

**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

**SECURITIES AND EXCHANGE  
COMMISSION,**

**Plaintiff,**

**v.**

**WILLIAM J. BOWSER, et al.**

**Defendants.**

**Case No. 2:20-CV-918 TS**

**Honorable Ted Steward**

**DISTRIBUTION PLAN**

**I. OVERVIEW**

1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange Commission (the “SEC” or the “Commission”) in accordance with practices and procedures customary in Fair Fund administrations. This Plan provides for the distribution of a Fair Fund (the “Fair Fund”), comprised of disgorgement, prejudgment interest, and civil money penalties paid by William J. Bowser (“Bowser”), Christopher J. Ashby (“Ashby”), Scott W. Beynon (“Beynon”), and Jordan S. Nelson (“Nelson”) (collectively, the “Defendants”) in the above-captioned matter. (Dkt. No. 13).

2. As described more specifically below, the Plan seeks to compensate investors who were harmed by the Defendants’ conduct alleged in the Complaint filed on December 30, 2020 (the “Complaint”). (Dkt. No. 2). In the Complaint, the SEC alleged that the Defendants violated the federal securities laws in connection with an offering fraud related to Noah Corporation (“Noah”), the operator of commercial event centers, and with Rockwell Debt Free Properties, Inc. (“Rockwell”), a seller of securities in Noah. According to the Complaint, between January 2017 and February 2019, the Defendants made material misrepresentations and omissions convincing investors to purchase over \$35.9 million in securities. The Commission charged the Defendants with violations of Sections 17(a)(1), (2) and (3) of the Securities Act of 1933 [15 U.S.C. § 77q(a)(1), (2) and (3)] and Section 10(b) and 15(a) of the Securities Exchange Act of 1934 [15 U.S.C. § 78j(b) and § 78o(a)] and Rule 10b-5(a) and (c) thereunder [17 C.F.R. § 240.10b-5(a) and (c)].

3. As calculated using the methodology detailed in the Plan of Allocation (attached hereto as Exhibit A), investors will be compensated for their losses on investments in fractional tenant-in-common interests in certain “Event Centers” that were purchased between January 2017 and February 2019. Based on information obtained by the Commission during its investigation and the review and analysis of applicable records, the Commission has reasonably concluded that it has all records necessary to calculate each investor’s harm. As a result, the Fair Fund is not being distributed according to a claims-made process.

4. The Commission has custody of the Fair Fund and shall retain control of the assets of the Fair Fund. The Court retains jurisdiction over implementation of the Plan.

## **II. BACKGROUND**

5. On December 30, 2020, the SEC filed the Complaint against the Defendants alleging violations of the antifraud provisions of the federal securities laws in connection with a series of material misrepresentations and omissions made to potential investors, as well as operating as unregistered broker dealers. The Defendants entered into settlements with the SEC simultaneously with the filing of the Complaint. (Dkt. Nos. 3 - 6).

6. In its Complaint, the SEC alleged that Noah, through Bowser, and Rockwell, through Ashby, Beynon, and Nelson (the “Rockwell Defendants”), engaged in a series of misrepresentation and omissions regarding the distressed financial state of Noah in order to sell fractional, tenant-in-common interests in undeveloped properties on which Noah was supposed to develop and operate event centers (“Noah TIC Interests”). These misrepresentations and omissions gave investors the false impression that Noah was profitable and that the properties were developed and generating revenue. In fact, many of the properties were merely undeveloped land, nearly all of Noah event centers were losing money, and Noah, through Bowser, was misappropriating funds from investors in Noah TIC Interests intended to develop event center properties to instead cover Noah’s current operating expenses and pay rents to prior investors in Noah TIC Interests. During the Relevant Period, Noah could not have sustained operations without the continual influx of new funds from investors in Noah TIC Interests. The SEC further alleged that the Rockwell Defendants had operated as unregistered broker dealers in their solicitation of investors and sale of the Securities, as defined below.

7. On December 30, 2020, the Court entered final judgments against the Defendants (the “Final Judgments”), ordering Bowser to pay \$47,796.45 in disgorgement plus prejudgment interest of \$6,402.58 and a civil penalty of \$192,768.00, for a total of \$246,967.03; Ashby to pay \$551,161.00 in disgorgement plus prejudgment interest of \$43,994 .57 and a \$96,384.00 civil penalty for a total of \$691,539.57; Beynon to pay \$585,426.00 in disgorgement plus prejudgment interest of \$46,729.65 and a civil penalty of \$96,384.00 for a total of \$728,539.65; and Nelson to pay \$281,273.00 in disgorgement plus prejudgment interest of \$22,451.66 and civil penalty of \$96,384.00 for a total of \$400,108.66. In total, the Court ordered the Defendants to pay \$2,067,154.91. (Dkt. Nos. 7-10).

8. On November 22, 2021, the Court entered an Order creating a Fair Fund pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, [15 USC § 7246(a)], and appointing Miller

Kaplan Arase LLP as the Tax Administrator (“Miller Kaplan” or the “Tax Administrator”) to execute all income tax reporting requirements, including the preparation and filing of tax returns, for all funds under the Court’s jurisdiction in the case. (Dkt. No. 13).

9. On August 17, 2023, the Court entered an Order appointing Adriene Mixon, Esq., a Commission employee, as the Distribution Agent of the Fair Fund (the “Distribution Agent”) to oversee the administration of the Fair Fund and implement the Court-approved Distribution Plan. (Dkt. No. 15)

10. The Defendants have paid a collective total of \$1,836,526.18, which has been deposited in a Commission-designated account at the U.S. Department of the Treasury. Any additional funds collected pursuant to the Final Judgments, and any interest accrued, will be added to the Fair Fund. As of September 13, 2024, the Fair Fund’s balance is \$1,938,784.66, comprised of funds collected and accrued interest.

### III. DEFINITIONS

As used in this Plan, the following definitions will apply:

11. “**Administrative Costs**” shall mean any administrative costs and expenses, including without limitation tax obligations, the fees and expenses of the Tax Administrator and Third-Party (as defined below), and investment and banking costs.

12. “**Certification Date**” means the date established in accordance with this Plan by which a Preliminary Claimant’s Certification Form must be postmarked or submitted electronically in order to be eligible to participate in this distribution. The Certification Date shall be thirty (30) days from the mailing of the Plan Notice.

13. “**Certification Form**” means the form that must be completed and signed by each Preliminary Claimant attesting to their name, mailing address, and sufficient information to confirm their tax identification and status. The Certification Form will also require confirmation of the calculated Investment listed in the Plan Notice. If the Preliminary Claimant disagrees with the amount of the Investment listed in the Plan Notice, the Preliminary Claimant may dispute their calculated Investment in accordance with paragraph 49. By signing the Certification Form, the Preliminary Claimant swears or affirms that all information provided in connection with their claim, including all transactions claimed, is accurate and complete to the best of their knowledge and that they are not an Excluded Party as defined in paragraph 17.

14. “**Determination Notice**” means the notice sent by the Distribution Agent within forty-five (45) days of the Certification Date to any Preliminary Claimant whose Certification Form is deficient, in whole or in part. The Determination Notice will provide the reason(s) for the deficiency and in the event the Preliminary Claimant has been deemed an Excluded Party, the Determination Notice will state the reason(s) for such. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency or request reconsideration of the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

15. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in accordance with the terms of this Plan.

16. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have suffered a loss on their Investment, pursuant to the Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant.

17. **“Excluded Party”** means (a) the Defendants; (b) present or former officers or directors of the Defendants or any assigns, creditors, heirs, distributees, spouses, parents, dependent children or controlled entities of any of the foregoing Persons or entities; (c) any employee or former employee of the Defendants or any of its affiliates who has been terminated for cause or has otherwise resigned, in connection with the conduct alleged in the Complaint; (d) any Person who, as of the Certification Date, has been the subject of criminal charges related to the conduct alleged in the Complaint or any related Commission action; (e) the Third-Party, its employees, and those Persons assisting the Distribution Agent in her role as the Distribution Agent; and (f) any purchaser or assignee of another Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this provision shall not be construed to exclude those Persons who obtained such a right by gift, inheritance or devise.

18. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in the Complaint. Any additional funds collected from the Defendants, pursuant to the Final Judgments will be added to the Fair Fund.

19. **“Final Determination Notice”** means the written notice sent by the Third-Party to notify each Preliminary Claimant that they have been determined to be either (a) an Eligible Claimant and confirm their calculated Investment amount; or (b) an Unresponsive Preliminary Claimant or an Excluded Party and are not eligible for a distribution. The Third-Party will not send a Final Determination Notice to a Preliminary Claimant if their Plan Notice was returned as “undeliverable.” The Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the eligibility status and loss calculation and is not subject to appeal.

20. **“Investment”** means the total amount invested in the Securities that were purchased during the Relevant Period.

21. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less Administrative Costs.

22. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, who will receive a Distribution Payment.

23. **“Person”** means natural individuals as well as legal entities such as corporations, partnerships, or limited liability companies.

24. **“Plan Notice”** means the written notice sent by the Third-Party to each

Preliminary Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement characterizing the distribution; a link to the approved Plan posted on the SEC’s website and instructions for requesting a copy of the Plan; the Certification Form, along with specification of any information needed from the Preliminary Claimant to prevent them from being deemed an Unresponsive Preliminary Claimant; their calculated Investment amount; a description of the tax information reporting and other related tax matters; the procedure for the distribution as set forth in the Plan; and the name and contact information for the Distribution Agent and the Third-Party as resources for additional information or to contact with questions regarding the distribution.

25. **“Plan of Allocation”** means the methodology used by the Distribution Agent to calculate a Payee’s Distribution Payment. The Plan of Allocation is attached hereto as Exhibit A.

26. **“Preliminary Claimant”** means a Person, or their lawful successors, identified by the Distribution Agent based on her review and analysis of applicable records obtained by the Commission during and after its investigation, who may have suffered a loss from purchasing or acquiring the Securities during the Relevant Period; or those Persons who request a Plan Notice as described in paragraph 24 that are determined by the Distribution Agent to have suffered a loss as a result of purchasing or acquiring the Securities during the Relevant Period.

27. **“Relevant Period”** is January 2017 and February 2019, both dates inclusive.

28. **“Securities”** means fractional, tenant-in-common interests in five “Event Centers” offer by the Defendants, known as Noah's Jacksonville, FL; Noah's Carmel, IN; Noah's Independence, OH; Noah's Dublin, OH; and Noah's Toledo, OH.

29. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose address the Third-Party has not been able to verify by the Certification Date; or a Preliminary Claimant who does not timely return the Certification Form, or any other information or documentation requested in the Plan Notice, or as specified in a Determination Notice. Unresponsive Preliminary Claimants will not be eligible for a Distribution Payment.

#### **IV. TAX COMPLIANCE**

30. On November 22, 2021, the Court appointed Miller Kaplan as the Tax Administrator of the Fair Fund to handle the tax obligations of the Fair Fund. The Tax Administrator will be compensated for reasonable fees and expenses from the Fair Fund, pursuant to the Court’s Order. (Dkt. No. 13).

31. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g) of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

- (a) Obtaining a taxpayer identification number;
- (b) Requesting funds necessary for the timely payment of all applicable taxes, the payment of taxes for which the Tax Administrator has received funds, and the filing of applicable returns; and
- (c) Fulfilling any information reporting or withholding requirements imposed on distributions from the Fair Fund, including but not limited to Foreign Account Tax Compliance Act (FATCA).

32. All tax obligations will be paid from the Fair Fund, subject to the review and approval of Commission staff, pursuant to the Court's Order. (Dkt. No. 13).

## **V. DISTRIBUTION AGENT**

33. On August 17, 2023, the Court appointed Adriene Mixon, Esq., as the distribution agent for the Fair Fund ("Distribution Agent"). (Dkt. No. 15). As an SEC employee, the Distribution Agent shall receive no compensation, other than her regular salary as an SEC employee, for her services in administering the Fair Fund.

34. The Distribution Agent will be responsible for administering the Fair Fund in accordance with the Plan. The Distribution Agent will engage a third-party (the "Third-Party"), to perform some of the administrative tasks associated with implementing the Plan, including, among other things, establishing a database of harmed investors, verifying contact information for Preliminary Claimants, assisting with the collection of tax forms and tax identification numbers, establishing an escrow account to receive and disburse distribution payments, disbursing payments in accordance with the Plan, monitoring and tracking check-cashing, researching and reconciling errors, and reissuing distribution payments, if directed by the Distribution Agent, for reasonable compensation. The Third-Party's fees and expenses will be paid from the Fair Fund as an Administrative Cost, pursuant to a cost proposal submitted to and approved by the SEC staff, and reported to the Court in the final accounting. The Third-Party will invoice all fees and expenses on a quarterly basis directly to the SEC staff. Once the SEC staff has reviewed and approved the payment of the invoice(s), the SEC will petition the Court for an order to pay these invoices from the Fair Fund.

35. To carry out the purposes of this Plan, the Distribution Agent is authorized to make and implement immaterial changes to the Plan upon agreement of the SEC staff. If a change is deemed to be material by the SEC staff, Court approval is required prior to implementation by amending the Plan.

36. The Distribution Agent may extend any procedural deadline contained in the Plan for good cause shown.

## **VI. PLAN PROCEDURES**

### Specification of Preliminary Claimants

37. Using information obtained during its investigation, the Commission has identified Preliminary Claimants. Preliminary Claimants are limited to only those Persons who may have suffered a loss as a result of their Investment in the Securities during the Relevant Period.

### Procedures for Locating and Notifying Preliminary Claimants

38. Within thirty (30) days of Court approval of the Plan, the Third-Party will send the Plan Notice to each Preliminary Claimant's last known email address (if known) and/or mailing address.

### Undeliverable Mail

39. If any mailing is returned as undeliverable, the Third-Party will make the best practicable efforts to ascertain a Preliminary Claimant's correct address. If another address is obtained, the Third-Party will then resend it to the Preliminary Claimant's new address within thirty (30) days of receipt of the returned mail. If the mailing is returned again, and the Third-Party, despite best practicable efforts, is unable to find a Preliminary Claimant's correct address, the Distribution Agent, in her discretion, may deem such Preliminary Claimant an Unresponsive Preliminary Claimant.

40. Any Preliminary Claimant who relocates or otherwise changes contact information after receipt of the Plan Notice must promptly communicate any change in address or contact information to the Distribution Agent.

### Procedures to Request Plan Notice

41. Any Person who does not receive a Plan Notice, as described in paragraph 38, but who is aware of this Plan (e.g., through other Preliminary Claimants or on [www.sec.gov](http://www.sec.gov)) and believes they should be included as a Preliminary Claimant should contact the Distribution Agent within thirty (30) days from the approval of the Plan to establish that they should be considered a Preliminary Claimant. Such Person should include with that communication, documentation sufficient to support their claim that they should be considered a Preliminary Claimant, as well as contact information (physical address, telephone number, and email address, if available) for responsive communications. The Distribution Agent will direct the Third-Party to send the Person a Plan Notice and Certification Form within two (2) weeks of receiving the Person's documentation, if the Distribution Agent determines that the Person should be classified as a Preliminary Claimant.

### Certification Requirements and Failure to Respond to Plan Notice

42. To maintain classification as a Preliminary Claimant, a completed Certification Form, together with all supporting documentation as requested in the Plan Notice, must be signed by the Preliminary Claimant and returned to the Third-Party by the Certification Date.

The Certification Form must be executed by the Preliminary Claimant, unless the Third-Party accepts such Certification Form from a successor, heir, administrator, or other Person authorized to act on the Preliminary Claimant's behalf. Those authorized to act on behalf of a Preliminary Claimant will be eligible to participate in the distribution to the same extent the original investor would have been eligible under the terms of the Plan.

43. The Third-Party will review all Certification Forms. Each Preliminary Claimant has the burden of proof to establish their identity as a Preliminary Claimant or their successor. The Third-Party may request, and the Preliminary Claimant has the burden of providing, any additional information and/or documentation deemed relevant by the Third-Party.

44. If a Preliminary Claimant fails to return the Certification Form or any requested supporting documentation within 30 days from the initial mailing of the Determination Notice, the Third-Party will make no fewer than two attempts to contact the Preliminary Claimant by mail, telephone or email, if known. The second attempt will in no event take place more than 60 days from the initial mailing of the Determination Notice.

#### Review of Certification Forms and Deficiency Process

45. The Distribution Agent will provide a Determination Notice within 75 days of the Certification Date to any Preliminary Claimant whose Certification Form is deficient, in whole or in part. The Determination Notice will provide the reason(s) for the deficiency and in the event the Preliminary Claimant is determined to be an Excluded Party, the Determination Notice will state the reason(s) for such. The Determination Notice will also notify the Preliminary Claimant of the opportunity to cure any deficiency or request reconsideration of the determination made by the Distribution Agent and provide instructions regarding what is required to do so.

46. Any Preliminary Claimant with a deficient Certification Form or missing required documentation will have 30 days from the date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

47. Any Preliminary Claimant seeking reconsideration of the Distribution Agent's determination made in the Determination Notice must advise the Distribution Agent in writing within 30 days of the date of the Determination Notice. All requests for reconsideration must include the necessary documentation to substantiate the basis upon which the Preliminary Claimant is requesting reconsideration of the Distribution Agent's determination.

48. The Distribution Agent has the authority, in its sole discretion, to waive technical deficiencies in the Certification Form.

#### Dispute Process

49. Disputes will be limited to calculation of the Investment. If a Preliminary Claimant disagrees with the calculated Investment amount listed in the Plan Notice, such dispute must be detailed on the Certification Form and returned to the Distribution Agent along with any

supporting documentation by the Certification Date. The Distribution Agent will investigate the dispute, and such investigation will include a review of the written dispute as well as any supporting documentation.

#### Final Determination Notices

50. The Distribution Agent will make its final eligibility determination only after reviewing timely responses received to the Determination Notices and investigating any disputes indicated on the Certification Forms regarding the amount of the calculated Investment listed in the Plan Notices.

51. Within 90 days of the Certification Date, the Third-Party will send a Final Determination Notice to notify each Preliminary Claimant of their final eligibility determination. The Final Determination Notice will notify each Preliminary Claimant that they have been determined to be either (a) an Eligible Claimant and confirm their calculated amount of their Investment; or (b) an Unresponsive Preliminary Claimant or an Excluded Party and are not eligible for a distribution. The Third-Party will not send a Final Determination Notice to a Preliminary Claimant if their Plan Notice was returned as “undeliverable.” The Final Determination Notice will constitute the Third-Party’s final ruling regarding the eligibility status and loss calculation and is not subject to appeal.

#### Distribution Methodology

52. The Distribution Agent will calculate each Preliminary Claimant’s Investment in accordance with the Plan of Allocation. When responding to the Plan Notice, Preliminary Claimants will have the opportunity to submit additional records for consideration in the calculations. All Preliminary Claimants who are determined to have a loss on their Investments, and who are not deemed an Excluded Party, or an Unresponsive Preliminary Claimant will be deemed an Eligible Claimant.

53. No Distribution Payments will be made for less than \$10.00. If an Eligible Claimant’s distribution amount calculates to less than \$10.00, in accordance with the Plan of Allocation, that Eligible Claimant will be deemed ineligible to receive a Distribution Payment and their distribution amount will be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to \$10.00. All Eligible Claimants whose distribution amount is equal to or greater than \$10.00, as calculated in accordance with the Plan of Allocation, will be deemed a Payee and receive a Distribution Payment.

#### Establishment of a Reserve

54. Before determining the amount of funds available for distribution and calculating each Payee’s Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator, will establish a reserve to pay Administrative Costs and to accommodate any unexpected expenditures (the “Reserve”).

55. After all Distribution Payments are made and Administrative Costs paid, any

remaining amounts in the Reserve will become part of the Residual described in paragraph 72.

#### Preparation of the Payment File

56. Within one hundred twenty (120) days of Court approval of the Plan, the Third-Party will compile a Payee List consisting of the name, address, calculated amount of their Investment, Distribution Payment, the percentage of harm being compensated, the amount to be withheld from the Distribution Payment for taxes, if applicable. The Payee List will also include the total amount to be disbursed to the Bank, as defined in paragraph 57, along with the total amount to be disbursed to the Tax Administrator and transferred to the U.S. Department of the Treasury (the “Treasury”) as tax withholdings.

#### The Escrow Account

57. Prior to the disbursement of funds from the Net Available Fair Fund, the Third-Party will establish an escrow account at a United States commercial bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D, 12 C.F.R. § 208.43, and that is not unacceptable to the SEC staff (the “Bank”), pursuant to an escrow agreement (the “Escrow Agreement”) provided by the SEC staff.

#### Distribution of the Fair Fund

58. After preparation of the Payee List, the SEC will petition the Court for authority to disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for distribution by the Third-Party in accordance with the Plan. Pursuant to the order, the funds will be transferred to the Bank.

59. The Third-Party will be responsible for distributing funds disbursed to the Bank to Payees in accordance with the Payee List. For any electronic payment, the exact amount necessary to make a payment shall be transferred directly to the Payee’s bank account in accordance with written instructions provided to the Bank by the Third-Party.

60. All checks will bear a stale date of ninety (90) days from the date of issuance. Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop payment on those checks. A Payee’s claim will be extinguished if they fail to negotiate their check by the stale date, and the funds will remain in the Fair Fund, except as provided in paragraph 64.

61. All Distribution Payments will be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax treatment of the distribution is the responsibility of each Payee and that the Payee should consult his, her or its tax advisor for advice regarding the tax treatment of the distribution, however, any backup withholding required under Internal Revenue Code (“IRC”) § 3406(a) and the regulations promulgated thereunder, or withholding required with respect to nonresident aliens (“NRAs”) under Chapter 3 of the IRC, or FATCA-subject Payees under Chapter 4 of the IRC, will be withheld as required from the Distribution Payment and remitted to the Internal

Revenue Service on the Payee's behalf; (c) a statement that checks will be void and cannot be reissued after ninety (90) days from the date the original check was issued; and (d) contact information for the Distribution Agent for questions regarding the Distribution Payment. The letter or other mailings to Payees characterizing a Distribution Payment will be prepared by the Tax Administrator and provided to the Commission staff for review and approval.

62. All Distribution Payments, either on their face or in the accompanying mailing, will clearly indicate that the money is being distributed from the Fair Fund established by the Court to compensate investors for harm as a result of securities law violations.

63. At the discretion of the Distribution Agent, certain costs that were not factored into the Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution Payment. In such situations, the Distribution Agent will immediately notify the Tax Administrator of the reduction in the Distribution Payment.

64. Bank fees charged by the intermediary or designation bank selected by the Payee may reduce a Payee's Distribution Payment.

Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

65. The Third-Party shall use its best efforts to make use of commercially available resources and other reasonably appropriate means to locate all Payees whose checks are returned to the Third-Party as "undeliverable." If new address information becomes available, the Third-Party will repackage the distribution check and send it to the new address. If new address information is not available after a diligent search (and in no event no later than ninety (90) days after the initial mailing of the original check) or if the distribution check is returned again, the check shall be voided, and the Distribution Agent, in her discretion, may remove such Payee from the distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if feasible, to the remaining Payees.

66. The Distribution Agent will direct the Third-Party to reissue checks or electronic payments to Payees upon the receipt of a valid, written request from the Payee prior to the initial stale date. In cases where a Payee is unable to endorse a check as written (*e.g.*, name changes, IRA custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the reissuance of a Distribution Payment check in a different name, the Third-Party will request, and must receive, documentation to support the requested change. The Third-Party will review the documentation to determine the authenticity and propriety of the change request. If, in the discretion of the Distribution Agent, such change request is properly documented, the Distribution Agent will direct the Third-Party to issue an appropriately redrawn Distribution Payment to the requesting party. Reissued checks will be void at the later of ninety (90) days from issuance of the original check or sixty (60) days from the reissuance, and in no event will a check be reissued after ninety (90) days from the date of the original issuance without the approval of SEC staff.

67. The Third-Party will work with the Bank and maintain information about uncashed checks and any returned items due to non-delivery, insufficient addresses, and/or other

deficiencies. The Third-Party is responsible for researching and reconciling errors and reissuing payments, as directed by the Distribution Agent. The Third-Party is also responsible for accounting for all payments. The amount of all uncashed and undelivered payments will continue to be held in the Fair Fund.

68. The Third-Party will make and document its best efforts to contact Payees to follow-up on the status of uncashed distribution checks over \$100 (other than those returned as “undeliverable”) and take appropriate action to follow-up on the status of uncashed checks at the request of SEC staff. The Distribution Agent may direct the Third-Party to reissue such checks, subject to the time limits detailed herein.

#### Administrative Costs

69. All Administrative Costs will be paid by the Fair Fund and reported to the Court in the final accounting of the Fair Fund.

#### Receipt of Additional Funds

70. Should any additional funds be received pursuant to Commission or Court order, agreement, or otherwise, prior to the Court’s termination of the Fair Fund, such funds will be added to the Fair Fund and distributed, if feasible, in accordance with the Plan.

#### Disposition of Undistributed Funds

71. If funds remain following the initial distribution and payment of all Administrative Costs, the Distribution Agent, in consultation with the SEC staff, may seek subsequent distribution(s) of any available remaining funds. All subsequent distributions shall be made in a manner that is consistent with this Plan and pursuant to a Court Order.

72. A residual within the Fair Fund will be established for any amounts remaining after the final disbursement to Payees from the Fair Fund (the “Residual”). The Residual may include funds from, among other things, amounts remaining in the Reserve, distribution checks that have not been cashed, checks or electronic payments that were not delivered or were returned to the Commission, and tax refunds due to the Fair Fund’s overpayment of taxes or for waiver of IRS penalties.

73. Once the Distribution Agent, in consultation with the SEC staff, deems further distribution of the Fair Fund to investors infeasible, the Distribution Agent will direct the Third-Party to have the Bank stop payment on all uncashed distribution payments, and to return any remaining funds disbursed to the Bank as described in paragraph 58 to the Commission to become part of the Residual.

74. All funds remaining in the Residual that are infeasible to distribute to investors will be returned to the SEC and held pending a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with this Court to approve the final accounting,

which will include a recommendation as to the final disposition of the Residual, consistent with Sections 21(d)(3), (5), and (7) and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>1</sup> If distribution of the Residual to investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.<sup>2</sup>

#### Accountings

75. When all funds have been disbursed, except for the Residual described in paragraph 72, the Third-Party will submit to the Distribution Agent a final report (the “Third-Party Final Report”) that includes an accounting of all funds disbursed to the Bank. The Third-Party Final Report will include, at a minimum, the number of payments and total amount sent to Payees, and the number of payments and total amount successfully disbursed (i.e., cashed or electronically transferred) to Payees, the percentage of the Payee’s Investment compensated by the Distribution Payment(s) from the Fair Fund, and the amount of funds returned to the SEC, pursuant to paragraph 73. The Third-Party Final Report must be endorsed by a declaration executed by the Third-Party under penalty of perjury under the laws of the United States.

76. Upon receipt of the Third-Party’s Final Report described above, the Distribution Agent will submit a final accounting to the SEC staff for filing with this Court prior to the termination of the Fair Fund or discharge of the Distribution Agent.

#### Termination of the Fair Fund

77. Once the SEC staff has reviewed and accepted the final accounting, the SEC will petition the Court for an order, as appropriate, approving the final accounting, discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

78. The Fair Fund will be eligible for termination and the Distribution Agent will be eligible for discharge after all of the following have occurred:

- (a) a final report and accounting has been submitted to and approved by the Court;
- (b) all Administrative Costs have been paid; and
- (c) the Court has approved the Commission’s recommendation as to the final disposition of the Residual consistent with Sections 21(d)(3), (5), and (7) of the Exchange Act and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>3</sup>

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<sup>1</sup> 15 U.S.C. § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the NDAA’s enactment. NDAA, Section 6501(b).

<sup>2</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be deposited or credited into the SEC Investor Protection Fund.

<sup>3</sup> *Id.*, see footnote 1.

79. Once the Fair Fund has been terminated, no additional payments will be made whatsoever.

## Exhibit A

### PLAN OF ALLOCATION

This Plan of Allocation<sup>1</sup> is designed to compensate investors in fractional tenant-in-common interests in certain “Event Centers”<sup>2</sup> (the “Securities”) during the period from January 2017 through February 2019 (the “Relevant Period”) based on their losses due to the Defendants’ misappropriation and diversion of their funds.

Investors who did not purchase the Securities from the Defendants relating to the five Event Centers during the Relevant Period, or who did not suffer any losses as a result of the Defendants’ violative conduct, or who are an Excluded Party, are ineligible to recover under this Plan.

Based upon records obtained by the Commission during and after its investigation and litigation, the Distribution Agent has identified those investors, or their lawful successor who may have suffered losses as a result of the Defendants’ misconduct (the “Preliminary Claimants”).

The Distribution Agent will calculate each Preliminary Claimant’s basis for loss using the amount invested in any of the five Event Centers during the Relevant Period (“Investment”), as derived by the Distribution Agent from a reconciliation of investor schedules, proofs of claim, and Defendants’ internal records and bank statements. In the event a Preliminary Claimant invested in more than one of the Securities, their Investment will be the sum of such amounts.

Any Preliminary Claimant who suffered a loss on his, her or its Investment, pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, will be deemed an Eligible Claimant.

### **Additional Provisions**

Allocation of Funds: Each Eligible Claimant’s distribution amount will equal their “*Pro Rata Percentage*,” calculated as the ratio of their Investment to the sum of Investments of all Eligible Claimants, multiplied by the Net Available Fair Fund.

Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. An Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be deemed ineligible and his, her or its distribution amount may be reallocated on a *pro-rata* basis to Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution Amount.

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<sup>1</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

<sup>2</sup> The five Event Centers are known as Noah's Jacksonville, FL; Noah's Carmel, IN; Noah's Independence, OH; Noah's Dublin, OH; and Noah's Toledo, OH.

Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum Distribution Amount will be deemed a Payee.

Distribution Payment: Each Payee will receive a Distribution Payment equal to their calculated distribution amount. In no event will a Payee receive from the Fair Fund more than their Investment.

**Table A: Eligible Claimants and *Pro Rata* Percentages**

<b>Investor Number</b>	<b>Event Center</b>	<b>Investment (\$)</b>	<b><i>Pro Rata</i> Percentage</b>
1	Carmel	836,141.64	2.77%
2	Carmel	1,449,125.41	4.80%
3	Carmel	400,000.00	1.33%
4	Carmel	151,460.46	0.50%
5	Carmel	565,000.00	1.87%
6	Carmel	206,000.00	0.68%
7	Carmel	350,000.00	1.16%
8	Carmel	223,215.56	0.74%
9	Carmel	369,300.00	1.22%
10	Carmel	150,000.00	0.50%
11	Carmel	379,104.60	1.26%
12	Carmel	400,000.00	1.33%
13	Carmel	779,348.15	2.58%
14	Dublin	200,000.00	0.66%
15	Dublin	500,000.00	1.66%
16	Dublin	212,116.57	0.70%
17	Dublin	150,000.00	0.50%
18	Dublin	150,000.00	0.50%
19	Dublin	150,000.00	0.50%
20	Dublin	670,053.26	2.22%
21	Dublin	150,000.00	0.50%
22	Dublin	403,400.00	1.34%
23	Dublin	304,473.94	1.01%
24	Dublin	150,000.00	0.50%
25	Dublin	400,000.00	1.33%
26	Dublin	100,000.00	0.33%
27	Dublin	150,000.00	0.50%
28	Dublin	200,000.00	0.66%
29	Dublin	300,000.00	0.99%
30	Dublin	177,265.16	0.59%
31	Dublin	400,000.00	1.33%
32	Dublin	300,000.00	0.99%
33	Dublin	730,000.00	2.42%
34	Dublin	132,300.00	0.44%

<b>Investor Number</b>	<b>Event Center</b>	<b>Investment (\$)</b>	<b><i>Pro Rata</i> Percentage</b>
35	Independence	403,339.00	1.34%
36	Independence	300,000.00	0.99%
37	Independence	500,000.00	1.66%
38	Independence	382,012.00	1.27%
39	Independence	210,000.00	0.70%
40	Independence	616,974.00	2.05%
41	Independence	879,000.00	2.91%
42	Independence	296,450.00	0.98%
43	Independence	179,720.00	0.60%
44	Independence	320,000.00	1.06%
45	Independence	186,252.00	0.62%
46	Independence	1,162,183.00	3.85%
47	Independence	152,000.00	0.50%
48	Independence	221,875.00	0.74%
49	Jacksonville	252,240.32	0.84%
50	Jacksonville	150,000.00	0.50%
51	Jacksonville	389,128.03	1.29%
52	Jacksonville	150,000.00	0.50%
53	Jacksonville	200,000.00	0.66%
54	Jacksonville	150,000.00	0.50%
55	Jacksonville	1,500,000.00	4.97%
56	Jacksonville	164,000.00	0.54%
57	Jacksonville	817,542.62	2.71%
58	Jacksonville	577,000.00	1.91%
59	Jacksonville	1,704,475.00	5.65%
60	Toledo	400,000.00	1.33%
61	Toledo	200,000.00	0.66%
62	Toledo	204,457.17	0.68%
63	Toledo	3,554,202.60	11.78%
64	Toledo	1,506,725.00	4.99%
65	Toledo	250,000.00	0.83%
		<b>30,167,880.49</b>	<b>100%</b>