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7 Counsel for David Stapleton, Receiver

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 SILICONSAGE BUILDERS, LLC aka
 15 SILICON SAGE BUILDERS and
 16 SANJEEV ACHARYA,

17 Defendants.

Case No. 3:20-cv-09247-SI

**NOTICE OF SUBMISSION OF REVISED
 PROPOSED ORDER GRANTING
 MOTION OF RECEIVER, DAVID
 STAPLETON, FOR ORDER APPROVING
 SALES OF REAL PROPERTY OWNED
 BY DOWNTOWN GATEWAY RETAIL,
 LLC, FREE AND CLEAR OF LIENS**

Date: April 22, 2022
 Time: 10:00 a.m.
 Crtrm.: 1 – 17th Floor (hearing via Zoom)
 Judge: Susan Illston

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TO THE HONORABLE SUSAN ILLSTON, SENIOR DISTRICT JUDGE, AND ALL PARTIES IN INTEREST:

PLEASE TAKE NOTICE that David Stapleton has submitted a revised proposed order granting his motion to approve the sale of real property owned by Downtown Gateway Retail, LLC. A redlined version of the order is attached hereto. A summary of the revisions is as follows:

(1) The revised order adds language requested by Orange Coast Title Company regarding the sale being free and clear of liens, claims, interests, and leases to make it abundantly clear that the liens, claims, interests, and leases that are not paid through escrow (like the lien of Franklin Monroe Holding Company, LLC) are being stripped from the real property.

(2) At the request of Franklin Monroe Holding Company, LLC, the secured lender, the revised order clarifies that the rejection of the Orange Theory lease will occur upon the closing of the sale of the real property located at 1026 Monroe.

DATED: April 13, 2022

Respectfully submitted,
SMILEY WANG-EKVALL, LLP

By: /s/ Kyra E. Andrassy
KYRA E. ANDRASSY
Counsel for David Stapleton, Receiver

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1 The Court having reviewed the *Motion of Receiver, David Stapleton, for Order*
2 *Approving Sales of Real Property Owned by Downtown Gateway Retail, LLC* (the
3 "Motion"), and the declarations submitted in support of the Motion, and good cause
4 appearing, the Court finds:

5 (1) The Court has jurisdiction over the real property located at 1002 Monroe St.
6 (APN 269-62-001), 1026 Monroe St. (APN 269-62-002), 1034 Monroe St. (APN 269-62-
7 003), 1056 Monroe St. (APN 269-62-004), 1078 Monroe St. (APN 269-62-005), 1086
8 Monroe St. (APN 269-62-006), 1098 Monroe (APN 269-62-007), in Santa Clara, CA
9 95050 (together, the "Property");

10 (2) The Receiver has demonstrated good, sufficient, and sound business
11 purpose and justification for the Motion to be granted in its entirety;

12 (3) The terms and conditions of the proposed sales are fair and reasonable;

13 (4) Proper, timely, and adequate and sufficient notice of the Motion has been
14 given; and

15 (5) The granting of the Motion is in the best interests of the receivership estate
16 and its creditors.

17 Based on the foregoing, **IT IS ORDERED AS FOLLOWS:**

18 (1) The Motion is granted;

19 (2) The Receiver to authorized to enter into the Forbearance Agreement with
20 Franklin Monroe Holding Company, LLC (the "Lender"), that was submitted as Exhibit
21 "9," and the terms of that Forbearance Agreement are approved;

22 (3) Without further order of the Court, the Lender shall be deemed to have
23 been granted relief from the Receivership Order¹ and may proceed with enforcing all of
24 its rights and remedies under the Loan Documents, as that term is defined in the
25 Forbearance Agreement, and applicable law, including, without limitation, the completion
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28 ¹ Capitalized terms not defined in this Order shall have the meaning ascribed to them in the Motion.

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1 of the non-judicial foreclosure sale of the Property initiated by its Notice of Default upon
2 the occurrence of any of the following events:

3 (a) The occurrence of any default under the Loan Documents other than
4 the Existing Default described in the Forbearance Agreement;

5 (b) The occurrence of a default of a material term of the Forbearance
6 Agreement which is not cured within five (5) business days;

7 (c) The Lender does not receive the net proceeds from the sales of the
8 units located at 1002 Monroe, 1056 Monroe, 1078 Monroe, 1086 Monroe, and 1098
9 Monroe, which sales are to close concurrently, on or before May 9, 2022;

10 (d) The Lender does not receive the net proceeds from the sale of 1034
11 Monroe on or before May 15, 2022; or

12 (e) The sale of 1026 Monroe does not close on or before July 31, 2022,
13 at a sale price in excess of that set forth in the Forbearance Agreement.

14 (4) The Receiver is authorized to sell 1002 Monroe St., Santa Clara, CA 95050
15 APN 269-62-001 to Altitude Investment, Inc., pursuant to the terms and conditions of the
16 purchase agreement provided as Exhibit "1," which terms and conditions are approved,
17 including that the sale is "as-is, where-is" and without any representations or warranties;

18 (5) The Receiver is authorized to sell 1034 Monroe St., Santa Clara, CA 95050,
19 APN 269-62-003, to 1034 Monroe St. LLC pursuant to the terms and conditions of the
20 purchase agreement provided as Exhibit "2," which terms and conditions are approved,
21 including that the sale is "as-is, where-is" and without any representations or warranties;

22 (6) The Receiver is authorized to sell 1056 Monroe St., Santa Clara, CA 95050,
23 APN 269-62-004, to Monroe Investment, LLC, pursuant to the terms and conditions of the
24 purchase agreement provided as Exhibit "3," which terms and conditions are approved,
25 including that the sale is "as-is, where-is" and without any representations or warranties;

26 (7) The Receiver is authorized to sell 1078 Monroe St., Santa Clara, CA 95050,
27 APN 269-62-005, to Hong Xie or his assignee pursuant to the terms and conditions of the
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1 purchase agreement provided as Exhibit "4," which terms and conditions are approved,
2 including that the sale is "as-is, where-is" and without any representations or warranties;

3 (8) The Receiver is authorized to sell 1086 Monroe St., Santa Clara, CA 95050,
4 APN 269-62-006, to Ly's Pole Studio pursuant to the terms and conditions of the
5 purchase agreement provided as Exhibit "5," which terms and conditions are approved,
6 including that the sale is "as-is, where-is" and without any representations or warranties;

7 (9) The Receiver is authorized to sell 1098 Monroe St., Santa Clara, CA 95050,
8 APN 269-62-007, to Alan Nguyen or his assignee pursuant to the terms and conditions of
9 the purchase agreement provided as Exhibit "6," which terms and conditions are
10 approved, including that the sale is "as-is, where-is" and without any representations or
11 warranties;

12 (10) The Receiver is authorized to sell 1026 Monroe St., Santa Clara, CA 95050,
13 APN 269-62-002, without the necessity of a further Court order on terms and conditions
14 similar to the terms and conditions of the purchase agreements for the other six units and
15 at a price that is at or in excess of the release price contained in the Forbearance
16 Agreement, and the sale shall be "as-is, where-is" and without any representations or
17 warranties;

18 (11) The rejection of the 1026 Monroe Lease is approved, with the rejection to
19 be effective only upon the closing of the sale by the Receiver of 1026 Monroe Street;

20 (12) The foregoing sales shall be free and clear of all liens, claims, interests,
21 leases, and encumbrances such that they are removed from the Property, including, but
22 not limited to, the following:

23 (a) Deed of Trust in favor of Franklin Monroe Holding Company, LLC,
24 recorded as Document No. 2019-24264147, subject however to the terms and limitations
25 of the Forbearance Agreement;

26 (b) Deed of Trust in favor of Peruri Capital Partners, LLC, et al.,
27 recorded as Document No. 2015-23159638;

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1 (c) Deed of Trust in favor of Preferred Bank, recorded as Document No.
2 2016-23421735;

3 (d) Liens recorded by the Downtown Gateway Homeowners'
4 Association, recorded as Document Nos. 2020-24643403, 2020-24643405, 2020-
5 24643406, 2020-24643407, 2020-24643408, 2020-24643409, and 2020-24643404;

6 (e) Lien of All Seasons Roofing & Waterproofing, Inc., recorded as
7 Document No. 2021-24797629;

8 (f) Lien in favor of Franchise Tax Board against Sanjeev and Mina
9 Acharya recorded as Document No. 2020-24616560; and

10 (g) Lien in favor of Express Fence, LLC, recorded as Document No.
11 2021-24936198; ~~and~~

12 (13) The recordation of this Order with the Santa Clara County Recorder shall
13 constitute a discharge, termination, and cancellation as to the Property of the liens,
14 claims, interests, leases and encumbrances referenced in the foregoing paragraph,
15 except for the lien of Franklin Monroe Holding Company, LLC;

16 (14) The payment of the broker's commission to SVN Capital West Partners is
17 approved;

18 ~~(14)~~15 From the proceeds of the first unit to close escrow, the escrow agent is
19 authorized to pay the lien of All Seasons Roofing & Waterproofing that is recorded as
20 Instrument Number 2021-24797629, the broker's commission, the seller's share of
21 closing costs and property taxes, and the amount of the Carve-Out applicable to that unit
22 as set forth in the Forbearance Agreement, with the remaining proceeds to be remitted to
23 the Lender in accordance with the terms of the Forbearance Agreement;

24 ~~(15)~~16 From the sale of the remaining units, escrow is authorized to pay the
25 broker's commission, the seller's share of closing costs and property taxes, and the
26 amount of the Carve-Out applicable to that unit, with the remaining proceeds to be
27 remitted to the Lender in accordance with the terms of the Forbearance Agreement;

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(~~16~~17) The Receiver is authorized to execute all documents that he deems reasonably necessary to consummate the foregoing sales on behalf of Downtown Gateway Retail, LLC; and

(~~17~~18) Any licensed title insurer and the buyers of the Property are authorized to rely on the Order as authorizing the Receiver to transfer legal title to the Property free and clear of all liens, claims, interests, leases and encumbrances.

Dated:

SUSAN ILLSTON
United States District Judge

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PROOF OF SERVICE

STATE OF CALIFORNIA, DISTRICT COURT, NORTHERN DISTRICT

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On 4/13/2022, I served true copies of the following document(s) described as **NOTICE OF SUBMISSION OF REVISED PROPOSED ORDER GRANTING MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER APPROVING SALES OF REAL PROPERTY OWNED BY DOWNTOWN GATEWAY RETAIL, LLC, FREE AND CLEAR OF LIENS** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)) – Pursuant to United States District Court, Northern District of California, the foregoing document will be served by the court via NEF and hyperlinked to the document. On 4/13/2022, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

(X) (BY U.S. MAIL). I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

() (BY E-MAIL). By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

() (BY FACSIMILE). I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on _____, at Costa Mesa, California.

() STATE I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

(X) FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 13, 2022, at Costa Mesa, California.

/s/ Lynnette Garrett

Lynnette Garrett

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BY U.S. MAIL:

5 Preferred Bank 6 Attn: Debbie Kong, Agent for 7 Service of Process 601 S. Figueroa St. 48 th Floor Los Angeles, CA 90017	USI Servicing, Inc. Attn: William E. Nassour III 1516 Pontius Ave. Los Angeles, CA 90025	USI Servicing, Inc. Attn: William Nassour III 9595 Wilshire Boulevard, Suite 708 Beverly Hills, CA 90212
8 Express Fence LLC 9 Attn: Orlando Nunes, Agent for 10 Service of Process 2200 Tulip Rd. San Jose, CA 95128	All Seasons Roofing & Waterproofing Inc. Attn: Rodney Lewin 8665 Wilshire Blvd. #210 Beverly Hills, CA 90211	State of California Franchise Tax Board c/o General Counsel Section P.O. Box 1720, MS: A-260 Rancho Cordova, CA 95741-1720
11 State of California 12 Franchise Tax Board 13 Special Procedures Section P.O. Box 2952 Sacramento, CA 95812-2952	Downtown Gateway Homeowners Association c/o A.S.A.P. Collection Services 331 Piercy Road San Jose, CA 95138	Koma Ventures V, LLC c/o West Coast Fitness, LLC 11661 San Vicente Blvd. Suite 203 Los Angeles, CA 90049
14 Counsel to Koma Ventures 15 Michael Slapo 16 Fox Rothschild LLP 101 Park Avenue, 17 th Floor New York, NY 10178		

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