

CSD 2024 [04/28/96]

Name, Address, Telephone No. & I.D. No.

Leslie T. Gladstone, Trustee
 5656 La Jolla Blvd.,
 La Jolla, CA 92037
 Telephone (858) 454-9887

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF CALIFORNIA
 325 West "F" Street, San Diego, California 92101-6991

In re

PIRCH, INC.

Debtor(s).

BANKRUPTCY NO. 24-01376-CL7

REPORT OF SALE

Pursuant to Local Bankruptcy Rule 6004, the undersigned Trustee hereby reports and represents that:

1. On June 3, 2024 (ECF No. 128), due notice of the Trustee's intent to sell the property described herein was mailed to the debtor, the debtor's attorney and all creditors as required by Local Bankruptcy Rules 2002 and 6004.

2. The time for filing a request for hearing has expired without an objection or request for hearing having been received by the undersigned.

3. A description of the property sold, name of the purchaser(s), and the terms of sale are set forth in Exhibit A printed on Page 2.

4. If applicable, the following entities held a valid security interest in all or part of the property sold and were paid the stated sums in satisfaction thereof:

Name and AddressPropertyAmount Paid

5. The purchase price has been paid in full and all property delivered to the purchaser.

I hereby declare under penalty of perjury that the within and attached statements are true to the best of my knowledge and belief.

DATED: August 6, 2024

/s/ Leslie T. Gladstone
 Trustee in Bankruptcy

EXHIBIT "A"

PIRCH, INC. _____ DEBTOR, CASE NO. 24-01376-CL7

Type of Sale:¹

[XX] Trustee's Motion to (1) Approve Auction Procedures; and (2) Sell Leasehold Interests and Related Personal Property Pursuant to 11 U.S.C. Section 363, Free and Clear of Liens, Claims, and Interests. (ECF No. 128). Order approving Motion is attached hereto. (ECF No. 405)

Describe methods used to obtain best possible price:²

The Trustee provided notice of this sale to each party who expressed an interest in purchasing any portion of the Property. The Trustee also provided notice of the sale to all parties requesting special notice and all entities required to be given notice under the Court-approved notice procedures. The Trustee also advertised the sale with Inforuptcy.

<u>Name and Address of Purchaser(s)</u>	<u>Description of Property Sold</u>	<u>Sales Price</u>
Ferguson Enterprises, LLC	Leasehold interest for leased property located 3303 Hyland Avenue, Costa Mesa, CA	\$6,300,000.00, plus lease cure amount of \$387,918.92 for period through 7/31/24, plus any security deposit paid to landlord
Ferguson Enterprises, LLC	Leasehold interest for leased property located 28341 Marguerite Parkway, Mission Viejo, CA	\$1,500,000.00, plus lease cure amount of \$475,287.71 for period through 7/31/24, and security deposit paid to landlord in the amount of \$58,135.00
Ferguson Enterprises, LLC	Leasehold interest for leased property located 71905 Highway 101, Ste. B &E, Rancho Mirage, CA	\$1,500,000.00, plus lease cure amount of plus \$247,330.17 for period through 7/31/24, plus any security deposit paid to landlord

Offers or bids received but not accepted from the following entities:

<u>Name</u>	<u>Value of Offer</u>
Best Buy, L.P.	\$6,200.00, plus lease cure amount for 3303 Hyland Ave., Costa Mesa, CA

Auction Remit Reviewed and Approved:

DATED: August 6, 2024

Signed: /s/Leslie T. Gladstone _____,
Leslie T. Gladstone, Chapter 7 Trustee

INSTRUCTIONS

¹Indicate method of sale, whether by sealed bids, negotiations or otherwise.

²Describe advertising, telephone or other forms of solicitation for offers, negotiations and any other methods used to consummate sale.

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Name, Address, Telephone No. & I.D. No.

Leslie T. Gladstone, Esq. (SBN 144615)

Christin A. Batt, Esq. (SBN 222584)

FINANCIAL LAW GROUP, PC

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E-mail: ChristinB@flgsd.com

Attorneys for Leslie T. Gladstone, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT**

SOUTHERN DISTRICT OF CALIFORNIA

325 West F Street, San Diego, California 92101-6991

In Re

PIRCH, INC.,

Debtor.

BANKRUPTCY NO. 24-01376-CL7

Date of Hearing: July 1, 2024

Time of Hearing: 10:30 a.m.,

Name of Judge: Christopher B. Latham

ORDER ON**TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS**The court orders as set forth on the continuation pages attached and numbered 2 Through 9 with

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exhibits, if any, for a total of 9 pages. Motion/Application Docket Entry No. 128 .

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DATED:

July 12, 2024

Christopher B. Latham
 Judge, United States Bankruptcy Court

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

DEBTOR: PIRCH, INC.,

CASE NO: 24-01376-CL7

On June 3, 2024, Leslie T. Gladstone, chapter 7 Trustee (the "**Trustee**") for the bankruptcy estate (the "**Estate**") of Pirch, Inc. ("**Debtor**" or "**Pirch**"), filed and served her Motion to (1) Approve Auction Procedures; and (2) Sell Leasehold Interests and Related Personal Property Pursuant to 11 U.S.C. Section 363, Free and Clear of Liens, Claims, and Interests (the "**Sale Motion**").

On June 7, 2024, First Financial Holdings, LLC ("**FFH**") filed its Omnibus Limited Objection to the Sale Motion (the "**FFH Omnibus Objection**"). On June 7, 2024 Sub-Zero Group, Inc. ("**Sub-Zero**") filed its Notice of Non-Consent to Use of Cash Collateral by Secured Creditor Sub-Zero Group, Inc. On June 14, 2024, BTROP 1, LLC and TIS Equities X, LLC (collectively, the "**Mission Viejo Landlord**") filed their response to the Sale Motion. On June 17, 2024, CRC SOCO, LLC ("**CRC**") filed its limited objection to the Sale Motion (the "**CRC Limited Objection**"). On June 17, 2024, Sub-Zero filed its opposition to the Sale Motion (the "**Sub-Zero Opposition**"). On June 17, 2024, Lombardi Construction, Inc. and Chris Sznewajs (collectively, "**Lombardi**") filed their objection to the Sale Motion (the "**Lombardi Objection**").

On June 14, 2024, the Trustee filed her reply to the FFH Omnibus Objection. On June 24, 2024, the Trustee filed her Reply to the Lombardi Objection, and Lombardi thereafter withdrew the Lombardi Objection. On July 24, 2024, the Trustee filed her Reply to the CRC Limited Objection. On June 24, 2024, the Trustee filed her Reply to the Sub-Zero Opposition.

On June 26, 2024, the Trustee and Sub-Zero entered into that certain *Stipulation Between Sub-Zero Group and the Trustee Regarding Opposition to the Trustee's Motion to Approve Auction Procedures and Sell Leasehold Interests and Related Personal Property* (ECF No. 336) (the "**Sub-Zero Stipulation**"), by which Sub-Zero withdrew its Sub-Zero Opposition, subject to the terms and conditions as set forth in the Sub-Zero Stipulation. On June 27, 2024, the Court entered its Order approving the Sub-Zero Stipulation. (ECF No. 343)

On June 28, 2024, the Trustee filed her Supplemental Declaration in Support of the Sale Motion, which attached as an exhibit the Stipulation Regarding Assumption/Assignment of Lease (the "**Mission Viejo Stipulation**") entered into with the Mission Viejo Landlord regarding the lease (the "**Mission Viejo Lease**") of the premises located at 28341 Marguerite Parkway, Mission Viejo, CA 92691 (the "**Mission Viejo Premises**").

In the Sale Motion, the Trustee proposes to sell leasehold interests in three showroom locations—the Costa Mesa showroom, the Mission Viejo showroom, and the Rancho Mirage showroom—as well as any inventory, fixtures, leasehold improvements and other personal property (all only to the extent owned by Debtor) located at these showrooms (collectively, the "**Property**").

The Trustee negotiated an Asset Purchase Agreement with Ferguson Enterprises, LLC (the "**Asset Purchase Agreement**") for a total purchase price of \$5,000,000.00, plus the amounts necessary to cure all monetary defaults at each of these three lease locations. The Asset Purchase Agreement was subject to Court approval and overbid by potential buyers willing to offer the Trustee a better price. The Trustee allocated the purchase price among the three lease locations and entertained overbid offers for one or more of the locations.

This matter came on regularly for hearing on July 1, 2024, at 10:30 a.m., the Honorable Christopher B. Latham presiding. Appearances were made by Leslie T. Gladstone of Financial Law Group, P.C., attorneys for the Trustee; Anthony Napolitano, attorney for Sub-Zero Group, Inc., et al; Walter Pena, attorney for the Mission Viejo Landlord; Laurel Roglen, attorney for CRC SOCO, LLC; John Thompson, attorney for Ferguson Enterprises, LLC; and Buddy Davenport on behalf of Best Buy Stores L.P. No other appearances were made.

The Court having reviewed and considered the Sale Motion and auction procedures, the oppositions and limited objections, the Trustee's replies, and Stipulations, notice and service having been properly made, the auction properly conducted before the Court, for reasons stated in the record, and good cause appearing therefor,

IT IS HEREBY ORDERED that,

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

DEBTOR: PIRCH, INC.,

CASE NO: 24-01376-CL7

1. The Trustee's Motion to (1) Approve Auction Procedures; and (2) Sell Leasehold Interests and Related Personal Property Pursuant to 11 U.S.C. Section 363, Free and Clear of Liens, Claims, and Interests is hereby granted in part. Capitalized terms not defined herein are ascribed the meaning set forth in the Sale Motion.
2. The sale procedures and auction procedures in the Sale Motion as regarding the Property are approved.
3. Except as set forth herein, the sale of the Property is made pursuant to 11 U.S.C. Section 363(f), free and clear of any and all liens, claims, and interests, with any such liens, claims and interests attaching to the sale proceeds with the same validity, scope, priority, and perfection as they had on the Property immediately prior to sale. In the event that any of the sales described below fails to close, the existing liens on the applicable property shall remain unaffected.
4. The Trustee is authorized to pay any existing undisputed liens from the proceeds of the sales. In the event the Trustee disputes any amount submitted in an updated payoff demand from a lienholder, the undisputed amount shall be paid by the Trustee and the disputed amount of the lien shall be held by the Trustee pending resolution of the dispute by the Bankruptcy Court.
5. The failure to specifically include in this Order any particular provisions of the agreements described below shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the agreements and any and all related agreements, documents, instruments and actions, be authorized and approved in their entirety.
6. Any Aranelli-labelled cabinet displays located with the Property are not property of the Estate and shall not be sold. Aranelli Design LLC and the respective buyer may make separate arrangements regarding such displays.
7. As provided in the Sub-Zero Stipulation between the Trustee and Sub-Zero, the Trustee shall, among other things, segregate Three Hundred Fifty Thousand and 00/100ths Dollars (\$350,000.00) from the net proceeds of the sales of the Property (the "**Segregated Funds**") and hold such funds pending final determination of Sub-Zero's lien rights as to the Display Units (as defined in the Sub-Zero Opposition) located at the Costa Mesa showroom, the Mission Viejo showroom, and the Rancho Mirage showroom.
8. This Court retains jurisdiction to implement and effectuate the provisions of this Order.

Costa Mesa Property

9. Following an in-court auction, Ferguson Enterprises, LLC is confirmed as the Successful Bidder for the Costa Mesa Lease and related personal property (collectively, the "**Costa Mesa Property**") for a purchase price of Six Million Three Hundred Thousand and 00/100ths Dollars (\$6,300,000.00), plus the Costa Mesa Cure Amount (described below). Best Buy Stores L.P. is confirmed as the Back-Up Bidder for the Costa Mesa Property for a purchase price of Six Million Two Hundred Thousand and 00/100ths Dollars (\$6,200,000.00), plus the Costa Mesa Cure Amount.
10. The Court finds that Ferguson Enterprises, LLC as Successful Bidder and Best Buy Stores L.P. as Back-Up Bidder have provided to the landlord of the Costa Mesa Lease adequate assurance of future performance under that lease, as required by 11 U.S.C. 365(b)(1)(C) and (b)(3).
11. The sale of the Costa Mesa Property to Ferguson Enterprises, LLC as Successful Bidder is authorized and made pursuant to the Asset Purchase Agreement and the First Amendment to Asset Purchase Agreement, copies of which are attached as Exhibit A to the Declaration of Leslie T. Gladstone at ECF No. 128-1 and Exhibit A to the Supplemental Declaration of Leslie T. Gladstone at ECF No. 359, respectively, which agreements are incorporated herein by reference. The terms, conditions, and transaction contemplated by those agreements are hereby approved in all respects. The Trustee is authorized to assume and assign the Costa Mesa Lease and sell the Costa Mesa Property to Ferguson Enterprises, LLC for the gross purchase price of \$6,300,000.00 plus the Costa Mesa Cure Amount.
12. At or before Closing, Ferguson Enterprises, LLC as Successful Bidder shall pay to the Trustee the cure amount for the Costa Mesa Lease in the amount of \$387,918.92 for the period through July 31, 2024, plus any additional undisputed cure amounts submitted by the landlord prior to Closing (the "**Costa Mesa Cure Amount**"). Ferguson Enterprises LLC shall also reimburse to the Estate any security deposit paid by Pirch to the landlord for the Costa Mesa Lease to the

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

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extent it is not included in the Costa Mesa Cure Amount. Pursuant to 11 U.S.C. Section 365(b), the Trustee shall promptly transfer the Costa Mesa Cure Amount to the landlord under the Costa Mesa Lease, provided that the Trustee may retain any reimbursed security deposit in excess of the Costa Mesa Cure Amount paid by Ferguson Enterprises, LLC.

13. In the event that Ferguson Enterprises, LLC as Successful Bidder for the Costa Mesa Property fails to close this sale pursuant to the Asset Purchase Agreement and the First Amendment to Asset Purchase Agreement on or before July 31, 2024, it will forfeit the deposit as liquidated damages and the Trustee shall have the option, but not the requirement, to bring an action for specific performance and thereby require performance in full of the applicable agreement.
14. In the event that Ferguson Enterprises, LLC fails to close this sale of the Costa Mesa Property, the Trustee is authorized to proceed with the sale to Best Buy Stores L.P. as Back-Up Bidder in accordance with the terms of the Costa Mesa Back-Up Agreement, without further order of this Court, provided however that CRC shall receive no less than seven (7) days' notice prior to closing the sale to the Back-Up Bidder. A copy of the Costa Mesa Back-Up Agreement is attached as Exhibit B to the Supplemental Declaration of Leslie T. Gladstone at ECF No. 359 and incorporated herein by reference. The terms, conditions, and transactions contemplated by that agreement are hereby approved in all respects. The Trustee is authorized to sell the Costa Mesa Property to Best Buy Stores L.P. for the gross purchase price of \$6,200,000.00 plus the Costa Mesa Cure Amount. In the event the sale to the Back-Up Bidder proceeds pursuant to this Order, paragraphs 12 and 18 of this Order shall apply to Best Buy Stores L.P. as the purchaser.
15. In the event that Best Buy Stores L.P. as Back-Up Bidder fails to close this sale of the Costa Mesa Property pursuant to the Costa Mesa Back-Up Agreement on or before 10 business days after receipt of written notification that the Successful Bidder does not intend to consummate the transaction, it will forfeit the deposit as liquidated damages and the Trustee shall have the option, but not the requirement, to bring an action for specific performance and thereby require performance in full of the applicable agreement.
16. Closing of the sale of the Costa Mesa Property shall occur on or before 15 days after entry of this Order or as soon thereafter as possible.
17. Ferguson Enterprises, LLC as Successful Bidder and Best Buy Stores L.P. as Back-Up Bidder have been determined by the Court to be buyers in "good faith" within the meaning of 11 U.S.C. Section 363(m).
18. Notwithstanding anything to the contrary in this Order, with respect to the lease of the Costa Mesa Property (the "**Costa Mesa Lease**"), from and after the closing date, Ferguson Enterprises, LLC shall have both the benefit and burdens under the Costa Mesa Lease as of the closing date, including, without limitation, those burdens which have accrued as of the closing date but are not yet due under the terms of the Costa Mesa Lease (and thus are not payable as part of the Costa Mesa Cure Amount pursuant to section 365(b) of the Bankruptcy Code), including, without limitation: (i) any adjustments or reconciliations (including, without limitation, any year-end adjustments or reconciliations) in respect of common area maintenance, insurance, and other charges and expenses that become due under the Costa Mesa Lease, irrespective of whether it relates to a pre-closing or post-closing period; (ii) any and all property taxes due and payable under the Costa Mesa Lease; and (iii) any indemnification obligations that become due under the Costa Mesa Lease; provided that nothing in this Order shall be deemed or construed to amend, modify or supplement the Costa Mesa Lease.
19. The Trustee's right to surcharge expenses related to preservation and/or disposition of the Costa Mesa Property under Section 506(c) of the Bankruptcy Code is preserved as to all lien creditors and/or other parties in interest.

Mission Viejo Property

20. The Mission Viejo Stipulation is approved in its entirety.
21. Following an in-court auction, Ferguson Enterprises, LLC is confirmed as the Buyer for the Mission Viejo Lease and related assignable personal property owned by Debtor (collectively, the "**Mission Viejo Property**") for a purchase price

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

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of One Million Five Hundred Thousand and 00/100ths Dollars (\$1,500,000.00) plus the Mission Viejo Cure Amount (defined below).

22. The Trustee and Ferguson Enterprises, LLC shall be required to fully comply with 11 U.S.C. § 365(b), including, but not limited to, "cure, or provide adequate assurance that the trustee will promptly cure" all defaults under the Mission Viejo Lease, as required by 11 U.S.C. § 365(b)(1)(A), and provide to the Landlord "adequate assurance of future performance" of the Mission Viejo Lease, as required by 11 U.S.C. § 365(b)(1)(C) and (b)(3).
23. The Court finds that Ferguson Enterprises, LLC has provided to the Mission Viejo Landlord of the Mission Viejo Lease adequate assurance of future performance under that lease, as required by 11 U.S.C. 365(b)(1)(C) and (b)(3).
24. The sale of the Mission Viejo Property to Ferguson Enterprises, LLC is authorized and made pursuant to the Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Declaration of Leslie T. Gladstone at ECF No. 128-1 and pursuant to the Mission Viejo Stipulation, a copy of which is attached as Exhibit A to the Supplemental Declaration of Leslie T. Gladstone at ECF No. 346, which are incorporated herein by reference, and the terms, conditions, and transactions contemplated by that Agreement and that Stipulation are hereby approved in all respects. The Trustee is authorized to assume and assign the Mission Viejo Lease and sell the Mission Viejo Property to Ferguson Enterprises, LLC for the gross purchase price of \$1,500,000.00 plus the Mission Viejo Cure Amount.
25. At or before Closing, Ferguson Enterprises, LLC shall pay to the Trustee the cure amount for the Mission Viejo Lease in the amount of \$475,287.71 for the period through July 31, 2024, plus any additional undisputed cure amounts submitted by the Mission Viejo Landlord to the Trustee prior to Closing (the "**Mission Viejo Cure Amount**"). Ferguson Enterprises LLC shall also reimburse to the Estate the security deposit paid by Pirch to the Mission Viejo Landlord for the Mission Viejo Lease in the amount of \$58,135.00. As a condition precedent to the Trustee's assumption and assignment of the Mission Viejo Lease to Ferguson Enterprises, LLC pursuant to 11 U.S.C. Section 365(b), the Trustee shall promptly transfer and pay in full the Mission Viejo Cure Amount to the Mission Viejo Landlord under the Mission Viejo Lease. If for any reason the Mission Viejo Lease is not assumed and assigned on or before July 31, 2024, then on August 1, 2024, additional cure amounts will accrue and will be due and owing.
26. Upon satisfaction and payment in full of the Mission Viejo Cure Amount to the Mission Viejo Landlord under the Mission Viejo Lease, the Mission Viejo Lease will be resurrected in its entirety.
27. In the event that Ferguson Enterprises, LLC fails to close this sale pursuant to the Asset Purchase Agreement on or before July 31, 2024, it will forfeit its deposit as liquidated damages and the Trustee shall have the option, but not the requirement, to bring an action for specific performance and thereby require performance in full of the applicable agreement.
28. Closing of the sale of the Mission Viejo Property shall occur on or before 15 days after entry of this Order or as soon thereafter as possible.
29. Upon satisfaction and payment in full of the Mission Viejo Cure Amount to the Mission Viejo Landlord under the Mission Viejo Lease and upon entry of a final, unappealable Order approving the Mission Viejo Stipulation, and approving the assumption and assignment of the Mission Viejo Lease, the Forfeiture Relief Action and the Unlawful Detainer Action (as defined in the Mission Viejo Stipulation) shall be promptly dismissed.
30. Ferguson Enterprises, LLC has been determined by the Court to be a buyer in "good faith" within the meaning of 11 U.S.C. Section 363(m).
31. Notwithstanding anything to the contrary in this Order, with respect to the Mission Viejo Lease of the Mission Viejo Premises, from and after the Closing Date, Ferguson Enterprises, LLC shall be subject to all the terms and conditions of the Mission Viejo Lease and shall have both the benefits and the burdens under the Mission Viejo Lease as of the Closing Date, including, without limitation, those burdens which have accrued as of the Closing Date but are not yet due under the terms of the Mission Viejo Lease (and thus are not payable as part of the Mission Viejo Cure Amount pursuant to section 365(b) of the Bankruptcy Code), including, without limitation: (i) any adjustments or reconciliations (including, without limitation, any year-end adjustments or reconciliations) in respect of common area maintenance, insurance, and

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Signed by Judge Christopher B. Latham July 12, 2024

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

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other charges and expenses that become due under the Mission Viejo Lease, irrespective of whether it relates to a pre-Closing Date or post-Closing Date period; (ii) any and all property taxes due and payable under the Mission Viejo Lease; and (iii) any indemnification obligations that become due under the Mission Viejo Lease; provided that nothing in this Order shall be deemed or construed to amend, modify, or supplement the Mission Viejo Lease.

32. The Trustee's right to surcharge expenses related to preservation and/or disposition of the Mission Viejo Property under Section 506(c) of the Bankruptcy Code is preserved as to all lien creditors and/or other parties in interest; provided, however, for clarification, the Trustee is not allowed and shall not be allowed to surcharge the Mission Viejo Cure Amount which must be paid in full to the Mission Viejo Landlord.

Rancho Mirage Property

33. Following an in-court auction, Ferguson Enterprises, LLC is confirmed as the Buyer for the Rancho Mirage Lease and related personal property (collectively, the "**Rancho Mirage Property**") for a purchase price of One Million Five Hundred Thousand and 00/100ths Dollars (\$1,500,000.00) plus the Rancho Mirage Cure Amount (defined below).
34. The Court finds that Ferguson Enterprises, LLC has provided to the landlord of the Rancho Mirage Lease adequate assurance of future performance under that lease, as required by 11 U.S.C. 365(b)(1)(C) and (b)(3).
35. The sale of the Rancho Mirage Property to Ferguson Enterprises, LLC is authorized and made pursuant to the Asset Purchase Agreement, a copy of which is attached as Exhibit A to the Declaration of Leslie T. Gladstone at ECF No. 128-1 and incorporated herein by reference, and the terms, conditions, and transaction contemplated by that agreement are hereby approved in all respects. The Trustee is authorized to assume and assign the Rancho Mirage Lease and sell the Rancho Mirage Property to Ferguson Enterprises, LLC for the gross purchase price of \$1,500,000.00 plus the Rancho Mirage Cure Amount.
36. At or before Closing, Ferguson Enterprises, LLC shall pay to the Trustee the cure amount for the Rancho Mirage Lease in the amount of \$247,330.17 for the period through July 31, 2024, plus any additional undisputed cure amounts submitted by the landlord prior to Closing (the "**Rancho Mirage Cure Amount**"). Ferguson Enterprises LLC shall also reimburse to the Estate any security deposit paid by Pirch to the landlord for the Rancho Mirage Lease to the extent it is not included in the Rancho Mirage Cure Amount. Pursuant to 11 U.S.C. Section 365(b), the Trustee shall promptly transfer the Rancho Mirage Cure Amount to the landlord under the Rancho Mirage Lease, except insofar as the Rancho Mirage Cure Amount involves reimbursement of any security deposit, which shall be retained by the Estate.
37. In the event that Ferguson Enterprises, LLC as Successful Bidder for the Rancho Mirage Property fails to close this sale pursuant to the Asset Purchase Agreement on or before July 31, 2024, it will forfeit its deposit as liquidated damages and the Trustee shall have the option, but not the requirement, to bring an action for specific performance and thereby require performance in full of the applicable agreement.
38. Closing of the sale of the Rancho Mirage Property shall occur on or before 15 days after entry of this Order or as soon thereafter as possible.
39. Ferguson Enterprises, LLC has been determined by the Court to be a buyer in "good faith" within the meaning of 11 U.S.C. Section 363(m).
40. Notwithstanding anything to the contrary in this Order, with respect to the lease of the Rancho Mirage Property (the "**Rancho Mirage Lease**"), from and after the closing date, Ferguson Enterprises, LLC shall have both the benefit and burdens under the Rancho Mirage Lease as of the closing date, including, without limitation, those burdens which have accrued as of the closing date but are not yet due under the terms of the Rancho Mirage Lease (and thus are not payable as part of the Rancho Mirage Cure Amount pursuant to section 365(b) of the Bankruptcy Code), including, without limitation: (i) any adjustments or reconciliations (including, without limitation, any year-end adjustments or reconciliations) in respect of common area maintenance, insurance, and other charges and expenses that become due under the Rancho Mirage Lease, irrespective of whether it relates to a pre-closing or post-closing period; (ii) any and all property taxes due and payable under the Rancho Mirage Lease; and (iii) any indemnification obligations that become

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Signed by Judge Christopher B. Latham July 12, 2024

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

DEBTOR: PIRCH, INC.,

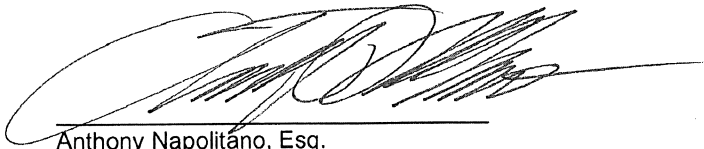
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due under the Rancho Mirage Lease; provided that nothing in this Order shall be deemed or construed to amend, modify or supplement the Rancho Mirage Lease.

41. The Trustee's right to surcharge expenses related to preservation and/or disposition of the Rancho Mirage Property under Section 506(c) of the Bankruptcy Code is preserved as to all lien creditors and/or other parties in interest.

IT IS SO ORDERED.

APPROVED AS TO FORM



Anthony Napolitano, Esq.
BUCHALTER, a Professional Corporation
Attorneys for Sub-Zero Group, Inc.

Laurel Roglen, Esq.
BALLARD SPAHR LLP
Attorneys for CRC SOCO, LLC

Roger F. Friedman, Esq.
RUTAN & TUCKER, LLP
Attorneys for BTPROP 1, LLC and
TIS Equities X, LLC

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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

DEBTOR: PIRCH, INC.,

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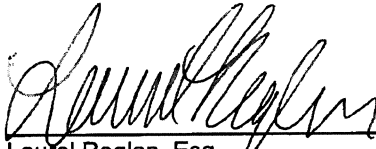
due under the Rancho Mirage Lease; provided that nothing in this Order shall be deemed or construed to amend, modify or supplement the Rancho Mirage Lease.

41. The Trustee's right to surcharge expenses related to preservation and/or disposition of the Rancho Mirage Property under Section 506(c) of the Bankruptcy Code is preserved as to all lien creditors and/or other parties in interest.

IT IS SO ORDERED.

APPROVED AS TO FORM

Anthony Napolitano, Esq.
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TRUSTEE'S MOTION TO (1) APPROVE AUCTION PROCEDURES; AND (2) SELL LEASEHOLD INTERESTS AND RELATED PERSONAL PROPERTY PURSUANT TO 11 U.S.C. SECTION 363, FREE AND CLEAR OF LIENS, CLAIMS, AND INTERESTS

DEBTOR: PIRCH, INC.,

CASE NO: 24-01376-CL7

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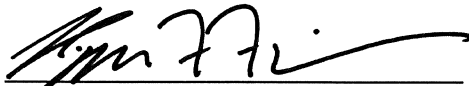
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