

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**KINETIC INVESTMENT GROUP, LLC and
MICHAEL SCOTT WILLIAMS, CASE NO.: 8:20-cv-394-MSS-SPF**

Defendants, and

**KINETIC FUNDS I, LLC,
KCL SERVICES, LLC d/b/a LENDACY,
SCIPIO, LLC, LF 42, LLC, EL MORRO
FINANCIAL GROUP, LLC, and KIH, INC.,
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

**MOTION FOR EXPEDITED APPROVAL OF AMENDED CONTRACT
PRICE FOR PRIVATE SALE OF VILLA GABRIELA PROPERTY**

Mark A. Kornfeld, as Receiver (the “Receiver”), by and through undersigned counsel, files this Motion for Expedited Approval of Amended Contract Price for the Private Sale of Villa Gabriela Property (the “Motion”) and states as follows:

Executive Summary

The Receiver files this Motion for Court approval of the prospective sale at an amended purchase price (\$1,690,000.00) due to the passage of time since execution of the original Contract with the purchaser, the decrease in market conditions since April of 2022, and the need to monetize the real property of the Receivership Estates.

Background

1) On March 6, 2020, this Court granted the SEC's Emergency Motion for Appointment of Receiver and appointed Mark A. Kornfeld, Esq. to serve as the Receiver for the Receivership Defendants in this Receivership. (Doc. 34, ¶ 2.)

2) As ordered by this Court, "[t]he Receiver is authorized to locate, list for sale... and take all necessary and reasonable actions to cause the sale...of all real property in the Receivership Estates" for the benefit of the defrauded investors. (Doc. 34, ¶ 32.)

3) The Villa Gabriela properties (hereinafter "Villa Gabriela"), consists of the following:

- a. Condominium Villa Gabriela, Apartment PH1-A/PH 1-B located at 109 De la Cruz Street, San Juan, Puerto Rico 00901;
- b. Condominium Villa Gabriella, Apartment 2-E located at 109 De la Cruz Street, San Juan, Puerto Rico 00901;
- c. Parking Space #321 located at Cochera San Francisco, Luna Street #204, San Juan, Puerto Rico 00901; and
- d. Parking Space #325 located at Cochera San Francisco, Luna Street #204, San Juan, Puerto Rico 00901.

4) On May 15, 2020, after investigating the circumstances surrounding the purchase of Villa Gabriela, Receiver filed his Motion for Possession of and Title to Residential Real Property Purchased by Defendant Williams ("Williams") in San Juan, Puerto Rico and supporting Declaration (collectively, the "Turnover Motion") (Docs. 71-72.)

5) The Turnover Motion alleged that Williams directed the transfer of approximately \$1.5 million in investor funds from Kinetic Funds' primary bank account to ultimately be paid to various third parties for the purpose of purchasing the properties for his benefit. (Doc. 72, ¶ 12.)

6) On July 6, 2020, before the Court ruled on the Turnover Motion, the Receiver and Williams entered into a Stipulation to resolve the Turnover Motion, in which Williams expressly acknowledged that he had no ownership, property, or other legal rights or interests in Villa Gabriela and waived any and all claims to the contrary. (Doc. 103, ¶ 7.)

7) Subsequently, the Receiver began taking steps to market and sell Villa Gabriela. Those measures were detailed in Receiver's "Motion for Approval of (1) the Private Sale of Puerto Rico Real Properties and Parking Spaces; and (2) the Proposed Publication, Marketing, and Overbid Procedures Associated with the Sale of the Real Properties" (the "Motion") (Doc. 275.)

8) In late 2020 and early 2021, prior to filing the Motion for Approval, the Receiver took all necessary steps in order to comply with 28 U.S.C. § 2001(b) by obtaining three independent appraisals of Villa Gabriela. (Doc. 275.)

9) The three appraisals for Villa Gabriela were \$1,580,000.00, \$1,523,000.00, and \$1,771,000.00, respectively. A copy of each appraisal is attached to the Receiver's Motion as Exhibit 3. (Doc. 275.)

10) In March 2022, after obtaining the three appraisals and marketing the listing extensively (which was complicated due to significant preventative measures

imposed by the Puerto Rican government as a result of the COVID-19 pandemic), the Receiver ultimately accepted a \$2.1 million cash offer from a prospective purchaser (hereinafter the “Purchaser.”)

11) After an arms-length negotiation over material terms, on March 18, 2022, the Receiver and Purchaser entered into the fully executed Purchase and Sale Agreement (the “Contract”) and, thereafter, the Purchaser deposited sixty-three thousand dollars (\$63,000.00) as earnest money with the Receiver’s Listing Agent.

12) The Contract provided, among other things, that the sale of Villa Gabriela was contingent upon this Court’s approval, as well as the satisfaction of the requirements set forth in 28 U.S.C. § 2001 (including required statutory overbid and publication procedures.) (Doc. 275.)

13) On April 1, 2022, the Receiver promptly filed the Motion in order to receive Court approval for the sale and approval to initiate the statutorily required overbid and publication procedures.

14) On April 15, 2022, in response to the filing of the Motion for Approval, Williams filed a Response in Opposition, claiming, among other things, that the sale of Villa Gabriela was “premature” due to the ongoing enforcement proceeding with the SEC. (Doc. 277.)

15) On May 2, 2022, the Receiver responded timely to Williams’ Opposition, whereby the Receiver presented multiple arguments supporting the prospective sale, including (but not limited to) clear record evidence that Williams had voluntarily

stipulated and agreed to relinquish any and all possible claims to title of Villa Gabriela, to the Receiver. (Doc. 281.)

16) While the Motion remained pending during the months of July, August and September 2022, the Purchaser made overtures to the Receiver (and his real estate professionals) regarding the status of the approval of the sale, and expressed growing concern over the passage of time, due to a number of factors, including deteriorating conditions at the properties and a rapidly declining real estate market.

17) On October 20, 2022, the Receiver filed a supplemental “Notice regarding Status of Sale Requested in Motion for Approval of Private Sale of Real Property,” in which the Receiver advised the Court formally of the Purchaser’s growing concerns regarding the passage of time from when the Contract was first executed, and the Receiver having sought approval for the transaction. (Doc. 291.)

18) On the morning of October 24, 2022, the Receiver received written communication from counsel for the Purchaser dated October 21, 2022 that the Purchaser purportedly was terminating the Contract due to among other things the “mere passage of time” affecting the agreement. The Receiver filed this correspondence with the Court. (Doc. 292.)

19) On October 24, 2022, several hours after receiving this written notice, the Court granted the Motion to Approve the Private Sale. (Doc. 293.)

20) On October 24, 2022, counsel for the Receiver immediately contacted counsel for the Purchaser, who conveyed that, despite the Court approval, he still intended to terminate the Contract due to the non-fault of the Purchaser and the

“event” of the passage of time, when combined with the dramatic change in market and financial conditions since the execution of the contract in March of 2022. Purchaser also demanded the return of his escrowed, earnest deposit.

21) Solely so there is never a misunderstanding on the record here, the Receiver disagrees with the Purchaser’s legal and equitable position to unilaterally terminate the Contract. The Contract was never “time of the essence,” was knowingly and clearly conditioned upon this Court’s approval, as well as certain statutory requirements, and did not afford expressly or implicitly provide any “opt out” clause to Purchaser due to time delays or market shifts.

22) However, the Receiver is also keenly sensitized and mindful of his role as a steward and fiduciary to claimants and alleged victims here. He has with his team of professionals analyzed the substantial cost and risk of theoretical litigation, the collapse of the Puerto Rico real estate market, a lack of interest from others in acquiring the properties, the need and desire to stop the many tens of thousands in costs, maintenance, and repairs, rising interest rates, the Purchaser’s good faith and good will, and, the compelling equitable interest in monetizing the assets here in order to distribute over seven figures back to alleged victims, as soon as practicable. As such, the Receiver determined in the exercise of his reasonable discretion to work with the Purchaser to reach a new agreement and a mutually acceptable purchase price.

23) After completing settlement negotiations regarding a new agreement, the Receiver and Purchaser expressly agreed not to litigate the dispute or terminate the Contract; the parties agreed that Purchaser would purchase Villa Gabriela at a reduced

purchase price of one million six hundred ninety thousand (\$1.69m) (essentially a twenty (20%) discount).

24) The Receiver and the Purchaser have drafted an addendum to the Contract reflecting this amended purchase price. A copy of the Addendum is attached to this Motion as part of Exhibit A. (See “Addendum I Purchase and Sale Contract.”)

25) The Receiver hereby requests that the Court expeditiously approve the amended purchase price of \$1.69m permit the Receiver to engage in all statutorily required overbid and publication procedures, albeit with the amended purchase price.

26) If a higher price than \$1.69m is bid by another prospective purchaser (and satisfies the overbid procedures), the Receiver will move forward with negotiations with the Purchaser and prospective overbid purchaser as prescribed by the procedures in Receiver’s Motion (Doc. 275) and 28 U.S.C. § 2001.

ARGUMENT

A. Legal Standard

Federal courts have broad powers and wide discretion to determine relief in an equity receivership, including the authority to authorize the sale or transfer of real estate within a receivership. *SEC v. Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992); *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir. 1986). The Court’s wide discretion derives from the inherent powers of an equity court to fashion relief. *Elliott*, 953 F.2d at 1566; *SEC v. Safety Finance Service, Inc.*, 674 F.2d 368, 372 (5th Cir. 1982). A court imposing a receivership assumes custody and control of all assets and properties of the

receivership, and it has broad equitable authority to issue all orders necessary for the proper administration of the receivership estate. *See SEC v. Credit Bancorp Ltd.*, 290 F.3d 80, 82-83 (2d Cir. 2002); *SEC v. Wencke*, 622 F.2d 1363, 1370 (9th Cir. 1980).

The court may enter such orders as may be appropriate and necessary for a receiver to fulfill his duty to preserve and maintain any real property(ies) and funds within the receivership estate. *See, e.g., Official Comm. Of Unsecured Creditors of Worldcom, Inc. v. SEC.*, 467 F.3d 73, 81 (2d Cir. 2006). Any action taken by a district court in the exercise of its discretion is subject to great deference by appellate courts. *See United States v. Branch Coal*, 390 F.2d 7, 10 (3d Cir. 1969). Such discretion is especially important considering that one of the ultimate purposes of a receiver's appointment is to provide a method of gathering, preserving, and ultimately liquidating assets to return funds to creditors. *See Safety Fin. Serv., Inc.*, 674 F.2d 368, 372 (5th Cir. 1982) (court overseeing equity receivership enjoys "wide discretionary power" related to its "concern for orderly administration") (citations omitted).

Courts routinely approve a receiver's request to sell real property based on compliance with Section 2001. *See, e.g., U.S. v. Brewer*, Case No. 07-cr-90, Doc. 541 at *2 (M.D. Fla. May 12, 2009) (granting private sale of real properties after compliance with Section 2001 requirements); *SEC v. Nadel*, Case No. 09-cv-00087, Doc. 1446 (M.D. Fla. October 28, 2020) (same); *FTC v. NPB Advertising, Inc. at al.*, Case No. 14-cv-01155, Doc. 158 (M.D. Fla. Aug. 1, 2017) (same). Courts have also exercised their discretion to approve the sale of real properties based on substantial compliance with Section 2001, including cases where the receiver obtained less than three appraisals.

See, e.g., SEC v. Patrick Kirkland et al., 2009 WL 1439087 (M.D. Fla. 2009) (finding substantial compliance with Section 2001(b)'s appraisal requirements based on a single appraisal); *SEC v. Global Online Direct, Inc.*, Case No. 1:07-CV-0767-WSD, Order Granting Receiver's Mot. For Order Authorizing the Sale of Certain Properties (N.D. Ga. 2009) ("The Court hereby relieves the Receiver from the provisions of 28 U.S.C. §§ 2001-2002"); *SEC v. Stanley J. Kowalewski et al.*, Case No. 1:11-cv-0056-TCB, Order Granting Receiver's Motion for Approval of Private Sale of Real Properties (N.D. Ga. 2012) (finding compliance with 28 U.S.C. § 2001(b) despite receiver not obtaining three appraisals for the property). This Court has also approved identical procedures in the Receiver's previous sale of a separate parcel of real property in this proceeding. *See* Doc. 206.

B. The Court Should Now Approve an Amended Purchase Price of One Million, Six Hundred Ninety Thousand (\$1,690,000.00) and Order the Villa Gabriela Property to be Sold Immediately

As one who is empowered with necessary, equitable discretion to make crucial financial determinations on behalf of the Receivership Estate, the Receiver fully recommends that the Court approve the amended purchase price of **\$1,690,000.00** for the Private Sale of Villa Gabriela to the Purchaser, as set forth by the terms and conditions of the Purchase and Sale Agreement and attached Addendum. (See Exhibit A.) The Receiver is fully authorized to proceed with the sale of real estate under 28 U.S.C. § 2001 provided that:

- (a) The purchase price is for at least two-thirds of the average appraised value of Villa Gabriela;

- (b) The appraised value of the Properties was established by three disinterested appraisals of Villa Gabriela;
- (c) The Court finds the sale serves the best interests of the Receivership Estate;
- (d) The terms of the proposed sale are published in a newspaper of general circulation as directed by the Court and at least ten days before confirmation; and
- (e) There is no bona fide offer made at least ten (10%) higher than the proposed sale price made under the Court's prescribed conditions.

The Receiver submits that the “new” proposed sale, with the discounted amended purchase price, and the publication and overbid procedures fully comply with 28 U.S.C. § 2001.

The amended purchase price is well within the approved price range given the appraisals obtained due to 28 U.S.C. § 2001. Due to the substantial passage of time and the dramatic and adversely changed market conditions since March of 2022, the Receiver has determined in consultation with counsel and his real estate professionals, that the re-marketing, re-listing, and theoretical litigation with the Purchaser is not in the best interests of the Receivership Estates, and that selling Villa Gabriella at an amended purchase price of \$1,690,000.00 with the current Purchaser, is clearly and unmistakably the preferred and most desirable (and cost efficient) outcome for serving the Receivership Estates, valid claimants, and those who are victims of Williams' alleged malfeasance and fraud. Additionally, and of consequence, no other bonafide

offers have been received to date for Villa Gabriela despite efforts to obtain same. With interest rates increasing exponentially, and the costs of holding title to Villa Gabriela decreasing funds the Receivership Estate on a monthly basis, as well as the uncertainty in the market that would further be exacerbated by a continued delay in selling Villa Gabriela, the Receiver believes it is far more prudent to move forward with the Purchaser's amended price, and to, upon this Court's order, quickly initiate new publication and overbid procedures with the amended purchase price.

WHEREFORE, Mark A. Kornfeld, Court-Appointed Receiver, respectfully requests that this Court to enter an Order granting the Receiver's Motion for Approval of Amended Contract Price for Private Sale of Villa Gabriela Property and granting any other relief the Court deems just and equitable.

LOCAL RULE 3.01(g) CERTIFICATION

Pursuant to Local Rule 3.01(g), the undersigned certifies that counsel for the Receiver conferred with counsel for the Commission and counsel for Defendant Michael Williams prior to filing this Motion. Counsel for the Commission has no objection to the relief requested in this Motion. Defendant Michael Williams objects to the relief requested as set forth in his response and sur-reply he filed in response to the Receiver's previously filed Motion for Approval of Private Sale.

BUCHANAN INGERSOLL & ROONEY PC



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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a Notice of Electronic Filing to the following counsel of record:

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SEC vs. Kinetic Investment Group, LLC, et al
Case No: 8:20-cv-394-MSS-SPF

EXHIBIT “A”

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") dated March 18, 2022 is entered into by and between Mr. Mark Kornfeld, solely as the Court-appointed SEC Federal Equity Receiver of Kinetic Investment Group, LLC, et al., under case number 8:20-cv-00394-WFJ-SPF (the "Seller"), of legal age, married and resident of Tampa, FL and Allan Rothstein, a _____, duly organized under the laws of the commonwealth of Puerto Rico, represented by _____, (the "Purchaser"), of legal age, _____ (collectively, the "Parties").

WITNESSETH

WHEREAS, Mark A. Kornfeld, as Receiver of Kinetic Investment Group, LLC is the owner in fee simple ("*pleno dominio*") of the real property more particularly described in Exhibit A attached hereto and made to form a part hereof (the "Property");

WHEREAS, on March 6, 2020, United States District Judge William F. Jung entered an Order in the case styled *Securities and Exchange Commission v. Kinetic Investment Group, LLC et al*, Case No. 8:20-cv-394-T-35SPF (M.D. Fla.) (the "Receivership Action") appointing Mr. Mark A. Kornfeld as Receiver over various entities including Kinetic Investment Group, LLC ("Kinetic"), and directed him to, among other things, marshal assets for the entities placed in receivership including Kinetic (the "Receivership Entities"). The Receiver has full authority to sell the Property with approval of the United States District Court for the Middle District of Florida overseeing the Receivership Action (the "Receivership Court"). Mr. Mark A. Kornfeld is acting solely in his capacity as Receiver of Kinetic and, as such, shall have no personal or individual liability of any kind, and makes no representation of any kind whatsoever in his personal or individual capacity;

WHEREAS, on October 6, 2021, the United States District Court for the District of Puerto Rico entered an Order and Writ to the Registrar of Property in San Juan, Puerto Rico directing the Registrar to transfer title of the Property in fee simple in favor of "Mark A. Kornfeld, as Receiver for Kinetic Investment Group, LLC et al.";

WHEREAS, on July 6, 2020, the Receiver Mark A. Kornfeld and Defendant Michael Scott Williams, entered a Joint Stipulation in which Mr. Williams transfers title to the property herein described in Exhibit A to the Receiver.

WHEREAS, the Registrar of Property in San Juan, Puerto Rico transferred title to the Property to the Seller on November 15, 2021;

WHEREAS, Seller has agreed to sell the Property (as such term is hereinafter defined) to Purchaser and Purchaser has agreed to purchase the Property from Seller, on the terms and conditions hereinafter provided;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the Parties, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. **Property**: The Seller agrees to sell and convey, and Purchaser agrees to purchase and pay for, all pursuant to the terms and conditions hereinafter set forth, the Property consisting of all of Seller's right, title, and interest in and to the Property, more particularly described on Exhibit "A" attached hereto.

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The Property shall include all appurtenant rights, privileges, and easements, all buildings and improvements, free from all encumbrances whatsoever, except restrictions and easements of record, zoning ordinances, and taxes and assessments, both general and special, not currently due and payable.
PROPERTY SOLD "AS IS".

(a) **As-Is Sale.** Purchaser hereby agrees that to the maximum extent permitted by applicable law, the purchase and sale of the Property is made and shall be made without recourse on Seller or based on any representation or warranty of any kind (whether express, implied or statutory) by Seller. The purchase and sale of the Property shall be on an "**AS IS, WHERE IS**" basis, with all faults and without any representation or warranty (all of which Seller hereby disclaims). The Purchaser understands and agrees that the property is offered, purchased, and accepted by the Purchaser **AS IS** and **WITH ALL FAULTS** including any structural or cosmetic faults or hazards as well as any building violations for the building as a whole that may apply. The Seller makes no warranties or guarantees whatsoever whether written, oral, or implied as to quality, condition or habitability. Purchaser acknowledges that they have entirely relied on their own information, judgment and inspection of the Property and do not and have not relied on any representations or warranties by Seller. The Purchaser also represents that it has had the opportunity to conduct ample due diligence into the Property.

(b) **Condition of the Property.** Purchaser acknowledges and agrees to purchase the Property on an "As Is, Where Is" basis, with all faults and without representations, express or implied, of any type, kind, character or nature, including but not limited to the suitability of the Property for any use, and without warranties, express or implied, of any type, kind, character or nature, including but not limited to, suitability of the Property for any use, and without recourse, express or implied, of any type, kind, character or nature. The Seller has not made, makes or has authorized anyone to make, any representation or warranty as to any environmental condition, under or around the Property, including whether the Property contains asbestos, radon or any hazardous materials or harmful or toxic substances, or pertaining to the extent, location or nature of the same, if any. Purchaser will not make any claims or bring any cost recovery action or claim for contribution or other action against the Seller for any reason, including structural, cosmetic, or environmental issues including any issues arising from or relating to the presence or alleged presence, discharge, disposal, release or escape of any hazardous materials or harmful or toxic substances in, on, under or about the Property, including claims under or on account of (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as the same may have been or may hereafter be amended, and similar state statutes, and any regulations promulgated thereunder, (ii) any other federal, state, or local law, ordinance, rule or regulation, now or hereafter in effect, that deals with or otherwise in any manner relates to environmental matters of any kind, (iii) this Agreement or (iv) the common law.

(c) **Possession of the Property.** Unless otherwise agreed to by the Parties, Purchaser shall take possession of the Property on the Closing Date. Seller agrees to vacate the Property on or prior to the Closing Date.

2. **Purchase Price And Contingencies:** The Purchase Price shall be Two Million One Hundred ^{THOUSAND} ^{MDK} Dollars and 00/100 (\$ 2,100,000 .00).

This Agreement is contingent upon (1) approval by the Receivership Court, (2) compliance with the requirements set forth by 28 U.S.C. § 2001, and (3) the non-receipt by Seller of a bona fide offer, under conditions prescribed by the Court, as described in 28 U.S.C. § 2001(b) (a "Bona Fide Offer"). Purchaser understands and acknowledges that 28 U.S.C. § 2001(b) prohibits the Receivership Court's approval and confirmation of the transaction contemplated by this Agreement if Seller receives a Bona Fide Offer. As such, upon receipt of a Bona Fide Offer, Seller shall have the exclusive right to terminate this Agreement, and Purchaser's sole and exclusive remedy for such termination is limited to the return of its Earnest Money Deposit, as defined and set forth below. If the Seller does not receive a Bona Fide

Offer after compliance with the publication procedures required by 28 U.S.C. § 2001(b), this Agreement is further contingent upon Seller obtaining an Order in substantially the form as the Order attached as Exhibit B (the "Order") approving the sale of the Property described in Exhibit A to Purchaser free and clear of all liens, claims, encumbrances, and restrictions as provided for in the order of the Receivership Court approving this transaction (collectively, the "Contingencies").

In the event that Seller receives a Bona Fide Offer or the Receivership Court does not approve of the sale of the Property, i.e., if the Contingencies are not satisfied on or before the Closing Date, Purchaser acknowledges and agrees that its sole and exclusive remedy is to seek return of the Earnest Money Deposit, as defined below, from Seller. This Agreement, when duly executed by the Parties, constitutes the express waiver in writing of any other remedy, whether legal or equitable, that may be available to the Purchaser.

3. **Escrow Agent and Earnest Money Deposits:** On or before the date of execution of this Agreement, Purchaser shall deliver to Seller a deposit of ————Sixty Three Thousand Dollars (\$——63,000.00) (the "Earnest Money Deposit") in immediately available funds which shall be held in escrow by Benjamin Rivera Iglesias ("BRI") in his escrow account (the "Escrow Account") until the Closing Date or the date of any early termination of this Agreement. The Earnest Money Deposit shall be applied to the Purchase Price on the Closing Date. Seller and Purchaser hereby acknowledge and agree that interest shall not accumulate or be payable on any amounts held by BRI in connection with any Earnest Money Deposit or otherwise. Purchaser shall pay the balance of the Purchase Price to Seller in immediately available funds on the Closing Date.

4. **Transaction Documents.** At Closing, Seller and Purchaser shall execute, as applicable, (i) a Deed of Purchase and Sale, pursuant to which Seller conveys, transfers and sells to Purchaser fee simple title to the Property (the "Deed of Purchase and Sale"); (ii) any deeds, instruments and documents necessary for the cancellation and/or release of record of any liens and encumbrances on the Property, other than the Permitted Encumbrances; (iii) any other such deeds, instruments and documents as shall be necessary and appropriate to transfer and convey to Purchaser all of Seller's right, title and interest in and to the Real Property and the Personal Property, free and clear of all tenancies, liens, encumbrances, mortgages, options, claims, litigation, judgments, rights of third parties and other restrictions or limitations affecting the ability to use or transfer, other than the Permitted Encumbrances (collectively, the "Transaction Documents"); and any deeds, instruments and documents as shall be necessary and appropriate to effectively register the Property in the Puerto Rico Property Registry.

5. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser that:

(a) **Title to the Property.** Seller represents that, to the best of its knowledge, title to the Property is good, marketable and recordable in fee simple ("*pleno dominio*"), free and clear of all tenancies, liens, encumbrances, mortgages, options, claims, litigation, judgments, rights of third parties and other restrictions or limitations affecting the ability to use or transfer, with the exception of the Permitted Encumbrances. Purchaser, at Purchaser's cost and expense, may obtain evidence of title, a title abstract, title insurance and/or a survey of the Property. At Closing, Purchaser shall pay (as necessary): (i) all title examination fees for mortgage; (ii) survey costs or any costs to update surveys requested by Purchaser; (iii) any premiums for a title insurance policy; (iv) all survey and appraisal costs required by mortgage bank (v) mortgage taxes (if any); (vi) the cost of any environmental reports procured by Purchaser; and (vii) Purchaser's legal, accounting and other professional fees and expenses and the cost of all certificates, instruments, documents and papers required to be delivered, or to cause to be delivered, by Purchaser hereunder, including without limitation, the cost of performance by Purchaser and the obligations hereunder.

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(b) **Execution and Delivery.** This Agreement constitutes a legal, valid and binding obligation of Seller and Purchaser enforceable in accordance with its terms subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally from time to time in effect.

(c) **Receivership and Authority to Act.** Pursuant to the March 6, 2020 Order entered in the Receivership Action (Doc. 34), the Receiver was authorized to act on behalf of Kinetic and other Receivership Entities and to, among other things, "locate, list for sale or lease, engage a broker for sale or lease, cause the sale or lease, and take all necessary and reasonable actions to cause the sale or lease of all real property in the Receivership Estates, either at public or private sale, on terms and in the manner the Receiver deems most beneficial to the Receivership Estate, and with due regard to the realization of the true and proper value of such real property." The Purchaser acknowledges and agrees that in all matters pertaining to this Agreement, including in its execution, Mr. Mark A. Kornfeld is acting solely in his capacity as Receiver of Kinetic Funds and, as such, shall have no personal or liability of any kind, whether in contract, in tort or otherwise and in no circumstance will the Seller be liable for any consequential damages including loss of profit, arising out of, or relating to any claim brought in connection with this Agreement or the condition of the Property.

6. **Representations and Warranties of Purchaser.** Purchaser represents and warrants to Seller that:

(a) **Execution and Delivery.** This Agreement constitutes a legal, valid and binding obligation of Purchaser enforceable in accordance with its terms subject, as to the enforcement of remedies, to applicable bankruptcy, insolvency, moratorium or other similar laws affecting the enforcement of creditors' rights generally from time to time in effect.

(b) **Approvals and Consents.** No approval, authorization, consent or other order or action of or filing with any court, administrative agency or other governmental authority is required for the execution and delivery of this Agreement or the consummation of the transactions contemplated herein.

(c) **Absence of Litigation.** No action, suit, proceeding or investigation by or before any court, administrative agency or other governmental authority involving Purchaser has been threatened or instituted which could restrain, prohibit or invalidate any of the transactions contemplated by this Agreement.

7. **Seller Covenants.** Seller covenants and agrees that:

(a) **No New Liens.** From and after the date of this Agreement and through the Closing Date, Seller shall not constitute, create or permit to exist upon the Property any tenancies, liens, encumbrances, mortgages, easements, restrictions, litigation, judgments, claims, options and rights of third parties, other than the encumbrances mandated by law and any mortgages existing as of the date of execution of this Agreement.

(b) **Cancellation of Liens, Encumbrances and Mortgages.** On or before the Closing Date, Seller shall pay in full and cause the cancellation and/or release of any and all existing liens, encumbrances and mortgages on the Property, other than the Permitted Encumbrances.

(c) **Real Property Taxes and Assessments.** All real property taxes and other assessments of any kind and nature due and payable (including interest and penalties thereon) with respect to the Property (the "Real Property Taxes and Assessments") corresponding to the period prior to the Closing Date shall

have been paid in full by Seller on or prior to the Closing Date. Effective as of the Closing Date, Purchaser shall be defended, indemnified and held harmless by Seller from all real property taxes and assessments, penalties, interest and surcharges and costs and expenses assessed against the Property corresponding up to the period prior to the Closing Date.

(d) **Utilities and Maintenance Charges.** All utility charges, including, but not limited to, water, sewerage, electricity, gas, telephone, internet and cable television service charges (collectively, the "Utility Charges") and any maintenance charges and fees (collectively, the "Maintenance Charges") with respect to the Property corresponding to the period prior to the Closing Date shall have been paid in full by Seller on or prior to the Closing Date. Effective as of the Closing Date, Purchaser shall be defended, indemnified and held harmless by Seller from all Utility Charges and any Maintenance Charges, including, but not limited to, any penalties, interest and surcharges and costs and expenses, with respect to the Property corresponding up to the period prior to the Closing Date.

(e) **Improvements and Alterations.** Unless otherwise agreed to by the Parties, from and after the date of this Agreement and through the Closing Date, Seller shall not perform any improvements; alterations or additions to the Property other than maintain the property in good conditions and the removal of any personal property or furnishings.

(f) **Preparation of Deed of Purchase and Sale.** Seller agrees to provide all the documentation necessary for the preparation of the Deed of Purchase and Sale.

8. **Lead-Based Paint Disclosure.** Federal law mandates that sellers of real property constructed prior to nineteen seventy-eight (1978) must complete certain lead-based paint disclosure requirements. Such disclosure requirements should be completed before a purchaser makes an offer and before a seller accepts a purchase offer, otherwise a purchaser may not be obligated under any purchase and sale agreement. A seller of any real property is required to provide a purchaser with any information on lead-based paint hazards from risk assessments or inspections in a seller's possession and notify a purchaser of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

9. **Closing.** Unless extended by mutual agreement of the Parties, the Closing shall take place within thirty (30) days after Receivership Court's approval of the sale, with Purchaser to provide written notice specifying the actual closing date at least three (3) business days before such closing date. All funds and documents required to be deposited hereunder shall be deposited into escrow prior to the Closing. The Parties agree that they shall fully cooperate with each other in connection with any steps required to be taken as part of their obligations under this Agreement, and to effect Closing, including the execution and delivery of such documents and the taking of such actions at Closing as shall reasonably be requested by one party or the other.

10. **Closing Deliveries of Seller.** At Closing, Seller shall tender to Purchaser each of the following:

(a) The Transaction Documents.

(b) Negative tax certificates from the Puerto Rico Municipal Tax Collection Center, the Puerto Rico Department of the Treasury and any other applicable government agencies certifying that the Real Property Taxes and Assessments assessed and owed in respect of the Property through the Closing Date have been paid in full and any other evidence of compliance with the Seller's covenants.

(c) Evidence that Utility Charges and Maintenance Charges with respect to the Property corresponding to the period prior to the Closing Date have been paid in full.

[II] Seller's Initials

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(d) Such additional documents as may be necessary to otherwise consummate and register at the Puerto Rico Property Registry the transactions contemplated hereby.

11. Closing Deliveries of Purchaser. At Closing, Purchaser shall tender to Seller each of the following:

(a) The Purchase Price.

(b) The Transaction Documents.

(c) Such additional documents as may be necessary to otherwise consummate the transactions contemplated hereby.

12. Post Closing Covenant. From time to time after Closing, Seller and Purchaser agree to execute and deliver, without further consideration, such documents as either party hereto may reasonably request, in such form as may be appropriate, if necessary or advisable in connection with the consummation of the transactions contemplated hereby or any other agreement delivered in connection herewith.

13. Closing Costs. (a) Except as otherwise expressly provided herein, each party shall bear its own costs and expenses in connection with the transaction contemplated in this Agreement, including, without limitation, attorneys' fees, appraisal fees, inspection costs and expenses, title studies and title insurance premiums.

(b) The Deed of Purchase and Sale shall be executed before a Notary Public from IRW LAW OFFICE as per court order granted on _____, 2022 under case number 8:20-cv-00394-WFJ-SPF. The notarial tariff corresponding to the original of the Deed of Purchase and Sale and the cost of the internal revenue, legal aid and notarial assistance stamps required to be cancelled on the original of the Deed of Purchase and Sale shall be paid by Seller. The cost of the internal revenue, legal aid and notarial assistance stamps required to be cancelled on the first certified copy of the Deed of Purchase and Sale and the recordation costs of the Deed of Purchase and Sale in the Registry of Property of Puerto Rico shall be paid by Purchaser.

(c) All costs and expenses related to the cancellation and/or release of record of the liens, encumbrances and mortgages on the Property, other than the Permitted Encumbrances, shall be paid by Seller.

14. Default; Termination.

(a) **Seller Default.** If Closing shall not occur due to any causes attributable to Seller, or Seller defaults on any of its obligations under this Agreement (any one of such events, a "Seller Event of Default"), Purchaser may declare Seller to be in default under the terms of this Agreement and may elect to give written notice to Seller (the "Seller Default Notice"), with a copy to BRI, specifying the Seller's default or defaults and stating that this Agreement shall expire and terminate on the date specified in the Seller Default Notice, which shall be at least five (5) days after the giving of the Seller Default Notice. On the date specified in the Seller Default Notice, this Agreement shall expire and terminate and thereafter Purchaser and Seller shall return the entire Earnest Money Deposit within the five (5) days of the expiration of the Agreement and have no further rights and obligations to Purchaser under this Agreement.

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Purchaser agrees that its sole remedy or relief in the event of any termination of this Agreement due to a Seller Event of Default shall be its right to have the Earnest Money Deposit returned to Purchaser without any deductions.

(b) **Purchaser Default.** If Closing shall not occur due to causes attributable to Purchaser and/or Purchaser defaults on any of its obligations under this Agreement (any one of such events, a "**Purchaser Event of Default**"), Seller may declare Purchaser to be in default under the terms of this Agreement and give written notice to Purchaser (the "**Purchaser Default Notice**"), with a copy to BRI, specifying the Purchaser's default or defaults and stating that this Agreement shall expire and terminate on the date specified in the Purchaser Default Notice, which shall be at least five (5) days after the giving of the Purchaser Default Notice. On the date specified in the Purchaser Default Notice, this Agreement shall expire and terminate and thereafter Purchaser and Seller shall have no further rights and obligations under this Agreement. Upon the expiration of the Inspection Period and any termination of this Agreement due to a Purchaser Event of Default, Seller shall be entitled to retain the Earnest Money Deposit.

(c) **Termination without Default.** If Closing does not occur due to any causes not directly attributable to either Purchaser or Seller, the Earnest Deposit held in escrow will be returned in its entirety to Purchaser no later than five (5) days of the event and not further liability or obligations shall exist between the parties.

15. **Commission.** The commission payable to Mr. Benjamín Rivera Iglesias, License #C-18918 in connection with the purchase and sale transaction contemplated herein shall be equivalent to Sixty Three Thousand Dollars (\$ — — 63,000.00), equal to three percent (3%) of the Purchase Price (the "**Commission**"). The Commission shall be payable to by the Seller at Closing.

16. **Assignment.** This Agreement may not be assigned by any of the Parties hereto, without the prior written consent of the other party.

17. **Notices.**

(a) All notices, requests, consents and other communications required or permitted under this Agreement shall be in writing and shall be, as elected by the person giving notice, hand delivered by messenger or courier service (including overnight delivery) or mailed by registered or certified mail (postage prepaid), return receipt requested, addressed to:

If to Seller at:
Mr. Mark Kornfeld
c/o Jordan D. Maglich, Esq.
Buchanan Ingersoll & Rooney PC
401 E. Jackson Street., Suite 2400
Tampa, FL 33602
813-222-2098

If to Purchaser at:

If to Benjamin Rivera Iglesias:
#B-4 Calle 9, La Sierra del Rio,
San Juan, PR 00926
787-632-5150

[] Seller's Initials

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(b) Each such notice shall be deemed delivered and received (i) on the date delivered if by personal delivery or courier; or (ii) on the date upon which the return receipt is signed or delivery is refused, as the case may be, if mailed.

(c) By giving to the other party at least fifteen (15) days written notice thereof, a party shall have the right from time to time and at any time during the term of this Agreement to change its address.

18. Governing Law and Venue. The Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the state of Florida. Any disputes that relate to the registration and title of the subject property, and notwithstanding any conflict of law provisions, shall be governed by the laws of Puerto Rico. Purchaser and Seller hereby (i) agree that all disputes and matters whatsoever arising under, in connection with, or incident to this Agreement shall be exclusively litigated as a summary proceeding in *Securities and Exchange Commission v. Kinetic Investment Group, LLC et al.*; United States District Court, Middle District of Florida, Tampa Division, Case No. 8:20-CV-394, to the exclusion of the courts of or in any other territory, province, state or country, and (ii) irrevocably submit to the exclusive jurisdiction of the United States District Court, Middle District of Florida, in any action or proceeding arising out of or relating to this Agreement, and hereby irrevocably waive any objection to submission to venue of any such action or proceeding in any such court and any claim that any such action or proceeding has been brought in an inconvenient forum. A final judgment in any such action or proceeding shall be conclusive and may be enforced in any other jurisdiction by suit on the judgment or in any other manner provided by law.

19. Pronouns. Wherever from the context it appears appropriate, each term stated in either the singular or the plural shall include the singular and the plural, and pronouns authorized in either the masculine, the feminine or the neuter gender shall include the masculine, feminine and neuter.

20. Severability. If any provision of this Agreement, or the application of such provision to any person or circumstances, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

21. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

22. Entire Agreement and Amendments. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof and may not be amended except by an instrument in writing signed by the Parties.

23. Waiver. Failure of a party hereto to complain of any act, omission, course of action or continued acts or omissions, no matter how long such may continue, shall not be deemed a waiver by such party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waiving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or consent to any subsequent breach of this Agreement.

24. Further Assurances. The Parties agree to execute and deliver any and all other instruments and documents and do any and all other acts and things as may be necessary or expedient to more fully effectuate this Agreement and consummate the transactions contemplated hereunder.

25. **Construction.** The Parties expressly acknowledge that the terms and conditions of this Agreement have been the subject of review, discussion and negotiation by the Parties, and consequently, in the event of any conflict or inconsistency in the provisions of this Agreement, those conflicts or inconsistencies shall not be construed against the party that caused this Agreement to be drafted.

26. **Headings.** The headings of the Sections are for convenience and are not to be deemed controlling over the text of any Section of this Agreement.

27. **Effect of Other Agreements.** This Agreement supersedes all prior conversations, understandings, agreements and negotiations between the Parties with respect to the matters contemplated herein.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

SELLER

By: 

Name: Mark A. Kornfeld, As Receiver

DL Number: _____

PURCHASER

By: 

Name: Allan Rothstein

DL Number: _____

EXHIBIT A

DESCRIPTION OF REAL PROPERTY

- a. **—URBANA: Propiedad Horizontal: Apartamento Pent-house “A” (PH-A)** localizado en el tercer piso del Condominio GABRIELA’S HOUSE con una cabida de superficial de tres mil dieciocho punto siete pies cuadrados (3,018.7 p.c.) equivalentes a doscientos ochenta punto cuatro metros cuadrados (280.4 m.c.). Colinda por el NORTE, en una distancia de setenta y un pies nueve pulgadas (71’ 9”), equivalentes a veintiuno punto nueve metros (21.9 m.) con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el número ciento siete (107) de la Calle Cruz; por el SUR, en una distancia de setenta y un pies nueve pulgadas (71’ 9”), equivalentes a veintiuno punto nueve metros (21.9 m.) con la pared exterior del Condominio que da hacia la colindancia con la Calle Luna; por el ESTE, en una distancia de cincuenta y dos pies seis pulgadas (52’ 6”), equivalentes a dieciséis punto cero metros (16.0 m.) con el Apartamento Pent-house “B” (PH-B); y por el OESTE, en una distancia de cincuenta y dos pies seis pulgadas (52’ 6”), equivalentes a dieciséis punto cero metros (16.0 m.) con la pared exterior del Condominio que da hacia la colindancia con la Calle Cruz. Le corresponde a este apartamento el dieciséis punto nueve nueve cinco ocho por ciento (16.9958%) en los elementos comunes del edificio.

--Se segrega de la finca #232, inscrita al folio 99 del tomo 195 de San Juan.

--FINCA : Número 5231 inscrita al Folio 122 de Tomo 195 de San Juan Registro de la Propiedad de San Juan, Sección I

- b. **—URBANA: Propiedad Horizontal: Apartamento Pent-house “B” (PH-B)** localizado en el tercer piso del Condominio GABRIELA’S HOUSE con una cabida de superficial de dos mil cuarenta y dos punto ocho pies cuadrados (2,042.8 p.c.) equivalentes a ciento ochenta y nueve punto ocho metros cuadrados (189.8 m.c.). Colinda por el NORTE, en una distancia de cincuenta y nueve pies nueve punto cinco pulgadas (59’9.5”), equivalentes a dieciocho punto dos metros (18.2 m.) con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el número ciento siete (107) de la Calle Cruz; por el SUR, en una distancia de cincuenta y nueve pies nueve punto cinco pulgadas (57’9.5”), equivalentes a dieciocho punto dos metros (18.2 m.) con la pared exterior del Condominio que da hacia la colindancia de la Calle Luna; por el ESTE, en una distancia de cincuenta y dos pies seis pulgadas (52’ 6”), equivalentes a dieciséis punto cero metros (16.0 m.) con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el número doscientos uno (201) de la Calle Luna; y por el OESTE, en una distancia de cincuenta y dos pies seis pulgadas (52’ 6”), equivalentes a dieciséis punto cero metros (16.0 m.) con la pared exterior del Condominio que da hacia la colindancia con el Apartamento Pent-house “B” (PH-B). Le corresponde a este apartamento el once punto cinco cero uno tres por ciento (11.5013%) en los elementos comunes del edificio.

--Se segrega de la finca #232, inscrita al folio 99 del tomo 195 de San Juan.

--FINCA : Número 5232 inscrita al Folio 124 de Tomo 195 de San Juan Registro de la Propiedad de San Juan, Sección I

- c. **--URBANA: Propiedad Horizontal: Apartamento Dos "E" (2-E)** localizado en el segundo piso del Condominio GABRIELA'S HOUSE con una cabida de superficial de mil doscientos treinta y uno punto nueve pies cuadrados (1,231.9 p.c.) equivalentes a ciento catorce punto cuatro metros cuadrados (114.4 m.c.). Colinda por el **NORTE**, en una distancia de veinticuatro pies cinco punto cinco pulgadas (24'5.5") equivalentes a siete punto cuarenta y cinco metros (7.45 m.) con la pared exterior del Condominio que da hacia la colindancia con la propiedad marcada con el número ciento siete (107) de la Calle Cruz; por el **SUR**, en una distancia de veinticuatro pies cinco punto cinco pulgadas (24'5.5), equivalentes a siete punto cuarenta y cinco metro s(7.45 m.) con el Apartamento Dos "D" (2-D) y con área comunal; por el **ESTE**, en una distancia de treinta y siete pies una pulgada (37'1"), equivalentes a once punto tres metros (11.3 m.) con la pared exterior del Condominio que da hacia la propiedad marcada con el número doscientos uno (201) de la Calle Luna; por el **OESTE**, en una distancia de treinta y siete pies una pulgada (37' 1"), equivalentes a once punto tres metros (11.3 m.) con el Apartamento Dos "C" (2-C) y con el Apartamento Dos "D" (2-D). Le corresponde a este apartamento el seis punto nueve tres cinco ocho (6.9358%) por ciento en los elementos comunes del edificio.

--Se segrega de la finca #232, inscrita al folio 99 del tomo 195 de San Juan.

--**FINCA** : Número 5229 inscrita al Folio 118 de Tomo 195 de San Juan Registro de la Propiedad de San Juan, Sección I

- d. **--PROPIEDAD HORIZONTAL: Apartamento Dieciséis (16):** Unidad Comercial de Estacionamiento localizada en el tercer nivel del Edificio A del **CONDOMINIO COCHERA SAN FRANCISCO** ubicado en el Doscientos Cuatro de la Calle Luna, Viejo San Juan, con un área superficial de Ciento Cuarentiocho Punto Cincuenta Pies Cuadrados (148.50 p.c.); colinda por el **Norte**, con el Apartamento Diecisiete (17); por el **Sur**, con área comunal; por el **Este**, con área comunal y por el **Oeste**, con área comunal. Tiene acceso por el tramo de tránsito vehicular central comunal del tercer nivel que conecta con la rampa desembocando en el antiguo Pasaje Matienzo hoy área comunal de tránsito vehicular y peatonal y finalmente a la vía publica Calle Luna. La unidad tiene acceso peatonal a la Calle San Francisco a través de las escaleras y el ascensor común. Corresponde a dicho Apartamento una participación indivisa en los elementos comunes general del Condominio equivalente al cero punto seis seis cero tres por ciento (0.6603%).

--Se segrega de la finca #4429, inscrita al folio 224 del tomo 164 de San Juan.

--**FINCA** : Número 5434 inscrita al Folio 32 de Tomo 199 de San Juan Registro de la Propiedad de San Juan, Sección I.

- e. **--PROPIEDAD HORIZONTAL: Apartamento Diecinueve (19):** Unidad Comercial de Estacionamiento localizada en el tercer nivel del Edificio A del **CONDOMINIO COCHERA SAN FRANCISCO** ubicado en el Doscientos Cuatro de la Calle Luna, Viejo San Juan, con un área superficial de Ciento Cuarentiocho Punto Cincuenta Pies Cuadrados (48.50 p.c.); colinda por el **Norte**, con área comunal; por el **Sur**, con el apartamento dieciocho (18); por el **Este**, con área comunal y por el **Oeste**, con área comunal. Tiene acceso por el tramo de tránsito vehicular central comunal del tercer nivel que conecta con la rampa desembocando en el antiguo Pasaje Matienzo hoy área comunal de tránsito vehicular y peatonal y finalmente a la vía publica Calle Luna. La unidad tiene acceso peatonal a la Calle San Francisco a través de las escaleras y el ascensor común.

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Corresponde a dicho Apartamento una participación indivisa en los elementos comunes general del Condominio equivalente al cero punto seis seis cero tres por ciento (0.6603%).

--Se segrega de la finca #4429, inscrita al folio 224 del tomo 164 de San Juan.

--**FINCA** : Número 5432 inscrita al Folio 28 de Tomo 199 de San Juan Registro de la Propiedad de San Juan, Sección I.

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EXHIBIT B

COURT ORDER

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

**KINETIC INVESTMENT GROUP, LLC and
MICHAEL SCOTT WILLIAMS,**

CASE NO.: 8:20-cv-394

Defendants, and

**KINETIC FUNDS I, LLC,
KCL SERVICES, LLC d/b/a LENDACY,
SCIPIO, LLC, LF 42, LLC, EL MORRO
FINANCIAL GROUP, LLC, and KIH, INC.,
f/k/a KINETIC INTERNATIONAL, LLC,**

Relief Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of the Receiver's Motion for Approval of the (1) Private Sale of Villa Gabriella Property Located in San Juan, Puerto Rico; and (2) Proposed Publication, Marketing, and Overbid Procedures Associated With the Sale of the Property (the "Motion") (Doc. ____). Upon review of the Motion, its exhibits, the entire file, and being otherwise duly advised on the premises, the Court finds granting the Motion to be in the Receivership Estate's best interests. Accordingly, it is hereby **ORDERED** and **ADJUDGED** that:

1. The Receiver's Motion for Approval of the (1) Private Sale of Villa Gabriella Property Located in San Juan, Puerto Rico; and (2) Proposed Publication, Marketing, and Overbid Procedures Associated With the Sale of the Property (Doc. ____) is **GRANTED**;

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2. The Court appoints and takes judicial notice of the three appraisals attached as Exhibits 4-6 to the Motion of the following parcels constituting the "Property":

- a. Condominium Villa Gabriela, Apartment PH1-A/PH 1-B located at 109 De la Cruz Street, San Juan, Puerto Rico 00901;
- b. Condominium Villa Gabriella, Apartment 2-E located at 109 De la Cruz Street, San Juan, Puerto Rico 00901;
- c. Parking Space #321 located at Cochera San Francisco, Luna Street #204, San Juan, Puerto Rico 00901; and
- d. Parking Space #325 located at Cochera San Francisco, Luna Street #204, San Juan, Puerto Rico 00901.

The legal descriptions of the Property, as set forth in **Exhibit A** to the Motion, are incorporated herein;

3. The Court finds that the Receiver has satisfied the requirements of 28 U.S.C. § 2001 regarding the marketing and proposed sale terms and procedures for the Property;

4. The Court finds that the form and substance of the Notice attached as Exhibit 8 to the Motion is sufficient to provide notice of the proposed sale of the Property as well as the procedures and timeframe for the submission of any bona fide offer pursuant to 28 U.S.C. § 2001;

5. The Court finds that the publication of the approved Notice attached as Exhibit 8 to the Motion in the *Sarasota Herald Tribune* and the *El Nuevo Dia* newspapers for one day at least ten days prior to any sale of the Property is sufficient to satisfy the notice requirements set forth under 28 U.S.C. § 2001;

6. The Receiver is authorized and empowered to take such steps, incur and pay such costs and expenses from the Receivership Estate, and do such things as may be reasonably necessary to implement and effect the terms and requirements of this Order, including publishing the Notice;

7. The Court finds the \$_____ million offer in the Purchase and Sale Agreement to be commercially reasonable, in the Receivership Estate's best interests, and in compliance with the price requirements set forth in 28 U.S.C. § 2001. The Court also finds that the Receiver has made substantial and sufficient efforts to market and sell the Property. Accordingly, if no qualified bid (other

than the offer in the Purchase and Sale Agreement) is received by the overbid deadline, the Receiver shall report the same to the Court, and he is approved and authorized to deem the \$ _____ million offer as the highest offer for the Property and, without further order from this Court, to sell, close and transfer title of the Property free and clear of all liens, claims, interests, and encumbrances, in accordance with the Purchase and Sale Agreement attached as Exhibit 1 to the Motion; and

8. In the event the Receiver is provided with any timely and qualified overbid(s) pursuant to 28 U.S.C. §2001 and consistent with the procedures outlined in the Motion, the Receiver is authorized to negotiate in good faith with any party(ies) submitting such bid(s) and the original Purchaser and to use his sole discretion and business judgment to select a final purchaser that he deems to have provided the offer that is in the best interest of the Receivership Estate. Following the Receiver's determination, he shall report the same to the Court, and, without further order from this Court, is approved and authorized to sell, close and transfer title of the Property free and clear of all liens, claims, interests, and encumbrances, in accordance with the Purchase and Sale Agreement entered into with the final purchaser.

DONE AND ORDERED at Tampa, Florida, this ____ day of _____, 2022.

MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

ADDENDUM I TO PURCHASE AND SALE AGREEMENT

THIS ADDENDUM I TO PURCHASE AND SALE AGREEMENT (the “Agreement”) dated **November 11, 2022** is entered into by and between **Mr. Mark Kornfeld**, solely as the Court-appointed SEC Federal Equity Receiver of Kinetic Investment Group, LLC, et al., under case number 8:20-cv-00394-WFJ-SPF (the “Seller”), and **Allan Rothstein** (the “Purchaser”), (collectively, the “Parties”).

WITNESSETH

WHEREAS, Mark A. Kornfeld, as Receiver of Kinetic Investment Group, LLC is the owner in fee simple (“pleno dominio”) of the real property more particularly described in Exhibit A attached hereto and made to form a part hereof (the “Property”);

WHEREAS, the Parties had previously agreed on the sale and purchase of the Property in accordance with a **PURCHASE AND SALE AGREEMENT** (the “Contract”) dated March 18, 2022.

WHEREAS, due to certain events, equity, the change in market conditions and the passage of time, the Parties have decided to amend the Contract. The parties have held several meetings in which they have discussed the relevant changes in the real estate market on the island and the deterioration of the Property, and have decided that it is in their mutual interests to reduce the purchase price subject to the approval of the Court and the relevant procedure.

NOW, THEREFORE, the parties agree to the following amendments in accordance with Section 22 of the Contract.

1. Section 2: Purchase Price and Contingencies. The Parties amend the Purchase Price and mutually agree to a new purchase price of \$1,690,000.00. The money held in escrow and as Earnest Money Deposit (\$63,000.00) will remain the same amount and will be subtracted from the final sales price. The Parties recognize that this offer is contingent on Court approval and subsequent publication of notice for a period of 10 calendar days. If Purchaser is not willing to go through with closing, Seller may declare Purchaser in default in accordance with Section 14 of the Contract, retain Purchaser’s Earnest Money Down, and Seller reserves any and all rights and remedies.

2. Section 6: Representations and Warranties of Purchaser. The Purchaser will guarantee his price offer for 60 days following the signature of this Agreement. If the Court does not approve within the 60 days the Purchaser may request the return of the Earnest Money Deposit or submit in writing to the Receiver that his offer be further extended for an additional 30 days,

3. Section 15: Commission. Due to a reduction in price the Commission is adjusted to \$50,700.00, equal to three percent of the Purchase Price.

4. No Novation. This Amendment is not intended by the parties to be, and shall not be construed to be, a novation of the Contract. All other Agreements and clauses not expressly named herein remain in force, except that they are clearly interpreted to be against the modifications herein contained.

5. **Governing Law, Venue and Remedies.** Any question or dispute arising from or relating to this Agreement shall be exclusively resolved in accordance with the terms and conditions of Section 18 of the Contract. The Parties agree that if a dispute arises, they will continue to have the Remedies available in the Contract.

6. **Interpretation.** This Agreement constitutes the whole agreement between the parties hereto with respect to the subject matter hereof, the amendments, and supersedes all prior oral or written understandings, agreements or negotiations between the Parties with respect to such subject matter.

7. **Counterparts.** This Agreement may be executed in counterparts with the same force and effect as if executed in one complete and original document.

8. **Waiver.** Failure of a party hereto to complain of any act, omission, course of action or continued acts or omissions, no matter how long such may continue, shall not be deemed a waiver by such party of its rights hereunder, and all waivers of the provisions hereof shall be effective only if in writing, signed by the party so waiving. No waiver of any breach of this Agreement shall be deemed a waiver of any other breach of this Agreement or consent to any subsequent breach of this Agreement.

9. **Notices.** All notices to be provided under this Agreement must be in writing and addressed to Counsel for each party.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first written above.

SELLER

PURCHASER



By: _____

Name: Mark A. Kornfeld, As Receiver

DocuSigned by:
Allan Rothstein
A637EE203FA142C...

By: _____

Name: Allan Rothstein