

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

ONH AFC CS INVESTORS LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

**STIPULATION REGARDING MOTION FOR ENTRY OF AN ORDER (I)  
AUTHORIZING THE USE OF PROPERTY OF ESTATE OUTSIDE OF THE  
ORDINARY COURSE OF BUSINESS, (II) AUTHORIZING THE RELEASE  
OF ANY CAUSES OF ACTION AGAINST THE BUYER AND  
THE LINCOLN PLACE PROPERTY, AND (III) GRANTING RELATED RELIEF**

This stipulation (the “Stipulation”) is by and among (i) ONH 1601 CS Investors LLC (“ONH 1601”), (ii) ONH AFC CS Investors LLC (“ONH AFC” and together with ONH 1601, the “Debtors”), (iii) Elchonon (“Elie”) Schwartz, One Night Holdings LLC (“One Night”), the Nightingale Group, LLC, and Nightingale Properties, LLC (together with Mr. Schwartz and One Night referred to as “Schwartz/Nightingale Parties,” and collectively with the Debtors, the “Parties”).

**RECITALS**

WHEREAS, this Stipulation is entered into in contemplation of the Debtors filing the *Motion for Entry of an Order (I) Authorizing the Use of Property of Estate Outside of the Ordinary Course of Business, (II) Authorizing the Release of Any Causes of Action Against the Buyer and the Lincoln Place Property, and (III) Granting Related Relief* (the “Motion”),<sup>2</sup> allowing for the release of certain potential claims against RKR GAIA 2, LLC or Black Lion Investment Group and its successors and assigns with respect to Lincoln Place (the “Buyer”) and the property located at 1601 Washington Avenue, in Miami Beach, Florida (“Lincoln Place”) in exchange for receipt of certain proceeds as described herein;

WHEREAS, the Parties entered into this Stipulation in connection with the Motion;

WHEREAS, the Schwartz/Nightingale Parties are contemplating the sale of Lincoln Place;

WHEREAS, the Schwartz/Nightingale Parties have informed the Debtors that the Schwartz/Nightingale Parties have no relationship with the Buyer or its affiliates, directors, officers, or members;

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<sup>1</sup> The last four digits of the Debtors’ federal tax identification numbers are 1199 (ONH AFC CS Investors LLC) and 6326 (ONH 1601 CS Investors LLC). The Debtors’ mailing address is 3445 Peachtree Road, Suite 1225 Atlanta, GA 30326.

<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Motion.

WHEREAS, the Schwartz/Nightingale Parties have informed the Debtors that they will receive no compensation or consideration, whether direct or indirect, or contingent or otherwise, in Lincoln Place or future proceeds thereof other than (1) the Proceeds (as defined below), or (2) amounts to be placed into escrow as provided below.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties agree as follows:

1. **Proceeds of Lincoln Place Sale.** The Schwartz/Nightingale Parties agree that \$8,830,000 (the “Proceeds”) from the sale of Lincoln Place shall be directed and paid to ONH 1601 on account of unpaid investor claims. Either the Buyer, Mr. Schwartz, or Nightingale will deposit any remaining proceeds from the sale after payment of (1) third party creditors of Lincoln Place (mainly its existing mortgage holders and lenders that are unrelated to Mr. Schwartz or Nightingale), and (2) any unaffiliated, third-party investors into Lincoln Place, in the amount of approximately \$3 million pending final accounting and closing costs, into an escrow account mutually agreed upon with the Independent Manager, pending further negotiations or court order. The Schwartz/Nightingale Parties agree that they have no claim to the Proceeds.

2. **Relationship to Buyer.** The Schwartz/Nightingale Parties warrant and agree that they have no relationship with the Buyer of Lincoln Place.

3. **Interest in Sale.** Since the appointment of the independent manager for the Debtors, the Schwartz/Nightingale Parties have not and will not receive compensation or consideration, whether direct or indirect, or contingent or otherwise, from the sale of Lincoln Place or future proceeds thereof other than (1) the amounts to be paid to ONH 1601, or (2) amounts to be placed into escrow as provided for herein.

4. **Reservation of All Claims and Rights.** The Debtors expressly reserve any and all rights, claims, and causes of action against the Schwartz/Nightingale Parties.

5. **Warranty of Capacity to Execute Stipulation.** Each of the Parties further represents and warrants that it has all requisite legal capacity, power, and exclusive authority to execute and perform its obligations under this Stipulation.

6. **Notices.** Any notice, demand, or request required or permitted to be given under this Stipulation shall be in writing and addressed to the Party to be notified at such Party’s address as set forth below. The notice shall be deemed sufficient if delivered (i) personally, (ii) by electronic mail, (iii) delivered to a nationally-recognized courier, or (iv) deposited in the U.S. mail, as certified or registered mail, with postage prepaid. If sent by electronic mail or by a nationally-recognized courier for next day delivery, the notice shall be deemed to have been delivered the day after being “sent” or provided to the nationally-recognized courier.

If to the Debtors:  
Jorian Rose, Esq.  
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If to the Schwartz/Nightingale Parties:

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7. **Voluntary Stipulation.** Each of the Parties declares that the terms of this Stipulation have been read and understood and that this Stipulation is entered into voluntarily, freely, and without coercion of any sort.

8. **Consultation with Attorney.** By signing this Stipulation, the Parties state that they have read it, understand it, and have signed it knowingly and voluntarily, and that the execution of this Stipulation is not the result of any fraud, duress, mistake, or undue influence whatsoever. The Parties further represent and warrant that they have not relied on any inducements, promises, or representations by the other party or any other entity or person, other than the terms and conditions of this Stipulation.

9. **Complete Stipulation.** This Stipulation contains the entire understanding of the Parties with respect to the matters addressed herein and therein and, except as set forth in this Stipulation, no representations, warranties or promises have been made or relied on by any Party.

10. **Severability.** Should any part, term, or provision of this Stipulation be determined by any tribunal, court or arbitrator to be illegal, invalid, or unenforceable, the validity of the remaining parts, terms, or provisions shall not be affected thereby, and the illegal, invalid, or unenforceable part, term, or provision shall be deemed not to be part of this Stipulation.

11. **Waiver of Breach.** The Parties agree that a failure by any Party at any time to require performance of any provision of this Stipulation shall not waive, affect, diminish, obviate

or void in any way that Party's full right or ability to require performance of the same, or any other provisions of this Stipulation, at any time thereafter.

12. **Authorship**. The parties affirm that this Stipulation is the product of negotiation and it shall not be construed against either party on the basis of sole authorship. Each of the Parties has participated in drafting this Stipulation, which each Party acknowledges is the result of negotiations between the Parties. In the event any ambiguity or question of intent arises, this Stipulation shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision or portion of this Stipulation. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and one gender shall include all genders.

13. **Counterparts**. This Stipulation may be executed in one or more counterparts (including copies or facsimiles of the same), each of which shall be deemed an original, and all of which, when taken together, shall be deemed one Stipulation, but no counterpart shall be binding unless an identical counterpart shall be executed and delivered by each of the other parties to this Stipulation. Once signed, any reproduction of this Stipulation made by reliable means (for example, photocopy or facsimile) is considered an original.

**THE PARTIES REPRESENT THAT THEY HAVE READ THE FOREGOING STIPULATION AND COMPLETELY UNDERSTAND IT.**

Dated: October 2, 2023

**For ONH 1601 CS Investors LLC and ONH AFC CS Investors LLC**

/s/ Anna Phillips

Anna Phillips, Independent Manager

**For Elchonon ("Elie") Schwartz, One Night Holdings LLC, the Nightingale Group, LLC,  
and Nightingale Properties, LLC**

/s/ Elchonon Schwartz

Elchonon ("Elie") Schwartz