

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

CBL & ASSOCIATES  
PROPERTIES, INC., *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 20-35226 (DRJ)

(Jointly Administered)

**APPLICATION OF ATC  
FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

ATC Indoor DAS LLC, on behalf of itself and any of its applicable affiliates (collectively, “*ATC*”), creditors and parties-in-interest in the above-captioned, jointly administered bankruptcy cases (the “*Bankruptcy Cases*”), hereby file this *Application for Allowance of Administrative Expense Claim* (this “*Application*”) seeking entry of an order requiring payment of certain post-petition, pre-effective date amounts due and owing by the Debtors to ATC in the amount of at least

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/CBLProperties>. The Debtors’ service address for the purposes of these chapter 11 cases is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421.

\$17,815.34 incurred in connection with the ATC Assumed Agreements (as defined herein). In support of this Application, ATC respectfully states as follows:

**I. INTRODUCTION AND BACKGROUND**

1. Beginning on November 1, 2020 (the “*Petition Date*”) CBL & Associates Properties, Inc. together with its affiliated debtors (collectively, the “*Debtors*”) each filed a voluntary petition for relief under title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “*Court*”) commencing these jointly administered chapter 11 cases (the “*Chapter 11 Cases*”).

2. ATC is a tenant of certain of the Debtors pursuant to certain individual leases and a master license agreement under which ATC leases separate premises in certain retail shopping centers from one or more of the Debtors (and certain non-debtor affiliates, where applicable) for the installation, operation and maintenance of distributed antenna systems. Additionally, ATC, CBL & Associates Management, Inc. (“*CBL*”) and CBL’s affiliates that are landlords to ATC under the referenced leases are party to a settlement agreement dated as of March 20, 2020 (the agreements referenced in this paragraph are collectively referred to herein as the “*ATC Assumed Agreements*”), pursuant to which, among other things, the CBL and its affiliates make certain payments to ATC.

3. On March 25, 2021, ATC filed 17 timely proofs of claim in the Debtors’ chapter 11 cases (collectively, the “*Proofs of Claim*”). See, e.g., Claim No. 20623 filed against CBL & Associates Properties, Inc. Each of ATC’s proofs of claim asserted rights of setoff, recoupment, and other equitable rights to the fullest extent available. The proofs of claim reserve all of ATC’s rights and preserve all defenses in connection therewith.

4. On August 11, 2021, the Bankruptcy Court entered its *Proposed Findings of Fact, Conclusions of Law, and Order (I) Confirming Third Amended Joint Chapter 11 Plan of CBL &*

*Associates Properties, Inc. and its Affiliated Debtors and (II) Granting Related Relief* [ECF # 1397] (the “**Confirmation Order**”) confirming the plan attached thereto as Exhibit A (the “**Plan**”).

5. The Plan provides that all executory contracts and unexpired leases will be assumed unless such executory contracts or unexpired leases are listed on a *Schedule of Rejected Contracts*. See Plan, § 8.1.

6. On July 19, 2021, the Debtors filed the *Notice of Filing of Plan Supplement for Third Amended Joint Chapter 11 Plan of CBL & Associates Properties, Inc. and its Debtor Affiliates* [Docket No. 1315] which contained the *Schedule of Rejected Contracts*.

7. None of the ATC Assumed Agreements were listed on the Schedule of Rejected Contracts, and, accordingly, each of the ATC Assumed Agreements is assumed in connection with the Plan.

8. On July 19, 2021, the Debtors filed the *Notice of Filing of Cure Notice* [Docket No. 1317] and attached the Cure Notice as Exhibit A thereto.

9. The Cure Notice reiterated that the Plan provides for the assumption of all executory contracts and unexpired leases that are not rejected, and attached a schedule listing the cure amount for particular executory contracts or unexpired leases where the Debtors believe such amounts to be owing. The Cure Notice also stated that any executory contracts or unexpired leases not included on the schedule to the Cure Notice would be assumed with a \$0.00 cure amount.

10. None of the ATC Assumed Agreements were listed on the schedule to the Cure Notice, and accordingly, the Debtors proposed a cure amount for each of the ATC Assumed Agreements in the amount of \$0.00.

11. On July 28, 2021, ATC filed its *Limited Objection of ATC to Notice of Cure Amounts with Respect to Executory Contracts and Unexpired Leases of Debtors* [ECF # 1431] (the

“*ATC Cure Objection*”) asserting certain pre-petition and post-petition amounts outstanding and owing to ATC under the ATC Assumed Agreements.

12. ATC and the Debtors agreed to adjourn resolution of the ATC Cure Objection until after confirmation of the Plan, and the Debtors retained a reserve for the amount asserted in the ATC Cure Objection in accordance with the Plan. Debtors’ counsel made a representation of the same on the record at the hearing to confirm the Plan (the “*Confirmation Hearing*”).

13. Following the Confirmation Hearing, ATC and the Debtors have been working diligently to reconcile the amounts due and owing to ATC under the ATC Assumed Agreements. As of the date hereof, the ATC Cure Objection remains outstanding and the parties are continuing to work to reconcile the amounts outstanding under the ATC Assumed Agreements.

14. On November 1, 2021, the Effective Date of the Plan occurred. [ECF # 1545].

15. Pursuant to the Plan and the Assumed ATC Agreements, ATC has continued to perform in accordance with such agreements following the Petition Date. Accordingly, to the extent not paid as cure costs in connection with the assumption of the Assumed ATC Agreements, ATC has an Administrative Claim against the applicable Debtors under the Assumed ATC Agreements for amounts allocable to the post-petition period. Though ATC expects to be paid such amounts in full, ATC hereby asserts this Administrative Claim for all such amounts on a protective basis. Moreover, ATC files this request for allowance and payment of an Administrative Claim specifically to preserve its rights in connection with any Administrative Claims arising on or after the Petition Date through the Effective Date, in accordance with the Plan and the Confirmation Order.

16. Following the filing of the ATC Cure Objection, certain of the amounts asserted were reconciled while others became due and owing to ATC under the Assumed ATC Agreements.

ATC hereby asserts an administrative claim for at least \$17,815.34 comprised of amounts attributable to the post-petition period:

17. Because ATC is currently investigating the elements of this administrative claim, this administrative claim is being filed, in part, as an unliquidated administrative claim, and is filed to protect ATC from the potential forfeiture of any and all rights against the Debtors.

## **II. JURISDICTION AND VENUE**

18. The statutory basis for the relief requested in this application is 11 U.S.C. §§ 503(b)(1) and 507(a)(2).

19. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2).

20. The venue of these bankruptcy cases and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

## **III. ARGUMENT AND AUTHORITIES**

21. By this Application, ATC seeks an allowed administrative expense claim for at least \$17,815.34 for amounts incurred in connection with the ATC Assumed Agreements post-petition, to the extent such amounts have not already been paid as cure costs in connection with the assumption of the ATC Assumed Agreements. These post-petition amounts are attributable to the sites listed below, and the applicable invoices for these amounts are attached hereto as Exhibit A:

<b>Lease #</b>	<b>Site Name</b>	<b>Amount</b>
<b>834408</b>	<b>Valley View Mall</b>	<b>\$5,400.00</b>
<b>834409</b>	<b>West Towne Mall</b>	<b>\$5,400.00</b>
<b>834412</b>	<b>Cross Creek Mall</b>	<b>\$7,200.00</b>

<b>834443</b>	<b>Burnsville Center</b>	<b>(184.66)</b>
	<b>TOTAL</b>	<b>\$17,815.34</b>

22. Pursuant to section 503(b)(1) of the Bankruptcy Code, “[a]fter notice and a hearing, there shall be allowed administrative expenses . . . including “the actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1). To qualify as an administrative expense, the expense must arise from a post-petition transaction with the Debtors, and such expense must have benefited the Debtors in the operation of its business and it must have been actual and necessary. *See, e.g., In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 387 (5th Cir. 2001); *see also Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II)*, 931 F.3d 432, 442 (5th Cir. 2019) (“Administrative priority serves ‘to encourage third parties to provide necessary goods and services to the debtor-in-possession so that it can continue to conduct its business, thus generating funds from which prepetition creditors can be paid’”) (citation omitted).

23. ATC entitled to payment of an administrative claim pursuant to 11 U.S.C. §§ 503(b)(1)(A) and 507(a)(2) in the amount of \$17,815.34 because that is the amount outstanding for post-petition date pre-effective date amounts due and owing to ATC under the ATC Assumed Agreements.

24. The transaction giving rise to the administrative expense claim that ATC is owed arose post-petition because the performance under the applicable agreements occurred after the Debtors filed for bankruptcy protection, and ATC continued to perform under such agreements.

25. By performing under the ATC Assumed Agreements post-petition, ATC has assisted the Debtors to continue operations of its business as a debtor in possession. Absent performance under the agreements, the Debtors likely would have experienced interruption in their

business. Because ATC's continued relationship with the Debtors post-petition directly benefitted the Debtors, ATC is entitled to an administrative expense claim in an amount representing the amounts due and owing to ATC under the ATC Assumed Agreements between the Petition Date and the Plan's Effective Date.

26. Based on the foregoing, pursuant to 11 U.S.C. §§ 105 and 503(b)(1)(A), ATC respectfully requests that the Court allow, authorize, and order the Debtors to pay the post-Petition Date amounts owed to ATC without delay.

27. ATC reserves all rights and remedies they have or may be entitled to under the applicable agreements, applicable law or in equity, and do not intend to relinquish or compromise any rights or remedies it has or may become entitled to seek or assert.

#### **IV. RESERVATION OF RIGHTS**

28. ATC reserves the right to amend or supplement this Application or its filed proofs of claim at any time and in any manner and reserve all rights they may have under applicable law and the Bankruptcy Code, including, without limitation, the right to amend this Application or to seek a judicial estimation of any unliquidated amounts asserted herein pursuant to 11 U.S.C. §502(c) at any time. ATC is still investigating the post-petition amounts owing to them by the Debtors, and are filing this claim in part, as an unliquidated administrative claim, to protect ATC from the potential forfeiture of any and all rights against the Debtors.

#### **V. CONCLUSION**

WHEREFORE, ATC respectfully requests that this Court enter an order, (i) granting this Application; (ii) allowing an administrative expense claim against the specified Debtors in the amount of at least \$17,815.34; (iii) directing the Debtors to make payment to ATC of such allowed administrative expense claim; (iv) reserving all of ATC's rights to file supplemental or additional

administrative expense requests for all additional amounts outstanding or that come due; and (v) granting such other and further relief as this Court finds just and equitable.



Dated: November 16, 2021

*/s/ Stephen J. Humeniuk*

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**LOCKE LORD LLP**

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chelsey.rosenbloom@lockelord.com

*Attorneys for ATC Indoor DAS LLC, on behalf of  
itself and any of its applicable affiliates (collectively,  
the “ATC”)*

# **EXHIBIT A**

**AMERICAN TOWER™**

American Towers LLC  
 A Subsidiary of American Tower Corporation  
 10 Presidential Way  
 Woburn, MA 01801

**BILL TO:** CBL & ASSOCIATES MANAGEMENT INC  
 P.O. Box 7547  
 HICKSVILLE, NY 11802

INVOICE			408283339
CUSTOMER NUMBER: 56746			
ISSUE DATE:	01-MAY-21	DUE DATE: 01-MAY-21	REPORT TYPE: Invoice

Please remit all payments to:  
 AMERICAN TOWER CORPORATION  
 29637 Network Place  
 Chicago, IL 60673-1296

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE		TOTAL AMOUNT	TAX AMOUNT
01-MAY-21	834412	00344527	CROSS CREEK MALL	NC	CBL verizon lease data	N/A	N/A		OTHER		\$2,400.00	\$0.00
FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com					SUBTOTAL		\$2,400.00		TAX	\$0.00	TOTAL	\$2,400.00
Separately stated transaction tax may be included in accordance with applicable state and local tax laws										PAGE : 1 of 1		

**CBL & ASSOCIATES MANAGEMENT INC**  
**P.O. Box 7547**  
**HICKSVILLE , NY 11802**

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**AMERICAN TOWER™**

American Towers LLC  
A Subsidiary of American Tower Corporation  
10 Presidential Way  
Woburn, MA 01801

**BILL TO:** CBL & ASSOCIATES MANAGEMENT INC  
P.O. Box 7547  
HICKSVILLE, NY 11802

INVOICE			408375774
CUSTOMER NUMBER: 56746			
ISSUE DATE:	01-JUN-21	DUE DATE: 01-JUN-21	REPORT TYPE: Invoice

Please remit all payments to:  
AMERICAN TOWER CORPORATION  
29637 Network Place  
Chicago, IL 60673-1296

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE	TOTAL AMOUNT	TAX AMOUNT	
01-JUN-21	834412	00344527	CROSS CREEK MALL	NC	CBL verizon lease data	N/A	N/A		OTHER	\$2,400.00	\$0.00	
FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com					SUBTOTAL			\$2,400.00	TAX	\$0.00	TOTAL	\$2,400.00
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 10 Presidential Way  
 Woburn, MA 01801

**BILL TO:** CBL & ASSOCIATES MANAGEMENT INC  
 2030 HAMILTON PLACE BOULEVARD  
 CBL CENTER, SUITE 500  
 CHATTANOOGA , TN 37421

Please remit all payments to:  
 SPECTRASITE COMMUNICATIONS, LLC  
 29641 Network Place  
 Chicago, IL 60673-1296

INVOICE		153465132
CUSTOMER NUMBER: 56746		
ISSUE DATE: 01-MAY-21	DUE DATE: 31-MAY-21	REPORT TYPE: Invoice

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE	TOTAL AMOUNT	TAX AMOUNT
01-MAY-21	834408	00344556	VALLEY VIEW MALL	VA	vbl verzion lease	N/A	N/A		OTHER	\$1,800.00	\$0.00
FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com					SUBTOTAL		\$1,800.00	TAX	\$0.00	TOTAL	\$1,800.00
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FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com

SUBTOTAL

\$1,800.00

TAX

\$0.00

TOTAL

\$1,800.00

**CBL & ASSOCIATES MANAGEMENT INC  
2030 HAMILTON PLACE BOULEVARD  
CBL CENTER, SUITE 500  
CHATTANOOGA , TN 37421**

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SpectraSite®

SpectraSite Communications, LLC  
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 10 Presidential Way  
 Woburn, MA 01801

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INVOICE		153465133
CUSTOMER NUMBER: 56746		
ISSUE DATE: 01-MAY-21	DUE DATE: 31-MAY-21	REPORT TYPE: Invoice

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE	TOTAL AMOUNT	TAX AMOUNT
01-MAY-21	834409	00344560	WEST TOWNE MALL	WI	cbl verizon lease	N/A	N/A		OTHER	\$1,800.00	\$0.00
FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com					SUBTOTAL		\$1,800.00	TAX	\$0.00	TOTAL	\$1,800.00
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 SPECTRASITE COMMUNICATIONS, LLC  
 29641 Network Place  
 Chicago, IL 60673-1296

INVOICE		153491766
CUSTOMER NUMBER: 56746		
ISSUE DATE: 01-JUN-21	DUE DATE: 01-JUL-21	REPORT TYPE: Invoice

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE	TOTAL AMOUNT	TAX AMOUNT
01-JUN-21	834409	00344560	WEST TOWNE MALL	WI	cbl verizon lease	N/A	N/A		OTHER	\$1,800.00	\$0.00
FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com					SUBTOTAL		\$1,800.00	TAX	\$0.00	TOTAL	\$1,800.00
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INVOICE		153493132
<b>CUSTOMER NUMBER: 56746</b>		
<b>ISSUE DATE:</b> 01-JUN-21	<b>DUE DATE:</b> 01-JUL-21	<b>REPORT TYPE:</b> Invoice

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE	TOTAL AMOUNT	TAX AMOUNT
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 29637 Network Place  
 Chicago, IL 60673-1296

INVOICE		408791038
CUSTOMER NUMBER: 56746		
ISSUE DATE: 01-NOV-21	DUE DATE: 01-NOV-21	REPORT TYPE: Invoice

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE		TOTAL AMOUNT	TAX AMOUNT
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Chicago, IL 60673-1296

INVOICE		153615761
CUSTOMER NUMBER: 56746		
ISSUE DATE: 01-NOV-21	DUE DATE: 01-DEC-21	REPORT TYPE: Invoice

DATE	ATC LEASE#	ATC TOWER#	ATC TOWER NAME	TWR ST	CUSTOMER LEASE #	CUSTOMER TOWER #	CUSTOMER TOWER NAME	CUSTOMER PO	PURPOSE	TOTAL AMOUNT	TAX AMOUNT
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FOR INQUIRIES CALL: (800) 731-3226 - EMAIL: accounts.receivable@americantower.com					SUBTOTAL		\$1,800.00	TAX	\$0.00	TOTAL	\$1,800.00
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CBL CENTER, SUITE 500  
CHATTANOOGA , TN 37421**

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:

CBL & ASSOCIATES  
PROPERTIES, INC., *et al.*,

Debtors.<sup>2</sup>

Chapter 11

Case No. 20-35226 (DRJ)

(Jointly Administered)

**ORDER GRANTING APPLICATION OF ATC FOR ALLOWANCE OF  
ADMINISTRATIVE EXPENSE CLAIM**

Upon consideration of the *Application of ATC for Allowance of Administrative Expense Claim* (the “*Application*”)<sup>3</sup>, and after due deliberation and sufficient cause appearing therefore, it is hereby ORDERED that:

1. The Application is Granted; and
2. ATC is hereby allowed an administrative expense claim with respect to any post-petition amounts due and owing in connection with the applicable agreements between ATC and the Debtors pursuant to 11 U.S.C. § 503(b) and 507(a)(2) in an amount not less than **\$17,815.34** (the “*Allowed Administrative Claim*”); and
3. The above-captioned Debtors are hereby directed to remit payment on account of the Allowed Administrative Claim to ATC in accordance with the Plan and Confirmation Order; and

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<sup>2</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://dm.epiq11.com/CBLProperties>. The Debtors’ service address for the purposes of these chapter 11 cases is 2030 Hamilton Place Blvd., Suite 500, Chattanooga, Tennessee 37421.

<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Application.

4. The Court hereby retains jurisdiction over the implementation and enforcement of this order.

Dated:

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Honorable David R. Jones  
United States Bankruptcy Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that on November 16, 2021, true and correct copies of the foregoing were forwarded to all parties receiving electronic notification in this case from the Court's electronic case filing (ECF) system.

/s/ Stephen J. Humeniuk  
Stephen J. Humeniuk