

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

-v- :

No. 16-cv-6848 (BMC)

PLATINUM MANAGEMENT (NY) LLC; :
PLATINUM CREDIT MANAGEMENT, L.P.; :
MARK NORDLICHT; :
DAVID LEVY; :
DANIEL SMALL; :
URI LANDESMAN; :
JOSEPH MANN; :
JOSEPH SANFILIPPO; and :
JEFFREY SHULSE, :

Defendants. :
-----X

NOTICE OF MOTION OF MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY OF AN ORDER (A) APPROVING THE RETENTION OF WELLS GROUP OF DURANGO, INC.; AND (B) WAIVING THE REQUIREMENTS OF 28 U.S.C. §2001

PLEASE TAKE NOTICE that, upon the accompanying Declaration of Melanie L. Cyganowski, as Receiver (the “*Receiver*”) for Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP, Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, “*Platinum*”), and upon the Declaration of Conway Mackenzie Capital Advisors, LLC, as well as upon the Receiver’s Memorandum in Support of the Motion, the Receiver moves before the Honorable Brian M.

Cogan, United States District Judge for the United States District Court for the Eastern District of New York, located at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, for an order: (a) authorizing the retention and payment of Wells Group of Durango, Inc. (“*Wells*”) in accordance with the terms of the Brokerage Agreement by and between Platinum subsidiary Maximilian Investors LLC and Wells dated June 21, 2018; and (b) waiving the requirements of 28 U.S.C. § 2001 (the “*Motion*”).

PLEASE TAKE FURTHER NOTICE that any opposition to the Motion must be made in writing and (i) if by a party, electronically filed with the District Court or (ii) if by a non-party, electronically mailed to the Receiver at her e-mail address, platinumreceiver@otterbourg.com, in each case so as to be actually received no later than August 29, 2018.

PLEASE TAKE FURTHER NOTICE that, in the absence of any timely filed or served written opposition, the Court may grant the relief requested in the Motion, without further hearing or notice.

Dated: August 22, 2018

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein

Adam C. Silverstein

Erik B. Weinick

230 Park Avenue

New York, New York 10169

Tel.: (212) 661-9100

Fax: (212) 682-6104

asilverstein@otterbourg.com

Attorneys for Melanie L. Cyganowski, as Receiver

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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	:	
	:	
Defendants.	:	
-----X		

**DECLARATION OF MELANIE L. CYGANOWSKI,
AS RECEIVER, IN SUPPORT OF MOTION FOR ENTRY OF
AN ORDER (A) APPROVING THE RETENTION OF WELLS GROUP OF
DURANGO, INC.; AND (B) WAIVING THE REQUIREMENTS OF 28 U.S.C. §2001**

I, Melanie L. Cyganowski, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in support of my motion for entry of an order, substantially in the form annexed hereto as **Exhibit A**, (a) authorizing the retention and payment of Wells Group of Durango, Inc. (“*Wells*”) in accordance with the terms of the Brokerage Agreement by and between Platinum subsidiary Maximilian Investors LLC (“*Maximilian*”) and Wells dated June 21, 2018 (“*Brokerage Agreement*”); and (b) waiving the requirements of 28 U.S.C. § 2001 (the “*Motion*”). A copy of the Brokerage Agreement is annexed hereto as **Exhibit B**.

PRELIMINARY STATEMENT

2. By the Motion, I seek authority to retain and compensate a local real estate broker to market and sell approximately 370 acres of land in Montezuma County, Colorado (the “*Property*”), the site of a former gold mining operation. Following comprehensive due diligence conducted by my investment banking services provider, Conway Mackenzie Capital Advisors, LLC (“*Conway*”), Conway recommended that I sell the Property as real estate because there is little to no likelihood that profitable gold mining operations can be resumed.

3. I have accepted Conway’s recommendation and am taking steps to commence a sale process. As set forth in Conway’s Supporting Declaration, a local real estate broker is critical to a successful sale process because local property sales expertise and availability are needed to identify a buyer. Based on my review of Conway’s analysis, I have selected Wells to serve as the local real estate broker. These services will not overlap with, but rather will compliment, any services provided by any of my other professionals with respect to the Property. Thus, there will be no duplication of services, and more importantly, charges, to the estate.

4. In addition, to the extent that the price realized for the Property (or any other real property sold by the Receiver) is less than \$3 million, and consistent with Paragraphs 30 and 31 of the Receivership Order (defined below), I request that this Court waive any requirements of 28 U.S.C. § 2001 that may be applicable to this, or any other real property sale for less than \$3 million.

5. For the reasons set forth herein, as well as in the Memorandum of Law of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order: (A) Approving the Retention of Wells Group of Durango Inc., as Real Estate Broker; and (B) Waiving the Requirements of 28 U.S.C. § 2001, and the Declaration of Conway Mackenzie Capital Advisors, LLC in Support of Motion for Entry of an Order (A) Approving the Retention of Wells Group of

Durango Inc., as Real Estate Broker; and (B) Waiving the Requirements of 28 U.S.C. § 2001 (the “*Conway Dec.*”), the Motion should be granted.

BACKGROUND

6. Pursuant to the November 30, 2017 Order Approving the Receiver’s Fees and the Retention of Conway Mackenzie Capital Advisors, LLC [Dkt. No. 287], I retained Conway to assist me in the disposition of the Property, along with other certain assets. Conway has assisted with the disposition of the Property by performing extensive due diligence and analyzing the potential value of the Property both as a gold mine and as traditional real estate.

7. The Property, formerly owned by American Patriot Gold, LLC (“*APG*”), was the site of a now shuttered gold mine known as the Red Arrow Mine. *Conway Dec.* ¶9.

8. On April 17, 2013 Jaeger Kottmeier Associates, LLC was appointed the receiver of certain APG assets that included the Red Arrow Mine. Subsequently, APG filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code on August 30, 2013, and lost its mining permit in early 2014.

9. As a result APG’s default on a loan previously extended to it by Maximilian, Maximilian acquired the Property in fee simple. PPCO owns 99% of the membership interests in Maximilian.

CONWAY’S ANALYSIS OF THE PROPERTY

10. I tasked Conway with assessing the Property’s value, both as an operational gold mine and as real property with the potential for a different use. As part of its analysis of the Property, Conway:

- a) Reviewed reports from APG’s receiver and technical mining professionals analyzing the Property;

- b) Analyzed the Property's historical gold/mineral production, financial and operation information;
- c) Worked with Bryan Cave LLP, counsel to Maximilian during APG's receivership, to confirm ownership and legal/environmental status of the Property;
- d) Reviewed 2011 appraisals performed on the Property by Norton Appraisal Services, Inc. and Sharon A. Wallace;
- e) Reviewed various environmental documents concerning the Property including Orders issued by certain environmental regulatory agencies;
- f) Analyzed comparable land values of the Property by interfacing with regional real estate professionals; and
- g) Investigated availability of geological drilling core samples from the Property, which would support estimates of mineral reserves and provide insights into the best means of mineral extraction.

Conway Dec. ¶12.

11. After compiling comprehensive background materials regarding the Property, Conway considered multiple alternatives for the monetization of the Property. These alternatives included: selling the Property's assets as is, conducting additional technical analysis and attempting to sell the property with the benefit of additional technical information, and restarting mining activities and attempting to sell asset as an operating mine. Conway Dec. ¶13.

12. Conway ultimately recommended that I retain a real estate broker and sell the Property because even if I were to expend significant sums of money and time for additional technical analysis as to the remaining mineral content and potential for recovery, I would still face substantial risk and uncertainty in any future operation of the mine, including the quantity of gold ore remaining in the Property's ore deposits as well as any potential sale as an operating mine. Therefore, Conway recommended that the Property be marketed and sold with an eye towards recreational use. Conway Dec. ¶14.

13. The remote recreational land market is niche and unique among other real estate markets. As a result, Conway recommended the retention of a local real estate broker with specialized geographic knowledge to facilitate the marketing and sale of the Property. Conway considered the possibility of conducting the marketing and sale of the Property itself, however, Conway determined it would have to expend significant monetary and time resources to familiarize itself with the local market in order to conduct the sale and marketing. Conway determined there would be more certainty for a sale, and lower costs if a local, specialized real estate broker was retained by the Receivership. Conway Dec. ¶15.

THE BROKERAGE AGREEMENT WITH WELLS

14. Conway considered numerous alternatives before recommending Wells to me. All of these alternatives had shortcomings that made them less attractive than Wells. For example, one was a national broker without a local presence, and another, while familiar with the Property itself, was based in a distant part of the state. Wells, on the other hand, has a well-established local presence, a sizeable network of existing clients and is competitively priced. Conway Dec. ¶16.

15. The Brokerage Agreement is an exclusive right-to-sell listing agreement. Subject to the Court's approval of the Brokerage Agreement, Rick Lorenz of Wells will serve as Broker ("**Broker**") for the Property. Although the Brokerage Agreement is dated, and has a listing period commencing on June 21, 2018, the listing period will not commence until the entry of an order approving the Motion, and will conclude on November 30, 2018, subject to extension.

16. Wells will receive a commission of 8.5% of the gross purchase price, which I am advised is standard for this type of transaction. Additionally, if the Property is sold within 120 calendar days after the Brokerage Agreement's listing period expires and the buyer is (1)

someone whom the Broker negotiated with and (2) whose name was submitted in writing by the Broker to Maximilian during the listing period, then Wells will still receive its sales commission.

17. The terms of the Brokerage Agreement require Maximilian to acknowledge that additional mine reclamation work (including scrap removal, earth work and potentially other activities based on recent inspections by regulators) is required in order to comply with regulations promulgated by the Colorado Mine Land Reclamation Department.

18. Finally, under the Brokerage Agreement, Maximilian has agreed to spend up to \$15,000 in expenses for an excavating contractor to improve the road leading to the Property, enabling potential buyers to more readily access the Property. The road work is also required for the minimal required reclamation work remaining. Conway estimates the cost of the road work will be between \$17,000 and \$18,000. Conway is continuing to attempt to obtain the agreement of an adjacent landowner to share in this expense, as both properties would benefit from the improvement; however, no agreement has been reached to date. Conway Dec. ¶20.

FULFILLMENT OF THE PURPOSES OF 28 U.S.C. §2001

19. I believe that selling the Property would provide the Receivership Estate with capital and reduce administrative expenses for the estate. Current administrative expenses include property taxes and upkeep costs. These costs will be eliminated upon completion of the sale of the Property. Additionally, the Property faces significant uncertainties, challenges, and expenses if the Property is retained.

20. I believe that as a result of the requirements imposed upon me by Par. 31 of the Receivership Order, which require that I use my “best efforts to maximize the value realized upon the disposition of Receivership Property, considering the costs and benefits of any proposed transaction for the disposition of Receivership Property and taking into account the risk

profile, and the expected time horizon for the disposition, of such Receivership Property,” the purposes of 28 U.S.C. § 2001 are met, and strict compliance thereto would be superfluous and constitute an unnecessary expenditure of receivership resources.

CONCLUSION

21. For the reasons set forth herein, I respectfully request entry of an order, in substantially the form annexed hereto as Exhibit A: (a) authorizing and approving the retention of Wells on the terms set forth in the Brokerage Agreement; (b) waiving the requirements of 28 U.S.C. § 2001 for the sale of any real property for less than \$3 million; and (c) granting me such other and further relief as the Court deems appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of August, 2018, at New York, New York.

/s/ Melanie L. Cyganowski
Melanie L. Cyganowski

EXHIBIT A

Proposed Order

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants. :	:
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[PROPOSED]
ORDER APPROVING RECEIVER’S MOTION FOR
ORDER (A) APPROVING THE RETENTION OF WELLS GROUP
OF DURANGO, INC.; AND (B) WAIVING THE REQUIREMENTS OF 28 U.S.C. §2001

THIS MATTER coming before the Court on the Motion of Melanie L. Cyganowski, the duly appointed receiver herein (the “*Receiver*”), for entry of an order (a) authorizing the retention and payment of Wells Group of Durango, Inc. (“*Wells*”) in accordance with the terms of the Brokerage Agreement by and between Platinum subsidiary Maximilian Investors LLC (“*Maximilian*”) and Wells dated June 21, 2018 (“*Brokerage Agreement*”); and (b) waiving the requirements of 28 U.S.C. § 2001 [Dkt. No. ____] (the “*Motion*”)¹ and the Court having considered the Motion and exhibits and other documents filed in support of the Motion; and the Court having found that the Motion complies with applicable standards for granting the relief requested therein and that the transaction contemplated thereby was conducted in good-faith and

¹ Capitalized terms utilized but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

at arms' length by the parties thereto; and after due deliberation and for good and sufficient cause shown; it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Brokerage Agreement and the transactions set forth in the Brokerage Agreement are approved; and it is further

ORDERED that the requirements of 28 U.S.C. § 2001 are waived as to any sale by the Receiver of any real property for less than \$3 million

EXHIBIT B

Brokerage Agreement

EXHIBIT A

Proposed Order

UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF NEW YORK

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EXHIBIT B

Brokerage Agreement



The Wells Group of Durango, Inc.
Rick Lorenz
Ph: 970-375-7007 Fax: 970-375-3378

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (LC50-6-16) (Mandatory 1-17)

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

SELLER AGENCY **TRANSACTION-BROKERAGE**

Date: **6/21/2018**

1. AGREEMENT. Seller and Brokerage Firm enter into this exclusive, irrevocable contract (Seller Listing Contract) and agree to its provisions. Broker, on behalf of Brokerage Firm, agrees to provide brokerage services to Seller. Seller agrees to pay Brokerage Firm as set forth in this Seller Listing Contract.

2. BROKER AND BROKERAGE FIRM.

2.1. Multiple-Person Firm. If this box is checked, the individual designated by Brokerage Firm to serve as the broker of Seller and to perform the services for Seller required by this Seller Listing Contract is called Broker. If more than one individual is so designated, then references in this Seller Listing Contract to Broker include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

2.2. One-Person Firm. If this box is checked, Broker is a real estate brokerage firm with only one licensed natural person. References in this Seller Listing Contract to Broker or Brokerage Firm mean both the licensed natural person and brokerage firm who serve as the broker of Seller and perform the services for Seller required by this Seller Listing Contract.

3. DEFINED TERMS.

3.1. Seller: **MAXIMILIAN INVESTORS LLC.**

3.2. Brokerage Firm: **The Wells Group of Durango, Inc.**

3.3. Broker: **Rick Lorenz**

3.4. Property. The Property is the following legally described real estate in the County of **Montezuma**, Colorado:

Red Arrow Patented Mining Claims

Red Arrow # 2 USMS #20551; 20.76 Acres

Red Arrow # 3 USMS #20551; 19.79 Acres

Red Arrow # 9 USMS #20551; 19.35 Acres

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- Red Arrow # 5 USMS #20563; 16.74 Acres**
- Red Arrow # 4 USMS #20563; 7.91 Acres**
- Red Arrow # 20 USMS #20563; 19.75 Acres**
- Red Arrow # 7 USMS #20563; 20.55 Acres**
- Red Arrow # 21 USMS #20563; 16.95 Acres**
- Park City Lode USMS #20563; 19.53 Acres**
- Red Arrow # 8 USMS #20562; 17.35 Acres**
- Red Arrow Extension USMS #20562; 19.24 Acres**
- Red Arrow # 19 USMS #20562; 15.33 Acres**
- Rocky Placer USMS #16059; 18.69 Acres**
- Gold Run Placer USMS #16059; 19.37 Acres**
- Hidden Treasure Placer USMS #16059; 17.9 Acres**
- Fall Creek Placer USMS #16059; 37.44 Acres**
- East Gulch Placer USMS #16059; 19.71 Acres**
- Belle of East Mancos Placer USMS #16059; 40.69 Acres**

known as No. **TBD Forest Service Rd 567A, Mancos, CO 81326**, together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

3.5. Sale; Lease.

3.5.1. A Sale is the voluntary transfer or exchange of any interest in the Property or the voluntary creation of the obligation to convey any interest in the Property, including a contract or lease. It also includes an agreement to transfer any ownership interest in an entity which owns the Property.

3.5.2. If this box is checked, Seller authorizes Broker to negotiate leasing the Property. Lease of the Property or Lease means any agreement between the Seller and a tenant to create a tenancy or leasehold interest in the Property.

3.6. Listing Period. The Listing Period of this Seller Listing Contract begins on 6/21/2018, and continues through the earlier of (1) completion of the Sale of the Property or (2) 11/30/2018, and any written extensions (Listing Period). Broker must continue to assist in the completion of any Sale or Lease for which compensation is payable to Brokerage Firm under § 7 of this Seller Listing Contract.

3.7. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the date upon which both parties have signed this Seller Listing Contract.

3.8. Day; Computation of Period of Days, Deadline.

3.8.1. Day. As used in this Seller Listing Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

3.8.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, the first day is excluded and the last day is included, e.g., three days after MEC. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline **Will** **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

4. BROKERAGE RELATIONSHIP.

4.1. If the Seller Agency box at the top of page 1 is checked, Broker represents Seller as Seller's limited agent (Seller's Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker acts as a Transaction-Broker.

4.2. In-Company Transaction – Different Brokers. When Seller and buyer in a transaction are working with different brokers, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller acknowledges that Brokerage Firm is allowed to offer and pay

133 compensation to brokers within Brokerage Firm working with a buyer.

134 **4.3. In-Company Transaction – One Broker.** If Seller and buyer are both working with the same
 135 broker, Broker must function as:

136 **4.3.1. Seller's Agent.** If the Seller Agency box at the top of page 1 is checked, the parties agree
 137 the following applies:

138 **4.3.1.1. Seller Agency Only.** Unless the box in § 4.3.1.2 (**Seller Agency Unless Brokerage**
 139 **Relationship with Both**) is checked, Broker represents Seller as Seller's Agent and must treat the buyer as a
 140 customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker must
 141 disclose to such customer Broker's relationship with Seller.

142 **4.3.1.2. Seller Agency Unless Brokerage Relationship with Both.** If this box is checked,
 143 Broker represents Seller as Seller's Agent and must treat the buyer as a customer, unless Broker currently has
 144 or enters into an agency or Transaction-Brokerage relationship with the buyer, in which case Broker must act
 145 as a Transaction-Broker.

146 **4.3.2. Transaction-Broker.** If the Transaction-Brokerage box at the top of page 1 is checked, or in
 147 the event neither box is checked, Broker must work with Seller as a Transaction-Broker. A Transaction-Broker
 148 must perform the duties described in § 5 and facilitate sales transactions without being an advocate or agent
 149 for either party. If Seller and buyer are working with the same broker, Broker must continue to function as a
 150 Transaction-Broker.

151 **5. BROKERAGE DUTIES.** Brokerage Firm, acting through Broker, as either a Transaction-Broker or a
 152 Seller's Agent, must perform the following **Uniform Duties** when working with Seller:

153 **5.1.** Broker must exercise reasonable skill and care for Seller, including, but not limited to the following:

- 154 **5.1.1.** Performing the terms of any written or oral agreement with Seller;
 155 **5.1.2.** Presenting all offers to and from Seller in a timely manner regardless of whether the
 156 Property is subject to a contract for Sale;
 157 **5.1.3.** Disclosing to Seller adverse material facts actually known by Broker;
 158 **5.1.4.** Advising Seller regarding the transaction and advising Seller to obtain expert advice as to
 159 material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;
 160 **5.1.5.** Accounting in a timely manner for all money and property received; and
 161 **5.1.6.** Keeping Seller fully informed regarding the transaction.

162 **5.2.** Broker must not disclose the following information without the informed consent of Seller:

- 163 **5.2.1.** That Seller is willing to accept less than the asking price for the Property;
 164 **5.2.2.** What the motivating factors are for Seller to sell the Property;
 165 **5.2.3.** That Seller will agree to financing terms other than those offered;
 166 **5.2.4.** Any material information about Seller unless disclosure is required by law or failure to
 167 disclose such information would constitute fraud or dishonest dealing; or
 168 **5.2.5.** Any facts or suspicions regarding circumstances that could psychologically impact or
 169 stigmatize the Property.

170 **5.3.** Seller consents to Broker's disclosure of Seller's confidential information to the supervising broker
 171 or designee for the purpose of proper supervision, provided such supervising broker or designee does not
 172 further disclose such information without consent of Seller, or use such information to the detriment of Seller.

173 **5.4.** Brokerage Firm may have agreements with other sellers to market and sell their property. Broker
 174 may show alternative properties not owned by Seller to other prospective buyers and list competing properties
 175 for sale.

176 **5.5.** Broker is not obligated to seek additional offers to purchase the Property while the Property is
 177 subject to a contract for Sale.

178 **5.6.** Broker has no duty to conduct an independent inspection of the Property for the benefit of a buyer
 179 and has no duty to independently verify the accuracy or completeness of statements made by Seller or
 180 independent inspectors. Broker has no duty to conduct an independent investigation of a buyer's financial
 181 condition or to verify the accuracy or completeness of any statement made by a buyer.

182 **5.7.** Seller understands that Seller is not liable for Broker's acts or omissions that have not been
 183 approved, directed, or ratified by Seller.

184 **5.8.** When asked, Broker **Will** **Will Not** disclose to prospective buyers and cooperating brokers
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199 the existence of offers on the Property and whether the offers were obtained by Broker, a broker within
 200 Brokerage Firm or by another broker.
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202 **6. ADDITIONAL DUTIES OF SELLER'S AGENT.** If the Seller Agency box at the top of page 1 is checked,
 203 Broker is Seller's Agent, with the following additional duties:
 204

- 205 **6.1.** Promoting the interests of Seller with the utmost good faith, loyalty and fidelity;
 206 **6.2.** Seeking a price and terms that are set forth in this Seller Listing Contract; and
 207 **6.3.** Counseling Seller as to any material benefits or risks of a transaction that are actually known by
 208 Broker.
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 211 **7. COMPENSATION TO BROKERAGE FIRM; COMPENSATION TO COOPERATIVE BROKER.** Seller
 212 agrees that any Brokerage Firm compensation that is conditioned upon the Sale of the Property will be earned
 213 by Brokerage Firm as set forth herein without any discount or allowance for any efforts made by Seller or by
 214 any other person in connection with the Sale of the Property.
 215

216 **7.1. Amount.** In consideration of the services to be performed by Broker, Seller agrees to pay
 217 Brokerage Firm as follows:
 218

219 **7.1.1. Sale Commission.** (1) 8.5% of the gross purchase price or (2) , in U.S. dollars.

220 **7.1.2. Lease Commission.** If the box in § 3.5.2 is checked, Brokerage Firm will be paid a fee equal to
 221 (1) % of the gross rent under the lease, or (2) , in U.S. dollars, payable as follows: .
 222

223 **7.1.3. Other Compensation.** .

224 **7.2. Cooperative Broker Compensation.** Brokerage Firm offers compensation to outside brokerage
 225 firms, whose brokers are acting as:
 226

227 **Buyer Agents:** 3.5 % of the gross sales price or , in U.S. dollars.

228 **Transaction-Brokers:** 3.5 % of the gross sales price or , in U.S. dollars.

229 **7.3. When Earned.** Such commission is earned upon the occurrence of any of the following:
 230

231 **7.3.1.** Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;
 232 **7.3.2.** Broker finding a buyer who is ready, willing and able to complete the Sale or Lease as
 233 specified in this Seller Listing Contract; or

234 **7.3.3.** Any Sale (or Lease if § 3.5.2 is checked) of the Property within 120 calendar days after the
 235 Listing Period expires (Holdover Period) (1) to anyone with whom Broker negotiated and (2) whose name was
 236 submitted, in writing, to Seller by Broker during the Listing Period (Submitted Prospect). Provided, however,
 237 Seller **Will** **Will Not** owe the commission to Brokerage Firm under this § 7.3.3 if a commission is earned
 238 by another licensed real estate brokerage firm acting pursuant to an exclusive agreement entered into during
 239 the Holdover Period and a Sale or Lease to a Submitted Prospect is consummated. If no box is checked in this
 240 § 7.3.3, then Seller does not owe the commission to Brokerage Firm.
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242 **7.4. When Applicable and Payable.** The commission obligation applies to a Sale made during the
 243 Listing Period or any extension of such original or extended term. The commission described in § 7.1.1 is
 244 payable at the time of the closing of the Sale, or, if there is no closing (due to the refusal or neglect of Seller)
 245 then on the contracted date of closing, as contemplated by § 7.3.1 or § 7.3.3, or upon fulfillment of § 7.3.2
 246 where the offer made by such buyer is not accepted by Seller.
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 249 **8. LIMITATION ON THIRD-PARTY COMPENSATION.** Neither Broker nor Brokerage Firm, except as set
 250 forth in § 7, will accept compensation from any other person or entity in connection with the Property without
 251 the written consent of Seller. Additionally, neither Broker nor Brokerage Firm is permitted to assess or receive
 252 mark-ups or other compensation for services performed by any third party or affiliated business entity unless
 253 Seller signs a separate written consent for such services.
 254

255 **9. OTHER BROKERS' ASSISTANCE, MULTIPLE LISTING SERVICES AND MARKETING.** Seller has
 256 been advised by Broker of the advantages and disadvantages of various marketing methods, including
 257 advertising and the use of multiple listing services (MLS) and various methods of making the Property
 258 accessible by other brokerage firms (e.g., using lock boxes, by-appointment-only showings, etc.), and whether
 259 some methods may limit the ability of another broker to show the Property. After having been so advised,
 260 Seller has chosen the following:
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9.1. MLS/Information Exchange.

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9.1.1. The Property **Will** **Will Not** be submitted to one or more MLS and **Will** **Will Not** be submitted to one or more property information exchanges. If submitted, Seller authorizes Broker to provide timely notice of any status change to such MLS and information exchanges. Upon transfer of deed from Seller to buyer, Seller authorizes Broker to provide sales information to such MLS and information exchanges.

9.1.2. Seller authorizes the use of electronic and all other marketing methods except: .

9.1.3. Seller further authorizes use of the data by MLS and property information exchanges, if any.

9.1.4. The Property Address **Will** **Will Not** be displayed on the Internet.

9.1.5. The Property Listing **Will** **Will Not** be displayed on the Internet.

9.2. Property Access. Access to the Property may be by:

Manual Lock Box Electronic Lock Box

.

Other instructions: .

9.3. Brokerage Marketing. The following specific marketing tasks will be performed by Broker:

marketing as Broker deems necessary which includes, but is not limited to being placed on: www.BuyDurango.com with its own multipage "mini website"; www.Realtor.com where it will be a "showcase property"; on a rotating basis with other Team Lorenz listings, a "featured property" on the BuyDurango.com homepage; Land.com and Homes and Land.com websites; Facebook marketing; Craigslist; Zillow.com where The Wells Group is a featured company; Homes.com; Trulia.com. and the creation of a Virtual Tour. A virtual tour will be created with Photoshoped images and a video.

10. SELLER'S OBLIGATIONS TO BROKER; DISCLOSURES AND CONSENT.

10.1. **Negotiations and Communication.** Seller agrees to conduct all negotiations for the Sale of the Property only through Broker, and to refer to Broker all communications received in any form from real estate brokers, prospective buyers, tenants or any other source during the Listing Period of this Seller Listing Contract.

10.2. **Advertising.** Seller agrees that any advertising of the Property by Seller (e.g., Internet, print and signage) must first be approved by Broker.

10.3. **No Existing Listing Agreement.** Seller represents that Seller **Is** **Is Not** currently a party to any listing agreement with any other broker to sell the Property.

10.4. **Ownership of Materials and Consent.** Seller represents that all materials (including all photographs, renderings, images or other creative items) supplied to Broker by or on behalf of Seller are owned by Seller, except as Seller has disclosed in writing to Broker. Seller is authorized to and grants to Broker, Brokerage Firm and any MLS (that Broker submits the Property to) a nonexclusive irrevocable, royalty-free license to use such material for marketing of the Property, reporting as required and the publishing, display and reproduction of such material, compilation and data. This license survives the termination of this Seller Listing Contract.

10.5. **Colorado Foreclosure Protection Act.** The Colorado Foreclosure Protection Act (Act) generally applies if (1) the Property is residential (2) Seller resides in the Property as Seller's principal residence (3) Buyer's purpose in purchase of the Property is not to use the Property as Buyer's personal residence and (4) the Property is in foreclosure or Buyer has notice that any loan secured by the Property is at least thirty days delinquent or in default. If all requirements 1, 2, 3 and 4 are met and the Act otherwise applies, then a contract, between Buyer and Seller for the sale of the Property, that complies with the provisions of the Act is required. If the transaction is a Short Sale transaction and a Short Sale Addendum is part of the Contract between Seller and Buyer, the Act does not apply. It is recommended that Seller consult with an attorney.

11. PRICE AND TERMS. The following Price and Terms are acceptable to Seller:

11.1 **Price.** U.S. \$ **\$495,000**

11.2. **Terms.** **Cash** **Conventional** **FHA** **VA** **Other:** Commercial loan

11.3. **Loan Discount Points.**

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11.4. Buyer's Closing Costs (FHA/VA). Seller must pay closing costs and fees, not to exceed \$, that Buyer is not allowed by law to pay, for tax service and .

11.5. Earnest Money. Minimum amount of earnest money deposit U.S. \$ \$20,000 in the form of Personal check or wire transfer

11.6. Seller Proceeds. Seller will receive net proceeds of closing as indicated:
 Cashier's Check at Seller's expense; Funds Electronically Transferred (Wire Transfer) to an account specified by Seller, at Seller's expense; or Closing Company's Trust Account Check

11.7. Advisory: Tax Withholding. The Internal Revenue Service and the Colorado Department of Revenue may require closing company to withhold a substantial portion of the proceeds of this Sale when Seller either (1) is a foreign person or (2) will not be a Colorado resident after closing. Seller should inquire of Seller's tax advisor to determine if withholding applies or if an exemption exists.

12. DEPOSITS. Brokerage Firm is authorized to accept earnest money deposits received by Broker pursuant to a proposed Sale contract. Brokerage Firm is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of the Sale contract.

13. INCLUSIONS AND EXCLUSIONS.

13.1. Inclusions. The Purchase Price includes the following items (Inclusions):

13.1.1. Fixtures. The following items are included if attached to the Property on the date of this Seller Listing Contract, unless excluded under Exclusions (§ 13.2): lighting, heating, plumbing, ventilating, and air conditioning fixtures, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories), garage door openers including remote controls.

Other Fixtures:

If any fixtures are attached to the Property after the date of this Seller Listing Contract, such additional fixtures are also included in the Purchase Price.

13.1.2. Personal Property. The following items are included if on the Property, whether attached or not, on the date of this Seller Listing Contract, unless excluded under Exclusions (§ 13.2): storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, and all keys. If checked, the following are included: Water Softeners Smoke/Fire Detectors Carbon Monoxide Alarms Security Systems Satellite Systems (including satellite dishes); and Any personal property left on the subject Property and not required to be removed by the Colorado Mine Land Board, shall become the property of the purchaser.

The Personal Property to be conveyed at closing must be conveyed by Seller free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except No exceptions. Conveyance will be by bill of sale or other applicable legal instrument.

13.1.3. Trade Fixtures. The following trade fixtures are included: Having never been underground in the mine itself, Seller And Broker have no knowledge of any trade fixtures, but if there are any, then they are included.

The Trade Fixtures to be conveyed at closing must be conveyed by Seller, free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except No exceptions.. Conveyance will be by bill of sale or other applicable legal instrument.

13.1.4. Parking and Storage Facilities. Use Only Ownership of the following parking facilities:
;
and Use Only Ownership of the following storage facilities:

13.1.5. Water Rights. The following legally described water rights: Any owned by the Seller or any accrued rights that have been historically used upon the Property.
Any water rights must be conveyed by Quit claim deed or other applicable legal instrument. The Well Permit # is .

13.1.6. Growing Crops. The following growing crops:.

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13.2. Exclusions. The following are excluded (Exclusions):

14. TITLE AND ENCUMBRANCES. Seller represents to Broker that title to the Property is solely in Seller's name. Seller must deliver to Broker true copies of all relevant title materials, leases, improvement location certificates and surveys in Seller's possession and must disclose to Broker all easements, liens and other encumbrances, if any, on the Property, of which Seller has knowledge. Seller authorizes the holder of any obligation secured by an encumbrance on the Property to disclose to Broker the amount owing on said encumbrance and the terms thereof. In case of Sale, Seller agrees to convey, by a Special warranty deed, only that title Seller has in the Property. Property must be conveyed free and clear of all taxes, except the general taxes for the year of closing.

All monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) must be paid by Seller and released except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows: **None, Property is free and clear.**

The Property is subject to the following leases and tenancies: **None.**

If the Property has been or will be subject to any governmental liens for special improvements installed at the time of signing a Sale contract, Seller is responsible for payment of same, unless otherwise agreed.

15. EVIDENCE OF TITLE. Seller agrees to furnish buyer, at Seller's expense, unless the parties agree in writing to a different arrangement, a current commitment and an owner's title insurance policy in an amount equal to the Purchase Price as specified in the Sale contract, or if this box is checked, **An Abstract of Title** certified to a current date.

16. ASSOCIATION ASSESSMENTS. Seller represents that the amount of the regular owners' association assessment is currently payable at approximately \$ per and that there are no unpaid regular or special assessments against the Property except the current regular assessments and except . Seller agrees to promptly request the owners' association to deliver to buyer before date of closing a current statement of assessments against the Property.

17. POSSESSION. Possession of the Property will be delivered to buyer as follows: Upon closing and full funding, subject to leases and tenancies as described in § 14.

18. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.

18.1. Broker's Obligations. Colorado law requires a broker to disclose to any prospective buyer all adverse material facts actually known by such broker including but not limited to adverse material facts pertaining to the title to the Property and the physical condition of the Property, any material defects in the Property, and any environmental hazards affecting the Property which are required by law to be disclosed. These types of disclosures may include such matters as structural defects, soil conditions, violations of health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer may have the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known by Broker about the Property.

18.2. Seller's Obligations.

18.2.1. Seller's Property Disclosure Form. Disclosure of known material latent (not obvious) defects is required by law. Seller **Agrees** **Does Not Agree** to provide a Seller's Property Disclosure form completed to Seller's current, actual knowledge.

18.2.2. Lead-Based Paint. Unless exempt, if the improvements on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, a completed Lead-Based Paint Disclosure (Sales) form must be signed by Seller and the real estate licensees, and given to any potential buyer in a timely manner.

18.2.3. Carbon Monoxide Alarms. Note: If the improvements on the Property have a fuel-fired heater or appliance, a fireplace, or an attached garage and one or more rooms lawfully used for sleeping purposes (Bedroom), Seller understands that Colorado law requires that Seller assure the Property has an operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a location as required by the applicable building code, prior to offering the Property for sale or lease.

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18.2.4. Condition of Property. The Property will be conveyed in the condition existing as of the

date of the sales contract or lease, ordinary wear and tear excepted, unless Seller, at Seller's sole option, agrees in writing to any repairs or other work to be performed by Seller.

19. RIGHT OF PARTIES TO CANCEL.

19.1. Right of Seller to Cancel. In the event Broker defaults under this Seller Listing Contract, Seller has the right to cancel this Seller Listing Contract, including all rights of Brokerage Firm to any compensation if the Seller Agency box is checked. Examples of a Broker default include, but are not limited to (1) abandonment of Seller, (2) failure to fulfill all material obligations of Broker and (3) failure to fulfill all material Uniform Duties (§ 5) or, if the Seller Agency box at the top of page 1 is checked, the failure to fulfill all material Additional Duties Of Seller's Agent (§ 6). Any rights of Seller that accrued prior to cancellation will survive such cancellation.

19.2. Right of Broker to Cancel. Brokerage Firm may cancel this Seller Listing Contract upon written notice to Seller that title is not satisfactory to Brokerage Firm. Although Broker has no obligation to investigate or inspect the Property, and no duty to verify statements made, Brokerage Firm has the right to cancel this Seller Listing Contract if any of the following are unsatisfactory (1) the physical condition of the Property or Inclusions, (2) any proposed or existing transportation project, road, street or highway, (3) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants, or (4) any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property. Additionally, Brokerage Firm has the right to cancel this Seller Listing Contract if Seller or occupant of the Property fails to reasonably cooperate with Broker or Seller defaults under this Seller Listing Contract. Any rights of Brokerage Firm that accrued prior to cancellation will survive such cancellation.

20. FORFEITURE OF PAYMENTS. In the event of a forfeiture of payments made by a buyer, the sums received will be: (1) 100% will be paid to Seller; (2) divided between Brokerage Firm and Seller, one-half to Brokerage Firm but not to exceed the Brokerage Firm compensation agreed upon herein, and the balance to Seller; (3) Other: . If no box is checked in this Section, choice (1), 100 % paid to Seller, applies. Any forfeiture of payment under this section will not reduce any Brokerage Firm compensation owed, earned and payable under § 7.

21. COST OF SERVICES AND REIMBURSEMENT. Unless otherwise agreed upon in writing, Brokerage Firm must bear all expenses incurred by Brokerage Firm, if any, to market the Property and to compensate cooperating brokerage firms, if any. Neither Broker nor Brokerage Firm will obtain or order any other products or services unless Seller agrees in writing to pay for them promptly when due (examples: surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Unless otherwise agreed, neither Broker nor Brokerage Firm is obligated to advance funds for Seller. Seller must reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Seller.

22. DISCLOSURE OF SETTLEMENT COSTS. Seller acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

23. MAINTENANCE OF THE PROPERTY. Neither Broker nor Brokerage Firm is responsible for maintenance of the Property nor are they liable for damage of any kind occurring to the Property, unless such damage is caused by their negligence or intentional misconduct.

24. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective buyer because of the race, creed, color, sex, sexual orientation, marital status, familial status, physical or mental disability, handicap, religion, national origin or ancestry of such person.

25. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Seller acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this Seller Listing Contract.

26. MEDIATION. If a dispute arises relating to this Seller Listing Contract, prior to or after closing, and is not

529 resolved, the parties must first proceed in good faith to submit the matter to mediation. Mediation is a process
530 in which the parties meet with an impartial person who helps to resolve the dispute informally and
531 confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing,
532 before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally
533 in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event the entire
534 dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by
535 one party to the other at the other party's last known address.
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539 **27. ATTORNEY FEES.** In the event of any arbitration or litigation relating to this Seller Listing Contract, the
540 arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney and
541 legal fees.
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544 **28. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the
545 Colorado Real Estate Commission.)

546 ***A. Seller understands that the entry of this listing into the Multiple Listing Service may be***
547 ***delayed up to five business days from the date this contract is signed by the Seller. This will***
548 ***allow the listing broker time to complete research (well information, septic information, water***
549 ***rights, etc.) and prepare all marketing resources (website, Visual Tour, printed materials, etc.)***
550 ***for a complete and concerted launch of this property.***
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554 ***B. Additional mine reclamation work is required per the Colorado Mine Land Reclamation***
555 ***Department. Part of that work will be paid for through a bond that has already been called but***
556 ***the additional expense to complete the required work shall be the responsibility of the Seller.***
557 ***Seller authorizes Broker to talk to that department and determine the work that needs to be***
558 ***done.***
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562 ***C. Seller agrees to spend up to \$15,000 for an excavating contractor to work on the road***
563 ***leading to the subject Property in for said contractor to obtain the permits, permissions etc.***
564 ***that would be required by the Forest Service, County or other governmental agency. Broker is***
565 ***authorized to represent to potential buyers that this work will be done.***
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570 **29. ATTACHMENTS.** The following are a part of this Seller Listing Contract:
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573 **30. NO OTHER PARTY OR INTENDED BENEFICIARIES.** Nothing in this Seller Listing Contract is deemed
574 to inure to the benefit of any person other than Seller, Broker and Brokerage Firm.
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576 **31. NOTICE, DELIVERY AND CHOICE OF LAW.**

577 **31.1. Physical Delivery.** All notices must be in writing, except as provided in § 31.2. Any document,
578 including a signed document or notice, delivered to the other party to this Seller Listing Contract, is effective
579 upon physical receipt. Delivery to Seller is effective when physically received by Seller, any signator on behalf
580 of Seller, any named individual of Seller or representative of Seller.
581

582 **31.2. Electronic Delivery.** As an alternative to physical delivery, any document, including a signed
583 document or written notice, may be delivered in electronic form only by the following indicated methods:
584 **Facsimile** **E-mail** **Internet.** If no box is checked, this § 31.2 is not applicable and § 31.1
585 governs notice and delivery. Documents with original signatures will be provided upon request of any party.
586

587 **31.3. Choice of Law.** This Seller Listing Contract and all disputes arising hereunder are governed by
588 and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado
589 residents who sign a contract in this state for property located in Colorado.
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592 **32. MODIFICATION OF THIS LISTING CONTRACT.** No subsequent modification of any of the terms of this
593 Seller Listing Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by
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the parties.

33. COUNTERPARTS. This Seller Listing Contract may be executed by each of the parties, separately, and when so executed by all the parties, such copies taken together are deemed to be a full and complete contract between the parties.

34. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties, and any prior agreements, whether oral or written, have been merged and integrated into this Seller Listing Contract.

35. COPY OF CONTRACT. Seller acknowledges receipt of a copy of this Seller Listing Contract signed by Broker, including all attachments.

Brokerage Firm authorizes Broker to execute this Seller Listing Contract on behalf of Brokerage Firm.

Date: _____
Seller: **MAXIMILIAN INVESTORS LLC.**
By: MELANIE L. CYGANOWSKI, Receiver
Address: **152 W 57TH Street 54th Floor New York NY 10019**
Phone: Fax:
Electronic Address:



Date: **6/21/2018**
Broker: **Rick Lorenz**
Brokerage Firm's Name: **The Wells Group of Durango, Inc.**
Team Lorenz
Address: **901 Main Avenue Durango, CO 81301**
Ph: **970-375-7007** Fax: **970-375-3378** Electronic Address: **Rick@BuyDurango.com**

LC50-6-16 EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT
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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE	:
COMMISSION,	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
Defendants.	:
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No. 16-cv-6848 (BMC)

**DECLARATION OF CONWAY MACKENZIE
CAPITAL ADVISORS, LLC, IN SUPPORT OF MOTION FOR ENTRY
OF AN ORDER (A) APPROVING THE RETENTION OF WELLS GROUP OF
DURANGO, INC.; AND (B) WAIVING THE REQUIREMENTS OF 28 U.S.C. §2001**

I, Kenneth T. Latz, pursuant to 28 U.S.C. § 1746, hereby declare that the following is true to the best of my knowledge, information and belief:

1. I make this declaration in support of the motion of Melanie L. Cyganowski, as Receiver, for entry of an order (a) authorizing the retention and payment of Wells Group of Durango, Inc. (“*Wells*”) in accordance with the terms of the Brokerage Agreement by and between Platinum subsidiary Maximilian Investors LLC (“*Maximilian*”) and Wells dated June 21, 2018 (“*Brokerage Agreement*”); and (b) waiving the requirements of 28 U.S.C. § 2001 (the “*Motion*”).

2. I am a Senior Managing Director of Conway MacKenzie Capital Advisors, LLC (“*Conway*”), located at 600 Fifth Avenue, 25th Floor, New York, New York 10020. In addition,

I am the leader of the Private Fund Services practice area of Conway MacKenzie, Inc., and affiliate of Conway.

3. This declaration is based upon my personal knowledge and information provided to me by other Conway professionals. I am in all respects competent to make this Declaration.

PRELIMINARY STATEMENT

4. By the Motion, the Receiver seeks authority to retain and compensate a local real estate broker to market and sell approximately 370 acres of land in Montezuma County, Colorado (the “*Property*”), the site of a former gold mining operation. Following comprehensive due diligence conducted Conway, as the Receiver’s investment banking services provider, Conway recommended that the Receiver sell the Property as real estate because there is little to no likelihood that profitable gold mining operations can be resumed.

5. The Receiver has accepted Conway’s recommendation and is taking steps to commence a sale process.

6. A local real estate broker is critical to a successful sale process because local property sales expertise and availability are needed to identify a buyer. Based on the Receiver’s review of Conway’s analysis, the Receiver has selected Wells to serve as the local real estate broker. These services will not overlap with, but rather will compliment, any services provided to the Receiver by any of her other professionals with respect to the Property. Thus, there will be no duplication of services, and more importantly, charges, to the estate.

7. For the reasons set forth herein, the Motion should be granted.

BACKGROUND

8. Pursuant to the November 30, 2017 Order Approving the Receiver’s Fees and the Retention of Conway Mackenzie Capital Advisors, LLC [Dkt. No. 287], the Receiver retained

Conway to assist her in the disposition of the Property, along with other certain assets. Conway has assisted with the disposition of the Property by performing extensive due diligence and analyzing the potential value of the Property both as a gold mine and as traditional real estate.

9. The Property, formerly owned by American Patriot Gold, LLC (“*APG*”), was the site of a now shuttered gold mine known as the Red Arrow Mine.

10. On April 17, 2013 Jaeger Kottmeier Associates, LLC was appointed the receiver of certain APG assets that included the Red Arrow Mine. Subsequently, APG filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code on August 30, 2013, and lost its mining permit in early 2014. Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order: (A) Approving the Retention of Wells Group of Durango Inc., as Real Estate Broker; and (B) Waiving the Requirements of 28 U.S.C. § 2001, (“*Cyganowski Dec.*”) at ¶8.

11. As a result APG’s default on a loan previously extended to it by Maximilian, Maximilian acquired the Property in fee simple. PPCO owns 99% of the membership interests in Maximilian. *Cyganowski Dec.* ¶9.

CONWAY’S ANALYSIS OF THE PROPERTY

12. The Receiver tasked Conway with assessing the Property’s value, both as an operational gold mine and as real property with the potential for a different use. As part of its analysis of the Property, Conway:

- a) Reviewed reports from APG’s receiver and technical mining professionals analyzing the Property;
- b) Analyzed the Property’s historical gold/mineral production, financial and operation information;
- c) Worked with Bryan Cave LLP, counsel to Maximilian during APG’s receivership, to confirm ownership and legal/environmental status of the Property;

- d) Reviewed 2011 appraisals performed on the Property by Norton Appraisal Services, Inc. and Sharon A. Wallace;
- e) Reviewed various environmental documents concerning the Property including Orders issued by certain environmental regulatory agencies;
- f) Analyzed comparable land values of the Property by interfacing with regional real estate professionals; and
- g) Investigated availability of geological drilling core samples from the Property, which would support estimates of mineral reserves and provide insights into the best means of mineral extraction.

13. After compiling comprehensive background materials regarding the Property, Conway considered multiple alternatives for the monetization of the Property. These alternatives included: selling the Property's assets as is, conducting additional technical analysis and attempting to sell the property with the benefit of additional technical information, and restarting mining activities and attempting to sell asset as an operating mine.

14. Conway ultimately recommended that the Receiver retain a real estate broker and sell the Property because even if the Receiver were to expend significant sums of money and time for additional technical analysis as to the remaining mineral content and potential for recovery, the Receiver would still face substantial risk and uncertainty in any future operation of the mine, including the quantity of gold ore remaining in the Property's ore deposits as well as any potential sale as an operating mine. Therefore, Conway recommended that the Property be marketed and sold with an eye towards recreational use.

15. The remote recreational land market is niche and unique among other real estate markets. As a result, Conway recommended the retention of a local real estate broker with specialized geographic knowledge to facilitate the marketing and sale of the Property. Conway considered the possibility of conducting the marketing and sale of the Property itself, however,

Conway determined it would have to expend significant monetary and time resources to familiarize itself with the local market in order to conduct the sale and marketing. Conway determined there would be more certainty for a sale, and lower costs if a local, specialized real estate broker was retained by the Receivership.

THE BROKERAGE AGREEMENT WITH WELLS

16. Conway considered numerous alternatives before recommending Wells to the Receiver. All of these alternatives had shortcomings that made them less attractive than Wells. For example, one was a national broker without a local presence, and another, while familiar with the Property itself, was based in a distant part of the state. Wells, on the other hand, has a well-established local presence, a sizeable network of existing clients and is competitively priced.

17. The Brokerage Agreement is an exclusive right-to-sell listing agreement. Subject to the Court's approval of the Brokerage Agreement, Rick Lorenz of Wells will serve as Broker ("**Broker**") for the Property. Although the Brokerage Agreement is dated, and has a listing period commencing on June 21, 2018, the listing period will not commence until the entry of an order approving the Motion, and will conclude on November 30, 2018, subject to extension. Cyganowski Dec. ¶15.

18. Wells will receive a commission of 8.5% of the gross purchase price, which the Receiver is advised is standard for this type of transaction. Additionally, if the Property is sold within 120 calendar days after the Brokerage Agreement's listing period expires and the buyer is (1) someone whom the Broker negotiated with and (2) whose name was submitted in writing by the Broker to Maximilian during the listing period, then Wells will still receive its sales commission. Cyganowski Dec. ¶16.

19. The terms of the Brokerage Agreement require Maximilian to acknowledge that additional mine reclamation work (including scrap removal, earth work and potentially other activities based on recent inspections by regulators) is required in order to comply with regulations promulgated by the Colorado Mine Land Reclamation Department. Cyganowski Dec. ¶17.

20. Finally, under the Brokerage Agreement, Maximilian has agreed to spend up to \$15,000 in expenses for an excavating contractor to improve the road leading to the Property, enabling potential buyers to more readily access the Property. The road work is also required for the minimal required reclamation work remaining. Conway estimates the cost of the road work will be between \$17,000 and \$18,000. Conway is continuing to attempt to obtain the agreement of an adjacent landowner to share in this expense, as both properties would benefit from the improvement; however, no agreement has been reached to date.

CONCLUSION

21. For the reasons set forth herein, the Court should enter an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec.: (a) authorizing and approving the retention of Wells on the terms set forth in the Brokerage Agreement; (b) waiving the requirements of 28 U.S.C. § 2001 for the sale by the Receiver of any real property for less than \$3 million; and (c) granting the Receiver such other and further relief as the Court deems appropriate.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of August, 2018, at New York, New York.

/s/ Kenneth T. Latz
Kenneth T. Latz

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
SECURITIES AND EXCHANGE	:
COMMISSION,	:
Plaintiff,	:
-v-	:
	:
PLATINUM MANAGEMENT (NY) LLC;	:
PLATINUM CREDIT MANAGEMENT, L.P.;	:
MARK NORDLICHT;	:
DAVID LEVY;	:
DANIEL SMALL;	:
URI LANDESMAN;	:
JOSEPH MANN;	:
JOSEPH SANFILIPPO; and	:
JEFFREY SHULSE,	:
	:
Defendants.	:
-----X	

No. 16-cv-6848 (BMC)

**MEMORANDUM IN SUPPORT OF
MOTION OF MELANIE L. CYGANOWSKI, AS RECEIVER, FOR ENTRY
OF AN ORDER (A) APPROVING THE RETENTION OF WELLS GROUP OF
DURANGO, INC.; AND (B) WAIVING THE REQUIREMENTS OF 28 U.S.C. §2001**

OTTERBOURG P.C.
230 Park Avenue
New York, NY 10169
(212) 661-9100

Attorneys for Melanie L. Cyganowski, as Receiver

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Melanie L. Cyganowski, the duly appointed Receiver (the “**Receiver**”) of Platinum Credit Management, L.P., Platinum Partners Credit Opportunities Master Fund LP (“**PPCO**”), Platinum Partners Credit Opportunities Fund (TE) LLC, Platinum Partners Credit Opportunities Fund LLC, Platinum Partners Credit Opportunities Fund (BL) LLC, Platinum Liquid Opportunity Management (NY) LLC, Platinum Partners Liquid Opportunity Fund (USA) L.P., Platinum Partners Liquid Opportunity Master Fund L.P., Platinum Partners Credit Opportunities Fund International Ltd and Platinum Partners Credit Opportunities Fund International (A) Ltd (collectively, the “**Receivership Entities**” or “**Platinum**”), through her counsel, Otterbourg P.C., respectfully submits this memorandum in support of her motion (the “**Motion**”) for entry of an order: (a) authorizing the retention and payment of Wells Group of Durango, Inc. (“**Wells**”) in accordance with the terms of the Brokerage Agreement by and between Platinum subsidiary Maximilian Investors LLC (“**Maximilian**”) and Wells dated June 21, 2018 (“**Brokerage Agreement**”); and (b) waiving the requirements of 28 U.S.C. § 2001. In support of the Motion, the Receiver states as follows:

PRELIMINARY STATEMENT

The Receiver seeks authority to retain and compensate a local real estate broker to market and sell approximately 370 acres of land in Montezuma County, Colorado (the “**Property**”), the site of a former gold mining operation. Following comprehensive due diligence conducted by the Receiver’s investment banking services provider, Conway Mackenzie Capital Advisors, LLC (“**Conway**”), Conway recommended that the Receiver sell the Property as real estate because there is little to no likelihood that profitable gold mining operations can be resumed. The Receiver has accepted Conway’s recommendation and is taking steps to commence a sale process. As set forth in Conway’s Supporting Declaration, a local real estate broker is critical to a successful sale process because local property sales expertise and availability are needed to

identify a buyer. Based on the Receiver's review of Conway's analysis, the Receiver has selected Wells to serve as the local real estate broker. These services will not overlap with, but rather will compliment, any services provided to the Receiver by any of her other professionals with respect to the Property. Thus, there will be no duplication of services, and more importantly, charges, to the estate.

In addition, to the extent that the price realized for the Property (or any other real property sold by the Receiver) is less than \$3 million and consistent with Paragraphs 30 and 31 of the Receivership Order (defined below), the Receiver requests that this Court waive any requirements of 28 U.S.C. § 2001 that may be applicable to this, or any other real property sale for less than \$3 million.

For the reasons set forth herein, as well as in the Declaration of Melanie L. Cyganowski, as Receiver, in Support of Motion for Entry of an Order: (A) Approving the Retention of Wells Group of Durango Inc., as Real Estate Broker; and (B) Waiving the Requirements of 28 U.S.C. § 2001 (the "*Cyganowski Dec.*"), and the Declaration of Conway Mackenzie Capital Advisors, LLC in Support of Motion for Entry of an Order (A) Approving the Retention of Wells Group of Durango Inc., as Real Estate Broker; and (B) Waiving the Requirements of 28 U.S.C. § 2001 (the "*Conway Dec.*"), the Motion should be granted.

BACKGROUND

A. The Receivership

On December 19, 2016, in the above-captioned matter, the United States District Court for the Eastern District of New York (the "*Court*") entered the Order Appointing Receiver, which was amended on January 30, 2017 and October 16, 2017. [Docket Nos. 6, 59 and 276].

On July 6, 2017, the Court accepted the resignation of the original receiver, Bart M. Schwartz, Esq., (the “*Prior Receiver*”) and appointed Melanie L. Cyganowski as Receiver effective immediately (*i.e.*, July 6, 2017). [Docket No. 216].

B. The Receivership Order

On October 16, 2017, this Court entered the Second Amended Order Appointing Receiver, Dkt. No. 276 (together with the prior Orders Appointing Receiver, the “*Receivership Order*”). Among other powers relevant to this Motion, the Receivership Order granted the Receiver the authority:

- a. “To engage and employ persons in the Receiver’s discretion to assist the Receiver in carrying out the Receiver’s duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers, subject to Court approval.” Receivership Order Section I(6)(F).
- b. Authority to “dispose of Receivership [real] property.” Receivership Order Section VIII(28).
- c. Authority to “engage in transactions outside of the ordinary course of business of the Receivership Entities . . .” with a transaction outside of the ordinary course being defined, in part, as one involving “the disposition of the Receivership Estate’s interest in Receivership Property in exchange for cash or property of value in excess of \$3 million . . .”. Receivership Order Section VIII(30).

Thus subject to conditions set forth in the Receivership Order, the Receiver is empowered to retain Wells with the approval of this Court and then sell the Property without further order of this Court should the sale price be less than \$3 million.

C. The Receiver’s Retention of Conway to Advise on, and Assist with, the Disposition of Certain Receivership Assets

Pursuant to the November 30, 2017 Order Approving the Receiver’s Fees and the Retention of Conway Mackenzie Capital Advisors, LLC [Dkt. No. 287], the Receiver retained Conway to assist her in the disposition of the Property, along with other certain assets. Conway

has assisted with the disposition of the Property by performing extensive due diligence and analyzing the potential value of the Property both as a gold mine and as traditional real estate. Conway Dec. ¶8.

D. The Property

The Property, formerly owned by American Patriot Gold, LLC (“APG”), was the site of a now shuttered gold mine known as the Red Arrow Mine. Conway Dec. ¶9.

On April 17, 2013 Jaeger Kottmeier Associates, LLC was appointed the receiver of certain APG assets that included the Red Arrow Mine. Subsequently, APG filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code on August 30, 2013, and lost its mining permit in early 2014. Cyganowski Dec. ¶8.

As a result APG’s default on a loan previously extended to it by Maximilian, Maximilian acquired the Property in fee simple. PPCO owns 99% of the membership interests in Maximilian. Cyganowski Dec. ¶9.

E. Conway’s Analysis of the Property and Prospects for Disposition

The Receiver tasked Conway with assessing the Property’s value, both as an operational gold mine and as real property with the potential for a different use. As part of its analysis of the Property, Conway:

- a) Reviewed reports from APG’s receiver and technical mining professionals analyzing the Property;
- b) Analyzed the Property’s historical gold/mineral production, financial and operation information;
- c) Worked with Bryan Cave LLP, counsel to Maximilian during APG’s receivership, to confirm ownership and legal/environmental status of the Property;
- d) Reviewed 2011 appraisals performed on the Property by Norton Appraisal Services, Inc. and Sharon A. Wallace;

- e) Reviewed various environmental documents concerning the Property including Orders issued by certain environmental regulatory agencies;
- f) Analyzed comparable land values of the Property by interfacing with regional real estate professionals; and
- g) Investigated availability of geological drilling core samples from the Property, which would support estimates of mineral reserves and provide insights into the best means of mineral extraction.

Conway Dec. ¶12.

After compiling comprehensive background materials regarding the Property, Conway considered multiple alternatives for the monetization of the Property. These alternatives included: selling the Property's assets as is, conducting additional technical analysis and attempting to sell the property with the benefit of additional technical information, and restarting mining activities and attempting to sell asset as an operating mine. Conway Dec. ¶13.

Conway ultimately recommended that the Receiver retain a real estate broker and sell the Property because even if the Receiver were to expend significant sums of money and time for additional technical analysis as to the remaining mineral content and potential for recovery, the Receiver would still face substantial risk and uncertainty in any future operation of the mine, including the quantity of gold ore remaining in the Property's ore deposits as well as any potential sale as an operating mine. Therefore, Conway recommended that the Property be marketed and sold with an eye towards recreational use. Conway Dec. ¶14.

The remote recreational land market is niche and unique among other real estate markets. As a result, Conway recommended the retention of a local real estate broker with specialized geographic knowledge to facilitate the marketing and sale of the Property. Conway considered the possibility of conducting the marketing and sale of the Property itself, however, Conway determined it would have to expend significant monetary and time resources to familiarize itself with the local market in order to conduct the sale and marketing. Conway determined there

would be more certainty for a sale, and lower costs if a local, specialized real estate broker was retained by the Receivership. Conway Dec. ¶15.

F. Wells' Experience and Expertise

Conway considered numerous alternatives before recommending Wells to the Receiver. All of these alternatives had shortcomings that made them less attractive than Wells. For example, one was a national broker without a local presence, and another, while familiar with the Property itself, was based in a distant part of the state. Wells, on the other hand, has a well-established local presence, a sizeable network of existing clients and is competitively priced.

G. The Brokerage Agreement

The Brokerage Agreement¹ is an exclusive right-to-sell listing agreement. Subject to the Court's approval of the Brokerage Agreement, Rick Lorenz of Wells will serve as Broker ("**Broker**") for the Property. Although the Brokerage Agreement is dated, and has a listing period commencing on June 21, 2018, the listing period will not commence until the entry of an order approving the Motion, and will conclude on November 30, 2018, subject to extension. Cyganowski Dec. ¶15.

Wells will receive a commission of 8.5% of the gross purchase price, which the Receiver is advised is standard for this type of transaction. Additionally, if the Property is sold within 120 calendar days after the Brokerage Agreement's listing period expires and the buyer is (1) someone whom the Broker negotiated with and (2) whose name was submitted in writing by the Broker to Maximilian during the listing period, then Wells will still receive its sales commission. Cyganowski Dec. ¶16.

The terms of the Brokerage Agreement require Maximilian to acknowledge that additional mine reclamation work (including scrap removal, earth work and potentially other

¹ The Brokerage Agreement is annexed to the Cyganowski Dec. as Exhibit B.

activities based on recent inspections by regulators) is required in order to comply with regulations promulgated by the Colorado Mine Land Reclamation Department. Cyganowski Dec. ¶17.

Finally, under the Brokerage Agreement, Maximilian has agreed to spend up to \$15,000 in expenses for an excavating contractor to improve the road leading to the Property, enabling potential buyers to more readily access the Property. The road work is also required for the minimal required reclamation work remaining. Conway estimates the cost of the road work will be between \$17,000 and \$18,000. Conway is continuing to attempt to obtain the agreement of an adjacent landowner to share in this expense, as both properties would benefit from the improvement; however, no agreement has been reached to date. Conway Dec. ¶20.

APPLICABLE AUTHORITY

Entry into the Brokerage Agreement is well within the scope of the authority vested in the Receiver by the Receivership Order. *See, e.g.*, Receivership Order at Pars. 3, 6, 27, and 30 – 32. Among other powers granted to the Receiver, the Receiver has the authority to dispose of the Receivership’s real property for the benefit of the Receivership Estate. Receivership Order Section VIII(28).

Subject to the Court’s approval, the Receiver also has the ability hire professionals, including real estate broker and investment banks, to assist in her disposition of Receivership Property. Receivership Order Section VI. Selling the Property would provide the Receivership Estate with capital and reduce administrative expenses for the estate. Current administrative expenses include property taxes and upkeep costs. Cyganowski Dec. ¶19. These costs will be eliminated upon completion of the sale of the Property. Additionally, the Property faces significant uncertainties, challenges, and expenses if the Property is retained. Therefore, the

Receiver has determined it is in the best interest of the Receivership to retain Wells as a real estate broker to assist Conway in the sale of the Property.

It is also well within this Court's inherent equitable power to approve the Motion. *See S.E.C. v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002) (a receivership court has broad equitable authority to issue orders necessary for the proper administration of the estate and all of the assets and property thereof). This is especially true where, as here, the Wells retention represents the Receiver's exercise of her sound business discretion and judgment as a course of action that is in the best interests of the Receivership Estate. The Receiver is entitled to great deference with regard to her discretion and judgment on the best course of action for the Receivership Estate. *See In re JFD Enter., Inc.*, 2000 WL 560189, *5 (1st Cir. 2000) ("The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee's business judgment is subject to great judicial deference.") (internal citations omitted).

Finally, Paragraph 30 of the Receivership Order authorizes the Receiver to enter into non-ordinary course transactions, including the sale of property (real and otherwise), without further Court approval, so long as the disposition is not "in exchange for cash or property of value in excess of \$3 million." As a result of this provision, along with Par. 31 of the Receivership Order, which requires that the Receiver use her "best efforts to maximize the value realized upon the disposition of Receivership Property, considering the costs and benefits of any proposed transaction for the disposition of Receivership Property and taking into account the risk profile, and the expected time horizon for the disposition, of such Receivership Property," the purposes of 28 U.S.C. § 2001 are met, and strict compliance thereto would be superfluous and constitute an unnecessary expenditure of receivership resources. Cyganowski Dec. ¶20.

Therefore, the Court should approve the Motion given: (a) Conway's extensive due diligence that informed the Receiver's conclusion that the retention of Wells to assist in the Receiver's sale of the Property is the best course of action; and (b) the additional time and expense faced by the Receivership were the requirements of 28 U.S.C. § 2001 not to be waived for the sale of real property by the Receiver with a value of less than \$3 million.

CONCLUSION

For the reasons set forth herein, the Receiver respectfully requests entry of an order, in substantially the form annexed as Exhibit A to the Cyganowski Dec.: (a) authorizing and approving the retention of Wells on the terms set forth in the Brokerage Agreement; (b) waiving the requirements of 28 U.S.C. § 2001 for the sale by the Receiver of any real property for less than \$3 million; and (c) granting the Receiver such other and further relief as the Court deems appropriate.

Dated: New York, New York
August 22, 2018

OTTERBOURG P.C.

By: /s/ Adam C. Silverstein
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Erik. B Weinick

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