

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

In re:

ONH AFC CS INVESTORS, LLC., *et al.*¹

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

Ref. No. 285

**ORDER (I) APPROVING THE SETTLEMENT BETWEEN THE LIQUIDATING
TRUST AND USPO ATLANTA, LLC AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the liquidating trustee (the “Trustee”) of the ONH Liquidating Trust (the “Trust”), for entry of an order (this “Order”) (a) approving the Settlement Agreement, which is attached hereto as Exhibit 1, and granting certain related relief; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 3 the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and good and sufficient cause appearing for the relief requested in the Motion;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

2. The Settlement Agreement and all of its terms, including the releases set forth therein, is hereby approved in its entirety.

3. Upon USPO's transfer of the Settlement Payment to the Trust, all USPO Released Parties shall be released from the USPO Released Claims as provided in Section 6(a) of the Settlement Agreement.

4. The failure to specifically include or reference any particular term or provision of the Settlement Agreement in this Order shall not diminish or impair the effectiveness of such term or provision.

5. The Trustee is authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

6. The Court shall retain jurisdiction to (i) enforce and implement the terms and provisions of the Settlement Agreement and (ii) resolve any disputes arising under or in connection with the Settlement Agreement and any related documents. Furthermore, the Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Order.

Dated: July 2nd, 2024
Wilmington, Delaware



CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this “**Agreement**”) is made and entered into as of June 7, 2024 (the “**Execution Date**”) by and among (i) the ONH Liquidating Trust (the “**Plan Trust**”), as successor in interests to ONH 1601 CS Investors LLC and ONH AFC CS Investors LLC (collectively, the “**Debtors**”),¹ formerly debtors and debtors in possession in the Chapter 11 Cases (defined below), and as assignee of creditor claims pursuant to the Plan (as defined below); and (ii) USPO Atlanta LLC (“**USPO**”). The Plan Trust and USPO are referred to collectively hereinafter as the “**Parties**” and each individually as a “**Party**”.

Recitals

WHEREAS, on or about April 25, 2022, ONH AFC CS Investors LLC (“**ONH AFC**”) was formed by the Schwartz Nightingale Parties (as defined in the Plan) to permit investment in certain real estate located in Atlanta, Georgia;

WHEREAS, on or about May 3, 2022, ONH AFC LLC (the “**AFC Buyer**”), which was under control of Mr. Elchonon “Elie” Schwartz, entered into a Purchase Agreement with USPO to purchase the Atlanta Financial Center (including any amendment thereto and any related agreement, collectively, the “**Purchase Agreement**”).

WHEREAS, on July 14, 2023 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under subchapter V of chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, et seq. (as amended, the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Court**”), thereby commencing the chapter 11 cases that are being jointly administered for procedural purposes only *In re ONH AFC CS Investors LLC and ONH 1601 CS Investors LLC*, Case No. 23-10931 (CTG) (collectively, the “**Chapter 11 Cases**”);

WHEREAS, Ms. Anna Phillips was appointed as the independent manager for each of the Debtors on or about June 7, 2023;

WHEREAS, on December 14, 2023, the Court entered the Confirmation Order confirming the Debtors’ Plan of Liquidation (the “**Plan**”), and on December 28, 2023, the Effective Date of the Plan occurred.

WHEREAS, pursuant to the Plan, the Plan Trust was created to liquidate the Debtors’ assets, including, without limitation, any claims or causes of action, and Ms. Anna Phillips was appointed as the Trustee of the Plan Trust;

WHEREAS, the Plan Trust has alleged that Debtor ONH AFC CS Investors LLC transferred \$5,000,000 to USPO prior to commencement of these Chapter 11 Cases in connection with the Purchase Agreement and that such transfers are avoidable under the Bankruptcy Code and analogous state law (together with related claims, the “**Trust’s Alleged Claims**”);

¹ References in this Agreement to the Debtors shall mean either the Debtors or the Plan Trust (defined below), as applicable.

WHEREAS, USPO has denied liability for the Trust's Alleged Claims and has provided various factual and legal defenses and affirmative defenses thereto;

WHEREAS, the Parties and their respective advisors have negotiated extensively, at arm's length and in good faith, in an effort to settle and compromise the Trust's Alleged Claims, and this Agreement is the product of those negotiations; and

WHEREAS, the Parties enter into this Agreement to (i) avoid the delay, uncertainty, inconvenience and expense of litigation relating to the Trust's Alleged Claims and any other causes of action related to any payments directly or indirectly related to the Purchase Agreement received by or credited to USPO that could be asserted by or through the Plan Trust against USPO and related parties (the "**Clawback Claims**"),² and (ii) exchange a payment to the Plan Trust for releases from the foregoing claims, subject to the terms and conditions described below.

Agreement

NOW, THEREFORE, in consideration of the mutual promises, covenants, considerations, waivers, and releases set forth herein, the receipt and sufficiency of which are hereby acknowledged by each Party, each Party hereby agrees as follows:

1. **Recitals**. The recitals set forth above are fully incorporated herein by reference and made an express part of this Agreement. The Parties stipulate and agree that each of the recitals and terms and conditions of this Agreement are an integral part of this Agreement.

2. **Defined Terms**.

"Trust Released Claims" means all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, remedies, and demands whatsoever, in law, admiralty or equity, which any USPO Released Party now has or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever as of the effectiveness of this Agreement, including, without limitation, the Trust's Alleged Claims, the Clawback Claims, and any claims that could have been brought in connection with the Purchase Agreement or otherwise.

"Trust Releasers" means the Plan Trust, the Trustee of the Plan Trust, the Debtors, any investor in, or creditor of, the Debtors or other person that has assigned any of the USPO Released Claims to the Plan Trust, any person that potentially holds a USPO Released Claim derivatively through the Plan Trust, any person that holds any claim or remedy that is legally equivalent to any USPO Released Claim or the remedy therefor, and any other person on whose behalf the Plan Trust has asserted the USPO Released Claims.

"USPO Lenders" means Crédit Agricole Corporate and Investment Bank in its capacity as lender to USPO, administrative agent and joint lead arranger, Regions Bank, in its capacity

² "Clawback Claims" for the purposes of this Agreement shall only include claims that may be asserted against the USPO Released Parties, and shall exclude parties other than the USPO Released Parties that could be subject to such Claims.

as lender to USPO and syndication agent, Regions Capital Markets, in its capacity as joint lead arranger, Sumitomo Mitsui Trust Bank, Limited, in its capacity as lender to USPO, and Aozora Bank, Ltd., in its capacity as lender to USPO.

“USPO Released Claims” means all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, remedies, and demands whatsoever, in law, admiralty or equity, which any Trust Releasor now has or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever as of the effectiveness of this Agreement, including, without limitation, the Trust’s Alleged Claims, the Clawback Claims, and any claims that could have been brought in connection with the Purchase Agreement or otherwise.

“USPO Released Parties” means USPO and the USPO Lenders, and for each of the following in their capacity as such, their respective officers, directors, executives, employees, managers, sponsors, owners, members, investors, and affiliates; any agents, attorneys or other representatives of any of the foregoing; and any immediate or mediate subsequent transferees, successors, and assigns of any of the foregoing.

The Parties acknowledge and agree that USPO Released Claims is defined broadly, with the intent of ensuring that none of the USPO Released Parties faces further potential liability for the claims under by this Agreement.

3. Court Approval. This Agreement shall not be effective unless and until the Court has approved it by a final, no longer appealable order (the “**Court Approval**”) granting a motion to be filed by the Plan Trust in substantially the form annexed hereto as Exhibit A (along with notice of motion and proposed order, the “**Settlement Motion**”).

4. Plan Trust Authority. The Plan Trust represents and warrants to USPO that the Plan Trust has exclusive ownership and control of the USPO Released Claims, has not transferred or agreed to transfer any of the USPO Released Claims, and has full authority to enter into this Agreement without the need for any consent or authorization; provided, that the Plan Trust (and USPO) are requesting the Court Approval for the avoidance of doubt as to the effectiveness of this Agreement.

5. Settlement Payment. Within five business days after USPO receives written notice of the Court Approval, USPO shall pay, or cause to be paid, three million, two hundred and fifty thousand dollars (\$3,250,000) to the Plan Trust (the “**Settlement Payment**”) by wire transfer according to the instructions in Section 9 below.

6. Releases.

- a. Releases by the Plan Trust. Effective upon transfer of the Settlement Payment pursuant to Section 5, the Plan Trust, on behalf of itself and the other Trust Releasors, hereby releases and forever discharges to the fullest extent permitted by law the USPO Released Parties from the USPO Released Claims, except that the foregoing shall not release, waive, or discharge the Plan Trust’s rights under this Agreement. Notwithstanding

anything in this Agreement, nothing herein or otherwise shall release JOSMIC Holdings LLC, JOSMIC 2 LLC, Bordeaux Capital, Riverside Abstract, or any insider of the foregoing, and any transferee or subsequent transferee from the foregoing.

- b. Releases by USPO. Concurrently with the release set forth in Section 6(a), USPO, on behalf of itself and the other USPO Released Parties, hereby releases and discharges the Plan Trust, and its respective trustees, agents, employees, attorneys, representatives, and advisors, in their capacity as such, from the Trust Released Claims, except that the foregoing shall not release, waive, or discharge the USPO Released Parties' rights under this Agreement.

7. Potential Reimbursement. Solely in the event that the Plan Trust recovers from the Schwartz Nightingale Parties or otherwise, in the aggregate, funds more than sufficient in combination with the Settlement Payment to make its beneficiaries whole and to pay its administrative expenses, the Plan Trust shall reimburse USPO for the Settlement Payment from such excess recovery, such reimbursement not to exceed the amount of the Settlement Payment.

8. Due Authorization; Binding Agreement; No Conflict. Each of the Parties hereby represents and covenants to the other Parties as follows:

- a. such Party has the power, authority and the legal right to execute, deliver and perform under this Agreement;
- b. the person executing this Agreement on such Party's behalf has the full right and authority to enter into this Agreement on behalf of such Party and has the full right and authority to execute this Agreement and to fully bind such Party to the terms and conditions hereof;
- c. this Agreement has been duly executed and delivered by such Party and, subject to the Court Approval, constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms; and
- d. such Party's execution and delivery of this Agreement, and its or his performance of its or his obligations hereunder, have been duly authorized and do not and will not: (i) violate any provision of any law, rule, regulation, order, judgment, injunction, decree or determination applicable to such Party or the organizational documents of such Party, or (ii) result in a breach of or constitute a default under any agreement or instrument to which such Party may be bound or affected;

The Parties acknowledge and agree that the Debtors' foregoing representations and covenants are subject to the Court Approval.

9. Wire Instructions:

Beneficiary Name: (required)	ONH LIQUIDATING TRUST
Beneficiary Account Number: (required)	5400014974
Beneficiary Address: (optional)	
Bank Routing Number: (domestic wires)	3 1 2 1 2 1 0 1 7 1 0 1 3 1 8 1 1

Bank Routing/ Swift Code: (international wires)	EWBKUS66XXX
Receiving Bank Name:	East West Bank
Receiving Bank Address: (branch address)	135 N. Los Robles Ave., Suite 600
Receiving Bank Address (branch city, state, zip)	Pasadena, CA 91101
Other Information: (optional)	for AFC DDA

Trust contact: Joseph Pegnia at B. Riley: Direct: (470) 346-6833 Mobile: (404) 483-8422

10. Notice. Any notice or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving notice and shall be sent by hand delivery or overnight courier to the other Parties at the addresses set forth below:

If to the ONH Liquidating Trust:

Jorian L. Rose
BAKER & HOSTETLER LLP
45 Rockefeller Plaza
New York, NY 10111
Telephone: (212)589-4200
Facsimile: (212)589-4201
Email: jrose@bakerlaw.com

If to USPO Atlanta LLC:

USPO Atlanta LLC
c/o Sumitomo Corporation of Americas
300 Madison Avenue
New York, NY 10017
Attention: Makiko Hiromi, Corporate Counsel
Telephone: 917.836.2491
Email: makiko.hiromi@sumitomocorp.com

With a copy to:

Joshua Dorchak
Morgan, Lewis & Bockius LLP
101 Park Avenue
New York, NY 10178
Telephone: 212.309.6700
Email: joshua.dorchak@morganlewis.com

Notice may be provided to counsel for the Parties by electronic mail. Notices may also be provided to such other address or addresses provided in writing by a Party to the other Parties.

11. Further Assurances. The Plan Trust shall consult with USPO concerning the form and content of the Settlement Motion before filing it; the Parties shall cooperate in seeking the

Court Approval, including opposing any objection to the Settlement Motion; and after the Court Approval the Parties shall take all reasonable actions to ensure that they receive the full extent of their respective benefits under this Agreement.

12. Denial of Liability. Nothing in this Agreement shall be an admission of any liability by any Party to this Agreement or by the USPO Lenders or by any person released pursuant to this Agreement. In the event the Court denies approval of this Agreement, this Agreement shall be of no further force and effect.

13. Construction. The Parties participated jointly in the drafting and preparation of this Agreement. Therefore, in any interpretation or construction of this Agreement, the Agreement shall not be construed for or against any Party on that basis. No ambiguity shall be construed against any Party based upon a claim that such Party drafted the language.

14. Amendment. This Agreement may not be modified, amended, or otherwise altered except in writing executed and delivered by each of the Parties.

15. Successors and Assigns and Third Party Beneficiaries. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, including, without limitation, any chapter 11 or 7 trustee that may be appointed. The USPO Released Parties that are not Parties shall be third party beneficiaries of this Agreement with respect to the USPO Released Claims; otherwise, none of the provisions in this Agreement are intended by the Parties, nor shall they be deemed, to confer any benefit on any individual or entity not a Party to this Agreement or a successor or assignee of a Party to this Agreement.

16. Attorneys' Fees and Costs. Each of the Parties shall bear its own costs and expenses in connection with this matter, including, without limitation, legal fees and expenses.

17. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the Parties on the subject matter hereof, which agreements shall be of no further force or effect. Each Party acknowledges that, in entering into this Agreement, such Party is not relying on any statements or representations made by the other Parties other than as expressly set forth herein.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement, binding on the Parties. The Parties agree that facsimile or electronic copies of signatures shall be deemed original signatures for all purposes hereof.

19. Headings. Headings in this Agreement are for convenience only and do not constitute a part of this Agreement.

20. Governing Law. This Agreement shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of Delaware, without regard for that State's conflicts of law or choice of law principles.

21. Jurisdiction. The Court (or, upon withdrawal of the reference to this Court, the United States District Court for the District of Delaware) shall retain jurisdiction and venue over this Agreement and the Parties for the duration of the performance of the terms and provisions of this Agreement and for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or interpretation of this Agreement or to effectuate or enforce compliance with its terms.

22. No Waiver. No delay or failure by either Party to exercise any right under this Agreement, and no partial or single exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided.

[signature pages follow]

IN WITNESS WHEREOF, each Party has executed this Agreement as of the Execution Date.

ONH Liquidating Trust

By: Anna Phillips
Name: Anna Phillips
Title: Trustee of the
ONH Liquidating Trust

USPO Atlanta LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, each Party has executed this Agreement as of the Execution Date.

ONH Liquidating Trust

By: _____
Name: Anna Phillips
Title: Trustee of the
ONH Liquidating Trust

USPO Atlanta LLC

By:  _____
Name: Go Matsuura
Title: President

Exhibit A

Settlement Motion

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

In re:

ONH AFC CS INVESTORS, LLC., *et al.*¹

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

Hearing Date: July 17, 2024 at 10:00 a.m. (ET)

Obj. Deadline: July 3, 2024 at 4:00 p.m. (ET)

**MOTION FOR ENTRY OF AN ORDER (I) APPROVING THE
SETTLEMENT BETWEEN THE LIQUIDATING TRUST
AND USPO ATLANTA, LLC AND (II) GRANTING RELATED RELIEF**

The Trustee of the ONH Liquidating Trust, by and through undersigned counsel, hereby submits this motion (the “Motion”) for entry of an order substantially in the form attached hereto as Exhibit A (the “Order”), pursuant to section 105(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 9019(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), approving the Settlement and Release Agreement, attached as Exhibit 1 to the Order (the “Settlement Agreement”)² between the Trust and USPO Atlanta, LLC (“USPO”).

In support of the Motion, the Trustee states as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.³

2. The statutory predicates for the relief requested herein are section 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019.

BACKGROUND

3. On July 14, 2023 (the “Petition Date”), the above-captioned debtors and debtors-in-possession (the “Debtors”) commenced the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by each filing with the Court a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

4. The factual background relating to the Debtors’ commencement of these Chapter 11 Cases is set forth in detail in the *Declaration of Eric Lee in Support of Chapter 11 Petition and First Day Motions* [D.I. 2] filed on July 14, 2023.

5. On October 16, 2023, the Debtors filed the *Amended Small Business Debtors’ Joint Plan of Liquidation* [D.I. 147] (as may be modified, amended, or supplemented from time to time, the “Plan”), which was amended on October 27, 2023 [D.I. 173] and December 11, 2023 [D.I. 202].

6. On the Effective Date, the ONH Liquidating Trust (the “Liquidating Trust”) was established and, in accordance with the Liquidating Trust Agreement, Plan, and Confirmation Order, Ms. Anna Phillips was appointed as the Liquidating Trustee. The Liquidating Trust is empowered to pursue certain Causes of Action (as defined in the Plan) on the behalf of the Debtors’ estates (Plan, § 2.5(H)). Although the Liquidating Trust is authorized to settle Causes of Action

³ Pursuant to Local Rule of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) 9013-1(f), the Debtors hereby confirm their consent to entry of a final order by this Court in connection with this Motion if it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

without seeking approval from the Bankruptcy Court, the Plan provides that the Liquidating Trust may seek Bankruptcy Court approval or intervention for any reason. (*Id.*).

The Transfers

7. The Liquidating Trust investigated and analyzed the Debtors' pre-petition transfers in the four-year period before the Petition Date (the "Avoidance Period"). USPO received \$5,000,000 from the Debtors during the Avoidance Period (the "Transfers") that the Liquidating Trust believed should be subject to disgorgement because, the Liquidating Trust argued, the Debtors did not receive reasonably equivalent value for the Transfers.

8. On January 12, 2024, the Trust sent USPO the *Demand for Return of Fraudulent Transfers and Notice of Intent to Initiate Legal Action* (the "Demand Letter"), informing USPO that the Liquidating Trust was exercising its authority to seek to avoid and recover certain transfers of property of the Debtors under the Bankruptcy Code and applicable state law for distribution to creditors and, accordingly, the Trust demanded that USPO return the Transfers, or litigation would be pursued. The Trust and USPO negotiated extensively over the following few months, exchanging facts, caselaw and positions on various claims and defenses.

Pre-petition Background related to the Transfers

9. Before the Bankruptcy Cases, Mr. Elchonon "Elie" Schwartz was in control of an entity called ONH AFC LLC (the "AFC Buyer"). The AFC Buyer entered into a *Purchase Agreement* with USPO, dated May 3, 2022, to purchase a large commercial real estate complex in Atlanta, Georgia known as the Atlanta Financial Center. The Transfers were made in connection with this Purchase Agreement. USPO believed that the Transfers were made by the AFC Buyer, but they actually were made by Debtor ONH AFC CS Investors, LLC (the "AFC Debtor"), which was not a party to the Purchase Agreement. The Transfers were credited to an account of USPO

subject to a longstanding lien in favor of the collateral agent for USPO's syndicate of secured lenders.

The Settlement Agreement

10. The Trust and USPO engaged in extensive and arm's-length settlement negotiations over a period of four months to resolve the Trust's Alleged Claims asserted in the Demand Letter. The Trust and USPO exchanged information, legal positions, and research regarding the claims and defenses relevant to the Transfers. As a result of those settlement negotiations, the parties reached the settlement that is memorialized in the Settlement Agreement.

11. In summary, the Settlement Agreement provides:⁴

Settlement Payment	USPO shall pay the Trust \$3.25 million within five business days after the Court's approval of the Settlement Agreement by a final, no longer appealable order.
Mutual Releases	In exchange for the Settlement Payment, the "Trust Releasers" will release the "USPO Released Parties" from the "USPO Released Claims," and USPO will then release the Trust from the "Trust Released Claims."

RELIEF REQUESTED

12. By this Motion, the Trustee respectfully requests the entry of an order, substantially in the form attached hereto as Exhibit A, (i) approving the Settlement Agreement and (ii) granting such other and further relief as this Court deems just and proper.

BASIS FOR RELIEF

13. Section 105(a) of the Bankruptcy Code provides, in pertinent part, that the "[c]ourt may issue any order, process, or judgment that is necessary or appropriate to carry out the

⁴ The description of the Settlement Agreement contained herein is summary in nature only and is not intended to alter or modify any terms of the Settlement Agreement. Because the Settlement Agreement is attached to the Order and is incorporated herein by reference, the Liquidating Trust has not included every term of the Settlement Agreement in this Motion. To the extent there is any inconsistency between this summary and the Settlement Agreement, the terms of the Settlement Agreement shall control.

provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). Bankruptcy Rule 9019(a) provides, in relevant part, that “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). The Third Circuit has emphasized that compromises are favored in bankruptcy “[t]o minimize litigation and expedite the administration of a bankruptcy estate.” *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996) (quoting 9 Collier on Bankruptcy ¶ 9019.03[1] (15th ed. 1993)). This Court has recognized that the approval of a proposed compromise and settlement is committed to the sound discretion of the bankruptcy court. *See In re Louise’s, Inc.*, 211 B.R. 798, 801 (Bankr. D. Del. 1997).

14. Before approving a settlement under Bankruptcy Rule 9019, a court must determine whether “the compromise is fair, reasonable, and in the interests of the estate.” *In re Marvel Entm’t Group, Inc.*, 222 B.R. 243, 249 (Bankr. D. Del. 1998) (quoting *Louise’s*, 211 B.R. at 801). The court may consider the opinions of the trustee or debtors-in-possession that the settlement is fair and equitable. *See In re Key3Media Group, Inc.*, 336 B.R. 87, 93 (Bankr. D. Del. 2005) (citing *In re Mickey Thompson Entnm’t Group, Inc.*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003)); *In re The Drexel Burnham Group, Inc.*, 134 B.R. at 505. A bankruptcy court need not decide the numerous issues of law and fact raised by a settlement, but rather “should canvass the issues to see whether the settlement falls below the lowest point in the range of reasonableness.” *Key3 Media*, 336 B.R. at 93 (citing *In re Jasmine, Ltd.*, 258 B.R. 119, 123 (D.N.J. 2000)); *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004) (“[C]ourt must only conclude that the compromise or settlement falls within the reasonable range of litigation possibilities.”) (citing *In re Penn Central Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979).

15. To reach this determination, the Court must assess the value of the claim that is being settled and balance it against the value to the estate of the approval of the settlement. *See In re Martin*, 91 F.3d at 393. In striking this balance, the Court should consider the following factors:

“(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors.” *Id.* Settlements should be allowed unless they fall below the “lowest point in the range of reasonableness.” *In re Capmark Fin. Group Inc.*, 438 B.R. 471, 515 (Bankr. D. Del. 2010) (citing *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir. 1983), *cert. denied*, 464 U.S. 822 (1983)). *See also In re W.R. Grace & Co.*, 475 B.R. 34, 77-78 (Bankr. D. Del. 2012).

16. The Trust believes the compromises embodied in the Settlement Agreement are fair and reasonable, and that approval thereof is in the best interests of the Trust, the Debtors’ estates, and creditors. The Settlement Agreement is the product of extensive good faith, arm’s-length negotiations between the Trust and USPO. And each of the *Martin* factors weighs in favor of approving the Settlement Agreement.

17. The Settlement Agreement, as described in detail in its Sections 2 and 5, effectuates a good faith compromise of all claims and causes of action that were or could have been asserted by or through the Trust, in its own right or as the assignee of the Debtors and certain investors in the Debtors, against USPO or persons related to it. In exchange for a full release of these USPO Released Claims against the USPO Released Parties, USPO has agreed to make the Settlement Payment and to release the Trust from all claims and causes of action that were or could have been asserted by or through the USPO Released Parties against the Trust.

18. Absent the settlement embodied in the Settlement Agreement, the Trust would face considerable litigation expense, risk, and delay with respect to resolution of the Trust’s Alleged Claims. Among other things, the disputes between the parties could require extensive and costly discovery, involving numerous fact witnesses (including Mr. Elchonon “Elie” Schwartz) and potentially also experts, as well as extensive briefing and argument.

19. USPO is a limited liability company whose principal asset is the Atlanta Financial Center (the “AFC”). USPO’s acquisition of the AFC was financed by a syndicate of secured lenders (the “Lenders”), whose collateral agent was granted a lien against AFC’s property, including the AFC and certain bank accounts, including the account to which the Transfers were credited. The Lenders take the credible position that, because (a) any judgment against USPO would be junior to their pre-existing lien and (b) they are undersecured, the Trust would recover nothing. These facts further support the Court’s approval of the Settlement Agreement, given the uncertainty of ever collecting against USPO.

20. Despite its confidence in the strength of the Trust’s Alleged Claims, the Trust does not believe that expending significant sums to litigate these claims makes sense when compared to the Settlement Agreement. The Trust determined there was a high likelihood that it may receive much less even if its claims proved ultimately successful.

21. If the Settlement Agreement is approved, the Trust intends to make a distribution to creditors of the AFC Debtor,⁵ which is much-needed after the Schwartz Nightingale Parties (as defined in the Plan) failed to make their most recent settlement installment payment.

22. Under the *Martin* factors, the Trust believes that the Settlement Agreement is fair and reasonable, falling well above “the lowest point in the range of reasonableness.” Accordingly, when considered in context, the Trust has concluded, in the exercise of its business judgment, that the terms of the settlement as set forth in the Settlement Agreement are clearly in the best interests of the Trust and the Debtors’ estates. As a result, the Trust respectfully requests that the Court approve the Settlement Agreement and terms of the settlement contained therein.

⁵ Because the Plan did not substantively consolidate the Debtors, the Liquidating Trustee has the power to make Distributions to holders of Allowed Claims or Interests against each specific Debtor based on recoveries from the Trust Assets of each specific Debtor. *See* Plan Supplement (Doc. No. 190, Exhibit A, p. 10). The Trust’s Alleged Claims are part of the ONH AFC CS Investors LLC Trust Assets and any recovery from such claims would be distributed to the ONH AFC CS Investors LLC creditors.

NOTICE AND NO PRIOR REQUEST

23. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) all creditors and investors; (c) the United States Department of Justice; and (d) all parties who have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Trust submits that no other or further notice is required.

24. No previous request for the relief requested herein has been made to this or any other court.

WHEREFORE, the Trust respectfully requests that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, and (b) grant such other and further relief as is just and proper.

Dated: June 14, 2024
Wilmington, Delaware

LANDIS RATH & COBB LLP

/s/ DRAFT

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Counsel for the ONH Liquidating Trust

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

In re:

ONH AFC CS INVESTORS, LLC., *et al.*¹

Debtors.

Chapter 11 (Subchapter V)

Case No. 23-10931 (CTG)

(Jointly Administered)

Ref. No. _____

**ORDER (I) APPROVING THE SETTLEMENT BETWEEN THE LIQUIDATING
TRUST AND USPO ATLANTA, LLC AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the liquidating trustee (the “Trustee”) of the ONH Liquidating Trust (the “Trust”), for entry of an order (this “Order”) (a) approving the Settlement Agreement, which is attached hereto as Exhibit 1, and granting certain related relief; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 3 the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and good and sufficient cause appearing for the relief requested in the Motion;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

2. The Settlement Agreement and all of its terms, including the releases set forth therein, is hereby approved in its entirety.

3. Upon USPO's transfer of the Settlement Payment to the Trust, all USPO Released Parties shall be released from the USPO Released Claims as provided in Section 6(a) of the Settlement Agreement.

4. The failure to specifically include or reference any particular term or provision of the Settlement Agreement in this Order shall not diminish or impair the effectiveness of such term or provision.

5. The Trustee is authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

6. The Court shall retain jurisdiction to (i) enforce and implement the terms and provisions of the Settlement Agreement and (ii) resolve any disputes arising under or in connection with the Settlement Agreement and any related documents. Furthermore, the Court shall retain jurisdiction to interpret, implement, and enforce the provisions of this Order.

Date: _____, 2024
Wilmington, Delaware

THE HONORABLE CRAIG T. GOLDBLATT
UNITED STATES BANKRUPTCY JUDGE