuate the terms and provisions of this Agreement, as may be reasonably requested by any other party to this Agreement.

Dated: September 30, 2021

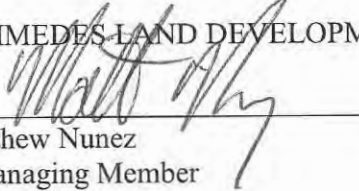
  
\_\_\_\_\_  
MATTHEW NUNEZ

Dated: September 30, 2021

  
\_\_\_\_\_  
MINDI NUNEZ

Dated: September 30, 2021

ARCHIMEDES LAND DEVELOPMENT LLC

By:   
\_\_\_\_\_  
Matthew Nunez  
Its: Managing Member

Dated: September 30, 2021

ROBB EVANS & ASSOCIATES LLC,  
as Receiver for Ecological Fox, LLC, et al.

By: \_\_\_\_\_  
Brick Kane  
Its: President

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35. Further Documents. The parties to this Agreement agree that they shall execute and deliver such additional documents or instruments necessary or appropriate to effectuate the terms and provisions of this Agreement, as may be reasonably requested by any other party to this Agreement.

Dated: September \_\_, 2021

\_\_\_\_\_  
MATTHEW NUNEZ

Dated: September \_\_, 2021

\_\_\_\_\_  
MINDI NUNEZ

Dated: September \_\_, 2021

ARCHIMEDES LAND DEVELOPMENT LLC

By: \_\_\_\_\_  
Matthew Nunez  
Its: Managing Member

Dated: September 30, 2021

ROBB EVANS & ASSOCIATES LLC,  
as Receiver for Ecological Fox, LLC, et al.

By: Kenton Johnson  
Brick Kane  
Its: President

By: KENTON JOHNSON  
Authorized Deputy  
to the Receiver

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