



107665324

**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

WELLS FARGO BANK, NATIONAL ASSOCIATION  
Plaintiff

Case No: CV-11-750490

Judge: JOHN J RUSSO

U. S. TOMMY, INC., ET AL  
Defendant

**JOURNAL ENTRY**

THE RECEIVER'S MOTION TO APPROVE BIDDING PROCEDURES IS GRANTED. OSJ

Judge Signature

Date

CPSB1

FILED  
2019 MAR -5 A 9:13  
CLERK OF COURTS  
CUYAHOGA COUNTY

IN THE COMMON PLEAS COURT  
CUYAHOGA COUNTY, OHIO

WELLS FARGO BANK, NATIONAL	)	CASE NO. CV-11-750490
ASSOCIATION	)	
	)	
Plaintiff,	)	JUDGE JOHN J. RUSSO
v.	)	
	)	
U.S. TOMMY, INC., et al.,	)	ORDER CONFIRMING
	)	BIDDING PROCEDURES
Defendant.	)	

This matter came before the Court upon the Motion to Approve Bidding Procedures (the "*Motion*") filed by Eric Silver of Ag Real Estate Group, Inc., the duly appointed and acting receiver in this action (the "*Receiver*"), for an order confirming bidding procedures (as described more fully in the Motion, the "*Bidding Procedures*") for the sale of the "*Property*" (as defined in the Motion).

Based upon the evidence presented in Receiver's Motion, the Court hereby FINDS and DETERMINES that:

1. Pursuant to O.R.C. § 2735.04(D)(2)(b), all appropriate parties, including owner of the Property, all parties to this foreclosure action, and all other persons identified in the title commitment submitted with the Motion who have or claim to have an interest in the Property (collectively, the "*Lienholders*"), have been served with the Motion and have been afforded an opportunity to be heard on the merits of the Motion.

2. No objection or other opposition to the Motion was filed with the Court. In accordance with O.R.C. § 2735.04(D)(2)(c), the Court may proceed without a hearing.

3. The transactions contemplated by the Bidding Procedures are fair and commercially reasonable.

4. Selling the Property in accordance with the provisions of the Bidding Procedures is in the best interests of the receivership estate, the owner of the Property, the parties to this action, and all record Lienholders.

5. It is in the best interests of the receivership estate that the Property be sold free and clear of all liens.

6. Under Civil Rule 54(b), there is no just reason for delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion is GRANTED as set forth herein.

IT IS FURTHER ORDER ADJUDGED AND DECREED that the Bidding Procedures are incorporated in this order and are approved in their entirety, except:

- The receiver or the broker hired by the receiver must give public notice of the receiver's sale once a week for at least three consecutive weeks before the beginning of the Initial Bid Round. Such notice must be by advertisement in a newspaper of general circulation in Cuyahoga County and must include a summary of the bid procedures;
- The Initial Bid Deadline is 5:00 p.m. prevailing EST on the seventh day after the last day of publication of the notice described above, not the seventh day after the entry of this order.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the transactions contemplated by the Bidding Procedures, subject to the lien of the treasurer or fiscal officer of Cuyahoga County for real estate taxes and assessments as contemplated by Ohio Revised Code § 2735.04(D)(3)(a), and subject to the interests of T-Mobile Central LLC (successor in interest to Voicestream PCS II Corporation) pursuant to the Lease, as defined in the form Purchase Agreement, attached and incorporated into the Bidding Procedures, as are hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the owner, of the Property, or any other person having an equity of redemption in the Property, may exercise such equity of redemption pursuant to O.R.C. § 2735.04(D)(7) by paying to the Receiver, by cashier's check or other form of immediately available funds, within three (3) days from the date of this Order, an amount equal to the aggregate amount owing on all liens upon the Property that were to be canceled as liens upon the Property by virtue of the sale, including all principal, interest, costs, and other amounts secured by those liens. Should the owners of the Property, or any other person having an equity of redemption in the Property fail to pay the foregoing amounts within three (3) days from the date of this Order, any such equity of redemption shall be forever barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that unless the owner of the Property, or any other person having an equity of redemption in the Property, timely exercises such equity of redemption, the Receiver shall be authorized to sell the Property pursuant to the Bidding Procedures, free and clear of all liens and encumbrances, including, but not limited to, claims of all parties to this action and any liens or encumbrances asserted by the Lienholders (except for the lien of the Treasurer of Cuyahoga County, Ohio for real estate taxes and assessments, and T-Mobile Central LLC, pursuant to the Leases, as that term is defined in the form Purchase Agreement).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that following the conclusion of the bidding process set forth in the Bid Procedures, pursuant to O.R.C. §§ 2735.04(D), Receiver shall file a motion to confirm the bidding process and to approve the proposed sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to O.R.C. §§ 2735.04(D)(2)(d), this Order is a final appealable order with respect to the matters it contains, and the Clerk of the Courts is hereby directed to enter this Order as a final appealable order in the records of this action. Pursuant to Civil Rule 54(b) there is no just reason for delay.

IT IS SO ORDERED.

Dated:

3/4/19

  
JUDGE RUSSO

SS



**NAILAH K. BYRD**  
**CUYAHOGA COUNTY CLERK OF COURTS**  
1200 Ontario Street  
Cleveland, Ohio 44113

**Court of Common Pleas**

**MOTION TO...**  
**November 15, 2018 17:08**

By: NATHANIEL R. SINN 0088467

Confirmation Nbr. 1552198

WELLS FARGO BANK, NATIONAL ASSOCIATION

CV 11 750490

vs.

U. S. TOMMY, INC., ET AL

**Judge:** JOHN J. RUSSO

**Pages Filed:** 91

WELLS FARGO BANK, NATIONAL ASSOCIATION	)	CASE NO. CV-11-750490
	)	
	)	
Plaintiff,	)	JUDGE JOHN J. RUSSO
	)	
v.	)	
	)	
U.S. TOMMY, INC., et al.,	)	<b>RECEIVER'S MOT</b>
	)	<b>APPROVE BID PRO</b>
	)	<b>FOR THE SALE OF</b>
Defendant.	)	<b>PROPERTY</b>

Respectfully submitted,

Nathaniel R. Sinn (0088467)  
David A. Zulandt (0095516)  
Buckingham, Doolittle & Burroughs, LLC  
1375 E. 9<sup>th</sup> Street, Suite 1700  
Cleveland, OH 44114  
Phone: (216) 621-5300  
Facsimile: (216) 615-3021  
Email: [nsinn@bdblawn.com](mailto:nsinn@bdblawn.com)  
[dzulandt@bdblawn.com](mailto:dzulandt@bdblawn.com)

Electronically Filed 11/15/2018 17:08 / MOTION / CV 11 750490 / Confirmation Nbr. 1552198 / BATCH

## MEMORANDUM OF LAW

### **I. Background**

Plaintiff, Wells Fargo Bank National Association, as Indenture Trustee for The Grand Pacific Business Loan Trust 2005-1, commenced this action on March 8, 2011 against U.S. Tommy, Inc. and others, seeking certain relief, including the appointment of a receiver. On October 11, 2017, upon the motion of Grand Pacific Holdings Corp. (“**Grand Pacific**”), a successor plaintiff in this matter, this Court issued an Order Appointing Receiver (“**Receivership Order**”) directing the Receiver to take immediate possession, control, management, operation and charge of the property consisting of a hotel commonly known as University Hotel and Suites, located at 3614-3618 Euclid Avenue, Cleveland, Ohio 44114 (the “**Property**”), assigned permanent parcel nos. 103-07-008, 103-07-009, 103-07-027 and 103-07-028, and to take such other actions as the Receiver deems necessary to properly and adequately manage, control, operate, maintain and protect the Property during the pendency of the receivership.

Pursuant to the authority granted by this Court through the Receivership Order, the Receiver retained Ag Real Estate Group, Inc. (“**Broker**”), as real estate broker to market the Property. The Receiver and Broker developed and implemented a marketing plan to sell the Property, which included, but was not limited to, the following:

- Creating a comprehensive marketing package
- Placing an ad in *Crain's Cleveland Business*
- Placing a premium listing on Loopnet/CoStar, resulting in more than 57,825 views
- Conducting two open houses/property tours held on August 8, 2018 and August 15, 2018, resulting in 14 individual tours of the property.



These efforts culminated in the Receiver obtaining an offer that was reduced to a proposed purchase agreement incorporating a stalking horse and bid process, which the Receiver previously brought before this Court for approval pursuant to a motion filed on September 11, 2018.

Shortly thereafter, on September 14, 2018, Grand Pacific assigned its interest in the underlying note, mortgage, and related loan documents to Crimson Cleveland Hotels Investors, LLLP (“**Crimson Cleveland**”), who was thereafter substituted as the real party in interest/substitute plaintiff in this action pursuant to a journal entry of the Court issued October 1, 2018.

Paragraph 9 of the Receivership Order states, in pertinent part, that “[t]he Receiver will obtain consent of Plaintiff, **its successors or assigns** for any sale of the Property.” (Emphasis added). Crimson Cleveland expressed its interest to credit bid for the Property, which was not contemplated by the Receiver’s prior motion. Therefore, Crimson Cleveland, as the successor and assign to Grand Pacific, objected to the motion and the previously proposed bid process as filed. Accordingly, the Court denied the previously filed motion consistent with the requirements of Paragraph 9 of the Receivership Order

Notwithstanding, there remains significant interest in the Property. Additionally, Crimson Cleveland continues to express an interest in credit bidding as the senior secured creditor to the Property. Therefore, the Receiver seeks to implement a two phase bidding process for the purchase of the Property as set forth in proposed bid procedures (the “**Bid Procedures**”), a true and correct copy of which are attached hereto as Exhibit “A”. Attached to the Bid Procedures, and incorporated therein, is a model form Agreement for Sale and Purchase of Real Property (the “**Form Purchase**

**Agreement**"). Crimson Cleveland approved the attached Bid Procedures and Form Purchase Agreement, and expressly consented to the sale of the Property thereto.

As indicated below, the proposed Bid Procedures and Form Purchase Agreement are commercially reasonable, within the Receiver's discretion, fair to all interested parties and will maximize the amount of proceeds received from the sale of the Property.

## **II. Law and Argument**

### **A. The Receiver Has the Power and Authority to Sell the Property.**

R.C. § 2735.04 provides, in pertinent part, that "[u]nder the control of the court that appointed the receiver, . . . the receiver may . . . *[s]ell and make transfers of real or personal property; [e]xecute deeds, leases, or other documents of conveyance of real or personal property and [g]enerally do any other acts that the court authorizes.*" R.C. § 2735.04(B)(5), (6) and (8). The Receiver may sell real and personal property free and clear of liens and encumbrances. R.C. § 2735.04(D)(1)(a); *see also, Huntington National Bank v. Motel 4 BAPS, Inc.* (2010), 191 Ohio App. 3d 90, 944 N.E.2d 1210; *The Park National Bank v. Cattani, Inc.* (2010), 187 Ohio App. 3d 186, 931 N.E.2d 623. Further, receivership sales are not subject to the provisions of Ohio Revised Code Chapter 2329. R.C. § 2735.04(D)(4); *see also, Avondale Community Council, et al. v. Lentine, et al.*, 1<sup>st</sup> Dist., No. C-110221, 2012-Ohio-186. *See also, Motel 4 BAPS*, 191 Ohio App. 3d at 95 ("the legislature clearly defined writs of execution and receiverships as separate and distinct options for enforcing and satisfying debts").

In accordance with the foregoing authority and as stated above, this Court authorized the Receiver to "negotiate and affect an orderly sale, transfer, or assignment of all or a portion of any of the Property..." and to "conduct a sale of the Property in any manner which he, in his good and reasonable discretion, believes will maximize the

proceeds received from the sale.” See Receivership Order, ¶ 3(d). This Court further authorized the Receiver to hire a real estate agent to market the Property. See Receivership Order, ¶ 9. Consequently, the Receiver engaged Broker to develop and implement a marketing plan to sell the Property. The efforts of the Receiver and Broker resulted in significant interest in the Property.

Moreover, pursuant to Paragraph 9 of the Receivership Order, the Receiver sought “consent of Plaintiff, its successors or assigns for any sale of the Property.” The plaintiff Crimson Cleveland approved the Bid Procedures, including the Form Purchase Agreement, and expressly consented to any sale of the Property arising therefrom. Accordingly, subject to the approval of this Court, the Receiver has the power and authority to implement the Bid Procedures to sell the Property pursuant to both R.C. § 2735.04 and the requirements of the Receivership Order.

**B. The Proposed Bid Procedures are Fair to All Interested Parties.**

All prospective purchasers have been afforded the opportunity to inspect the Property and perform their own due diligence. Should a prospective purchaser seek to bid and ultimately purchase the Property, they must do so subject to the Bid Procedures and the Form Purchase Agreement.

No prospective purchaser is affiliated in any manner whatsoever with the Receiver. No prospective purchaser has offered to pay any consideration to the Receiver in connection with the purchase and sale of the Property, except for that expressly set forth in the Bid Procedures and the Form Purchase Agreement.

In addition to all potential purchasers who have expressed interest in the Property to date, all potentially interested parties will be informed of their opportunity

to submit a bid pursuant to the proposed Bid Procedures. Further, interested parties will submit their bid via the Form Purchase Agreement.

In recognition of its senior secured creditor, the Bid Procedures and Form Purchase Agreement afford Plaintiff the opportunity to submit its bid in the form of a credit bid. For all the foregoing reasons, Receiver represents that the proposed Bid Procedures present a balanced sale approach that will take full advantage of the interest garnered to date, while affording all interested parties a fair opportunity to participate in the bidding process.

C. The Proposed Bid Procedures will Maximize the Proceeds Received.

As indicated above, Receiver and Broker have taken great efforts to appropriately market the Property for sale. In order to more fully take advantage of the significant interest received to date, Receiver proposes a two phase bidding procedure for the sale of the Property. In the “**Initial Bid Round**” (as defined in the Bid Procedures), Receiver will solicit bids from any and all interested purchasers. All bids must be submitted to the Receiver or the Receiver’s counsel no later than 5:00 p.m. on the 7<sup>th</sup> day following the Court’s approval of the Bid Procedures (“**Initial Bid Deadline**”).

If the Receiver determines that there are Qualified Bids (defined in the Bid Procedures) submitted by at least two Qualified Bidders (defined in the Bid Procedures), the Receiver shall conduct the Final Bid Round (defined in the Bid Procedures). Only Qualified Bidders will be permitted to participate in the Final Bid Round.

As soon as practicable following the Initial Bid Deadline, Receiver shall inform the Qualified Bidders of the minimum bid amount for the Final Bid Round and solicit a second round of bids (“**Final Qualified Bids**”). All Final Qualified Bids must be in excess of \$100,000.00 of the highest Initial Qualified Bid, and be submitted to the

Receiver or the Receiver's counsel no later than 5:00 pm on the 3<sup>rd</sup> day following the Initial Bid Deadline (the "**Final Bid Deadline**"). The highest and best Final Qualified Bid will be deemed the "**Prevailing Bid**" (as defined in the Bidding Procedures).

No later than 7 days following the Final Bid Deadline, the Receiver will file a motion with the Court to approve and confirm the sale.

Receiver, in his reasonable discretion and good faith judgment, is confident that the marketing efforts employed to date, combined with the two phase bidding process above, will produce a highly competitive bidding environment and maximize the amount of proceeds received from the sale of the Property.

D. The Due Process Rights of Lienholders Are Preserved.

The propriety of a receiver's sale of property depends upon preserving the due process rights of lienholders having an interest in the property to be sold by notifying such persons of the proposed sale and giving them an opportunity to voice any objections or concerns they may have regarding the proposed sale. *Motel 4 BAPS*, 191 Ohio App. 3d at 96. *See also Huntington v. Olmsted Lanes*, Cuyahoga C.P. No. 10 CV 729378 (March 11, 2011).

The names of any and all lienholders are set forth in a recent title commitment (the "**Title Commitment**"), a copy of which is attached hereto as Exhibit B. The Title Commitment identifies those persons who have, or claim to have, an interest in the Property (collectively, the "**Lienholders**"). In accordance with R.C. § 2735.04(D)(2)(b), the owner of the Property, all parties to this foreclosure action, and all Lienholders are being served with this Motion. If no party served with this Motion objects thereto, the Court may grant the Motion and approve the Bid Procedures

without a hearing pursuant to R.C. 2735.04(D)(2)(c). Consequently, the due process rights of the Lienholders are preserved.

### **III. Conclusion**

For the reasons stated herein, the Receiver requests that this Court issue an Order approving the proposed Bid Procedures. A proposed Order is attached hereto as Exhibit C for the Court's convenience and consideration.

Respectfully submitted,

/s/ Nathaniel R. Sinn

Nathaniel R. Sinn (0088467)

David A. Zulandt (0095516)

Buckingham, Doolittle & Burroughs, LLC

1375 E. 9<sup>th</sup> Street, Suite 1700

Cleveland, OH 44114

Phone: (216) 621-5300

Facsimile: (216) 615-3021

Email: [nsinn@bdblawn.com](mailto:nsinn@bdblawn.com)

[dzulandt@bdblawn.com](mailto:dzulandt@bdblawn.com)

*Attorneys for Eric Silver, Receiver*

## CERTIFICATE OF SERVICE

A copy of the foregoing *Motion* was sent by Regular U.S. Mail this 15<sup>th</sup> day of November, 2018, to:

Heather E. Heberlein  
1400 Fifth Third Center  
600 Superior Avenue  
Cleveland, OH 44114  
Ph: 261-685-4784  
*Attorney for Plaintiff*

Marilyn K. Eble  
127 Public Square, Ste. 3900  
Cleveland, OH 44114  
Ph: 216-566-5500

and

John B. Kopf  
Thompson Hine  
41 South High Street, Suite 1700  
Columbus, OH 43215  
Ph: 614-469-4743  
*Attorneys for Defendant Voicestream PCS  
II Corporation*

Sean F. Berney  
4725 Grayton Road  
Cleveland, OH 44135  
Ph: 216-362-7777  
*Attorney for Defendant Ohio Department  
of Taxation*

Growth Capital, Inc.  
IMG Center  
1360 East Ninth Street, Suite 950  
Cleveland, OH 44114

Yuh-Chyn Liu  
3614 Euclid Avenue Suite 217  
Cleveland, OH 44115-0000

Hunan Gourmet  
3614 Euclid Avenue  
Cleveland, OH 44115-0000

Leonard J. Pappas  
3614 Euclid Avenue  
Cleveland, OH 44114  
Ph: 216-285-4784  
*Attorney for Defendants U.S. Tommy, Inc.,  
James Lin, Mark Lin, Robert Lin, and  
Yueh-or Lin*

Marlon A. Primes  
U.S. Courthouse, #400  
801 W. Superior Ave.  
Cleveland, OH 44113  
*Attorney for Defendant United States Small  
Business Administration*

Kelly Kay Perk  
1200 Ontario Street  
Justice Center, 8<sup>th</sup> floor  
Cleveland, OH 44113  
Ph: 2126-443-7851  
*Attorney for Defendants Cuyahoga County  
Board of Commissioners and Cuyahoga  
County Treasurer*

United States Small Business  
Administration  
409 Third Street SW, Suite 7000  
Washington, DC 20416-0000

Tsai-Fwu Chou  
3614 Euclid Avenue Suite 217  
Cleveland, OH 44115-0000

Voicestream PCS II Corporation  
c/o CSC Lawyers Incorporating Service  
(Corporation Service Company), Registered  
Agent  
50 West Broad Street  
Columbus, OH 43215-0000

Marcel C. Duhamel  
Vorys, Sater, Seymour and Pease, LLP  
200 Public Square, Suite 1400  
Cleveland, Ohio 44114  
(216) 479-6100  
(216) 479-6060 (facsimile)  
mcduhamel@vorys.com  
*Attorney for Crimson Cleveland Hotel Investors, LLLP*

/s/ Nathaniel R. Sinn  
NATHANIEL R. SINN (0088467)  
*Attorney for Eric Silver, Receiver*



## BIDDING PROCEDURES

### A. Background

On October 11, 2017, the Court of Common Pleas, Cuyahoga County, Ohio, Case No. CV-11-750490, issued an Order Appointing a Receiver ("**Receivership Order**") appointing Eric Silver ("**Receiver**") as receiver to manage and to act with full authority with respect to the real property located at 3614-3618 Euclid Avenue, Cleveland, Ohio 44114, consisting of a hotel commonly known as University Hotel and Suites. Pursuant to the Receivership Order, the Receiver is authorized to negotiate and effect an orderly sale of all or a portion of any of the receivership property, in any manner which he, in his good faith and reasonable discretion, believes will maximize the proceeds received from the sale. The Receivership Order further permits the Receiver to hire an auctioneer and/or real estate agent to market and/or auction the receivership property.

### B. Definitions

In addition to the definitions set forth elsewhere throughout these bidding procedures, as used in these Bidding Procedures the following terms shall have the indicated meanings:

1. "**Bid**" shall have the meaning ascribed to it in Section G herein.
2. "**Bidder**" shall have the meaning ascribed to it in Section G herein.
3. "**Broker**" shall mean Ag Real Estate Group, Inc.
4. "**Court**" shall mean the Cuyahoga County, Ohio Court of Common Pleas.
5. "**Final Qualified Bid**" shall have the meaning ascribed to it in Section J herein.
6. "**Plaintiff**" shall mean Crimson Cleveland Hotels Investors, LLLP, the holder of the underlying note in this action as of September 14, 2018.
7. "**Property**" shall have the meaning ascribed to it in the Purchase Agreement.
8. "**Prevailing Bid**" shall mean a Bid selected and approved for the acquisition of the Property or any part thereof.
9. "**Prevailing Bidder**" shall mean the party submitting a Prevailing Bid.

10. “*Purchase Agreement*” shall mean the form Agreement for Sale and Purchase of Property attached hereto as Exhibit “1”.
11. “*Qualified Bidder*” shall mean any potential bidder meeting the criteria of Section I herein.
12. “*Receiver’s Counsel*” shall mean Buckingham, Doolittle & Burroughs, LLC.
13. “*Sale Order*” shall mean the Journal Entry or Order issued by the Court approving these Bidding Procedures, the substantive form of the Purchase Agreement, and otherwise sets forth the required procedure for the sale and conveyance of the Property.

**C. Property to be Sold**

The property sold pursuant to these Bidding Procedures shall be the Property as that term is defined in the Purchase Agreement, and shall consist of the Real Property, Personal Property, and Intangible Property, as each of those terms are defined in the Purchase Agreement.

**D. Free and Clear of Liens and Encumbrances**

The Property shall be sold free and clear of all liens and encumbrances other than the lien of the treasurer or fiscal officer of Cuyahoga County for real estate taxes and assessments as contemplated by Ohio Revised Code § 2735.04(D)(3)(a), and subject to the interests of T-Mobile Central LLC (successor in interest to Voicestream PCS II Corporation) pursuant to the Leases, as that term is defined in the Purchase Agreement. Further, subject to further approval of the Court, the Confirmation Order shall direct that a certified copy of the Confirmation Order shall be recorded in the records of Cuyahoga County, Ohio evidencing that the liens and encumbrances against the Property have been cancelled and released as contemplated under Ohio Revised Code § 2735.04(D)(3)(b).

**E. Solicitation**

Pursuant to the Receivership Order, the Receiver has retained Broker to aid in the solicitation of Bids. Additionally, the Receiver and Receiver’s Counsel have prepared (a) the Purchase Agreement; and (b) a form acknowledgement (the “*Acknowledgement*”), whereby potential Bidders agree to be bound by the provisions of these Bidding Procedures.

F. As Is, Where Is

Any sale of the Property will be completed on an “as is, where is” basis and without surviving representations, warranties, covenants or indemnities of any kind, nature or description by the Receiver or any party or their respective agents, professionals, advisors or otherwise except to the extent set forth in the Purchase Agreement.

G. Initial Bid Round

These Bidding Procedures provide for two rounds of bidding in which to solicit binding offers or proposals (each a “**Bid**”, and each party who submits a Bid, a “**Bidder**”) to purchase the Property. In the Initial Bid Round, Receiver will solicit offers from any and all potential Bidders who have expressed interest in the Property to date, or whom the Receiver deems, in his sole discretion, to be a potential interested Bidder. In order to participate in the Initial Bid Round, all potential Bidders must deliver their Bids in writing to the Receiver or the Receiver’s Counsel no later than 5:00 p.m. prevailing EST on the 7<sup>th</sup> day following the entry of the Sale Order (the “**Initial Bid Deadline**”). Should the Receiver determine a Bidder to be a Qualified Bidder (as defined below), then such Bidder will proceed to the second and final bid round in accordance with the procedures set out herein. All bidding will be conducted in US Dollars.

H. Determination of Qualified Bidder Status

The Receiver may discuss, negotiate or seek clarification of any Bid. A Bidder may not amend or withdraw a Bid without the written consent of the Receiver. Any such modification, amendment or withdrawal of a Bid by a Bidder without the written consent of the Receiver shall result in a forfeiture of such Bidder’s Deposit.

To participate in the second and final bid round, a Bidder must be deemed a “**Qualified Bidder**.” To be deemed a Qualified Bidder, a Bidder must submit a Qualified Bid (defined below).

The Receiver shall notify all Qualified Bidders with respect to whether such Bidder is a Qualified Bidder as soon as practicable after the Bid Deadline. All Bids will be considered, but the Receiver reserves the right to reject any and all Bids.

If the Receiver determines that there is only one Qualified Bid, then the Qualified Bidder submitting such Qualified Bid shall be the Prevailing Bidder and the process need not proceed to the second and final bid round.

## **I. Qualified Bid Requirements**

To be a Qualified Bid, a Bid must:

- 1) Be submitted to the Receiver on or before the applicable deadlines;
- 2) Be accompanied by an executed Acknowledgement (if not already delivered);
- 3) Identify the Bidder and the representatives thereof who are authorized to appear and act on behalf of the Bidder for all purposes regarding the contemplated transaction;
- 4) Be accompanied by an executed, legally binding agreement, substantially in the form of the Purchase Agreement, which agreement must set forth a proposed purchase price therein;
- 5) Be accompanied by a good-faith deposit in an amount no less than 5% of the proposed purchase price, in cash, cashier's check or certified check payable to Chicago Title Insurance Company.
- 6) Be accompanied by satisfactory evidence, in the opinion of the Receiver, of committed and non-contingent financing or other confirmable fiscal wherewithal to consummate the transaction set forth in the Purchase Agreement;
- 7) Not be conditional on obtaining financing, or any internal approval, or on the outcome or review of due diligence;
- 8) Not request or entitle the Bidder to any break-up fee, expense reimbursement, termination or similar type of fee or payment. Further, by submitting a Bid, a Bidder shall be deemed to irrevocably waive any right to pursue a claim in any way related to the submission of its Bid or these Bidding Procedures; and
- 9) Contain such other information reasonably requested by the Receiver.

Notwithstanding the foregoing, Plaintiff may submit its Qualified Bid in the form of a credit bid which shall be exempt from the requirements listed above, including the requirement to deliver the Good Faith Deposit. Each Bidder shall comply with all reasonable requests for additional information by the Receiver regarding such Bidder and its contemplated transaction. Failure by the Bidder to comply with requests for additional information will be a basis for the Receiver to determine that the Bidder is not a Qualified Bidder.

**J. Final Bid Round**

If the Receiver determines that there are Qualified Bids submitted by at least two Qualified Bidders, then the Receiver shall conduct a second and final bid round. As soon as practicable following the Initial Bid Deadline, but in no event longer than one day, the Receiver shall inform the Qualified Bidders via phone call and electronic mail of the minimum bid amount for the Final Bid Round and solicit a second round of Qualified Bids (the "***Final Qualified Bids***"). All Final Qualified Bids must be in excess of \$100,000.00 of the highest and best Qualified Bid submitted during the Initial Bid Round as determined by the Receiver in his sole discretion. All Final Qualified Bids must be submitted in writing to the Receiver or the Receiver's Counsel no later than 5:00 p.m. prevailing EST on the 3<sup>rd</sup> day following the Initial Bid Deadline (the "***Final Bid Deadline***").

The highest and best Final Qualified Bid, as determined by the Receiver in the Receiver's sole discretion, will be deemed the Prevailing Bid. If the Receiver receives no Final Qualified Bids, then the Qualified Bidder submitting the highest and best Qualified Bid during the Initial Bid Round shall be the Prevailing Bidder. The Prevailing Bidder shall have the rights and obligations of the purchaser, as set forth in the Purchase Agreement. The Prevailing Bidder shall deliver the Deposit (defined in the Purchase Agreement) to the Title Agent immediately upon executing the Purchase Agreement, and in no event later than two (2) business days following notification by the Receiver of being the Prevailing Bidder.

**K. Reservation of Rights**

In addition to the other reservations of rights set out herein, the Receiver reserves the right in its reasonable discretion to: (a) waive strict compliance with any one or more of the Bid requirements specified herein, and deem such non-compliant Bids to be Qualified Bids, provided that such non-compliance is not material in nature; (b) reject any and all Bids if, in the Receiver's reasonable business judgment, no Bid is for fair and adequate consideration; and (c) adopt such ancillary and procedural rules not otherwise set out herein for these Bidding Procedures that in his reasonable business judgment will better promote the goals of these Bidding Procedures and/or more fully maximize the amount of proceeds received from the sale of the Property. Notwithstanding anything set forth in these Bidding Procedures to the contrary, any proposed sale resulting from these Bidding Procedures is conditioned upon receipt of all requisite approvals of Plaintiff or its successor or assigns, approval of the Court and approval of the Title Company to close, as explained more fully in the Purchase Agreement

**L. Motion to Confirm Sale**

No later than seven (7) days following the Final Bid Deadline, the Receiver will file a motion with the Court to approve and confirm the sale as contemplated under Ohio Revised Code § 2735.04(D)(6).

**M. Closing of Sale**

In the event the Court grants the Motion to Confirm Sale, the Prevailing Bidder and the Receiver shall close the transactions contemplated by the Purchase Agreement thirty (30) days following entry of an order by the Court granting the Motion to Confirm Sale, or sooner if all requisite approvals under Section K and/or the Purchase Agreement are obtained, or such other date as the Receiver and the Prevailing Bidder may determine. The Prevailing Bidders failure to close may result in forfeiture of the Deposit and may also result in the Prevailing Bidder being held in contempt of Court.

**O. Return of Good Faith Deposit**

1) Good faith deposits of all Bidders who are determined not to be Qualified Bidders shall be returned to such Bidders within three (3) business days after the day on which such Bidder is notified that it is not a Qualified Bidder;

2) Good faith deposits of all Qualified Bidders other than the Prevailing Bidder shall be returned to such Bidders within three (3) business days after the day on which the Prevailing Bidder is selected;

3) Any good faith deposit and/or the Deposit of the Prevailing Bidder shall be applied to the purchase price of such transaction at closing. The Prevailing Bidders failure to close may result in forfeiture of the Deposit and may also result in the Prevailing Bidder being held in contempt of Court.

4) Any good faith deposit and/or the Deposit of the Prevailing Bidder shall be returned to the Prevailing Bidder if the Court does not grant the Motion to Confirm Sale.

CL2:487790\_v1

**AGREEMENT FOR SALE AND PURCHASE OF PROPERTY**

(Commercial Property)

SELLER: **Eric M. Silver**, not in his individual capacity, but solely in his capacity as court-appointed receiver in the lawsuit styled as "Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 v. U.S. Tommy, Inc., et al", bearing Cause No. 11 CV 750490 in the Court of Common Pleas, Cuyahoga County, Ohio

BUYER: [\_\_\_\_], a(n) \_\_\_\_\_ [\_\_\_\_], and/or assigns as permitted

EXECUTION DATE: \_\_\_\_\_, 2018

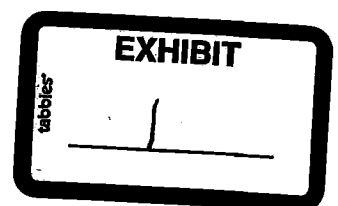
PROPERTY: A hotel operating as the "University Hotel and Suites" and other related facilities located at 3614-3618 Euclid Ave., Cleveland, Ohio

**TABLE OF CONTENTS**

<u>ARTICLE</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
ARTICLE I	DEFINED TERMS .....	1
ARTICLE II	PURCHASE PRICE AND TERMS OF PAYMENT; CLOSING ADJUSTMENTS .....	4
ARTICLE III	SPECIAL PROVISIONS; NOTEHOLDER AS BUYER .....	6
ARTICLE IV	CONDITION .....	7
ARTICLE V	TITLE .....	10
ARTICLE VI	ESCROW AND CLOSING .....	10
ARTICLE VII	APPROVAL BY COURT .....	12
ARTICLE VIII	ENVIRONMENTAL MATTERS .....	12
ARTICLE IX	WARRANTIES AND REPRESENTATIONS .....	13
ARTICLE X	ASSIGNMENT .....	13
ARTICLE XI	BROKERAGE .....	14
ARTICLE XII	DEFAULT; TERMINATION .....	14
ARTICLE XIII	NO JOINT VENTURE .....	15
ARTICLE XIV	MISCELLANEOUS .....	15
ARTICLE XV	ESCROW TERMS .....	20
ARTICLE XVI	LITIGATION .....	21

**EXHIBITS**

- A LEGAL DESCRIPTION
- B RECEIVERSHIP ORDER
- C SPECIAL WARRANTY DEED OF RECEIVER
- D AFFIDAVIT
- E BILL OF SALE
- F ASSIGNMENT AND ASSUMPTION AGREEMENT
- G NOTICE TO SERVICE CONTRACTOR
- H TITLE COMMITMENT



## **AGREEMENT FOR SALE AND PURCHASE OF PROPERTY**

**Eric M. Silver**, not in his individual capacity, but solely in his capacity as court-appointed receiver in the lawsuit styled as "Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 v. U.S. Tommy, Inc., et al", bearing Cause No. 11 CV 750490 in the Court of Common Pleas, Cuyahoga County, Ohio ("**Seller**"), and [**buyer**], a(n) [state] [type of entity], and/or assigns as permitted ("**Buyer**"), hereby agree on the Execution Date, that Seller shall sell to Buyer and Buyer shall purchase from Seller, upon the following terms and conditions and for the price herein set forth, the Property, as such term is defined in Article I of this Agreement.

### **ARTICLE I** **DEFINED TERMS**

1.1 **Definitions.** As used herein, the following terms shall have the following meanings:

(a) "**Agreement**" shall mean this Agreement for Sale and Purchase of Property executed by both Buyer and Seller.

(b) "**Borrower**" means U.S. Tommy, Inc.

(c) "**Business Day**" shall mean any day other than Saturday or Sunday on which business is conducted by national banking institutions in Cuyahoga County, Ohio.

(d) "**Closing**" shall mean the execution and delivery of the Special Warranty Deed of Receiver, the Bill of Sale and the other instruments to be executed by Seller conveying the Property to Buyer, and the payment by Buyer to Seller of the Purchase Price.

(e) "**Closing Date**" shall mean 30 days following entry of an order by the Court granting the Motion to Confirm Sale, or sooner if all requisite approvals under Section 6.7 hereof, or a date as mutually agreed upon by Seller and Buyer.

(f) "**County**" shall mean Cuyahoga County located in the State.

(g) "**Court**" shall mean the Court of Common Pleas for Cuyahoga County, Ohio.

(h) "**Deed**" shall mean the Special Warranty Deed of Receiver conveying good and clear record and marketable, free and clear from liens and encumbrances whatsoever except the Acceptable Encumbrances (defined in Section 5.1) to the Real Property to Buyer, duly executed by Seller, notarized and in the form set forth on **Exhibit C** attached hereto.

(i) "**Deposit**" shall mean the amount from time to time held by the Title Company in a separate interest bearing account, and shall be a sum equal to 5% of the Purchase Price, and, if applicable, increased to the extent interest accrues thereon. As set forth in Article VII, if the Noteholder is the Buyer, a Deposit is not required.

(j) "**Execution Date**" shall mean the date set forth on the first page of this Agreement.

(k) "**General Intangibles**" shall mean Seller's interest in any and all warranties, telephone exchange numbers, architectural or engineering plans and specifications, and



development rights that relate to the Real Property or the Personal Property that Seller has the right to assign, if in Seller's possession.

(l) "**Hazardous Materials**" shall mean any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum, its derivatives, by-products and other hydrocarbons, or any substance having any constituent elements displaying any of the foregoing characteristics. The term "**Hazardous Materials**" includes, without limitation, any substance regulated under any and all federal, state and local statutes, laws (including case law), regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions, whether now or hereafter in effect, relating to human health, the environment or to emissions, discharges or releases of pollutants, contaminants, toxic substances, hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous materials or wastes or the clean-up or other remediation thereof.

(m) "**Intangible Property**" shall mean, to the extent the same is transferable by Seller, Seller's interest in the Leases, the Service Contracts, the Permits, the General Intangibles and any and all rights to the name of the improvements upon the Real Property.

(n) "**Land**" shall mean that certain parcel of real property located in the County and State, as more particularly described on the attached **Exhibit A**.

(o) "**Leases**" shall mean that certain lease as evidenced by the Memorandum of Lease and Option between U.S. Tommy, Inc. and Voicestream PCS II Corporation as referenced as Paragraph 10 of Schedule B, Part II of the Title Commitment.

(p) "**Noteholder**" shall mean Crimson Cleveland Hotel Investors, LLLP, and its successors or assignees.

(q) "**Owner**" shall mean Borrower or its successor or assignee.

(r) "**Permits**" shall mean any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property.

(s) "**Personal Property**" shall mean Seller's interest in all tangible personal property and fixtures located on or attached to the Real Property as of the Closing Date. "**Personal Property**" does not include property owned by others such as Tenants under Leases or parties to Service Contracts, management or franchise agreements.

(t) "**Property**" shall mean collectively the Real Property, the Personal Property and the Intangible Property.

(u) "**Prorations Date**" shall mean the day before the Closing Date.

(v) "**Purchase Price**" shall mean \$\_\_\_\_\_, a portion of which, consisting of \$\_\_\_\_\_, is in consideration for Personal Property and Intangible Property.

(w) **"Real Property"** shall mean the Land, together with Seller's interest in the buildings and other improvements and fixtures located thereon, together with Seller's interest in all rights of ways, ingress and egress, easements, rights, privileges, hereditaments and appurtenances thereto or in any way appertaining thereto.

(x) **"Receiver"** shall mean Eric M. Silver, as appointed a receiver pursuant to the Receivership Order.

(y) **"Receivership Action"** shall mean that certain civil action styled "Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 v. U.S. Tommy, Inc., et al", bearing Cause No. 11 CV 750490 in the Court of Common Pleas, Cuyahoga County, Ohio.

(z) **"Receivership Order"** shall mean that certain Order Appointing a Receiver entered by the Court on October 11, 2017 in the Receivership Action, and any and all subsequent amendments or modifications thereto, pursuant to which the Receiver was appointed to, among other things, take possession, custody and control of the Property and to sell the Property. A copy of the Receivership Order is attached as **Exhibit B**.

(aa) **"Sale Order"** shall mean the Journal Entry or Order issued by the Court approving the bid process, the substantive form of this agreement, and otherwise sets forth the required procedure for the sale and conveyance of the Property.

(bb) **"Security Deposits"** shall mean the refundable security deposits, if any, in Receiver's possession with respect to the Leases and which have not been forfeited by Tenants prior to Closing. Security Deposits shall not include any security deposits, whether or not provided for in the Leases, which were paid to Borrower and which were not delivered to Receiver and are not in Receiver's possession.

(cc) **"Seller Group"** shall mean, individually and collectively, Seller, Receiver, and Noteholder and their respective members, managers, trustee, master servicer, special servicer and certificate holders and their respective past, present, and future officers, directors, shareholders, general partners, limited partners, agents, representatives, heirs, successors, assigns and attorneys and their respective heirs, successors, and assigns.

(dd) **"Service Contracts"** shall mean any and all service, maintenance, supply or other similar agreements, if any, which may be assumed by Buyer at Closing, however termed, written or oral, affecting the use, ownership, maintenance, or operation of all or any part of the Property but specifically excluding any management, franchise or license agreements pertaining to the Property.

(ee) **"State"** shall mean the state of Ohio.

(ff) **"Tenants"** shall mean those persons or entities holding rights of tenants under Leases.

(gg) **"Title Agent"** shall mean Chicago Title Insurance Company, 1111 Superior Ave., Ste. 600, Cleveland, OH 44114; Attention: Bruce E. Cweiber.

(hh) **"Title Commitment"** shall mean the commitment for issuance of an owner's title insurance policy in the full amount of the Purchase Price in favor of Buyer issued by Title Agent on behalf of Title Company, as further defined in Section 5.1.

(ii) **"Title Company"** shall mean Chicago Title Insurance Company.

1.2 Other Defined Terms. Other capitalized terms contained in this Agreement shall have the meanings assigned to them herein.

## **ARTICLE II**

### **PURCHASE PRICE AND TERMS OF PAYMENT; CLOSING ADJUSTMENTS**

2.1 Purchase Price. The total Purchase Price shall be the Purchase Price set forth in Section 1.1 of this Agreement.

2.2 Payment of Purchase Price. The Purchase Price shall be paid as follows:

(a) Credit for Deposit. Immediately upon execution of this Agreement by Buyer and Seller, and subject to Article III, Buyer shall deliver to the Title Agent in escrow the Deposit by cashier's check or by wire transfer. If the Deposit is not received by the Title Agent within two Business Days following the Execution Date, this Agreement shall be terminated without further action or notice. The Deposit, if applicable, is consideration for the rights granted to Buyer to purchase the Property, shall be credited against the Purchase Price at Closing and shall be non-refundable, except where otherwise provided herein.

(b) Payment at Closing. The balance of the Purchase Price, subject to Article III, and subject to the prorations and adjustments set forth in this Agreement, and the satisfaction of any conditions precedent, shall be paid (i) by Buyer to Seller by wire transfer to Title Agent's account at the time of Closing, and (ii) by the Title Agent to Seller by wire transfer to Seller's account immediately upon Closing and prior to the recordation of the Deed, although both the payment and recordation of the Deed shall be fully conditioned on the satisfaction of the other. Buyer expressly acknowledges and agrees that this Agreement is not subject or conditioned in any way on Buyer's ability to obtain financing. Wired funds must be received in the Title Agent's on or prior to the close of business on the Closing Date.

2.3 Closing Adjustments and Prorations.

(a) Hotel Room Revenues. Seller shall receive and be entitled to all room, parking, and other revenues, charges and receivables (herein called **"Hotel Room Revenues"**) from the operation of the Property as a hotel (herein called the **"Hotel"**) through check out time on the Closing Date. Buyer shall receive and be entitled to all Hotel Room Revenues from and after checkout time on the Closing Date. At Closing, Seller shall sell to Buyer in connection with the Hotel, and Buyer shall purchase from Seller, at face value: (i) all petty cash funds in the hands of Seller (or its manager of the Hotel) in connection with the Hotel guest operations. Buyer shall not be obligated to collect any such Hotel Room Revenues owing to Seller, but shall cooperate with Seller, at Seller's cost, in reasonable respects in connection with any collection efforts of Seller, which shall not include the commencement of litigation by Seller against any applicable debtor. If any receivables for Hotel Room Revenues shall be collected by Buyer or Manager, in the normal course of business, Buyer shall remit the same to Seller within fifteen (15) days after receipt, less reasonable third-party costs actually incurred by Buyer in the collection of such amounts.

(b) Food. On or prior to Closing, Seller shall attempt to reduce all inventories of unopened containers of food and beverages to zero. Buyer shall not be obligated to pay to Seller at Closing any proration amount for unopened containers of food and beverages and operating supplies and equipment in storage, and Seller shall not be obligated to leave any inventories of unopened containers of food and beverages for Buyer.

(c) Advance Reservations. Buyer shall be entitled to a credit against the Purchase Price for advance payments and reservation deposits, if any, under booking arrangements for the Property to the extent the booking relates to a period after the Closing Date received by Seller on or before the Closing Date. At the Closing, Seller shall provide a ledger of itemized deposits, including name, amount, date provided, date of reservation, contact information for the reserver and contact information for any booking agent, in a customary form and Buyer shall execute a receipt for such advance payments and reservation deposits, and Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, liabilities, damages, losses, costs and expenses of any kind or nature whatsoever (including, without limitation, attorneys' fees and expenses and court costs) suffered, incurred or sustained by Seller as a result of, by reason of, or in connection with the application or return of such advance payments and reservation deposits, if not the fault of the Seller and Seller records.

(d) Lease Prepayments and Security Deposits. Receiver shall transfer to Buyer at Closing any Security Deposits and any other refundable money (other than Security Deposits), if any, in Receiver's actual possession for the account of Tenants, including, without limitation, all rental, utility, key, damage and other refundable deposits.

(e) Taxes and Assessments; Pending and Certified Liens. Taxes and assessments for the year of Closing shall be prorated as of the Prorations Date in accordance with the due date of the municipality or taxing unit in which the Property is located if the amount of such taxes is known at the time of Closing; if such amount cannot be then ascertained, proration shall be based upon the amount of the taxes, with the maximum discount allowed by law, if any, for the preceding year. In the event that, after the Closing Date, any of such taxes, charges or assessments shall be increased or reduced there shall not be any reapportionment post-closing between the parties.

(f) Utility Charges. Electric, water, sewer, gas, fuel, waste collection and removal and other utility and operating expenses relating to the Property shall be prorated as of the Prorations Date. Notwithstanding the foregoing, to the extent possible, Seller and Buyer shall request the utility companies to read the meters as of the Prorations Date, and Seller shall be responsible for all charges incurred through the Prorations Date. All prepaid deposits for utilities shall be refunded to Seller at the time of closing by the utility companies, and it shall be Buyer's responsibility to make any utility deposits required for service.

(g) Accounts Receivable. All accounts receivable, rebates and refunds, and, except as otherwise provided in Section 14.1 hereof, insurance proceeds and claims, arising or applicable to periods prior to the Closing Date shall remain the property of Seller. Buyer will cooperate with Seller after the Closing Date in Seller's actions to collect any accounts receivable, including providing Seller with access to the books and records of the Property relating to such accounts receivable. Buyer shall not be obligated to take any actions to collect independently of the Seller. If Buyer actually receives payment on any accounts receivable arising or applicable to periods prior to the Closing Date, Buyer shall forward the funds actually collected to Seller. Receipts from account debtors having accounts arising or applicable to periods both prior to and after the Closing Date shall be applied first against the balances owed to Seller and then to

balances owed to Buyer. Upon request by Seller, Buyer shall be deliver to Seller all correspondence and other matters pertaining to accounts receivable arising or applicable to periods prior to the Closing Date

(h) Reproration and Post-Closing Adjustments. All prorations, adjustments and credits made and determined as herein provided shall be final as of the Closing Date, unless otherwise specified herein. This provision shall survive the Closing.

(i) Property Employees. There shall be no proration between Seller and Buyer of "employee costs" for any employee of Seller employed at the Property (the "**Project Employees**"). Seller shall be responsible for, and shall pay in full at or before Closing, all "employee costs" for the Project Employees applicable to or owing for periods through and including the Closing Date, or accrued as of the Closing Date. For the purposes of this Agreement, "**employee costs**" shall mean and include all fees, wages, salaries and other compensation, and the costs and expenses of workers compensation insurance, vacation pay, sick pay, pension, profit sharing, health insurance, other insurance, other employee benefits, social security taxes, unemployment insurance, and all other federal, state and local employment taxes. Seller will terminate all Project Employees as of the Closing Date. Buyer may employ certain Project Employees (on substantially the same terms and conditions as the terms and conditions of their employment). Seller agrees to cooperate with the Buyer to arrange at a reasonably convenient time for both Seller and Buyer prior to Closing to discuss the current employees' terms and conditions, so that the Buyer may make an informed decision related to re-hire, if any, at the full discretion of the Buyer.

2.4 Costs and Expenses. Seller shall pay (a) all costs of recording; (b) the Ohio conveyance fees and transfer taxes, if any; (c) all broker's fees and commissions as described in Article XI; (d) one-half of the escrow fee, if any, charged by the Title Agent; and (e) the title insurance premium for the standard coverage owner's title insurance policy to be issued to Buyer by the Title Company. Buyer shall pay: (a) one-half of the escrow fee, if any, charged by the Title Agent; (b) the title insurance premium for the standard coverage lender's title insurance policy, if any, to be issued to Buyer by the Title Company; and (c) the title insurance premium for any extended coverage and endorsements to the title policy requested or required by Buyer. Attorneys' fees, consulting fees, survey costs and other expenses shall be borne by the party incurring such expense. The provisions of this Section shall survive the Closing for one year

### **ARTICLE III**

#### **SPECIAL PROVISIONS: NOTEHOLDER AS BUYER**

3.1 Application of Special Provisions. Notwithstanding anything to the contrary in this Agreement, in the event the Noteholder is the Buyer, then the provisions of this Article III shall apply; and to the extent any other provisions conflict with the provisions of this Article III, then this Article III shall control and shall supersede any such conflicting provisions.

3.2 No Deposit. Noteholder/Buyer shall not be required to pay a Deposit.

3.3 Costs and Expenses. At Closing, Noteholder/Buyer shall pay to Title Company all fees and expenses associated with closing, including, but not limited to: (a) Ohio conveyance fees and transfer taxes, if any; (b) the escrow fee; (c) the cost of the title examination and Title Commitment; (d) the cost of recording the Deed; (e) the cost of the Title Policy; (f) the cost of the lender's policy of title insurance required by Noteholder's/Buyer's lender, if any; (g) the cost of

recording any mortgage or other documents securing Noteholder's/Buyer's financing, if any; (h) any outstanding charges for electric, water, sewer, gas, fuel, waste collection and removal and other utility and operating expenses relating to the Property; and (i) all broker's fees and commissions as described in Article XI.

3.4 No Prorations. There shall be no proration through escrow of real estate taxes, assessments, utilities, or other income and expenses. To the extent that Noteholder/Buyer and Receiver determine it is necessary to prorate any real estate taxes, assessments, utilities, or other income and expenses for any reason, such proration will be done outside of escrow.

3.5 Credit Bidding. Noteholder/Buyer shall be allowed to credit bid:

3.6 Commission. If Noteholder is the Buyer, the broker's commission due Ag Real Estate, Inc. shall be set at \$97,500.00 and the provisions of Article XI shall not apply otherwise.

#### **ARTICLE IV** **CONDITION**

4.1 Information Regarding Property. Buyer acknowledges and agrees that prior to executing and delivering this Agreement to Seller, Buyer and Buyer's agents, contractors, and representatives have been provided with access to the Property for the purpose of allowing Buyer to conduct such inspections and investigations as Buyer deemed necessary or appropriate. Buyer represents and warrants to Seller that Buyer is relying solely on its own investigations, inspections, examinations and financial analysis of the Property in entering into this Agreement. Buyer's execution of this Agreement conclusively constitutes Buyer's approval of all aspects of the Property. Buyer further acknowledges and agrees that: Seller, Noteholder, or Receiver may have provided or may in the future provide to Buyer documents and information pertaining to the operation of the Property. All such information is provided simply as an accommodation to Buyer. Seller, Receiver, and Noteholder make no representations as to their accuracy or completeness and Buyer waives and releases any claim against any of them to the contrary. Buyer understands that some of the foregoing documents may have been provided by others to Seller, Receiver, or Noteholder and were not verified. In no event shall Seller, Receiver, or Noteholder be obligated to deliver or make available to Buyer any of Seller's internal memoranda, confidential or attorney-client privileged materials pertaining to the Property, if any. Until Closing, Buyer shall maintain all such information as confidential information. If the purchase and sale of the Property is not consummated in accordance with this Agreement, regardless of the reason or the party at fault, Buyer shall promptly upon request re-deliver to Seller copies of any such information and Buyer shall continue to maintain all such information as confidential information.

4.2 Condition of the Property.

(a) As Is. EXCEPT AS OTHERWISE PROVIDED HEREIN, BUYER DOES HEREBY ACKNOWLEDGE, REPRESENT, WARRANT AND AGREE TO AND WITH SELLER THAT: (I) BUYER IS EXPRESSLY PURCHASING THE PROPERTY IN ITS EXISTING CONDITION "AS IS, WHERE IS, AND WITH ALL FAULTS" AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF SELLER, RECEIVER OR NOTEHOLDER WITH RESPECT TO ALL FACTS, CIRCUMSTANCES, CONDITIONS AND DEFECTS; (II) NEITHER SELLER, RECEIVER, NOR

NOTEHOLDER HAS ANY OBLIGATION TO INSPECT FOR, REPAIR OR CORRECT ANY SUCH FACTS, CIRCUMSTANCES, CONDITIONS OR DEFECTS OR TO COMPENSATE BUYER FOR SAME; (III) SELLER AND RECEIVER HAVE SPECIFICALLY BARGAINED FOR THE ASSUMPTION BY BUYER OF ALL RESPONSIBILITY TO INSPECT AND INVESTIGATE THE PROPERTY AND OF ALL RISK OF ADVERSE CONDITIONS AND HAVE STRUCTURED THE PURCHASE PRICE AND OTHER TERMS OF THIS AGREEMENT IN CONSIDERATION THEREOF; (IV) BUYER IS AND WILL BE RELYING STRICTLY AND SOLELY UPON SUCH INSPECTIONS AND EXAMINATIONS AND THE ADVICE AND COUNSEL OF ITS OWN CONSULTANTS, AGENTS, LEGAL COUNSEL AND OFFICERS TO DETERMINE IF THE PURCHASE PRICE IS FAIR AND ADEQUATE CONSIDERATION FOR THE PROPERTY; (V) SELLER, RECEIVER AND NOTEHOLDER ARE NOT MAKING AND HAVE NOT MADE ANY WARRANTY OR REPRESENTATION WITH RESPECT TO ANY MATERIALS OR OTHER DATA PROVIDED BY SELLER, RECEIVER OR NOTEHOLDER TO BUYER (WHETHER PREPARED BY OR FOR THE SELLER OR OTHERS) OR THE EDUCATION, SKILLS, COMPETENCE OR DILIGENCE OF THE PREPARERS THEREOF OR THE PHYSICAL CONDITION OR ANY OTHER ASPECT OF ALL OR ANY PART OF THE PROPERTY AS AN INDUCEMENT TO BUYER TO ENTER INTO THIS AGREEMENT AND THEREAFTER TO PURCHASE THE PROPERTY OR FOR ANY OTHER PURPOSE; AND (VI) BY REASON OF ALL THE FOREGOING, BUYER ASSUMES THE FULL RISK OF ANY LOSS OR DAMAGE FOLLOWING CLOSING OCCASIONED BY ANY FACT, CIRCUMSTANCE, CONDITION OR DEFECT PERTAINING TO THE PROPERTY. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, BUYER SPECIFICALLY ACKNOWLEDGES THAT SELLER DOES NOT REPRESENT OR IN ANY WAY WARRANT THE ACCURACY OF ANY MARKETING INFORMATION OR PAMPHLETS LISTING OR DESCRIBING THE PROPERTY OR THE INFORMATION, IF ANY, PROVIDED BY SELLER TO BUYER.

(b) No Warranties. EXCEPT FOR WARRANTY OF TITLE AS SET FORTH IN THE DEED, SELLER AND RECEIVER HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND OR NATURE WHATSOEVER (INCLUDING WARRANTIES OF CONDITION, MERCHANTABILITY, HABITABILITY AND FITNESS FOR PARTICULAR PURPOSES), WHETHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO WARRANTIES WITH RESPECT TO THE PROPERTY, ZONING, LAND VALUE, SUBDIVISION OR LAND USE, AVAILABILITY OF ACCESS OR UTILITIES, INGRESS OR EGRESS, GOVERNMENTAL APPROVALS, OR THE SOIL CONDITIONS OF THE LAND. BUYER FURTHER ACKNOWLEDGES THAT BUYER IS BUYING THE PROPERTY "AS IS" AND IN ITS PRESENT CONDITION AND THAT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER IS NOT RELYING UPON ANY REPRESENTATION OF ANY KIND OR NATURE MADE BY NOTEHOLDER, SELLER OR RECEIVER, OR ANY OF THEIR RESPECTIVE EMPLOYEES, AGENTS OR OTHER REPRESENTATIVES WITH RESPECT TO THE LAND OR PROPERTY, AND THAT, IN FACT, NO SUCH REPRESENTATIONS WERE MADE EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT.

(c) Hazardous Materials. FURTHER AND WITHOUT IN ANY WAY LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, NOTEHOLDER, SELLER AND RECEIVER DO NOT MAKE ANY WARRANTY WITH RESPECT TO THE PRESENCE ON OR BENEATH THE LAND (OR ANY PARCEL IN PROXIMITY THERETO) OF HAZARDOUS MATERIALS. BY ACCEPTANCE OF THIS AGREEMENT AND THE DEED, BUYER ACKNOWLEDGES THAT BUYER'S OPPORTUNITY FOR INSPECTION AND INVESTIGATION OF SUCH LAND (AND OTHER PARCELS IN PROXIMITY THERETO) HAS BEEN ADEQUATE TO ENABLE BUYER TO MAKE BUYER'S OWN DETERMINATION WITH RESPECT TO THE PRESENCE ON OR BENEATH THE LAND (AND OTHER PARCELS IN PROXIMITY THERETO) OF SUCH

**HAZARDOUS MATERIALS. FURTHERMORE, BUYER'S CLOSING HEREUNDER SHALL BE DEEMED TO CONSTITUTE AN EXPRESS WAIVER OF BUYER'S AND ITS SUCCESSORS' AND ASSIGNS' RIGHTS TO SUE THE SELLER GROUP AND OF BUYER'S RIGHT TO CAUSE THE SELLER GROUP TO BE JOINED IN AN ACTION BROUGHT UNDER ANY FEDERAL, STATE OR LOCAL LAW, RULE, ACT, OR REGULATION NOW EXISTING OR HEREAFTER ENACTED OR AMENDED WHICH PROHIBITS OR REGULATES THE USE, HANDLING, STORAGE, TRANSPORTATION OR DISPOSAL OF HAZARDOUS MATERIALS OR WHICH REQUIRES REMOVAL OR REMEDIAL ACTION WITH RESPECT TO SUCH HAZARDOUS MATERIALS, SPECIFICALLY INCLUDING BUT NOT LIMITED TO FEDERAL "CERCLA", "RCRA", AND "SARA" ACTS.**

**4.3 Release.**

(a) Waiver and Release. WITHOUT IN ANY WAY LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPHS, BUYER, ON BEHALF OF ITSELF, ITS SUCCESSORS AND ASSIGNS, SPECIFICALLY ACKNOWLEDGES AND AGREES THAT IT FOREVER WAIVES, RELEASES AND DISCHARGES ANY CLAIM IT HAS, MIGHT HAVE HAD OR MAY HAVE AGAINST THE SELLER GROUP WITH RESPECT TO THE CONDITION OF THE PROPERTY, EITHER PATENT OR LATENT, THE ACCURACY OF THE DUE DILIGENCE REPORTS, SELLER'S ABILITY OR INABILITY TO OBTAIN OR MAINTAIN BUILDING PERMITS, EITHER TEMPORARY OR FINAL CERTIFICATES OF OCCUPANCY OR OTHER LICENSES FOR THE USE OR OPERATION OF THE PROPERTY, AND/OR CERTIFICATES OF COMPLIANCE FOR THE PROPERTY, THE ACTUAL OR POTENTIAL INCOME OR PROFITS TO BE DERIVED FROM THE PROPERTY, THE COMPLIANCE WITH ANY ENVIRONMENTAL OR OCCUPATIONAL PROTECTION, POLLUTION, SUBDIVISION OR LAND USE LAWS, RULES, REGULATIONS OR REQUIREMENTS OR LIABILITY FOR VIOLATIONS THEREOF, AND ANY OTHER STATE OF FACTS WHICH EXIST WITH RESPECT TO THE PROPERTY.

(b) Reviewed Provisions. BUYER SPECIFICALLY ACKNOWLEDGES THAT BUYER HAS CAREFULLY REVIEWED THE FOREGOING PROVISIONS AND DISCUSSED THEIR IMPORT WITH LEGAL COUNSEL, IS FULLY AWARE OF THEIR CONSEQUENCES, AND THAT THE PROVISIONS OF THIS PARAGRAPH ARE A MATERIAL PART OF THIS AGREEMENT.

**4.4 Entry Onto Property.** Buyer shall obtain Receiver's consent before entering the Property prior to Closing. Any entry upon the Property by or on behalf of Buyer shall be at Buyer's sole risk and expense. Buyer shall provide Seller with a certificate of comprehensive general liability insurance, in form, in an amount and issued by a carrier reasonably acceptable to Seller, insuring the Seller Group from all risks and loss associated with Buyer's exercise of its rights under this Paragraph. Buyer shall not cause or permit any damage to the Property or the imposition of any lien on the Property. If any lien shall be filed against the Property, Buyer promptly and at its own expense shall cause any such lien to be removed, and, in the event of such damage, shall restore the Property, as close as reasonably possible, to the condition existing immediately prior to Buyer's (or Buyer's agent's) entry. Buyer shall indemnify, defend and hold the Seller Group harmless from and against any claims, damages, expenses or losses, resulting from or related to Buyer's (or Buyer's agent's) entry upon the Real Property or activities in respect of the Property.

**4.5 Survival.** The provisions of this Article IV shall survive the Closing, except Section 4.4 shall not survive Closing.



## **ARTICLE V**

### **TITLE**

5.1 Title Commitment. Attached hereto as **Exhibit H** is a written commitment from the Title Company for the issuance of an ALTA owner's policy of title insurance covering the Real Property ("**Title Commitment**"), issued in blank, but which will be re-issued in favor of Buyer with liability limits equal to the Purchase Price upon Seller's acceptance of this offer. Upon Buyer's request, Seller will provide Buyer with copies of all of the exceptions to title identified in Schedule B(II) of the Title Commitment. If the Title Company cannot issue a title policy to Buyer free from all Monetary Liens and subject only to the matters set forth in Section 5.3, Buyer may terminate this Agreement.

5.2 Removal of Monetary Liens. The Closing of this transaction is conditioned upon the removal at or prior to Closing, by order of the Court or otherwise, of the following types of title matters (collectively, "**Monetary Liens**"): all mortgages, assignment of rents, security interests, and other monetary liens, including, without limitation, federal tax liens, judgment liens, tax liens, workers' compensation liens, and mechanics' liens, whether or not liquidated, taxes and assessments, including interest and penalties thereon, except to the extent arising from Buyer's inspections of the Property, if any, in which case Buyer shall be liable for the same.

5.3 Transfer Subject to Third Party's Interests. Notwithstanding any provisions in this Article V to the contrary, pursuant to the Receivership Order the sale or transfer of the Property shall be subject to the interests of T-Mobile Central LLC (successor in interest to defendant Voicestream PCS II Corporation).

5.4 Survey. Buyer, at its sole cost and expense, may obtain a survey of the Land prepared in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys (the "**Survey**").

## **ARTICLE VI**

### **ESCROW AND CLOSING**

6.1 Escrow Instructions. Seller and Buyer agree to execute such reasonable additional and supplementary escrow instructions as may be appropriate to enable the Title Company to comply with the terms of this Agreement; provided, however, that in the event of any conflict between the provisions of this Agreement and any supplementary escrow instructions, the terms of this Agreement shall control.

6.2 Time and Place. Closing shall take place at 10:00 a.m., Eastern Standard Time on the Closing Date or such earlier date as may be mutually acceptable to the parties with all deliveries to be made in escrow to the Title Company prior to 10:00 a.m. on the Closing Date.

6.3 Seller's Deposit of Documents. At or before Closing, Seller shall deposit into escrow with the Title Company the following items:

(a) an executed Deed with respect to the Land, in the form of **Exhibit C** hereto, together with any State, County and local transfer tax declarations and forms required to be executed by Seller.

(b) an executed Affidavit in the form of **Exhibit D** hereto.

(c) an executed Bill of Sale (without representations or warranties) with respect to the Personal Property, if any, in the form of **Exhibit E** hereto.

(d) two counterparts of an executed Assignment and Assumption Agreement with respect to the Intangible Property, in the form of **Exhibit F** hereto.

(e) an executed Closing Statement reflecting all financial aspects of the transaction between Buyer and Seller.

(f) an affidavit pursuant to Section 1445 of the Internal Revenue Code given to Seller's knowledge.

6.4 Buyer's Deposit of Documents. At or before Closing Buyer shall deposit or cause to be deposited into escrow the following, if applicable:

(a) cash to close in the amount required by Section 2.2.

(b) any federal, State, County and local transfer tax declarations and forms required to be executed by Buyer.

(c) two counterparts of an executed Assignment and Assumption Agreement, in the form of **Exhibit F** hereto.

(d) an executed Closing Statement reflecting all financial aspects of the transaction between Buyer and Seller.

(e) evidence reasonably satisfactory to Seller and the Title Company reflecting that all documents executed by Buyer at Closing were duly authorized and executed.

(f) an executed Certificate of Buyer that all of Buyer's warranties and representations remain true as of Closing.

(g) such authorizations, approvals and incumbency as Seller or the Title Company may reasonably require authorizing Buyer to consummate the transaction contemplated hereby and to perform all of Buyer's obligations hereunder (if Buyer is a corporation, partnership or limited liability company).

(h) Certificate of Good Standing from the Secretary of State in which Buyer is organized (if Buyer is a corporation, partnership or limited liability company) (if other than the State, a certificate of the Secretary of the State authorizing Buyer to do business in the State will also be required).

6.5 Other Documents. Buyer and Seller shall each deliver such other documents as are otherwise required by this Agreement to consummate the purchase and sale of the Property in accordance with the terms hereof.

6.6 Possession. Possession of the Property, subject to the Leases, the Acceptable Encumbrances and the rights of parties in possession pursuant thereto, shall be surrendered to Buyer at the Closing.

6.7 Conditions Precedent. Notwithstanding anything to the contrary contained in this Agreement, all of the covenants and obligations of Seller and Receiver under this Agreement are conditioned upon receipt by Seller of all requisite approvals (collectively, "**Approval**") including but not limited to (i) the approval of Noteholder or its successor or assignee; (ii) the approval of the Court, as set forth in Article VII of this Agreement; and (iii) approval of the Title Company to close. If necessary, the closing will be adjusted to accommodate receipt of any or all of the approvals set forth in the preceding sentence. Except as otherwise stated herein, if any of the approvals are not obtained by the deadlines stated herein, then this Agreement shall terminate automatically, the Deposit will be delivered to Buyer, and thereupon neither party will have any further obligation or liability to the other party hereunder, except as otherwise expressly provided herein.

## **ARTICLE VII** **APPROVAL BY COURT**

7.1 Court Approval Required. Buyer acknowledges and agrees that the purchase and sale of the Property is conditioned upon the Court approving and confirming the transactions contemplated by this Agreement. If, for any reason, the Court rejects the transactions contemplated by this Agreement, then this Agreement shall terminate automatically, subject to the provisions of Article XII, and Buyer shall not be entitled to reimbursement of any costs or expenses incurred by Buyer in connection with Buyer's negotiation and performance of this Agreement or any due diligence undertaken by or for Buyer.

7.2 Confirmation of Sale. Pursuant to Ohio Revised Code § 2735.04(D)(6), as soon as practicable after the Closing, Receiver shall apply to the Court for a final order approving and confirming the transactions contemplated by this Agreement.

## **ARTICLE VIII** **ENVIRONMENTAL MATTERS**

8.1 Release. Without limiting any other provision of this Agreement, Buyer acknowledges that Seller is not in any manner responsible to Buyer for the presence of any Hazardous Materials at, on, in, under or relating to the Property, if any. Buyer hereby specifically releases the Seller Group from any and all claims, losses, liabilities, fines, charges, damages, injuries, penalties, response costs, and expenses of any and every kind whatsoever (whether known or unknown) relating to the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Materials on the Property, if any, including without limitation, any residual contamination, in, on, under or about the Property or affecting natural resources, whether prior to or following Closing, and also including, without limitation, any liability due to asbestos-containing materials at the Property. Each covenant, agreement, representation, and warranty of Buyer contained in this Section 8.1 shall survive the Closing or termination of this Agreement.

8.2 Indemnification. Without limiting the provisions of Section 4.3 and Section 4.5, Buyer hereby indemnifies and agrees to defend, protect, save and hold the Seller Group harmless from and against any and all losses, liabilities, fines, charges, damages, injuries, penalties, response costs, expenses (including attorneys' fees and costs at all levels) and claims of any and every kind whatsoever paid, incurred or suffered by, or asserted against the Seller Group, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release of any Hazardous Material from, the Property from and after the Closing Date. The foregoing indemnification includes (a) all foreseeable and

unforeseeable consequential damages to the maximum extent permitted by law; (b) the costs of any required or necessary repair, remediation, or decontamination of the Property; and (c) any fines and penalties that may be imposed. This agreement to defend, indemnify, protect, save and hold harmless shall survive the Closing of this Agreement and shall be in addition to any other obligations or liability that Buyer may have to the Seller Group at common law or by statute or otherwise.

8.3 Confidentiality. Unless and until the Closing actually occurs, Buyer, its agents, consultants and employees shall keep confidential all reports and other information, received or completed by Buyer in Buyer's independent factual, physical and legal examinations and inquiries of the Property, except that: (a) Buyer shall promptly after receipt provide copies thereof to Receiver; and (b) Buyer may disclose same to its consultants if Buyer first obtains the agreement in writing of such consultants to keep such reports and related documentation confidential. Unless and until the Closing actually occurs, neither the contents nor the results of any test, report, analysis, opinion or other information shall be disclosed by Buyer, its agents, consultants or employees without Seller's prior written approval unless and until Buyer is legally required to make such disclosure. The provisions of this Section 8.3 shall survive the termination of this Agreement.

## **ARTICLE IX**

### **WARRANTIES AND REPRESENTATIONS**

9.1 Buyer's Warranties and Representations. Buyer warrants and represents that: (a) Buyer has the full right, power, and authority to purchase the Property from Seller as provided in this Agreement and to carry out Buyer's obligations hereunder; (b) Buyer is duly organized and in good standing under the laws of its state of formation and authorized to transact business in the State (if Buyer is a corporation, partnership or limited liability company); (c) all requisite action necessary to authorize Buyer to enter into this Agreement and to carry out Buyer's obligations has been taken (if Buyer is a corporation, partnership or limited liability company); (d) this Agreement has been duly authorized, executed and delivered by Buyer; and (f) Buyer has been fully apprised of the financial condition of the Seller and the Property and that Buyer knows Borrower is insolvent and will neither receive nor retain any proceeds from the sale of the Property to Buyer, and Buyer waives and renounces any legal or other rights it may have or which could arise as a consequence of the transaction contemplated by this Agreement to assert any claim against Seller or the Seller Group based upon or arising out of said insolvency or any related facts or circumstances whatsoever. The provisions of this Section shall survive the Closing for one year.

9.2 Seller's Warranties and Representations. Seller warrants and represents, subject to the terms of Article VII, that: (a) Seller has the full right, power, and authority to enter into this Agreement and (b) this Agreement has been duly authorized, executed and delivered by Seller. The provisions of this Section shall survive the Closing for one year.

## **ARTICLE X**

### **ASSIGNMENT**

Buyer's reputation, experience, and financial status constitute a material inducement and a substantial part of the consideration for sale of the Property by Seller to Buyer. Therefore, Buyer may not assign this Agreement, nor may any of Buyer's rights hereunder or any ownership interest in Buyer be transferred in any manner to any person or entity, without Seller's specific prior written consent, which consent may be withheld by Seller for any reason

whatsoever. Notwithstanding the preceding sentence, in the event Buyer desires to assign this Agreement to an entity of which the Buyer owns a majority interest and is controlled by Buyer, Seller's consent may not be unreasonably withheld. If Buyer assigns this Agreement pursuant to the terms hereof: (a) the assignee shall be liable (jointly and severally) for all of Buyer's obligations hereunder; (b) Buyer shall remain obligated (but jointly and severally with the assignee) with respect to all of Buyer's obligations hereunder; and (c) Buyer and any assignee shall execute such instruments of assignment and assumption in such form as Seller may require in confirmation of the provisions hereof.

## **ARTICLE XI BROKERAGE**

Buyer represents and warrants to Seller, Receiver and Noteholder that Buyer has not contacted or entered into any agreement with any real estate broker, agent, finder, or any other party in connection with this transaction other than Eric M. Silver of the Ag Real Estate Group, Inc. who represents the Seller/Receiver and that Buyer has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due and payable to any other party with respect to this transaction. Seller represents and warrants to Buyer that Seller has not contacted or entered into any agreement with any real estate broker, agent, finder, or party in connection with this transaction other than Ag Real Estate Group, Inc. and that Seller has not taken any action which would result in any real estate broker's, finder's, or other fees or commissions being due and payable to any other party with respect to this transaction. Each party hereby indemnifies, protects, defends and agrees to hold the other party harmless from any loss, liability, damage, cost, or expense (including, but not limited to, reasonable attorneys' fees) resulting to the other party from a breach of the representation and warranty made by such party herein. Seller agrees to pay Ag Real Estate Group, Inc. a commission in accordance with a separate written agreement by and between Seller and Ag Real Estate Group, Inc., which commission shall be paid only if, as and when Closing actually occurs and the Purchase Price is received by Seller. The brokerage fee shall be equal to 6% of the first \$1,000,000 of the Purchase Price and 4% of the remaining amount of the Purchase Price above \$1,000,000. The provisions of this Article shall survive the Closing and termination of this Agreement, as applicable, and shall not merge with the provisions of any Closing Documents, the delivery of the Deed and the payment of the Purchase Price.

## **ARTICLE XII DEFAULT; TERMINATION**

12.1 Automatic Termination. Should the Parties fail to close the transactions contemplated by this Agreement on or prior to 120 days following entry of the Sale Order, then this Agreement shall terminate automatically. Should this Agreement terminate automatically pursuant to this section, Section 6.7, Article VII, or any other applicable provision herein, then Escrow Agent shall promptly return to Buyer the Deposit plus interest thereon, if any. Thereafter, neither Seller nor Buyer shall owe any obligation to the other to sell or purchase the Property.

12.2 Buyer's Default. If Buyer shall fail to close the transaction contemplated hereby as and when required or if Buyer shall otherwise be in default of its obligations hereunder prior to Closing, the Deposit shall be paid over to Seller as liquidated damages, it being acknowledged by Buyer and Seller that it would be impractical or extremely difficult to fix actual damages if Buyer fails to close the transaction contemplated by this Agreement, that the Deposit is a reasonable estimate of these damages as of the Execution Date and that Seller's right to retain the Deposit will be Seller's sole and exclusive remedy for Buyer's default. After payment to

Seller of the Deposit, neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated pursuant to the provisions hereof which survive termination. The liquidated damages provisions contained in this Section 12.1 shall not apply to any of Buyer's indemnities under this Agreement, for which Seller shall be entitled to all remedies at law and in equity.

12.3 Seller's Default. If this transaction shall not be closed because of default of Seller, Buyer may, as its sole and exclusive remedy, by serving a written notice upon Seller and allowing Seller a minimum of five (5) Business Days in which to cure such objection or default, either (1) have Seller refund the Deposit to Buyer on demand, and, after repayment of the Deposit to Buyer, this Agreement shall be null and void and neither Seller nor Buyer shall have any further rights or obligations hereunder except that Buyer shall remain obligated pursuant to the provisions hereof which survive termination, or (2) waive Seller's default and close the transactions contemplated by this Agreement without any adjustment to the Purchase Price. The option selected by Buyer shall be Buyer's sole and exclusive remedy, and in no event shall Buyer be entitled to damages, including but not limited to punitive damages, consequential damages, incidental damages, and any and all other manner of damages, whether founded in law or in equity.

12.4 Permitted Termination Without Default by Either Party. If either Buyer or Receiver elects to terminate this Agreement, as permitted by the provisions of this Agreement, then the Party electing to terminate this Agreement shall give the other Party written notice of termination. If this Agreement terminates automatically pursuant to the provisions of Section 6.7 or the provisions of Article VII, or if Buyer has performed its obligations under this Agreement and, being entitled to do so, Buyer elects to terminate this Agreement, then Escrow Agent shall promptly return to Buyer the Deposit plus interest thereon, if any. Thereafter, neither Receiver nor Buyer shall owe any obligation to the other to sell or purchase the Property.

12.5 No Obligation of Seller after Closing. Buyer expressly acknowledges and agrees that Seller has no obligations with respect to the Property that shall survive the Closing and that all Seller representations, warranties and covenants shall be deemed merged into the Deed at Closing, except as otherwise expressly provided herein to the contrary. The provisions of this Section shall survive the Closing.

### **ARTICLE XIII** **NO JOINT VENTURE**

Buyer acknowledges and agrees that neither Seller nor any other member of the Seller Group is a venturer, co-venturer, insurer, guarantor or partner of Buyer in ownership of the Property, and that Seller and Seller Group bear and shall bear no liability whatsoever resulting from or arising out of Buyer's ownership of the Property. Therefore, Buyer agrees to indemnify and hold harmless the Seller Group from and against any and all losses, claims, demands, damages, costs and expenses of whatsoever kind or nature including reasonable attorneys' fees, related to or arising out of any claims against Seller or the Seller Group as a result of Buyer's ownership or development of, or construction upon, or resale of, the Property. The provisions of this Article shall survive the Closing.

**ARTICLE XIV**  
**MISCELLANEOUS**

14.1 Risk of Loss. Seller agrees to give Buyer prompt notice of any fire or other casualty affecting the Property after the Execution Date or of any actual or threatened (to the extent that Seller has current actual knowledge thereof) taking or condemnation of all or any portion of the Property after the Execution Date. If after the Execution Date and prior to Closing, there shall occur damage to the Property caused by fire or other casualty which would cost an amount, greater than, or equal to, ten percent (10%) of the Purchase Price to repair (as estimated by Seller, in its reasonable discretion), or the taking or condemnation of all or any portion of the Property which would materially interfere with the present use of such Property, then, in such event, Buyer shall have the right to terminate this Agreement by giving written notice to Seller, together with copies or originals of all Due Diligence Reports, within ten (10) days after Buyer has received notice from Seller or otherwise learns of that event. Upon such termination and delivery of copies or originals of all Due Diligence Reports, the Deposit shall be delivered to Buyer, and thereupon neither party will have any further obligation or liability to the other party hereunder, except as otherwise expressly provided herein. If Buyer does not so timely elect to terminate this Agreement, then the Closing shall take place as provided herein and there shall be assigned to Buyer at the Closing all interest of Seller in and to the insurance proceeds or condemnation awards payable to Seller on account of that event (the "**Proceeds**") in an amount up to, but not including any Proceeds in excess of, the Purchase Price (the "**Excess Proceeds**"). The Proceeds minus (y) any Excess Proceeds and (z) any sums which Seller incurs before the Closing to repair any of the damage shall be hereinafter referred to as the "**Buyer's Proceeds**".

If after the Execution Date and prior to Closing there shall occur damage to the Property caused by fire or other casualty, or the taking or condemnation of a portion of the Property, which would not materially interfere with the present use of the Property, then, Buyer may not terminate this Agreement and there shall be assigned to Buyer at the Closing all interest of Seller in and to the Buyer's Proceeds, less sums which Seller incurs before the Closing to repair any of the damage.

If after the Execution Date and prior to Closing, there shall occur damage to the Property caused by fire or other casualty which would cost an amount greater than or equal to fifty percent (50%) of the Purchase Price to repair (as estimated by Seller, in its reasonable discretion), then, in such event, Seller shall have the right to terminate this Agreement by written notice thereof delivered to Buyer within ten (10) days after that event. Upon such termination, the Deposit shall be delivered to Buyer, and thereupon neither party will have any further obligation or liability to the other party hereunder, except as otherwise expressly provided herein. If Seller does not so timely elect to terminate this Agreement, then, provided that Buyer has not terminated this Agreement as provided for in the first paragraph of this Section, the Closing shall take place as provided herein and there shall be assigned to Buyer at the Closing all interest of Seller in and to the Buyer's Proceeds.

If any Buyer's Proceeds in connection with a casualty to the Property are assigned to Buyer at Closing in accordance with this Section 13.1, Seller shall retain the exclusive right to process and handle the claim with Seller's insurance company. Seller and Buyer agree to use good faith efforts to cooperate with each other in adjusting the amount of the Proceeds, including, without limitation, promptly providing any and all materials requested by the insurance company and promptly responding to any and all inquiries from the insurance company. Seller shall not have the right to agree to the amount of the Proceeds to be paid by the insurance

company without the prior reasonable written consent of Buyer unless the Proceeds equal or exceed the Purchase Price. Upon payment by the insurance company, the Buyer's Proceeds shall be disbursed to Buyer and the Excess Proceeds, if any, shall be disbursed to Seller. Seller makes no representation or warranty with respect to the amount of the Proceeds that will be paid by the insurance company in connection with any such casualty, including, without limitation, whether Buyer will be entitled to the actual cash value or the replacement cost of the Property. If and only if a casualty or condemnation event contemplated by this Section 13.1 shall occur before the Closing Date and the parties shall have remaining obligations yet to be performed at that time, the applicable provisions of this paragraph shall survive the Closing for one year.

14.2 Construction. The terms "**Seller**" and "**Buyer**" whenever used in this Agreement shall include the heirs, personal representatives, successors and assigns of the respective parties hereto; provided, however, that Buyer's right of assignment is restricted by the provisions hereof. Whenever used, the singular number shall include the plural and the plural the singular, and the use of any gender shall include all genders. The term "**including**" as used herein shall in all instances mean "**including, but not limited to**". The headings in this Agreement are intended solely for convenience of reference and shall be given no effect in the interpretation of this Agreement. This Agreement and any related instruments shall not be construed more strictly against one party than against the other by virtue of the fact that initial drafts may have been prepared by counsel for one of the parties, it being recognized that this Agreement and any related instruments are the product of extensive negotiations between the parties hereto.

14.3 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which will constitute the same Agreement. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Agreement identical in form hereto, but having attached to it one or more additional signature pages.

14.4 Severability and Waiver. Invalidity of any one Section or provision of this Agreement by judgment or court order shall in no way affect any other Section or provision. Failure of any party to this Agreement to insist on the full performance of any of its provisions by the other party (or parties) shall not constitute a waiver of such performance unless the party failing to insist on full performance of the provision declares in writing signed by it that it is waiving such performance. A waiver of any breach under this Agreement by any party, unless otherwise expressly declared in writing, shall not be a continuing waiver or waiver of any subsequent breach of the same or other provision of this Agreement. The provisions of this Section shall survive the Closing.

14.5 Governing Law. The laws of the State (without regard to conflicts of law) shall govern the validity, construction, enforcement and interpretation of this Agreement.

14.6 Further Acts. In addition to the acts and deeds recited in this Agreement and contemplated to be performed, executed, and/or delivered under this Agreement, Seller and Buyer agree to perform, execute and/or deliver or cause to be performed, executed and/or delivered at Closing or after Closing all further acts, deeds, and assurances reasonably necessary to consummate the transactions contemplated hereby.

14.7 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing. All such notices, demands, requests and other communications (and copies thereof) shall be deemed to be delivered: (a) if sent by messenger,



upon personal delivery to the party to whom the notice is directed; (b) if sent by facsimile; (c) if sent by overnight courier, with request for next Business Day delivery, on the next Business Day after sending; or (d) whether actually received or not, two (2) Business Days after deposit in a regularly maintained receptacle for the United States mail, registered or certified, return receipt requested, postage prepaid, addressed as follows (or to such other address as the parties may specify by notice given pursuant to this Section):

TO SELLER: Eric M. Silver  
3659 S. Green Road, Suite 216  
Beachwood, OH 44122  
Facsimile: 216-504-5001  
Electronic Mail: Eric@AgRealEstateGroup.com

WITH A COPY TO: Buckingham, Doolittle & Burroughs, LLC  
1375 E. 9th St., Ste. 1700  
Cleveland, OH 44114  
Attn: Nathaniel R. Sinn  
Fax: 216-615-3021  
Electronic Mail: nsinn@bdblawn.com

TO BUYER: [\_\_\_\_\_] \_\_\_\_\_  
\_\_\_\_\_  
Attn: [\_\_\_\_\_] \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Electronic Mail: \_\_\_\_\_

WITH A COPY TO: [\_\_\_\_\_] \_\_\_\_\_  
\_\_\_\_\_  
Attn: [\_\_\_\_\_] \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Electronic Mail: \_\_\_\_\_

14.8 Entire Agreement and Amendment. This Agreement contains the entire understanding between Buyer and Seller with respect to the subject matter hereof. Neither this Agreement nor any provision hereof may be modified, amended, changed, waived, discharged or terminated orally. Any such action may occur only by an instrument in writing signed by the party against whom enforcement of the modification, change, waiver, discharge or termination is sought.

14.9 Recording. Buyer agrees not to record or file this Agreement or any notice or memorandum or reference to this Agreement in any public records, including, without limitation, the Recorder's Office in the County. Any such recordation or filing shall constitute a default, and upon such default Seller (a) may declare this Agreement null and void by recording or filing a notice that this Agreement is null and void in the public records; and (b) have the remedies provided by Article XI, above.

14.10 Exhibits. The Exhibits that are referenced in and attached to this Agreement are incorporated in, and made a part of, this Agreement for all purposes.

14.11 Time of the Essence. Seller and Buyer expressly agree that time is of the essence with respect to this Agreement. If the final day of any period or any date of performance under this Agreement falls on a date which is not a Business Day, then the final day of the period or the date of performance, as applicable, shall be extended to the next day which is a Business Day.

14.12 No Third Party Beneficiary. Expressly excepting any provisions of this Agreement that inure to the benefit of Noteholder or any other member of the Seller Group, this Agreement is solely between Seller and Buyer and no other party shall be entitled to rely upon any provision hereof for any purpose whatsoever.

14.13 Back-Up Contract(s). Buyer understands that Seller or Receiver may negotiate with other parties and may enter into back-up contracts for the sale of the Property. The back-up contracts will be subject and subordinate to this Agreement so long as this Agreement is in full force and effect and Buyer is not in default hereunder.

14.14 Limitation on Liability. Buyer expressly agrees that the obligations and liabilities of Seller under this Agreement and any document referenced herein shall not constitute personal obligations of the officers, directors, employees, agents, trustees, partners, members, representatives, stockholders or other principals and representatives of Seller, Receiver and Noteholder. Notwithstanding anything to the contrary, Seller's liability, if any, arising in connection with this Agreement or with the Property shall be limited to Seller's interest in the Property for the recovery of any judgment against Seller, and Seller shall not be personally liable for any such judgment or deficiency after execution thereon. The limitations of liability contained in this paragraph shall apply equally and inure to the benefit of Seller's present and future officers, directors, trustees, shareholders, agents and employees, and their respective heirs, successors and assigns.

14.15 Receivership Acknowledgment. Notwithstanding anything in this Agreement to the contrary, Buyer acknowledges that Receiver (as Seller) is executing this Agreement solely in its capacity as Receiver, appointed under the Receivership Order, and as such, any claim against Receiver and any obligation of Receiver under this Agreement is limited to and governed by the Receivership Order. Further, Receiver's liability, if any, arising in connection with this Agreement shall be limited to the assets of the receivership estate created by the Receivership Order.

14.16 Prohibited Persons. Neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"), (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "**Specifically Designated Nationals and Blocked Persons**" (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf>), (iii) who commits, threatens to commit or supports "**terrorism**," as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties described in clauses (i) – (v) above are herein referred to as a "**Prohibited Person**"). Buyer covenants

and agrees that neither Buyer nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Buyer) shall (aa) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (bb) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224. The provisions of this Section shall survive the Closing or termination of this Agreement.

#### **ARTICLE XV** **ESCROW TERMS**

If a Deposit is required, the Title Company shall hold the Deposit in escrow on the following terms and conditions:

(a) The Deposit shall be deposited, at the direction of Buyer, in escrow or trust accounts that are interest-bearing, readily available, liquid and federally insured to the full extent of the Deposit deposited.

(b) The Title Company shall deliver the Deposit to Seller or Buyer, as the case may be, in accordance with the provisions of this Agreement.

(c) Any notice to or demand upon the Title Company shall be in writing and shall be sufficient only if received by the Title Company within the applicable time periods set forth herein, if any. Notices to or demands upon the Title Company shall be sent by United States mail, registered or certified, return receipt requested, postage prepaid, or overnight courier service, with respect for next day delivery, to the address set forth in Section 1.1 of this Agreement, or served personally upon the Title Company with receipt acknowledged in writing by the Title Company. Notices from the Title Company to Seller or Buyer shall be mailed to them in accordance with Section 13.7 of this Agreement.

(d) If the Title Company shall have received notice signed by either party advising that litigation between the parties over entitlement to the Deposit has been commenced, the Title Company shall, on demand of either party, deposit the Deposit with the clerk of Court. If at any time the Title Company is uncertain of its duties hereunder or if the Title Company for any other reason is no longer willing to serve as escrow agent, the Title Company may, on notice to the parties, take such affirmative steps as it may, at its option, elect in order to terminate its duties as the Title Company, including, but not limited to, the deposit of the Deposit with the Court and the commencement of an action for interpleader, the reasonable costs of which shall be borne by whichever of the parties is the losing party. Upon the taking by the Title Company of such action described, the Title Company shall be released of and from all liability hereunder as escrow agent.

(e) The Title Company shall not incur any liability in acting upon any signature, notice, demand, request, waiver, consent, receipt or other paper or document believed by the Title Company to be genuine. The Title Company may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so, or is otherwise acting or failing to act under this Section except in the case of the Title Company's gross negligence or willful misconduct.

(f) The terms and provisions of this Article shall create no right in any person, firm or corporation other than the parties and their respective successors and permitted assigns and no third party shall have the right to enforce or benefit from the terms hereof.

(g) The Title Company has executed this Agreement for the sole purpose of agreeing to act as such in accordance with the terms of this Agreement.

## **ARTICLE XVI**

### **LITIGATION**

16.1 Attorneys' Fees. In the event of any litigation arising out of or under this Agreement the prevailing party shall be entitled to collect from the non-prevailing party reasonable attorneys' fees and costs. Buyer and Seller submit to the jurisdiction of the courts of Cuyahoga County, Ohio, and the United States District Court for the Northern District of Ohio, in respect of any suit or other proceeding brought in connection with or arising out of this Agreement. The provisions of this Section shall survive the Closing or termination of this Agreement.

16.2 WAIVER OF JURY TRIAL. **To the fullest extent permitted by law, the parties hereby knowingly, voluntarily and intentionally waive the right either may have to a trial by jury in respect of any litigation based hereon, or arising out of, under or in connection with this Agreement and any document executed in connection herewith or related hereto, or any course or conduct, course of dealing, statements (whether oral or written) or actions of either party. This provision is a material inducement for the parties to enter into this transaction and shall survive the closing or termination of this Agreement.**

[SIGNATURES ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the Execution Date.

**SELLER:**

---

**Eric M. Silver**, not in his individual capacity, but solely in his capacity as court-appointed receiver in the lawsuit styled as "Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 v. U.S. Tommy, Inc., et al", bearing Cause No. 11 CV 750490 in the Court of Common Pleas, Cuyahoga County, Ohio

{Signatures continued on following page}

{Signatures continued from prior page}

**BUYER:**

[\_\_\_\_\_]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXECUTION BY TITLE COMPANY**

The Title Company executes this Agreement for the purposes of acknowledging its Agreement to serve as escrow agent in accordance with the terms of the Agreement and to acknowledge receipt of the deposit of \$\_\_\_\_\_ from Buyer as the Deposit due thereunder.

**CHICAGO TITLE INSURANCE COMPANY**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Address for Notices:**

1111 Superior Avenue, Suite 600  
Cleveland, OH 44114  
Attn: Bruce E. Cweiber  
Facsimile: \_\_\_\_\_  
Electronic Mail: bruce.cweiber@ctt.com

## EXHIBIT A

### Legal Description

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of Sublot No. 1 and all of Sublot No. 20 in J.H. Webster's Subdivision as assignee of H.P. Weddell of part of Original Ten Acre Lots Nos. 64, 65, and 66 as shown by the recorded plat in Volume 13, Page 4 of Cuyahoga County Map Records, and also a part of Original Ten Acre Lot No. 66, and together forming a parcel of land more fully described as follows:

Beginning at a point on the Southerly line of Euclid Avenue (99 feet wide) at a point which is distant 50.00 feet Westerly measured along said Southerly line, from the Northeasterly corner of said Sublot No. 1 in J.H. Webster's Subdivision;

Thence North 89° 59' 31" East along the Southerly line of Euclid Avenue, as aforesaid, 243.31 feet to a point on the common boundary line as established by agreement dated August 21, 1953 and recorded in Volume 7859, Page 603 of Cuyahoga County Deed Records;

Thence South 0° 05' 36" East along the line established by said boundary agreement 64.28 feet to a point;

Thence South 0° 02' 55" East along the line established by said boundary agreement 210.13 feet to a point;

Thence North 89° 58' 55" East along the line established by said boundary agreement 0.17 feet to a point on the Easterly line of said Original Lot No. 66;

Thence South 0° 05' 00" East along the Easterly line of said Original Lot No. 66 a distance of 125.00 feet to a point on the Northerly line of Prospect Avenue (82.50 feet wide);

Thence South 89° 58' 55" West along the Northerly line of Prospect Avenue, as aforesaid, 53.40 feet to a point at the Southeasterly corner of a parcel of land conveyed to John G. Hall by deed dated May 28, 1873 and recorded in Volume 129, Page 273 of Cuyahoga County Deed Records;

Thence North 0° 05' 00" West along the Easterly line of said parcel conveyed to John G. Hall, 100.00 feet to a point at the Northeasterly corner thereof;

Thence South 89° 58' 55" West along the Northerly line of said parcel conveyed to John G. Hall, 20.00 feet to a point at the Southeasterly corner of a parcel of land conveyed to Augustine G. Stone by deed dated December 3, 1884 and recorded in Volume 373, Page 506 of Cuyahoga County Deed Records;

Thence North 0° 05' 00" West along the Easterly line of said parcel conveyed to Augustine G. Stone, 40.00 feet to a point at the Southeasterly corner of a parcel of land conveyed to William D. Rees by deed dated August 12, 1902 and recorded in Volume 1417 page 1 of Cuyahoga County Deed Records;



Thence South 89° 58' 55" West along the Southerly line of said parcel conveyed to William D. Rees 20.00 feet to a point on the Westerly line of said parcel of land conveyed to Augustine G. Stone;

Thence North 0° 05' 00" West along the Westerly line of said parcel conveyed to Augustine G. Stone, 10.00 feet to a point at the Northwestern corner of said parcel conveyed to Augustine G. Stone, which is also the Southerly line of land conveyed to William D. Rees by deed recorded in Volume 477, Page 120 of Cuyahoga County Deed Records;

Thence South 89° 58' 55" West along the Southerly line of said parcel conveyed to William D. Rees and along the Northerly line of the second parcel of land conveyed to Emily R. Hall by deed dated October 7, 1909, and recorded in Volume 1225, Page 34 of Cuyahoga County Deed Records, 34.17 feet to a point at the Northwestern corner of said parcel conveyed to Emily R. Hall;

Thence South 0° 05' 00" East along the Westerly line of said second parcel conveyed to Emily R. Hall, 20.00 feet to a point which is distant 130.00 feet Northerly, measured along a line parallel with the Westerly line of said Original Lot No. 66, from the Northerly line of Prospect Avenue, as aforesaid;

Thence South 89° 58' 55" West parallel with the Northerly line of Prospect Avenue, as aforesaid, 0.83 feet to a point at the Southeasterly corner of a parcel of land conveyed to Fred C. Cusack by deed dated June 22, 1933, and recorded in Volume 4299, Page 124 of Cuyahoga County Deed Records;

Thence North 0° 05' 00" West along the Easterly line of said parcel conveyed to Fred C. Cusack, 20.00 feet to a point at the Northeasterly corner thereof;

Thence South 89° 58' 55" West along the Northerly line of said land conveyed to Fred C. Cusack, 22.50 feet to a point at the Northwestern corner thereof;

Thence South 0° 05' 00" East along the Westerly line of said parcel conveyed to Fred C. Cusack by deed last aforesaid and by deed dated May 31, 1933 and recorded in Volume 4299, Page 125 of Cuyahoga County Deed Records, 150.00 feet to a point on the Northerly line of Prospect Avenue, as aforesaid;

Thence South 89° 58' 55" West along the Northerly line of Prospect Avenue, as aforesaid, 113.50 feet to a point at the Southwesterly corner of Sublot No. 20 in J. H. Webster's Subdivision;

Thence North 0° 05' 00" West along the Westerly line of said Sublot No. 20, a distance of 200.09 feet to a point at the Northwestern corner thereof;

Thence North 89° 58' 55" East along the Northerly line of said Sublot No. 20 a distance of 21.03 feet to a point that is 50.00 feet from the Southeast corner of Sublot No. 1 in J.H. Webster's Subdivision;

Thence North 0° 05' 00" West, parallel with the Easterly line of said Sublot No. 1, a distance of 199.36 feet to a point on the Southerly line of Euclid Avenue, as aforesaid, and the place of beginning, according to a survey by The Western Reserve Surveying Company in September, 1996, be the same more or less, but subject to all legal highways.

**EXHIBIT B**

**RECEIVERSHIP ORDER**

[TO BE ATTACHED]

**EXHIBIT C**

**SPECIAL WARRANTY DEED OF RECEIVER**

Eric M. Silver, not in his individual capacity, but solely in his capacity as court-appointed receiver of the Premises (defined below) ("Grantor"), pursuant to the power conferred upon Grantor by that Order Appointing a Receiver issued by the Court of Common Pleas, Cuyahoga County, Ohio on October 11, 2017, in an action styled as "Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 v. U.S. Tommy, Inc., et al", bearing Cause No. 11 CV 750490, and by every other power conferred upon Grantor, for Ten Dollars (\$10.00) paid and other good and valuable consideration the receipt of which is hereby acknowledged, hereby grants, with fiduciary covenants, to

\_\_\_\_\_, a \_\_\_\_\_  
("Grantee"), whose tax mailing address is \_\_\_\_\_  
\_\_\_\_\_ that certain parcel of land, together with all improvements thereon, lying in the County of Cuyahoga, State of Ohio, and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "**Premises**"). This deed and conveyance are made conveying good and clear record and marketable, free and clear from liens and encumbrances whatsoever accepted subject to those matters set forth on Exhibit B, attached hereto and incorporated herein by reference as if fully set forth herein, to the extent that the same are valid and subsisting and affect the Premises, and subject to the interests of T-Mobile Central LLC (successor in interest to defendant Voicestream PCS II Corporation).

U.S. Tommy, Inc., a New York corporation, became vested in the Premises under a \_\_\_\_\_ Deed dated \_\_\_\_\_ and previously recorded on \_\_\_\_\_ as Document No. \_\_\_\_\_ of the Cuyahoga County, Ohio Records.

TO HAVE AND TO HOLD the Premises, together with, all and singular, the rights and appurtenances thereto in anywise belonging, unto Grantee, its successors, legal representatives and assigns forever, and Grantor does hereby bind Grantor, and Grantor's successors and legal representatives, to WARRANT and FOREVER DEFEND, all and singular, the Premises unto Grantee, its successors, legal representatives and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof, by, through or under Grantor but not otherwise.

GRANTEE, BY ITS ACCEPTANCE HEREOF, ACKNOWLEDGES AND AGREES THAT GRANTEE CONDUCTED ITS OWN INDEPENDENT INVESTIGATION AND INSPECTION OF ALL ASPECTS OF THE PREMISES. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT IT HAS RELIED ON SUCH INDEPENDENT INVESTIGATION AND INSPECTION AND, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE CONTAINED HEREIN AND THE EXPRESS COVENANTS, WARRANTIES AND REPRESENTATIONS OF GRANTOR CONTAINED IN THE REAL ESTATE SALES CONTRACT REGARDING THE PREMISES BETWEEN GRANTOR AND GRANTEE, AND ANY CLOSING DOCUMENTS EXECUTED IN CONNECTION THEREWITH, HAS NOT RELIED ON ANY INFORMATION PROVIDED BY GRANTOR, GRANTOR'S AGENTS OR GRANTOR'S BROKER IN DETERMINING WHETHER TO PURCHASE THE PREMISES. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED BY GRANTOR TO GRANTEE WITH RESPECT TO THE PREMISES HAS BEEN OBTAINED FROM A VARIETY OF SOURCES AND THAT GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION.

GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE CONTAINED HEREIN AND THE EXPRESS COVENANTS, WARRANTIES AND REPRESENTATIONS OF GRANTOR CONTAINED IN THE REAL ESTATE SALES CONTRACT REGARDING THE PREMISES BETWEEN GRANTOR AND GRANTEE AND ANY CLOSING DOCUMENTS EXECUTED IN CONNECTION THEREWITH, GRANTOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY AND ALL REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO THE PREMISES, INCLUDING, BUT NOT LIMITED TO, (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES; (B) THE INCOME TO BE DERIVED FROM THE PREMISES; (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH GRANTEE MAY CONDUCT THEREON; (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, BUT NOT LIMITED TO, ANY STATE OR FEDERAL ENVIRONMENTAL LAW, RULE OR REGULATION; (E) THE HABITABILITY,

MERCHANTABILITY OR FITNESS OF THE PREMISES FOR A PARTICULAR PURPOSE; OR (F) ANY OTHER MATTER WITH RESPECT TO THE PHYSICAL OR OTHER CONDITION OF THE PREMISES. GRANTEE HEREBY WAIVES ANY SUCH REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES (EXCEPT FOR THE SPECIAL WARRANTY OF TITLE CONTAINED HEREIN AND THE EXPRESS COVENANTS, WARRANTIES AND REPRESENTATIONS OF GRANTOR CONTAINED IN THE REAL ESTATE SALES CONTRACT REGARDING THE PREMISES BETWEEN GRANTOR AND GRANTEE AND ANY CLOSING DOCUMENTS EXECUTED IN CONNECTION THEREWITH).

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH ABOVE, GRANTOR IS CONVEYING THE PREMISES TO GRANTEE **"AS IS, WHERE IS, WITH ALL FAULTS"** AND SPECIFICALLY AND EXPRESSLY WITHOUT ANY WARRANTIES, REPRESENTATIONS OR GUARANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND, NATURE OR TYPE WHATSOEVER FROM OR ON BEHALF OF GRANTOR.

IN WITNESS WHEREOF, Grantor has executed this Deed on the \_\_\_\_ day of \_\_\_\_\_, 2018.

**GRANTOR:**

Eric M. Silver, not in his individual capacity, but solely in his capacity as court-appointed receiver in the lawsuit styled as "Wells Fargo Bank, National Association, as Indenture Trustee for the Grand Pacific Business Loan Trust 2005-1 v. U.S. Tommy, Inc., et al", bearing Cause No. 11 CV 750490 in the Court of Common Pleas, Cuyahoga County, Ohio

STATE OF OHIO                    )  
  ) SS:  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_  
2018 by Eric M. Silver, in his capacity as the court-appointed receiver of the Premises herein  
conveyed.

\_\_\_\_\_  
Notary Public  
My commission expires:

This instrument prepared by:  
Buckingham, Doolittle & Burroughs, LLC  
1375 E. 9<sup>th</sup> St., Ste. 1700  
Cleveland, OH 44333

Exhibit "A" to Receiver's Deed  
(Description of Premises)

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of Sublot No. 1 and all of Sublot No. 20 in J.H. Webster's Subdivision as assignee of H.P. Weddell of part of Original Ten Acre Lots Nos. 64, 65, and 66 as shown by the recorded plat in Volume 13, Page 4 of Cuyahoga County Map Records, and also a part of Original Ten Acre Lot No. 66, and together forming a parcel of land more fully described as follows:

Beginning at a point on the Southerly line of Euclid Avenue (99 feet wide) at a point which is distant 50.00 feet Westerly measured along said Southerly line, from the Northeasterly corner of said Sublot No. 1 in J.H. Webster's Subdivision;

Thence North  $89^{\circ} 59' 31''$  East along the Southerly line of Euclid Avenue, as aforesaid, 243.31 feet to a point on the common boundary line as established by agreement dated August 21, 1953 and recorded in Volume 7859, Page 603 of Cuyahoga County Deed Records;

Thence South  $0^{\circ} 05' 36''$  East along the line established by said boundary agreement 64.28 feet to a point;

Thence South  $0^{\circ} 02' 55''$  East along the line established by said boundary agreement 210.13 feet to a point;

Thence North  $89^{\circ} 58' 55''$  East along the line established by said boundary agreement 0.17 feet to a point on the Easterly line of said Original Lot No. 66;

Thence South  $0^{\circ} 05' 00''$  East along the Easterly line of said Original Lot No. 66 a distance of 125.00 feet to a point on the Northerly line of Prospect Avenue (82.50 feet wide);

Thence South  $89^{\circ} 58' 55''$  West along the Northerly line of Prospect Avenue, as aforesaid, 53.40 feet to a point at the Southeasterly corner of a parcel of land conveyed to John G. Hall by deed dated May 28, 1873 and recorded in Volume 129, Page 273 of Cuyahoga County Deed Records;

Thence North  $0^{\circ} 05' 00''$  West along the Easterly line of said parcel conveyed to John G. Hall, 100.00 feet to a point at the Northeasterly corner thereof;

Thence South  $89^{\circ} 58' 55''$  West along the Northerly line of said parcel conveyed to John G. Hall, 20.00 feet to a point at the Southeasterly corner of a parcel of land conveyed to Augustine G. Stone by deed dated December 3, 1884 and recorded in Volume 373, Page 506 of Cuyahoga County Deed Records;

Thence North  $0^{\circ} 05' 00''$  West along the Easterly line of said parcel conveyed to Augustine G. Stone, 40.00 feet to a point at the Southeasterly corner of a parcel of land conveyed to William D. Rees by deed dated August 12, 1902 and recorded in Volume 1417 page 1 of Cuyahoga County Deed Records;

Thence South  $89^{\circ} 58' 55''$  West along the Southerly line of said parcel conveyed to William D. Rees 20.00 feet to a point on the Westerly line of said parcel of land conveyed to Augustine G. Stone;

Thence North  $0^{\circ} 05' 00''$  West along the Westerly line of said parcel conveyed to Augustine G. Stone, 10.00 feet to a point at the Northwestern corner of said parcel conveyed to Augustine G. Stone, which is also the Southerly line of land conveyed to William D. Rees by deed recorded in Volume 477, Page 120 of Cuyahoga County Deed Records;

Thence South  $89^{\circ} 58' 55''$  West along the Southerly line of said parcel conveyed to William D. Rees and along the Northerly line of the second parcel of land conveyed to Emily R. Hall by deed dated October 7, 1909, and recorded in Volume 1225, Page 34 of Cuyahoga County Deed Records, 34.17 feet to a point at the Northwestern corner of said parcel conveyed to Emily R. Hall;

Thence South  $0^{\circ} 05' 00''$  East along the Westerly line of said second parcel conveyed to Emily R. Hall, 20.00 feet to a point which is distant 130.00 feet Northerly, measured along a line parallel with the Westerly line of said Original Lot No. 66, from the Northerly line of Prospect Avenue, as aforesaid;

Thence South  $89^{\circ} 58' 55''$  West parallel with the Northerly line of Prospect Avenue, as aforesaid, 0.83 feet to a point at the Southeasterly corner of a parcel of land conveyed to Fred C. Cusack by deed dated June 22, 1933, and recorded in Volume 4299, Page 124 of Cuyahoga County Deed Records;

Thence North  $0^{\circ} 05' 00''$  West along the Easterly line of said parcel conveyed to Fred C. Cusack, 20.00 feet to a point at the Northeasterly corner thereof;

Thence South  $89^{\circ} 58' 55''$  West along the Northerly line of said land conveyed to Fred C. Cusack, 22.50 feet to a point at the Northwestern corner thereof;

Thence South  $0^{\circ} 05' 00''$  East along the Westerly line of said parcel conveyed to Fred C. Cusack by deed last aforesaid and by deed dated May 31, 1933 and recorded in Volume 4299, Page 125 of Cuyahoga County Deed Records, 130.00 feet to a point on the Northerly line of Prospect Avenue, as aforesaid;

Thence South  $89^{\circ} 58' 55''$  West along the Northerly line of Prospect Avenue, as aforesaid, 113.50 feet to a point at the Southwesterly corner of Sublot No. 20 in J. H. Webster's Subdivision;

Thence North  $0^{\circ} 05' 00''$  West along the Westerly line of said Sublot No. 20, a distance of 200.09 feet to a point at the Northwestern corner thereof;

Thence North  $89^{\circ} 58' 55''$  East along the Northerly line of said Sublot No. 20 a distance of 21.03 feet to a point that is 50.00 feet from the Southeast corner of Sublot No. 1 in J.H. Webster's Subdivision;

Thence North  $0^{\circ} 05' 00''$  West, parallel with the Easterly line of said Sublot No. 1, a distance of 199.36 feet to a point on the Southerly line of Euclid Avenue, as aforesaid, and the place of beginning, according to a survey by The Western Reserve Surveying Company in September, 1996, be the same more or less, but subject to all legal highways.



Exhibit "B" to Receiver's Deed  
(Permitted Exceptions)

**EXHIBIT D**

**AFFIDAVIT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The undersigned, being duly sworn, states as follows:

That the undersigned is the \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, and is duly authorized to execute this affidavit in his representative capacity on behalf of the \_\_\_\_\_;

That to the knowledge of the undersigned, \_\_\_\_\_ (herein called "**Owner**") is the owner of the real property described in **Exhibit "A"**, attached hereto and incorporated herein by reference (the "**Property**");

That the undersigned has no knowledge of any improvements or repairs that have been made on the Property at the request or direction of Owner or Eric M. Silver ("**Receiver**"), other than in the ordinary course of business, during the ninety-five (95) days immediately preceding the date of this affidavit for which there are unpaid bills, either for labor or materials used in making such improvements or repairs on the Property, or for the services of architects, surveyors or engineers in connection therewith, other than as follows:  
\_\_\_\_\_;

That the undersigned has no knowledge of any unrecorded claims, liens and encumbrances, easements or other agreements affecting title to the Property, except for the matters set forth on **Exhibit "B"**, attached hereto and incorporated herein by reference;

That the undersigned has no knowledge of any persons or other parties in possession of the Property who have a right or claim to possession extending beyond the date hereof, except for tenants under the leases set forth on **Exhibit "C"** attached hereto and incorporated herein by reference;

That the undersigned has no knowledge of any taxes, charges and assessments, (including, without limitation, sewer and water bills) arising by, through or under Owner, that are unpaid that could constitute a lien on the Property;

That, other than with respect to The Ag Real Estate Group, Inc., which will be paid a commission in connection with the purchase and sale of the Property, the undersigned has no knowledge that Owner has entered into any written agreement with, or otherwise engaged the services of, any commercial real estate broker for the payment of a real estate commission or fee relating to the purchase, sale, management, leasing or other licensed services, and the undersigned has received no notice of lien for any such services.

That the undersigned has no knowledge of any legal proceedings pending against Owner which could have a material adverse affect on Owner's title to the Property or the right or power of Owner to convey the Property; and

That the undersigned is making this affidavit to induce \_\_\_\_\_ to insure title to the Property.

\_\_\_\_\_(SEAL)  
Print Name: \_\_\_\_\_

Subscribed and sworn to before  
me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARY SEAL]

**EXHIBIT E**

**BILL OF SALE**

\_\_\_\_\_, a \_\_\_\_\_ ("**Assignor**"), in accordance with the Agreement for Sale and Purchase of Property dated \_\_\_\_\_, 20\_\_\_\_ and in consideration of the sum of Ten Dollars (\$10.00) (the sufficiency and receipt of which are hereby acknowledged), does hereby grant, bargain, sell, convey, assign, transfer, set over and deliver (collectively, "**assign**") unto \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**"), all of Assignor's right, title and interest in and to all of the furniture, furnishings, fixtures, equipment and other tangible personal property, that is now affixed to and/or located on the Real Property described on Exhibit A attached hereto and used in connection with the management, operation, or repair of the Real Property (collectively, "**Personal Property**").

TO HAVE AND TO HOLD the Personal Property unto Assignee and Assignee's heirs, legal representatives, successors and assigns forever.

**THE PERSONAL PROPERTY IS BEING ASSIGNED. "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AS OF THE DATE OF THIS BILL OF SALE, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, THE EXISTENCE THEREOF, THE ASSIGNEE'S OWNERSHIP, USE OR RIGHT TO TRANSFER SAME, THE AVAILABILITY OR ISSUANCE OF ANY NECESSARY CONSENT OR APPROVAL, THE EXISTENCE OR ABSENCE OF ANY NON-CONFORMITY, BREACH OR VIOLATION RELATIVE THERETO, AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ASSIGNEE IS HEREBY ACQUIRING THE PERSONAL PROPERTY BASED SOLELY UPON ASSIGNEE'S OWN INDEPENDENT INVESTIGATIONS AND INSPECTIONS OF THAT PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY ASSIGNOR OR ASSIGNOR'S AGENTS OR CONTRACTORS. ASSIGNOR HAS MADE NO AGREEMENT TO ALTER, REPAIR OR IMPROVE ANY OF THE PERSONAL PROPERTY. ASSIGNOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PERSONAL PROPERTY.**

IN WITNESS WHEREOF, Assignor has signed, sealed, and delivered this Bill of Sale as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

## EXHIBIT F

### ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ ("**Assignor**"), and \_\_\_\_\_, a \_\_\_\_\_ ("**Assignee**").

WHEREAS, Assignor and Assignee entered into that certain Agreement for Sale and Purchase of Property ("**Agreement**") dated \_\_\_\_\_, 20\_\_\_\_, for the sale and purchase of certain "**Property**" consisting of "**Real Property**" (as more particularly described in Exhibit A attached hereto), "**Personal Property**" and "**Intangible Property**" (as more particularly described in this Assignment and Assumption Agreement), as said terms are defined in the Agreement;

WHEREAS, Assignor desires to assign, transfer, set over and deliver to Assignee all of Assignor's right, title and interest in and to the Intangible Property as hereinafter provided; and

WHEREAS, Assignee desires to assume the duties and obligations of Assignor with respect to the Intangible Property.

NOW, THEREFORE, in accordance with the Agreement and in consideration of the sum of Ten Dollars (\$10.00), the sufficiency and receipt of which are hereby acknowledged, the parties do hereby covenant and agree as follows and take the following actions:

1. Assignor does hereby assign, transfer, set over and deliver unto Assignee all of the Assignor's right, title and interest, if any, in and to the following property to the extent the same is transferable by Assignor (collectively, "**Intangible Property**"):

(a) any and all leases, tenancies, licenses and other rights of occupancy or use of or for any portion of the Real Property or the Personal Property (including all amendments and renewals thereof), in effect as of the date of this Assignment and Assumption Agreement (collectively, "**Leases**");

(b) any and all any service, maintenance, supply, operating, or employment contracts or other agreements, however termed, written or oral, affecting the use, ownership, maintenance, or operation of all or any part of the Property (but specifically excluding any Leases and any management agreements) in effect as of the date of this Assignment and Assumption Agreement and which are set forth on Exhibit B attached hereto (collectively, "**Service Contracts**");

(c) any and all licenses, permits, authorizations, certificates of occupancy and other approvals that are in effect for the current use and operation of the Property (collectively, "**Permits**");

(d) any and all warranties, telephone exchange numbers, architectural or engineering plans and specifications, air rights and development rights that exist as of the date of this Assignment and Assumption Agreement and relate to the Real Property or the Personal Property (collectively, "**General Intangibles**"); and

(e) any and all rights to the name of the improvements upon the Real Property.

2. THE INTANGIBLE PROPERTY IS BEING ASSIGNED "AS IS", "WHERE IS", AND "WITH ALL FAULTS" AS OF THE DATE OF THIS ASSIGNMENT AND ASSUMPTION AGREEMENT, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER OF ANY KIND OR NATURE, INCLUDING, WITHOUT LIMITATION, THE EXISTENCE THEREOF, THE ASSIGNEE'S OWNERSHIP, USE OR RIGHT TO TRANSFER SAME, THE AVAILABILITY OR ISSUANCE OF ANY NECESSARY CONSENT OR APPROVAL, THE EXISTENCE OR ABSENCE OF ANY NON-CONFORMITY, BREACH OR VIOLATION RELATIVE THERETO, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ASSIGNEE IS HEREBY ACQUIRING THE INTANGIBLE PROPERTY BASED SOLELY UPON ASSIGNEE'S OWN INDEPENDENT INVESTIGATIONS AND INSPECTIONS OF THAT PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY ASSIGNOR OR ASSIGNOR'S AGENTS OR CONTRACTORS. ASSIGNOR SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE INTANGIBLE PROPERTY.

3. Assignee hereby accepts the foregoing assignment of the Intangible Property and hereby assumes all duties and obligations of Assignor under the Leases, Service Contracts, Permits and General Intangibles assigned herein. Assignee shall defend, indemnify and hold harmless Assignor from and against any and all Claims asserted against or incurred by Assignor as a result of any acts or omissions, from and after the date of this Assignment and Assumption Agreement, in connection with the Leases, Service Contracts, Permits and General Intangibles assigned herein. "**Claims**" means claims, demands, causes of action, losses, damages, liabilities, judgments, costs and expenses (including attorneys' fees, whether suit is instituted or not).

4. This Assignment and Assumption Agreement shall be (a) binding upon, and inure to the benefit of, the parties to this Assignment and Assumption Agreement and their respective heirs, legal representatives, successors and assigns, and (b) construed in accordance with the laws of the State of \_\_\_\_\_, without regard to the application of choice of law principles.

(Signatures on following page.)

IN WITNESS WHEREOF, this Assignment and Assumption Agreement has been signed,  
sealed and delivered by the parties as of the date first above written.

ASSIGNOR:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

ASSIGNEE:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT G**

**NOTICE TO SERVICE CONTRACTOR**

\_\_\_\_\_, 20\_\_\_\_

RE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Dear Service Contractor:

Please be advised that on this date \_\_\_\_\_, a  
\_\_\_\_\_ (the "**Prior Owner**"), has transferred ownership of the property known  
as \_\_\_\_\_ to \_\_\_\_\_, a  
\_\_\_\_\_ (the "**New Owner**"). You must look to the New Owner, and not to the Prior  
Owner, for all payments and other expenses, if any, due on or after the date hereof under your  
contract for services. All correspondence should be directed to the New Owner at  
\_\_\_\_\_.

Very truly yours,

**[PRIOR OWNER],**

a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_



**EXHIBIT H**  
**TITLE COMMITMENT**

*(See attached)*

---

**COMMITMENT FOR TITLE INSURANCE  
ISSUED BY  
CHICAGO TITLE INSURANCE COMPANY d/b/a/ PRECISION TITLE AGENCY**

**NOTICE**

**IMPORTANT—READ CAREFULLY:** THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

**COMMITMENT TO ISSUE POLICY**

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, Chicago Title Insurance Company, a Florida corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

**COMMITMENT CONDITIONS**

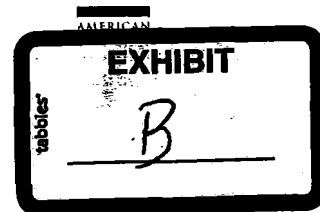
**1. DEFINITIONS**

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.

**ALTA Commitment for Title Insurance  
(06/01/2017)**

Copyright 2006-2016 American Land Title Association. All rights reserved.

Electronically Filed 11/15/2018 17:08 / MOTION / CV# 104927 / Confirmation Nbr. 1552198 / BATCH



- 
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
  - (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
  - (h) "Title": The estate or interest described in Schedule A.
2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.
3. The Company's liability and obligation is limited by and this Commitment is not valid without:
- (a) the Notice;
  - (b) the Commitment to Issue Policy;
  - (c) the Commitment Conditions;
  - (d) Schedule A;
  - (e) Schedule B, Part I—Requirements;
  - (f) Schedule B, Part II—Exceptions.
4. **COMPANY'S RIGHT TO AMEND**  
The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.
5. **LIMITATIONS OF LIABILITY**
- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
    - (i) comply with the Schedule B, Part I—Requirements;
    - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
    - (iii) acquire the Title or create the Mortgage covered by this Commitment.
  - (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
  - (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
  - (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
  - (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
  - (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.
  - (g) In any event, the Company's liability is limited by the terms and provisions of the Policy.
6. **LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT**
- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
  - (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.

- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

**7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT**

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

**8. PRO-FORMA POLICY**

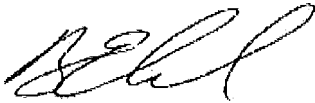
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

**9. ARBITRATION**

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

Issued by:

CHICAGO TITLE INSURANCE COMPANY  
d/b/a PRECISION TITLE AGENCY  
1111 SUPERIOR AVENUE  
CLEVELAND, OH 44114



\_\_\_\_\_  
Authorized Signatory

---

# Chicago Title Insurance Company d/b/a Precision Title Agency

1111 Superior Avenue, Suite 600, Cleveland, Ohio 44114  
Telephone 216-696-1275 • FAX 216-696-8107

## SCHEDULE A

Title Officer: Jonathan Iseman ([jonathan.iseman@ctt.com](mailto:jonathan.iseman@ctt.com)) (Direct Phone: 216-696-4027)  
Escrow No.:  
Title No.: 18210107

1. Effective date: June 21, 2018 at 7:29 AM

2. Policy or Policies to be issued:

2006 ALTA Owners Policy

Amount \$

Proposed Insured:

Purchaser with contractual rights under a purchase agreement with the vested owner identified at Item 4 below

2006 ALTA Loan Policy

Amount \$

Proposed Insured:

3. The estate or interest in the land described or referred to in this Commitment is:

Fee Simple

4. Title to the estate or interest in the land is at the Effective Date vested in:

U.S. Tommy, Inc., a New York corporation which acquired title by Deed Volume 15629, Page 657

5. The land referred to in this Commitment is described as follows:

PPN's 103-07-008, 009, 027 and 028

Situated in the City of Cleveland, County of Cuyahoga and State of Ohio, and known as being part of Sublot No. 1 and all of Sublot No. 20 in J. H. Webster's Subdivision as assignee of H.P. Weddell of part of Original Ten Acre Lots Nos. 64, 65 and 66 as shown by the recorded plat in Volume 13, Page 4 of Cuyahoga County Map Records, and also a part of Original Ten Acre Lot No. 66, and together forming a parcel of land more fully described as follows:

Beginning at a point on the Southerly line of Euclid Avenue (99 feet wide) at a point which is distant 50.00 feet Westerly measured along said Southerly line, from the Northeasterly corner of said Sublot No. 1 in J. H. Webster's Subdivision;

Thence North 89° 59' 31" East along the Southerly line of Euclid Avenue, as aforesaid, 243.31 feet to a point on the common boundary line as established by agreement dated August 21, 1953 and recorded in Volume 7859, Page 603 of Cuyahoga County Deed Records;

Thence South 0° 05' 36" East along the line established by said boundary agreement 64.28 feet to a point;

Thence South 0° 02' 55" East along the line established by said boundary agreement 210.13 feet to a point;

Thence North 89° 58' 55" East along the line established by said boundary agreement 0.17 feet to a point on the Easterly line of said Original Lot No. 66;

Thence South 0° 05' 00" East along the Easterly line of said Original Lot No. 66 a distance of 125.00 feet to a point on the Northerly line of Prospect Avenue (82.50 feet wide);

Thence South 89° 58' 55" West along the Northerly line of Prospect Avenue, as aforesaid, 53.40 feet to a point at the Southeasterly corner of a parcel of land conveyed to John G. Hall by deed dated May 28, 1873 and recorded in Volume 129, Page 273 of Cuyahoga County Deed Records;

Thence North 0° 05' 00" West along the Easterly line of said parcel conveyed to John G. Hall, 100.00 feet to a point at the Northeasterly corner thereof,

Thence South 89° 58' 55" West along the Northerly line of said parcel conveyed to John G. Hall, 20.00 feet to a point at the Southeasterly corner of a parcel of land conveyed to Augustine G. Stone by deed dated December 8, 1884 and recorded in Volume 373, Page 506 of Cuyahoga County Deed Records;

Thence North 0° 05' 00" West along the Easterly line of said parcel conveyed to Augustine G. Stone, 40.00 feet to a point at the Southeasterly corner of a parcel of land conveyed to William D. Rees by deed dated August 12, 1902 and recorded in Volume 1417, Page 1 of Cuyahoga County Deed Records;

Thence South 89° 58' 55" West along the Southerly line of said parcel conveyed to William D. Rees 20.00 feet to a point on the Westerly line of said parcel of land conveyed to Augustine G. Stone;

Thence North 0° 05' 00" West along the Westerly line of said parcel conveyed to Augustine G. Stone, 10.00 feet to a point at the Northwesterly corner of said parcel conveyed to Augustine G. Stone, which is also the Southerly line of land conveyed to William D. Rees by deed recorded in Volume 477, Page 120 of Cuyahoga County Deed Records;

Thence South 89° 58' 55" West along the Southerly line of said parcel conveyed to William D. Rees and along the Northerly line of the second parcel of land conveyed to Emily R. Hall by deed dated October 7, 1909, and recorded in Volume 1225, Page 34 of Cuyahoga County Deed Records, 34.17 feet to a point at the Northwesterly corner of said parcel conveyed to Emily R. Hall;

Thence South 0° 05' 00" East along the Westerly line of said second parcel conveyed to Emily R. Hall, 20.00 feet to a point which is distant 130.00 feet Northerly, measured along a line parallel with the Westerly line of said Original Lot No. 66, from the Northerly line of Prospect Avenue, as aforesaid;

Thence South 89° 58' 55" West parallel with the Northerly line of Prospect Avenue, as aforesaid, 0.83 feet to a point at the Southeasterly corner of a parcel of land conveyed to Fred C. Cusack by deed dated June 22, 1933, and recorded in Volume 4299, Page 124 of Cuyahoga County Deed Records;

Thence North 0° 05' 00" West along the Easterly line of said parcel conveyed to Fred C. Cusack, 20.00 feet to a point at the Northeasterly corner thereof,

Thence South 89° 58' 55" West along the Northerly line of said land conveyed to Fred C. Cusack, 22.50 feet to a point at the Northwesterly corner thereof,

---

Thence South 0° 05' 00" East along the Westerly line of said parcel conveyed to Fred C. Cusack by deed last aforesaid and by deed dated May 31, 1933 and recorded in Volume 4299, Page 125 of Cuyahoga County Deed Records, 150.00 feet to a point on the Northerly line of Prospect Avenue, as aforesaid;

Thence South 89° 58' 55" West along the Northerly line of Prospect Avenue, as aforesaid, 113.50 feet to a point at the Southwesterly corner of Sublot No. 20 in J. H. Webster's Subdivision;

Thence North 0° 05' 00" West along the Westerly line of said Sublot No. 20, a distance of 200.09 feet to a point at the Northwesterly corner thereof,

Thence North 89° 58' 55" East along the Northerly line of said Sublot No. 20 a distance of 21.03 feet to a point that is 50.00 feet from the Southeast corner of Sublot No. 1 in J. H. Webster's Subdivision,

Thence North 0° 05' 00" West, parallel with the Easterly line of said Sublot No. 1, a distance of 199.36 feet to a point on the Southerly line of Euclid Avenue, as aforesaid, and the place of beginning, and containing 2.0198 acres of land, according to a survey by The Western Reserve Surveying Company in September, 1996, be the same more or less but subject to all legal highways.

County Engineer's TM 98-030-S-001



**SCHEDULE B, PART I**  
**Requirements**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.

Note: Any documents being executed in conjunction with this transaction must be signed in the presence of an authorized Company employee, an authorized employee of an agent an authorized employee of the insured lender or by using Bancserv or other approved third-party services. If the above requirement cannot be met, please call the Company at the number provided in this report.

5. Receipt of proof of corporate status, or limited liability company status, or partnership status, and all agreement(s), and necessary consents, authorizations, resolutions, notices and corporate/company/partnership actions have been conducted, given or property waived relating to the transaction to be insured, including entity resolution(s) authorizing and designating appropriate officers/members/or partners to execute any and all necessary documents.

6. Satisfactory evidence should be had that improvements and/or repairs or alterations thereto are completed; that contractor, subcontractors, labor and materialmen are all paid.

7. If a Zoning Endorsement is requested, the following is required: A letter from Planning and Zoning and/or ALTA/NSPS survey setting forth items 2a.-e. from the endorsement and surveyor's certification that there are no violations.

8. For each policy to be issued as identified in Schedule A, Item 2; the Company shall not be liable under this commitment until it receives a designation of a Proposed Insured, acceptable to the Company. As provided in Commitment Condition 4, the Company may amend this commitment to add, among other things, additional exceptions or requirements after the designation of the Proposed insured.

9. The actual value of the estate or interest to be insured must be disclosed to the Company, and subject to the approval by the Company, entered as the amount of the policy to be issued. Until the amount of the policy to be issued shall be determined, and entered as aforesaid, it is agreed that as between the Company the applicant for this commitment, and every person relying on this commitment, the Company cannot be required to approve any such evaluation in excess of \$100,000 and the total liability of the Company on account of the commitment shall not exceed said amount.

10. Documents to be filed for record: **To be determined.**

**In a sale by a Receiver, the Company must be provided with evidence of notice to all parties of the Motion and Hearing of the appointment of the Receiver and Order granting said Motion which sets forth powers of the Receiver; notice to all parties of the Motion and Hearing of the Receiver to sell property free and clear of liens and encumbrances, with all liens to attach to the proceeds of sale and not to the property; consent to the sale of all parties, other than the County; the order approving the sale should be identified as a final appealable order or otherwise contain a provision that there is no just reason for delay.**

**SCHEDULE B, PART II**  
**Exceptions**

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
2. Rights or claims of parties in possession not shown by the public records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the land.
4. Easements or claims of easements not shown by the public records.
5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Taxes or special assessments which are not shown as existing liens by the public records.
7. Any lease, grant, exception or reservation of minerals or mineral rights together with any rights appurtenant thereto.
8. Any Loan Policy issued pursuant to this Commitment will contain the following exception:

Oil and gas leases, pipeline agreements or any other instruments related to the production or sale of oil and gas which may arise subsequent to the date of the policy pursuant to paragraph D of Ohio Revised Code Section 1509.31 effective June 30, 2010.

9. Easement for a metal bumper, reserved in the Warranty Deed from Bearings, Inc., to 3614 Euclid Corporation, c/o Aney-Michelson-Tucker, Inc., filed for record April 21, 1964 and recorded in Volume 11129, Page 305 of Cuyahoga County Records.

10. Memorandum of Lease and Option between U.S. Tommy, Inc., and Voicestream PCS II Corporation. The option having a term of 12 months with 1 additional 12 month renewal ("Optional Period"); the lease having a term of 5 years with the tenant's right to extend the lease for 5 additional 5 year terms, filed for record February 14, 2002 and being Cuyahoga County Recorder's AFN 200202140067.

11. Unrecorded Lease of Commercial Property dated March 8, 2000 by and between U.S. Tommy, Inc., a New York corporation "Landlord" and Hunan Gourmet, Inc. an Ohio corporation "Tenant" having a term of 10 years ending July 31, 2010 with the option to renew for 2 consecutive terms of 5 years each.

Note: Subordinated in favor of the mortgage in AFN 200507270611 by Subordination Agreement filed for record July 27, 2005 and being Cuyahoga County Recorder's AFN 200507270613.

12. Unrecorded Ground Lease Agreement dated February 2, 2005 by and between U.S. Tommy, Inc., a New York corporation "Landlord" and Tsai-Fwu Chiu and Yuh-Chyn Liu, husband and wife "Tenant" as to Room 217 and Room 215 within the property having a term of 25 years ending February 14, 2030 with the option to renew for 2 consecutive terms of 25 years each.

Note: Subordinated in favor of the mortgage in AFN 200507270611 by Subordination Agreement filed for record July 27, 2005 and being Cuyahoga County Recorder's AFN 200507270614.

13. Mortgage, Assignment of Rents and Leases and Security Agreement and Fixture Financing Statement in the original amount of 4,000,000.00 from U.S. Tommy, Inc., a New York corporation to Grand Pacific Financing Corporation, a California corporation dated as of July 11, 2005, filed for record July 27, 2005 and being Cuyahoga County Recorder's AFN 200507270611.

Note: Assigned by Assignment of Mortgage, Assignment of Rents and Leases and Security Agreement and Fixture Financing Statement from Grand Pacific Financing Corporation to Wells Fargo Bank, National Association, as Indenture Trustee for Grand Pacific Business Loan Trust 2005-1 filed for record October 23, 2007 and being Cuyahoga County Recorder's AFN 200710230030.

Note: Modified by Modification of Mortgage by and between U.S. Tommy, Inc., a New York corporation and Wells Fargo Bank, National Association, as Indenture Trustee for Grand Pacific Business Loan Trust 2005-1 filed for record September 6, 2013 and being Cuyahoga County Fiscal Officer's AFN 201309060809.

Note: Assigned by Assignment of Mortgage, Assignment of Rents and Leases and Security Agreement and Fixture Financing Statement from Wells Fargo Bank, National Association, as Indenture Trustee for Grand Pacific Business Loan Trust 2005-1 to Grand Pacific Holdings Corp. filed for record May 9, 20127 and being Cuyahoga County Fiscal Officer's AFN 201705090512.

14. Mortgage (Participation) in the original amount of \$1,076,000.00 from U.S. Tommy, Inc., a New York corporation to Growth Capital, Inc. filed for record May 21, 2002 and being Cuyahoga County Recorder's AFN 200205210689.

Note: Assigned to The U.S. Small Business Administration by Assignment filed for record May 21, 2002 and being Cuyahoga County Recorder's AFN 200205210691.

Note: Subordinated in favor of the mortgage in AFN 200507270611 by Subordination Agreement filed for record July 27, 2005 and being Cuyahoga County Recorder's AFN 200507270612.

15. Assignment of Leases and Rents from U.S. Tommy, Inc., a New York corporation to Growth Capital, Inc. filed for record May 21, 2002 and being Cuyahoga

Note: Assigned to The U.S. Small Business Administration by Assignment filed for record May 21, 2002 and being Cuyahoga County Recorder's AFN 200205210691.

16. UCC Financing Statement by Growth Capital, Inc., secured party, against from U.S. Tommy, Inc., debtor, filed for record May 21, 2002 and being Cuyahoga County Recorder's AFN 200205219010.

Continued by UCC Amendment filed for record January 30, 2007 and being Cuyahoga County Recorder's AFN 200701309003.

Continued by UCC Amendment filed for record January 24, 2012 and being Cuyahoga County Fiscal Officer's AFN 201201249006.

---

17. Judgment Lien No. JL 06-260653 filed March 27, 2006 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST06126996.

Original Amount: \$293.87 plus interest at 10% from March 18, 2006  
Account No. 18-3884420  
Serial No. 7050221872

18. Judgment Lien No. JL 06-265476 filed June 8, 2006 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST06128991.

Original Amount: \$304.00 plus interest at 10% from April 29, 2006  
Account No. 18-3884420  
Serial No. 7050224911

19. Judgment Lien No. JL 06-277474 filed October 26, 2006 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST06136315.

Original Amount: \$285.83 plus interest at 10% from October 7, 2006  
Account No. 18-3884420  
Serial No. 7060202527

20. Judgment Lien No. JL 06-277475 filed October 26, 2006 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST06136316.

Original Amount: \$461.22 plus interest at 10% from October 7, 2006  
Account No. 18-3884420  
Serial No. 7060204048

21. Judgment Lien No. JL 07-298627 filed June 6, 2007 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST07149470.

Original Amount: \$195.09 plus interest at 10% from May 5, 2007  
Account No. 18-3884420  
Serial No. 7060219350

---

22. Judgment Lien No. JL 07-310494 filed November 5, 2007 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST07155182.

Original Amount: \$165.23 plus interest at 10% from October 6, 2007  
Account No. 18-3884420  
Serial No. 7070205445

23. Judgment Lien No. JL 09-391761 filed October 22, 2009 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST9204542.

Original Amount: \$145.97 plus interest at 5% from September 12, 2009  
Account No. 18-3884420  
Serial No. 7090204167

24. Judgment Lien No. JL 09-391762 filed October 22, 2009 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST9204543.

Original Amount: \$210.21 plus interest at 5% from September 12, 2009  
Account No. 18-3884420  
Serial No. 7090204168

25. Judgment Lien No. JL 09-391763 filed October 22, 2009 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST9204544.

Original Amount: \$260.11 plus interest at 5% from September 12, 2009  
Account No. 18-3884420  
Serial No. 7090204169

26. Judgment Lien No. JL 10-429898 filed November 12, 2010 by the Cuyahoga County Board of County Commissioners against US Tommy, Inc. rendered in Common Pleas Court Case No. HM 103-07008, 009.

Original Amount: \$7,074.26 plus interest at 4% from November 12, 2010

---

27. Judgment Lien No. JL 11-450694 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,884.31 plus interest at 4% from May 3, 2011  
Account No. 9327333  
Serial No. 06201006390554

28. Judgment Lien No. JL 11-450695 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,811.56 plus interest at 4% from May 3, 2011  
Account No. 9371528  
Serial No. 06201008513654

29. Judgment Lien No. JL 11-450696 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,726.44 plus interest at 4% from May 3, 2011  
Account No. 9495014  
Serial No. 06201013497509

30. Judgment Lien No. JL 11-450697 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,364.46 plus interest at 4% from May 3, 2011  
Account No. 8892200  
Serial No. 06200927395454

31. Judgment Lien No. JL 11-450698 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,130.93 plus interest at 4% from May 3, 2011  
Account No. 9016031  
Serial No. 06200933520499



32. Judgment Lien No. JL 11-450699 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,199.33 plus interest at 4% from May 3, 2011  
Account No. 9045612  
Serial No. 06200932194511

33. Judgment Lien No. JL 11-450700 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,050.11 plus interest at 4% from May 3, 2011  
Account No. 9093179  
Serial No. 0620093635754

34. Judgment Lien No. JL 11-450701 filed May 3, 2011 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,282.14 plus interest at 4% from May 3, 2011  
Account No. 8684147  
Serial No. 06200928710597

35. Judgment Lien No. JL 11-450702 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$16,985.14 plus interest at 4% from May 3, 2011  
Account No. 8608366  
Serial No. 06200918224438

36. Judgment Lien No. JL 11-450703 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$16,906.73 plus interest at 4% from May 3, 2011  
Account No. 8679033  
Serial No. 06200923765075

37. Judgment Lien No. JL 11-450704 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,739.47 plus interest at 4% from May 3, 2011  
Account No. 8304888  
Serial No. 06200912784456

38. Judgment Lien No. JL 11-450705 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$17,047.19 plus interest at 4% from May 3, 2011  
Account No. 8368077  
Serial No. 06200915307329

39. Judgment Lien No. JL 11-450706 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,204.22 plus interest at 4% from May 3, 2011  
Account No. 8435469  
Serial No. 06200900270364

40. Judgment Lien No. JL 11-450707 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,949.86 plus interest at 4% from May 3, 2011  
Account No. 8138472  
Serial No. 06200906281692

41. Judgment Lien No. JL 11-450708 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,832.19 plus interest at 4% from May 3, 2011  
Account No. 8214933  
Serial No. 06200909796741

42. Judgment Lien No. JL 11-450709 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$134.41 plus interest at 4% from May 3, 2011  
Account No. 6453895  
Serial No. 7060219349

43. Judgment Lien No. JL 11-450710 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$21,065.69 plus interest at 4% from May 3, 2011  
Account No. 8043592  
Serial No. 06200902946775

44. Judgment Lien No. JL 11-450711 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$17,618.03 plus interest at 4% from May 3, 2011  
Account No. 6017357  
Serial No. 062006047500201

45. Judgment Lien No. JL 11-450712 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$2,983.75 plus interest at 4% from May 3, 2011  
Account No. 6025392  
Serial No. 06200605265848

46. Judgment Lien No. JL 11-450713 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$3,184.02 plus interest at 4% from May 3, 2011  
Account No. 5947167  
Serial No. 06200602017132

47. Judgment Lien No. JL 11-450714 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$3,789.48 plus interest at 4% from May 3, 2011  
Account No. 5676867  
Serial No. 0620052374360

48. Judgment Lien No. JL 11-450715 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$3,043.50 plus interest at 4% from May 3, 2011  
Account No. 5850664  
Serial No. 06200602017133

49. Judgment Lien No. JL 11-450717 filed May 3, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court.

Original Amount: \$20,968.27 plus interest at 4% from May 3, 2011  
Account No. 9224372  
Serial No. 06201002860611

50. Judgment Lien No. JL 11-457016 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245322.

Original Amount: \$3,790.62 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 0620052374360

51. Judgment Lien No. JL 11-457017 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245323.

Original Amount: \$3,044.39 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 0620060217133

52. Judgment Lien No. JL 11-457018 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245324.

Original Amount: \$3,184.99 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200602017132

53. Judgment Lien No. JL 11-457120 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245426.

Original Amount: \$20,742.08 plus interest at 5% from April 29, 2011  
Account No. 18-384450  
Serial No. 06201013497509

54. Judgment Lien No. JL 11-457020 filed June 28, 2011 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST11245326.

Original Amount: \$17,628.47 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200604750201

55. Judgment Lien No. JL 11-457021 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245327.

Original Amount: \$2,984.63 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200605265848

56. Judgment Lien No. JL 11-457023 filed June 28, 2011 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST11245329.

Original Amount: \$134.49 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 7060219349

---

57. Judgment Lien No. JL 11-457035 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245341.

Original Amount: \$21,080.57 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200902946775

58. Judgment Lien No. JL 11-457036 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245342.

Original Amount: \$20,964.73 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200906281692

59. Judgment Lien No. JL 11-457037 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245343.

Original Amount: \$20,847.06 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200909796741

60. Judgment Lien No. JL 11-457040 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245346.

Original Amount: \$20,754.31 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 062009127844456

61. Judgment Lien No. JL 11-457043 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245349.

Original Amount: \$17,059.43 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200915307329

62. Judgment Lien No. JL 11-457051 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245357.

Original Amount: \$21,219.51 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200900270364

63. Judgment Lien No. JL 11-457053 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245359.

Original Amount: \$16,997.51 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200918224438

64. Judgment Lien No. JL 11-457057 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245363.

Original Amount: \$16,919.09 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200923765075

65. Judgment Lien No. JL 11-457058 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245364.

Original Amount: \$3,790.62 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200928710597

66. Judgment Lien No. JL 11-457061 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245367.

Original Amount: \$21,380.20 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200927395454

67. Judgment Lien No. JL 11-457065 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245371.

Original Amount: \$21,146.56 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200933520499

68. Judgment Lien No. JL 11-457066 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245372.

Original Amount: \$21,215.03 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200932194511

69. Judgment Lien No. JL 11-457070 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245376.

Original Amount: \$21,065.74 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06200936353754

70. Judgment Lien No. JL 11-457074 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245380.

Original Amount: \$20,983.91 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06201002860611

71. Judgment Lien No. JL 11-457078 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245384.

Original Amount: \$20,899.94 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06201006390554



72. Judgment Lien No. JL 11-457080 filed June 28, 2011 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST11245386.

Original Amount: \$20,827.18 plus interest at 5% from April 29, 2011  
Account No. 18-384420  
Serial No. 06201008513654

73. Judgment Lien No. JL 13-629635 filed May 9, 2013 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST13304881.

Original Amount: \$151.98 plus interest at 3% from April 20, 2013  
Serial No. 7120219597

74. Judgment Lien No. JL 13-650875 filed October 30, 2013 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST13312624.

Original Amount: \$410.13 plus interest at 3% from September 7, 2013  
Serial No. 7130201147

75. Judgment Lien No. JL 14-664949 filed February 13, 2014 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST14320908.

Original Amount: \$206.70 plus interest at 3% from October 19, 2013  
Serial No. 713021146

76. Judgment Lien No. JL 14-669032 filed February 13, 2014 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST14324991.

Original Amount: \$278.09 plus interest at 3% from November 23, 2013  
Serial No. 7130202754

77. Judgment Lien No. JL 14-706424 filed September 17, 2014 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST14355777.

Original Amount: \$1,253.01 plus interest at 3% from September 6, 2014  
Serial No. 7130215965

---

78. Judgment Lien No. JL 15-746628 filed September 30, 2014 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15384762.

Original Amount: \$310.00 plus interest at 3% from September 19, 2014  
Serial No. 17201428867250

79. Judgment Lien No. JL 15-755627 filed December 15, 2015 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15391616.

Original Amount: \$392.13 plus interest at 3% from December 7, 2015  
Serial No. 17200928711666

80. Judgment Lien No. JL 15-755633 filed December 15, 2015 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15391622.

Original Amount: \$371.46 plus interest at 3% from December 7, 2015  
Serial No. 17201005584625

81. Judgment Lien No. JL 15-755635 filed December 15, 2015 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15391624.

Original Amount: \$321.28 plus interest at 3% from December 7, 2015  
Serial No. 17201324841395

82. Judgment Lien No. JL 15-755640 filed December 15, 2015 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15391629.

Original Amount: \$353.72 plus interest at 3% from December 7, 2015  
Serial No. 17201102579853

83. Judgment Lien No. JL 15-755814 filed December 15, 2015 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15391803.

Original Amount: \$331.46 plus interest at 3% from December 7, 2015  
Serial No. 17201225536754

---

84. Judgment Lien No. JL 15-755869 filed December 15, 2015 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST15391858.

Original Amount: \$342.28 plus interest at 3% from December 7, 2015  
Serial No. 17201125697524

85. Judgment Lien No. JL 16-775318 filed July 19, 2016 by the State of Ohio, Department of Taxation against US Tommy, Inc. rendered in Common Pleas Court Case No. ST16405439.

Original Amount: \$305.61 plus interest at 3% from July 9, 2016  
Serial No. 17201527834981

86. Judgment Lien No. JL 17-815538 filed August 9, 2017 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST17432826

Original Amount: \$20,247.34 plus interest at 4% from July 22, 2017  
Serial No. 10000639482

87. Judgment Lien No. JL 17-819398 filed September 26, 2017 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST17435689

Original Amount: \$15,790.31 plus interest at 4% from September 16, 2017  
Serial No. 10000651699

88. Judgment Lien No. JL 17-820007 filed October 4, 2017 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST17436153

Original Amount: \$439.44 plus interest at 4% from September 26, 2017  
Serial No. 7050221872

89. Judgment Lien No. JL 17-820495 filed October 10, 2017 by the State of Ohio, Department of Taxation against U S Tommy, Inc. rendered in Common Pleas Court Case No. ST17436472

Original Amount: \$7,647.80 plus interest at 4% from September 30, 2017  
Serial No. 10000666203

---

90. Judgment Lien No. JL 18-858709 filed June 29, 2018 by Grand Pacific Holding Corp against U.S. Tommy, Inc. et. al, rendered in Common Pleas Court Case No. CV-11-750490

Original Amount: \$3,513,199.00 plus interest at 10.75% from May 5, 2017 plus additional interest, costs and late charges

91. Pending legal action for foreclosure in Common Pleas Court Case No. CV-11-750490 filed March 8, 2011 by Wells Fargo Bank, National Association, as Indenture Trustee for Grand Pacific Business Loan Trust 2005-1., 1055 10th Avenue SE, Minneapolis, MN 55414 against U.S. Tommy, Inc. et. al.

Note: Eric Silver of Ag Real Estate, Inc. is appointed as the "Receiver".

See Docket provided

92. The County Treasurer's 2017 General Tax Duplicate shows:

Taxes for the year of 2017, listed in the name of U S Tommy, Inc., (Parcel Nos. 103-07-008, 009, 027 and 028), amounting to \$74,919.26 are paid.

Note: There are no Special Taxes or Assessments charged against the premises under examination.

Taxes for year of 2018, undetermined, are a lien, but not due and payable.

Additions, if any, which may hereafter be made by legally constituted authorities.

## END OF SCHEDULE B, PART II

IN THE COMMON PLEAS COURT  
CUYAHOGA COUNTY, OHIO

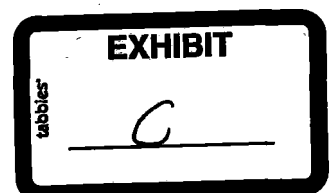
WELLS FARGO BANK, NATIONAL	)	CASE NO. CV-11-750490
ASSOCIATION	)	
	)	
Plaintiff,	)	JUDGE JOHN J. RUSSO
v.	)	
	)	
U.S. TOMMY, INC., et al.,	)	ORDER CONFIRMING
	)	BIDDING PROCEDURES
Defendant.	)	

This matter came before the Court upon the Motion to Approve Bidding Procedures (the "*Motion*") filed by Eric Silver of Ag Real Estate Group, Inc., the duly appointed and acting receiver in this action (the "*Receiver*"), for an order confirming bidding procedures (as described more fully in the Motion, the "*Bidding Procedures*") for the sale of the "*Property*" (as defined in the Motion).

Based upon the evidence presented in Receiver's Motion, the Court hereby FINDS and DETERMINES that:

1. Pursuant to O.R.C. § 2735.04(D)(2)(b), all appropriate parties, including owner of the Property, all parties to this foreclosure action, and all other persons identified in the title commitment submitted with the Motion who have or claim to have an interest in the Property (collectively, the "*Lienholders*"), have been served with the Motion and have been afforded an opportunity to be heard on the merits of the Motion.

2. No objection or other opposition to the Motion was filed with the Court. In accordance with O.R.C. § 2735.04(D)(2)(c), the Court may proceed without a hearing.



3. The transactions contemplated by the Bidding Procedures are fair and commercially reasonable.

4. Selling the Property in accordance with the provisions of the Bidding Procedures is in the best interests of the receivership estate, the owner of the Property, the parties to this action, and all record Lienholders.

5. It is in the best interests of the receivership estate that the Property be sold free and clear of all liens.

6. Under Civil Rule 54(b), there is no just reason for delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Motion is GRANTED as set forth herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Bidding Procedures are incorporated in this Order and approved in their entirety.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the transactions contemplated by the Bidding Procedures, subject to the lien of the treasurer or fiscal officer of Cuyahoga County for real estate taxes and assessments as contemplated by Ohio Revised Code § 2735.04(D)(3)(a), and subject to the interests of T-Mobile Central LLC (successor in interest to Voicestream PCS II Corporation) pursuant to the Lease, as defined in the form Purchase Agreement, attached and incorporated into the Bidding Procedures, as are hereby approved.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the owner of the Property, or any other person having an equity of redemption in the Property, may exercise such equity of redemption pursuant to O.R.C. § 2735.04(D)(7) by

paying to the Receiver, by cashier's check or other form of immediately available funds, within three (3) days from the date of this Order, an amount equal to the aggregate amount owing on all liens upon the Property that were to be canceled as liens upon the Property by virtue of the sale, including all principal, interest, costs, and other amounts secured by those liens. Should the owners of the Property, or any other person having an equity of redemption in the Property fail to pay the foregoing amounts within three (3) days from the date of this Order, any such equity of redemption shall be forever barred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that unless the owner of the Property, or any other person having an equity of redemption in the Property, timely exercises such equity of redemption, the Receiver shall be authorized to sell the Property pursuant to the Bidding Procedures, free and clear of all liens and encumbrances, including, but not limited to, claims of all parties to this action and any liens or encumbrances asserted by the Lienholders (except for the lien of the Treasurer of Cuyahoga County, Ohio for real estate taxes and assessments, and T-Mobile Central LLC, pursuant to the Leases, as that term is defined in the form Purchase Agreement).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that following the conclusion of the bidding process set forth in the Bid Procedures, pursuant to O.R.C. §§ 2735.04(D), Receiver shall file a motion to confirm the bidding process and to approve the proposed sale.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that pursuant to O.R.C. §§ 2735.04(D)(2)(d), this Order is a final appealable order with respect to the matters it contains, and the Clerk of the Courts is hereby directed to enter this Order as a final appealable order in the records of this action. Pursuant to Civil Rule 54(b) there is no just reason for delay.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE RUSSO



Respectfully submitted,

/s/ Nathaniel R. Sinn

Nathaniel R. Sinn (#0088467)

Buckingham, Doolittle & Burroughs, LLC

1375 E. 9<sup>th</sup> Street, Suite 1700

Cleveland, Ohio 44114

Telephone: (261) 615-7321

Facsimile: (216) 615-3021

nsinn@bdblaw.com

CL2:487792\_v1