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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

~~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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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 No oppositions to the motion were filed; 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;

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

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

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8 Dated: April 18, 2022

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12 SUSAN ILLSTON

13 United States District Judge
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