

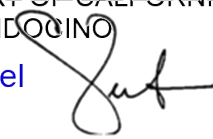
FILED

04/06/2022

KIM TURNER, CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA,
COUNTY OF MENDOCINO

Delgado, Samuel

DEPUTY CLERK



1 MARK S. ADAMS, SBN 68300
California Receivership Group
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Santa Monica, CA 90405
3 Tel. (310) 471-8181
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4 madams@calreceivers.com
Court-Appointed Receiver

6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
7 **IN AND FOR THE COUNTY OF MENDOCINO**

8 CITY OF UKIAH, a municipal corporation,
9

Petitioner,

10 v.

11 QUESTEX, LTD., et al.
12

Respondents.
13

Case No. SCU-K-CVPT-15-66036

**STIPULATION TO APPROVE
SETTLEMENT AGREEMENT, TO
DISCHARGE COURT-APPOINTED
RECEIVER, AND TO DISMISS ACTION
WHEN CONDITIONS STATED IN THE
SETTLEMENT AGREEMENT ARE MET;
~~(PROPOSED)~~ ORDER**

Judge: Hon. Ann Moorman
Dept.: G



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16 Petitioner City of Ukiah (“Petitioner”), current owner Twin Investments, LLC (“Current
17 Owner”), and court-appointed receiver Mark Adams (“Receiver”) and California Receivership
18 Group (“CRG”), by and through their respective undersigned counsels of record (collectively
19 “Parties”), hereby stipulate as follows:

20
21 **RECITALS**

22 1. The Parties desire that the Court discharge the Health and Safety Code receiver,
23 Mark Adams (“Receiver”) who was initially appointed as receiver for the Property located at 272
24 North State Street, Ukiah, CA 95482, Assessor’s Parcel Number 002-224-13 (“Property”) by
25 order of ~~this~~ ^{the} Court on January 9, 2017.

26 2. In that regard, the Parties have entered into a full and final settlement agreement
27 (“Settlement Agreement”) which states in more detail the terms of the discharge. The Settlement
28

1 Agreement, excluding exhibits attached thereto, is attached hereto as **Exhibit 1** and is
2 incorporated into this Stipulation by this reference.

3 3. The Parties desire and intend by this Stipulation to discharge the Receiver,
4 exonerate the surety, and waive any requirements under California law for further briefing on or
5 filing of an additional report of administration or final account and report per California Rules of
6 Court 3.1184. The Receiver's original discharge motion was filed in compliance with Cal Rules
7 of Court, Rule 3.1184 on March 26, 2021, and the Parties' various pleadings filed in response
8 thereto, all contained in the Court's file, are also incorporated herein by this reference.

9
10 **STIPULATION**

11 1. IT IS HEREBY STIPULATED that the Settlement Agreement is subject to court
12 approval.

13 2. IT IS HEREBY FURTHER STIPULATED that the receivership estate is
14 terminated in accordance with the Proposed Order Approving Settlement Agreement, Discharging
15 Court-Appointed Receiver, and Dismissing Action When Conditions Stated in the Settlement
16 Agreement Are Met, submitted herewith, and the Receiver is formally discharged of all further
17 duties, liabilities and responsibilities in this matter, except as otherwise required by the Settlement
18 Agreement and stated herein.

19 3. IT IS FURTHER STIPULATED that the Parties hereto waive any and all
20 objections or oppositions to accountings and reports of the Receiver and waive any potential
21 objections or oppositions that might be filed as to the Final Report and Accounting of Receiver.

22 4. IT IS FURTHER STIPULATED that the receivership estate should be terminated,
23 and the Receiver should be formally discharged of all further duties, liabilities, and
24 responsibilities for the administration of the receivership upon satisfaction of the conditions
25 stated in the Sections 2, 3.a, 3.b, 4 and 5 of the Settlement Agreement.

26 5. IT IS FURTHER STIPULATED that all of the acts, transactions, and all of the
27 actions of the Receiver and his counsel herein for the receivership period are confirmed, ratified
28 and approved. The Parties intend this discharge order to be res judicata as to any claim that may

1 have been brought or could be brought against the Receiver or any other Party in the future in
2 connection with any actions in this Receivership.

3 6. IT IS FURTHER STIPULATED that upon discharge all further liability on any
4 bonds heretofore filed by the Receiver is hereby released and the sureties exonerated thereon.

5 7. IT IS FURTHER STIPULATED that pursuant to Health and Safety Code Section
6 17980.7, the Court shall retain jurisdiction for a period of eighteen (18) months from the date of
7 its discharge order to reactivate the Receivership.

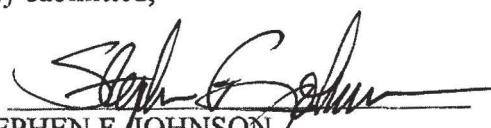
8 8. IT IS FURTHER STIPULATED that this stipulation may be executed in
9 counterparts, each of which shall be deemed an original, together which shall constitute a single
10 agreement. A facsimile or other electronically transmitted copy of an executed counterpart hereof
11 shall have the same effect as an original.

12 9. IT IS FURTHER STIPULATED that upon discharge the court shall retain
13 jurisdiction pursuant to California Code of Civil Procedure Section 664.6 to enforce the
14 Settlement Agreement. Attorney Fees shall be awarded to the prevailing party pursuant to
15 California Code of Civil Procedure Section 664.6 notwithstanding dismissal of the action.

16 10. IT IS FURTHER STIPULATED that the court's order, *inter alia*, shall discharge
17 extinguish and remove from the chain of title to the Property all deeds of trust, liens, mechanics
18 liens, and other interests in the Property recorded in the Official Records of Mendocino County
19 prior to January 11, 2019, and recorded in connection with or as a result of the administration of
20 the receivership, except the lis pendens providing notice of the receivership proceedings, which
21 are subject to Section 3(d) and 4 of the Settlement Agreement. .

22
23 DATED: March 21, 2022


Respectfully submitted,

24
25 By: 
26 STEPHEN F. JOHNSON
27 Manon, King, Johnson & Wipf, LLP
28 Attorneys for Owner Twin Investments,
LLC

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DATED: March 21, 2022

Respectfully submitted,

By: 
David J. Rapport, City Attorney for City of Ukiah

DATED: March 24, 2022

Respectfully submitted,

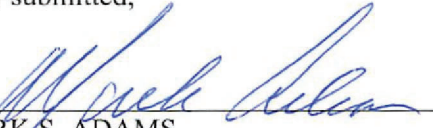
By: 
MARK S. ADAMS
Attorney for Receiver and California Receivership Group

EXHIBIT 1

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Settlement Agreement") is entered into by and among: (1) Twin Investments, LLC and its members Jitu Ishwar and Paru Ishwar, husband and wife ("Twin Investments"); (2) the City of Ukiah, a municipal corporation (the "City"); and (3) Mark S. Adams, in his capacity as court appointed receiver in the action referenced herein and in his individual capacity and on behalf of California Receivership Group (the "Receiver"). From time to time hereinafter, the parties to this Settlement Agreement will be collectively referred to as the "Parties" and individually as a "Party."

RECITALS

- A) After remaining vacant and unmaintained since 1995, the real property located at 272 North State Street in Ukiah, California, Mendocino County Assessor Parcel No. ("APN") 002-224-13, otherwise known as "the Palace Hotel," ("Subject Property") had become a public nuisance and posed a threat to public health and safety. Pursuant to Ukiah City Code Section 3300 et seq. on or about December 21, 2011, the City Council adopted a resolution declaring the Subject Property a dangerous building and ordered its owner to abate the nuisance conditions.
- B) After attempting unsuccessfully over period of four years to get its owner to voluntarily abate the public nuisance condition of the Subject Property, on July 10, 2015, the City filed *Ukiah v. Questex, Ltd*, Mendocino County Superior Court Case No. SCUUK-CVPT-15-66036. Pursuant to the provisions of Code Civ. Proc. § 568 and Health and Safety Code § 17980.7, the City requested that the court appoint a receiver to take full and complete control of the Subject Property and take all steps necessary to rehabilitate the Subject Property and bring it into compliance with the Health and Safety Code and the Ukiah City Code.
- C) On January 9, 2017, the Court issued its Order ("the Order") Appointing Mark S. Adams as the Receiver to take full and complete possession and control of the Subject Property, develop and implement a plan to rehabilitate the property and borrow funds as necessary to pay for the cost of the rehabilitation work and secure that debt with a recorded super priority first lien on the Subject Property for the amount borrowed. The Receiver was authorized to issue and record Receiver's Certificates of Indebtedness to evidence and secure such debt, which were to become a first lien on the Subject Property superior to all preexisting private liens and encumbrances. A form of such a certificate was attached to the Order as Exhibit A. The Receiver's Certificate was to be issued for such items as the Court expressly authorized, upon notice and after hearing.
- D) Pursuant to the Order, the Receiver borrowed from Jitu Ishwar \$438,000 on May 16, 2017 and \$139,576 on February 27, 2018, totaling \$577,576, which loans were secured by a Receiver's Certificate and Deed of Trust recorded with the Mendocino County Recorder on May 19, 2017, with an amended Deed of Trust recorded on December 22, 2017. After Notice of Default was given on December 12, 2018, the Palace Hotel was sold to Jitu Ishwar on January 11, 2019, in a non-judicial foreclosure for a bid of

\$972,084.94 which included the loans from Mr. Ishwar and unpaid receivership fees and expenses.

- E) On or about January 22, 2019, Mr. Ishwar filed Articles of Organization with the California Secretary of State establishing Twin Investments, LLC and on January 28, 2019, he conveyed title to the Subject Property to Twin Investments.
- F) On or about August 9, 2019, the Court approved a Receiver's Certificate and a deed of trust in the amount of \$120,000 in favor of California Receivership Group as beneficiary ("2019 Deed of Trust") which the Receiver has recorded with the Mendocino County Recorder.
- G) Twin Investments has entered, and the court has approved a Letter of Intent ("LOI") to negotiate a purchase and sale agreement for the sale of the Subject Property. Under the LOI the purchase agreement will provide buyer a nine (9) month due diligence period to develop plans and financing for the rehabilitation of the Subject Property in accordance with a Development Agreement to be negotiated and entered by Buyer and the City. The Subject Property remains a dangerous building and a public nuisance. The potential sale of the Subject Property under the terms of the purchase and sale agreement outlined in the LOI provides the best prospect of actually abating public nuisance conditions of the Subject Property.

NOW, THEREFORE, in consideration of the Recitals and Terms of this Settlement Agreement and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows.

TERMS

- 1. Incorporation of Recitals.** The above recitals are incorporated herein by reference.
- 2. Stipulation to Discharge Order.** Upon execution of a Purchase and Sale Agreement between the buyer and Twin Investments with terms as provided in the LOI ("Execution of Purchase Agreement"), the Parties shall file the stipulation to an order terminating the receivership and discharging the Receiver which stipulation and proposed order ("Discharge Order") are attached hereto as Exhibit A and incorporated herein by this reference.
- 3. Payments.** Within two (2) weeks after the Discharge Order is signed and filed by the court:
 - a. The City shall deposit in David J. Rapport's client trust account Twenty-Five Thousand Dollars (\$25,000) to be held by Mr. Rapport for payment to the Receiver as provided in Section 3.c below.
 - b. Twin Investments shall deposit in David J. Rapport's client trust account One Hundred Seventy-Five Thousand Dollars (\$175,000.00) to be held by Mr. Rapport for payment to the Receiver as provided in Section 3.c below. Said payment shall

constitute a full and complete satisfaction of any amounts owed or claimed to be owed by Twin Investments, Jitu Ishwar and Paru Ishwar to or on account of the Receivership or claims filed in or incurred by the Receivership.

- c. Upon compliance with Section 4, below, the funds deposited pursuant to Sections 3.a and 3.b shall be paid the Receiver by check drawn on the David J. Rapport client trust account.
 - d. Upon compliance with Section 3.c, the Receiver shall immediately reconvey to Twin Investments and take any other actions legally required to remove the 2019 Deed of Trust as a lien or encumbrance on title to the Subject Property.
 - e. Except as otherwise provided herein, the Parties shall be responsible for the payment of all their own attorney fees and costs, and no damages, interest or other payments shall be required to be made by the respective Parties.
- 4. Clearing Title.** By no later than two (2) weeks after notice is given to the Receiver that Twin Investments and the City have complied with Sections 3.a and 3.b, the Receiver shall take all actions required to obtain a preliminary title report and a commitment for title insurance for the sale of the Subject Property pursuant to the Purchase and Sale Agreement that does not list as exclusions from coverage under said policy of title insurance Items listed under Schedule B of the Preliminary Title Report prepared by Orange Coast Title Company as of December 19, 2019 (Order No. 150-1844834-07), attached hereto as Exhibit B and any encumbrances, liens or other legal interests resulting from the receivership or recorded prior to the filing of the Discharge Order with the exception of the notices of this action recorded by the City. Upon close of escrow under the Purchase Agreement, the City shall arrange for the recordation of legally sufficient releases to remove said notices from the chain of title to the Subject Property.
- 5. No Additional Contributions.** Except as otherwise provide herein, Twin Investments, Jitu Ishwar and/or Paru Ishwar, shall not be required by the court, a Party, or creditor to make payment, contribute any additional funds, or deduct any amount from the sale proceeds of the Property, to pay for the receivership, pay a Party, pay a creditor, or to make any other payment for any reason related to the receivership.

6. Release and Discharge

- a. Upon full execution of this Settlement Agreement and the Parties completion of all requirements of this Settlement Agreement, Execution of the Purchase Agreement and the court approving the Discharge Order, the Parties expressly release, waive, and relinquish and forever discharge each other from all claims, actions, liabilities, and causes of action, of every nature and kind whatsoever, which arose prior to the date of this Settlement Agreement, whether known or unknown, suspected or unsuspected, asserted or unasserted, or hereafter discovered or ascertained, in law or equity, arising out of the Receivership or any claims that were or could have filed therein.

- b. Except as expressly provided in Section 5.c the Parties hereby waive any and all rights based upon the provisions of Section 1542 of the Civil Code of the State of California, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

- c. This release will not affect any remedies available to City in the event the Purchase Agreement is terminated prior to close of escrow and the Subject Property remains a dangerous building and public nuisance, including reinstatement of the receivership in accordance with the Discharge Order.
- d. This Release on the part of Parties shall be a fully binding and complete settlement among the Parties, their assigns, and successors.
- e. The Parties acknowledge and agree that the Release set forth above is a general release. It is understood and agreed by the Parties that this settlement is a compromise of disputed claims, and the settlement is not to be construed as an admission of liability on the part of any Party.
- f. Each Party hereto shall bear all attorneys' fees and costs arising from the actions of its own counsel, if any, in connection with the claims described in the Recitals and each Party waives and releases the other Parties from any claim for attorneys' fees or costs,

7. GENERAL PROVISIONS

A. Entire Agreement. It is expressly agreed that this Settlement Agreement, constitutes a full and final settlement and release of all claims identified herein. The Parties agree that this Settlement Agreement contains the entire agreement between the Parties, and therefore supersedes any prior agreements of the Parties, with respect to the issues addressed herein. The terms of this Settlement Agreement are contractual and shall survive the execution of this Settlement Agreement.

B. Amendments. No modification, amendment, or waiver of any provision of this Settlement Agreement, nor consent to any departure by any Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Parties, and same shall be effective only in the specific instance and for the specific purpose for which given.

C. Severability. If any clause or provision herein shall be adjudged invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision, which shall remain in full force

and effect as such invalid clause or provision shall be deemed severable, unless such severance should materially affect the intent of the Parties in entering into this Settlement Agreement.

D. Governing Law. This Settlement Agreement is made and entered into in the State of California and will in all material respects be interpreted, enforced, and governed under the laws of said state, without regard to conflict of laws jurisprudence.

E. Capacity. The Parties warrant and represent that, prior to the execution of this Settlement Agreement, they have not sold, assigned, granted, conveyed, or transferred to any other entity or person any of the rights, obligations, claims, demands, actions, or causes of actions described herein. The Parties have full legal and mental capacity to enter into, execute, and perform the terms and conditions contained in this Settlement Agreement and have entered into the Settlement Agreement voluntarily. Any person executing this Settlement Agreement in a representative capacity represents and warrants that that person is duly authorized to execute this agreement on behalf of the represented Party.

F. Binding Effect. This Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns and legal representatives.

G. Counterparts. This Settlement Agreement may be executed in one or more counterparts, at different times and places. When all Parties have executed a counterpart of this Settlement Agreement, it shall be binding on all Parties notwithstanding that all of them may not have signed the same counterpart. A facsimile or other electronically transmitted copy of an executed counterpart hereof shall have the same effect as an original.

H. Waiver. No waiver by a Party affects the exercise of any of that Party's other rights and remedies. A Party's failure to neglect to enforce any of its rights un this Settlement Agreement will not be deemed to be a waiver of that or any other of that Party's rights.

I. Headings. The headings of the paragraphs herein are intended solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

J. Date of Execution. The date of this Settlement Agreement shall be the date that the last Party executes this Settlement Agreement as shown below (the "Date of Execution").

K. Retention of Court Jurisdiction. The Parties stipulate and respectfully request that the court retain jurisdiction pursuant to California Code of Civil Procedure Section 664.6 to enforce this Settlement Agreement. Attorney Fees shall be awarded to the prevailing party pursuant to California Code of Civil Procedure Section 664.6 notwithstanding dismissal of the action.

L. Court Approval. This Settlement Agreement is subject to court approval, and shall only be enforceable by the parties following court approval.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement on the dates set forth below:

TWIN INVESTMENT, LLC

By: _____
Jitu Ishwar, Member

Dated:

By: _____
Paru Ishwar, Member

Dated:

CITY OF UKIAH

By: _____
Sage Sangiacomo, City Manager

Dated:

MARK S. ADAMS AND CALIFORNIA RECEIVERSHIP GROUP

By: _____
Mark S. Adams

Dated

APPROVED AS TO FORM

Stephen F. Johnson
Mannon King, Johnson & Wipf, LLP

Attorney for Twin Investments

David J. Rapport, Ukiah City Attorney
Attorney for City of Ukiah

Mark S. Adams,
Court Appointed Receiver in his
Capacity as Attorney for himself
and California Receivership Group

Date: _____

Date: _____

Date: _____