

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OKLAHOMA**

IN RE:)	
)	
Oklahoma Jazz Hall of Fame, Inc.,)	Case No. 21-10047-M
)	(Chapter 11)
)	
Debtor.)	

SUBCHAPTER V TRUSTEE REPORT

Stephen J. Moriarty as Trustee (“Trustee”) for Oklahoma Jazz Hall of Fame, Inc. (the “Debtor”) submits this Report and states as follows:

1. On March 23, 2021 this Court entered an order (the “Bid Procedures Order”) (A) Establishing Bidding Procedures in Connection With the Sale of Substantially All of the Debtor’s Assets, (B) Approving the Form and Manner of Notices, (C) Scheduling Dates for An Auction and Sale Hearing, (D) Authorizing and Approving the Form of Asset Purchase Agreement; and (E) Approving Procedures to Determine Cure Amounts Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases [Dkt. No. 54].

2. Prior to expiration of the Bid Deadline¹ Trustee received bids from the following parties:

- a. Maxine Horner Family Foundation, and
- b. The Jazz Foundation, LLC.

3. Pursuant to the Bid Procedures, Trustee designated the following as Qualified Bidders that had submitted Qualified Bids:

- a. The Jazz Foundation, LLC.

¹ Unless otherwise stated, capitalized terms have the meanings ascribed to them in the Bid Procedures Order.

Trustee determined that the Maxine Horner Family Foundation (a \$0 bid for miscellaneous assets of Debtor without the required deposit) submitted a non-conforming bid and did not become a Qualified Bidder.

4. Having only one Qualified Bid, Trustee designated the Qualified Bid of The Jazz Foundation, LLC to be the Prevailing Bid with respect to the Assets for purposes of the Bid Procedures and elected not to proceed with an Auction of the Assets.

5. A copy of The Jazz Foundation, LLC bid is attached as Exhibit "A".

6. A copy of the proposed Lease Assignment and Bill of Sale to be used (subject to change) is attached as Exhibit "B".

/s/ Stephen J. Moriarty

Stephen J. Moriarty (OBA # 6410)
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-8820
Telephone: (405) 232-0621
Facsimile: (405) 232-9659
E-mail: smoriarty@fellerssnider.com

TRUSTEE

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2021, I electronically submitted the attached document to the Clerk of the Court using the ECF system for filing.

/s/ Stephen J. Moriarty

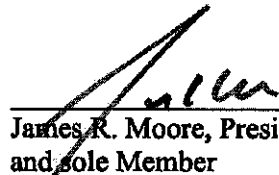
Stephen J. Moriarty

**RESOLUTION AND ACTION
THE JAZZ FOUNDATION, LLC**

The undersigned, being the only Member, President, and sole Manager of The Jazz Foundation, LLC (the "Company"), does hereby resolve and approve the following actions:

- 1) Allowing the Manager to sign and submit the attached bid and proposal to the Trustee, Stephen J. Moriarty for the Oklahoma Jazz Hall of Fame, Inc. (the "Debtor") in Case No. 21-10047-M in the Federal Bankruptcy Court for the Northern District of Oklahoma on May 4, 2021; and
- 2) To deposit Twenty Thousand Dollars (\$20,000.00) by wire transfer to the Trustee to support said bid and proposal on May 4, 2021; and
- 3) Directing the Manager to do all things and take all action he deems necessary to either (i) prevail in the auction and sale process, or (ii) withdraw from same at such time as he deems necessary and appropriate in his unilateral discretion on such terms as are permitted by the Sale Process if he is not the prevailing Buyer at Auction.

So Resolved and Approved this 4th day of May, 2021.


James R. Moore, President, Manager
and sole Member
The Jazz Foundation, LLC



May 4, 2021

Stephen J. Moriarty, Esq.
Fellers, Snider, Blankenship,
Bailey & Tippens, P.C.
100 N. Broadway Ave., Suite 1700
Oklahoma City, OK 73102
e-mail: smoriarty@fellerssnider.com

Re: Oklahoma Jazz Hall of Fame, Inc.
Voluntary Petition Chapter 11
Case No. 21-10047-M
(the "Estate")

Mr. Moriarty:

I write in my capacity as President and Manager of The Jazz Foundation, LLC, a privately owned Oklahoma limited liability company. The Jazz Foundation, LLC offers to perform as Buyer pursuant to the terms of the Asset Purchase Agreement attached hereto.

Assuming we are the successful bidder, then *in addition* to fulfilling its obligations under the Asset Purchase Agreement, The Jazz Foundation, LLC will:

- A. Assume the future (from and after date of Closing) obligations of the lease of premises at 111 East First Street, Tulsa ("Lease of Premises") and comply with the terms of the Lease of Premises and operate a Jazz Hall of Fame to include museum, practice facilities and maintain landscaping; and
- B. The Jazz Foundation, LLC will be funded with Two Million Dollars (\$2,000,000.00). Those funds will be used for the following purposes:
 - 1) One Million Dollars (\$1,000,000.00) in additional funds dedicated to the use of The Jazz Foundation, LLC to satisfy obligations of deferred maintenance and additional capital improvements to the Premises subject to the terms, requirements, conditions, and constraints of the Lease of Premises; and
 - 2) One Million Dollars (\$1,000,000.00) in additional funds to satisfy future obligations of the Lease of Premises and operating expenses of The Jazz Foundation, LLC.

I look forward to working with you to get a deal done quickly.

Sincerely,

James R. Moore, President and Manager
The Jazz Foundation, LLC

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated _____, 2021, by and between Stephen J. Moriarty as Trustee (the “Trustee”) for Oklahoma Jazz Hall of Fame, Inc. (“Seller”) and The Jazz Foundation, LLC, an Oklahoma limited liability company (“Buyer”);

RECITALS

Buyer desires to purchase the Assets, and Seller desires to sell, convey, assign, and transfer the Assets (as defined below) to Buyer, on the terms and conditions set forth in this Agreement.

Seller, with the assistance of his advisors, has the right to seek higher and better offers for the Assets and will conduct an auction (the “Auction”) for the Assets so as to seek to ensure this Agreement represents the highest and best offer received for the Assets. The sale of the Assets will be conducted pursuant to the Bidding Procedures, defined below, and incorporated herein.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

ARTICLE I.

Definitions and References

Section 1.1. Defined Terms. When used in this Agreement, the following terms shall have the respective meanings assigned to them in this **Section 1.1** or in the section, subsections or other subdivisions referred to below:

“**Agreement**” shall mean this Agreement, as hereafter changed, amended, or modified in accordance with the terms hereof.

“**Assets**” shall mean the Personal Property, Real Estate Lease, and the rights and interests described in **Section 2.1**.

“**Base Purchase Price**” shall have the meaning assigned to such term in **Section 3.1**.

“**Bidding Procedures**” shall be the procedures utilized to conduct the sale of the Assets as set forth **Schedule “___”**.

“**Closing**” shall have the meaning assigned to such term in **Section 6.1**.

“**Closing Date**” shall be on or before _____, 2021, the date on which Closing occurs.

“**Conveyance**” shall have the meaning assigned to such term in **Section 6.2(a)**.

“**Effective Date**” shall mean the Closing Date.

“**Excluded Interests**” shall have the meaning assigned to such term in **Section 2.2**.

“**Furniture, Fixtures and Equipment**” shall mean the Furniture, Fixtures and Equipment described in **Schedule “A”**.

“**Leased Real Estate**” shall mean the real estate lease of 111 East First Street, Tulsa, Oklahoma, which is identified on **Schedule “A”** which is leased to Seller.

“**Location**” shall mean 111 East First Street, Tulsa, Oklahoma.

“**Liability**” shall mean direct or indirect liability, indebtedness, obligation, commitment, expense, loss, claim, deficiency, guaranty, or endorsement by or of Person of any type, whether known or unknown, and whether accrued, absolute, contingent, matured or unmatured.

“**Person**” shall mean an individual, corporation, limited liability company, partnership, limited liability partnership, joint venture, trust, unincorporated organization, or any other entity, including any United States, foreign, state, or local governmental entity or municipality or any authority, department, commission, board, bureau, agency, court, instrumentality, or subdivision thereof.

“**Personal Property**” shall have the meaning assigned to such term in **Section 2.1**.

“**Purchase Price**” shall have the meaning assigned to such term in **Section 3.1**.

“**Real Estate Lease**” shall mean the Seller’s interest as lessee of the Leased Real Estate.

“**Sale Hearing**” shall mean the hearing conducted by the United States Bankruptcy Court for the Northern District of Oklahoma (“**Court**”) in the matter of *In re Oklahoma Jazz Hall of Fame, Inc.*, Case No. 21-10047-M approving the sale of the Assets.

“**Sale Order**” shall mean the order entered by the Court approving a sale of the Assets.

“**Transfer Taxes**” shall have the meaning assigned to such term in **Section 9.2**.

ARTICLE II.

Property to be Sold and Purchased

Section 2.1. Assets. Subject to the terms and provisions contained herein and for the consideration herein set forth, Seller agrees to sell, assign and convey and Buyer agrees to purchase and acquire from Seller, the following described assets rights, and interests described in the subsections (a), (b), (c), and (d) below and excluding the Excluded Interests (collectively, the “**Assets**”):

(a) All right, title and interest of Seller in and to all tangible property at the Location as more fully described in **Schedule “A”**;

(b) All right, title and interest of Seller in and to the intangible and intellectual property as more fully described in **Schedule “A”**;

(c) All of Seller’s right, title and interest in all Furniture, Fixtures and Equipment as more fully described in **Schedule “A”**; and

(d) All of Seller’s right, title and interest in the Real Estate Lease as more fully described in **Schedule “A”**.

Section 2.2. Excluded Interests. The Assets do not include, and there are hereby expressly excepted and excluded therefrom and reserved to Seller:

(a) All rights and causes of action arising, occurring, or existing in favor of Seller prior to the Effective Date (including, but not limited to, any and all contract rights, claims, receivables, revenues, recoupment rights, recovery rights, accounting adjustments, mis-payments, erroneous payments, or other claims of any nature in favor of Seller and relating and accruing to any time period prior to the Effective Date);

(b) Any accounts payable accruing before the Effective Date that are not included in the Liabilities referenced in **Section 2.4** below;

(c) All corporate, partnership, financial, tax and legal (other than title) records of Seller;

(d) All contracts of insurance or indemnity;

(e) Any refund of costs, taxes or expenses borne by Seller attributable to the period prior to the Effective Date;

(f) All deposits, cash, checks, funds, and accounts receivable or received attributable to Seller’s interests in the Assets with respect to any period of time prior to the Effective Date;

(g) Copies or scanned versions of all documents related to the Assets (to the extent Seller wishes to create such copies or scanned versions at Seller’s expense);

(h) Any other files, records, information, or data to the extent that Seller (i) is prevented from disclosing or transferring such materials to Buyer or (ii) considers such files, records, information, or data to be proprietary or confidential to it or which Seller cannot provide to Buyer without, in its reasonable opinion, breaching, or risking a break of, agreements with other parties, or waiving, or risking waiving, a legal privilege.

(i) These excluded rights and interests specified in this **Section 2.2** are collectively referred to as the “Excluded Interests.” Buyer shall not be responsible for, and Seller expressly retains, all liabilities related to the Excluded Interests, whether such liabilities arise before or after the Effective Date. It is understood that certain of the Excluded Interests may not be embraced by the term “Assets.” The fact that certain rights and interests have been expressly excluded is not intended to suggest that had they not been excluded they would have

constituted "Assets" and shall not be used to interpret the meaning of any word or phrase used in describing the "Assets."

Section 2.3. Claims. Notwithstanding anything to the contrary in this **Article II**, the Assets this Agreement contemplates selling and otherwise transferring to Buyer do not include any avoidance actions held by Seller, whether such avoidance action arises under state avoidance laws, or under any other applicable law, rule, or regulation.

Section 2.4. Assumed Obligations. At Closing, Buyer shall assume and pay when due (a) each and every Liability of the Seller related to the Assets with respect to any period of time before, on or after the Effective Date which are described on **Schedule "B"** hereto (collectively the "Assumed Obligations"). Buyer shall receive a credit against the Base Purchase Price in an amount equal to the Assumed Obligations. Prior to the Auction, to the extent Buyer determines that any cure cost exceeds the value of the related asset or contract, Buyer shall have the right to remove the asset or contract from its bid and shall amend any relevant exhibits accordingly.

ARTICLE III. **Purchase Price**

Section 3.1. Purchase Price. The gross purchase price for the Assets shall be \$200,000.00. Such Base Purchase Price may be adjusted as provided in Articles II, VII, and IX hereof (the Base Purchase Price, as so adjusted, and as the same may otherwise be adjusted by mutual agreement of the parties, being herein called the "Purchase Price"). The Purchase Price shall be paid in cash at the Closing as hereinafter provided.

Section 3.2. Deposit. Contemporaneous with the submission of this Agreement, Buyer shall deposit with Fellers, Snider, Blankenship, Bailey & Tippens, P.C. Trust Account (the "Escrow Agent") a good faith deposit (the "Good Faith Deposit") of \$20,000.00. The Good Faith Deposit must be made by certified check or wire transfer. In the event the transaction contemplated hereby is consummated in accordance with the terms hereof, the Deposit shall be applied to the Purchase Price to be paid by Buyer at the Closing. If Buyer receives credit for Deposit against the Purchase Price paid at Closing, such credit, shall be in the amount of the Deposit. In the event this Agreement is terminated by Buyer or Seller in accordance with **Section 5.3** below, the Deposit shall be returned to Buyer or retained by Seller as provided in **Section 5.4**.

ARTICLE IV. **Representations by Seller**

Section 4.1. Representations of Seller. Seller hereby represents to Buyer that as of the date of this Agreement:

(a) **Organization and Qualification.** Seller is the duly appointed Chapter 11 trustee for the Debtor.

(b) **Due Authorization.** Seller has full power to enter into and perform its obligations under this Agreement and has taken all proper action to authorize entering into this Agreement and performance of its obligations hereunder.

(c) **Approvals.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the compliance with the terms hereof, will result in any default under any agreement or instrument to which Seller is a party, or violate any order, writ, injunction, decree, statute, rule or regulation applicable to Seller, subject in each case to approval by the Bankruptcy Court, and approval of the Federal Communications Commission (as to the low-power, non-commercial radio license) if applicable.

(d) **Valid, Binding and Enforceable.** Subject to approval by the Bankruptcy Court, this Agreement constitutes (and the Conveyance provided for herein to be delivered at Closing will, when executed and delivered, constitute) the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms, except as limited by the Bankruptcy Code or other laws applicable generally to creditor's rights and as limited by general equitable principles.

Representations of Buyer

Section 4.2. Representations of Buyer. Buyer hereby represents to Seller that as of the date of this Agreement:

(a) **Organization and Qualification.** Buyer is duly organized and legally existing and in good standing under the laws of the state in which it was formed and is qualified to do business and in good standing in the state in which the Assets are located where the laws of such state will require Buyer to so qualify with respect to the interest in the Assets to be conveyed hereunder. Buyer is also qualified to own and operate the Assets with all applicable governmental agencies having jurisdiction over the Assets, to the extent such qualification is necessary or appropriate or will be necessary or appropriate upon consummation of the transactions contemplated hereby.

(b) **Due Authorization.** Buyer has full power to enter into and perform its obligations under this Agreement and has taken all proper action to authorize entering into this Agreement and performance of its obligations hereunder.

(c) **Approvals.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, nor the compliance with the terms hereof, will result in any default under any agreement or instrument to which Buyer is a party, or violate any order, writ, injunction, decree, statute, rule, or regulation applicable to Buyer.

(d) **Valid, Binding and Enforceable.** This Agreement constitutes (and the Conveyance provided for herein to be delivered at Closing will, when executed and delivered, constitute) the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms, except as limited by bankruptcy or other laws applicable generally to creditor's rights and as limited by general equitable principles.

(e) **No Litigation.** There are no pending suits, actions, or other proceedings in which Buyer is a party (or, to Buyer's knowledge, which have been threatened to be instituted against Buyer) which affect the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby.

(f) **No Distribution.** Buyer is acquiring the Assets for its own account and not with the intent to make a distribution in violation of the Securities Act of 1933 as amended (and the rules and regulations pertaining thereto) or in violation of any other applicable securities laws, rules, or regulations.

(g) **Knowledge and Experience.** Buyer has (and had prior to negotiations regarding the Assets) such knowledge and experience in the ownership and operation of the Assets financial and business matters as to be able to evaluate the merits and risks of an investment in the Assets. Buyer is able to bear the risks of an investment in the Assets and understands risks of, and other considerations relating to, a purchase of the Assets.

(h) **Opportunity to Verify Information.** As of the date of this Agreement, Buyer has been furnished with various materials relating to the Assets under this Agreement and has been afforded the opportunity to ask questions of Seller (or a person or persons acting on its behalf) concerning the Assets. Buyer has begun and will continue to make its own independent investigation of the Assets to the extent necessary to evaluate the Assets. At Closing, Buyer shall be deemed to have knowledge of all facts contained in all materials, documents, and other information which Buyer has been furnished or to which Buyer has been given access.

(i) **Merits and Risks of an Investment in the Assets.** Buyer understands and acknowledges that: (i) an investment in the Assets involves certain risks; (ii) neither the United States Securities and Exchange Commission nor any federal, state or foreign agency has passed upon the Assets or made any finding or determination as to the fairness of an investment in the Assets or the accuracy or adequacy of the disclosures made to Buyer; and (iii) except as set forth in **Section 6.1** of this Agreement, Buyer is not entitled to cancel, terminate or revoke this Agreement.

(j) **Financing.** Buyer has sufficient cash, available lines of credit or other sources of immediately available funds to enable it to fulfill its obligations hereunder and to make payment of all amounts to be paid by it hereunder on and after the Closing Date.

(k) **Good Faith Purchaser.** Buyer represents and warrants that it is a good faith purchaser.

(l) **Bidding Procedures.** Buyer represents that it has accepted and will abide by the Bidding Procedures.

ARTICLE V. **Conditions Precedent to Closing**

Section 5.1. Conditions Precedent to the Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to each of the following conditions being met:

(a) **Compliance with Covenants and Agreements.** Seller shall have performed and complied in all material respects with (or compliance therewith shall have been waived by Buyer) each and every covenant and agreement required by this Agreement to be performed or complied with by Seller prior to or at the Closing.

Section 5.2. Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to each of the following conditions being met:

(a) **Representations True and Correct.** Each and every representation of Buyer under this Agreement shall be true and accurate in all material respects as of the date when made and for purposes of serving as a condition to close and shall be true and accurate in all material respects at and as of such time of Closing as if it had been made again as of the Closing.

(b) **Compliance with Covenants and Agreements.** Buyer shall have performed and complied in all material respects with (or compliance therewith shall have been waived by Seller) each and every covenant and agreement required by this Agreement to be performed or complied with by Buyer prior to or at the Closing.

Section 5.3. Termination of Agreement. Prior to Closing, this Agreement may be terminated as follows:

(a) upon written agreement of Buyer and Seller;

(b) by Buyer or Seller by written notice to the other party if Closing shall not have occurred on or prior to twenty-one days following entry of the Sale Order (the "**Termination Date**"), and Seller has not given written notice to Buyer of its exercise of the Closing Extension pursuant to **Section 6.1(b)**; provided that a party shall not be entitled to exercise such right to terminate this Agreement if it is in material breach of its obligations hereunder.

(c) by Buyer or Seller by written notice to the other party if Seller has exercised the Closing Extension pursuant to **Section 6.1(b)** and the Closing shall not have occurred on or prior to forty (40) days following entry of the Sale Order.

(d) by Buyer if (i) any condition precedent to Buyer's obligations listed in **Section 6.1** above is not fulfilled or waived by Buyer as of the Closing Date, and (ii) Buyer is not in material breach of its obligations hereunder. In the event such a termination by Buyer occurs, the parties shall have no further obligations to one another hereunder (other than the obligations under **Section 5.4 and Article IX** all hereof all of which will survive such termination);

(e) by Seller if (i) any condition precedent to Seller's obligations listed in **Section 5.2** above is not fulfilled or waived by Seller as of the Closing Date, and (ii) Seller is not in material breach of its obligations hereunder. In the event such a termination by Seller occurs, the parties shall have no further obligations to one another hereunder (other than the obligations under **Sections 5.4 and Article IX** hereof all of which will survive such termination);

(f) by Seller if seller receives and accepts a better bid through the Bidding Procedures.

Section 5.4. Disposition of Deposit. In the event of a termination of this Agreement, the Deposit shall be returned to Buyer or retained by Seller as follows:

(a) If this Agreement is terminated in accordance with **Section 5.3 (a), (b), (c), (d), (e) or (f)**, the Deposit plus interest will be refunded to Buyer.

(b) If this Agreement is terminated for any reason whatsoever other than those identified in **Section 5.4 (a)**, the Deposit plus interest shall be retained by Seller.

ARTICLE VI.

Closing

Section 6.1. Closing.

(a) Unless earlier terminated pursuant to **Section 5.3**, the purchase and assignment of the Assets pursuant to this Agreement shall be consummated (the "**Closing**") at the Oklahoma City office of Feller Snider Blankenship and Bailey & Tippens, P.C. at 100 N. Broadway, Suite 1700, Oklahoma City, OK 73102, on the 2nd business day after all conditions to Closing set forth in **Article 5** shall have been satisfied or waived, but in no event shall the Closing occur after the date contemplated in **Section 6.1 (b)**.

(b) Closing shall occur no later than twenty (20) days following entry of the Sale Order but may be extended at Seller's option upon written notice to Buyer by Seller prior to 5:00 p.m. on the date fifteen (15) days following entry of the Sale Order (a "**Closing Extension**") of its intention to exercise such option.

(c) If Buyer proceeds to Closing with knowledge of any condition precedent listed in **Section 5.1** above not being met, such condition precedent will be deemed waived by Buyer as a condition to close and Buyer hereby waives all claims for breach of a representation and warranty related thereto.

(d) If Seller proceeds to Closing with knowledge of any condition precedent listed in **Section 6.2** above not being met, such condition precedent will be deemed waived by Seller as a condition to close and Seller hereby waives all claims for breach of a representation and warranty related thereto.

Section 6.2. Seller's Closing Obligations. At the Closing,

(a) **Delivery of Conveyance.** Upon receipt of payment of the amount provided in **Section 6.3(a)**, Seller shall execute, acknowledge, and deliver to Buyer a mutually agreeable bill of sale conveying the Assets (the "**Conveyance**"), in the form attached hereto as **Schedule "___"** with such modifications as may be mutually agreed to by Buyer and Seller, being attached thereto).

(b) **Turn Over Possession.** Seller shall, to the extent Seller can do so, turn over possession of the Assets.

(c) **Withheld Information.** Seller shall provide to Buyer a list of all files, Records, information, or data withheld pursuant to **Section 2.2(i)** to the extent such relate to the Assets.

Section 6.3. Buyer's Closing Obligations. At the Closing,

(a) **Payment to Seller.** Buyer shall deliver to Seller, by wire transfer of immediately available funds to an account designated by Seller in a bank located in the United States, an amount equal to the Purchase Price minus the Buyer's funds being held in trust in the "Escrow Account".

ARTICLE VII.
Post-Closing Obligations

Section 7.1. Further Assurances. Seller shall execute and deliver such other documents and instruments, and take such other actions, as Buyer may reasonably request in order to fully vest and perfect in Buyer all right, title, and interest in and to the Assets and otherwise to effectuate the transactions contemplated by this Agreement; however, it is expressly understood by Buyer that after closing Seller may distribute the proceeds to creditors and, if funds allow, equity holders, without reserve for any obligations to Buyer. Buyer shall execute and deliver such other documents and instruments, and take such other actions, as Seller may reasonably request in order to effectuate the transactions contemplated by this Agreement.

ARTICLE VIII.
Notices

Section 8.1. Notices. All notices and other communications required under this Agreement shall (unless otherwise specifically provided herein) be in writing and be delivered personally, by recognized commercial courier or delivery service which provides a receipt, by facsimile (with receipt acknowledged), or by registered or certified mail (postage prepaid), at the following addresses:

If to Seller: Oklahoma Jazz Hall of Fame, Inc.
c/o Stephen J. Moriarty, Trustee
Fellers, Snider, Blankenship, Bailey & Tippens
100 N. Broadway, Suite 1700
Oklahoma City, OK 73102
Telephone: 405.232.0621
Facsimile: 405.232.9659
E-mail: smoriarty@fellerssnider.com

If to Buyer: The Jazz Foundation, LLC
James R. Moore, President and Manager

P.O. Box 840
Tulsa, Oklahoma 74101-0840
Telephone: (918) 720-8470
jmoorejazzfoundation@gmail.com

or such other post office address within the continental limits of the United States as a party may designate for itself by giving notice to the other party, in the manner provided in this Section, at least ten (10) days prior to the effective date of such change of address. All notices given by personal delivery or mail shall be effective on the date of actual receipt at the appropriate address as provided above. Notices given by facsimile, if receipt is confirmed by the transmitting device, shall be effective upon actual receipt of received during recipient's normal business hours or at the beginning of the next business day after receipt if received after recipient's normal business hours.

ARTICLE IX.
Miscellaneous Matters

Section 9.1. Parties Bear Own Expenses; Limitation on Damages. Each party shall bear and pay all expenses (including without limitation, legal fees) incurred by it in connection with the transaction contemplated by this Agreement. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL HAVE ANY OBLIGATIONS WITH RESPECT TO THIS AGREEMENT, OR OTHERWISE IN CONNECTION HEREWITH, FOR ANY SPECIAL OR PUNITIVE DAMAGES.

Section 9.2. Transfer Taxes. Buyer shall pay and be responsible for all sales, transfer or similar taxes ("Transfer Taxes") due and owing in connection with this transaction. Where Transfer Taxes are due and owing by Buyer in connection with this transaction, and are required to be collected by Seller, Buyer shall pay the appropriate amount of Transfer Taxes due by Buyer and remit same to the appropriate governmental agency promptly after the Closing. Buyer agrees to be solely responsible and shall indemnify and hold Seller (and its affiliates, and its and their directors, officers, employees, attorneys, contractors, and agents) harmless, for any and all additional Transfer Taxes (including related penalty, interest, fines, or legal costs), if any, asserted to be due by any governmental agency by virtue of this transaction above those previously paid at Closing or otherwise.

Section 9.3. Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions among the parties with respect to such subject matter; provided that any Confidentiality Agreement executed by Buyer and Seller, or any representative of Seller, in connection with the transaction contemplated hereby remains in full force and effect and is not superseded or modified by this Agreement.

Section 9.4. Amendments, Waivers. This Agreement may be amended, modified, supplemented, restated, or discharged (and provisions hereof may be waived)

only by an instrument in writing signed by the party against whom enforcement of the amendment, modification, supplement, restatement, or discharge (or waiver) is sought.

Section 9.5. Choice of Law, Consent to Jurisdiction. Without regard to principles of conflicts of laws, this Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Oklahoma applicable to contracts made and to be performed entirely within such state and the laws of the United States of America.

Section 9.6. Time of Essence. Time is of the essence in this Agreement.

Section 9.7. Assignment. Seller agrees that Buyer shall have the right to assign all or a portion of its rights under this Agreement, including any indemnification rights, or any obligations or benefits hereunder, to a third party or parties subject to Seller's prior written approval which approval will not be unreasonably withheld; provided that Buyer shall remain obligated under this Agreement to the extent that such assignee fails in any respect to timely ratify or perform such obligations.

Section 9.8. Successors and Assigns. Subject to the limitation on assignment contained in Section 9.7 above, the Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

Section 9.9. No Press Releases. Except as may be required under applicable law, or by order or rules of the court, neither party shall make any public announcement with respect to the transaction contemplated hereby without the consent of the other party.

Section 9.10. Counterpart Execution, Fax Execution. This instrument may be executed in a number of identical counterparts, each of which for all purposes is to be deemed an original, and all of which constitute collectively, one instrument. It is not necessary that each party hereto execute the same counterpart so long as identical counterparts are executed by each such party hereto. This instrument may be validly executed and delivered by facsimile or other electronic transmission.

Section 9.11. Exclusive Remedy. The sole and exclusive remedy of Buyer with respect to the Assets shall be pursuant to the express provisions of this Agreement. The representations and warranties of Seller under this Agreement shall not survive Closing. If the Closing occurs, Buyer shall be deemed to have waived, to the fullest extent permitted under applicable law, any right to contribution against Seller (including, without limitation, any contribution claim arising under any applicable environmental law) and any and all other rights, claims and causes of action it may have against Seller arising under or based on any federal, state, or local statute, law, ordinance, rule or regulation or common law or otherwise. If the Closing does not occur due to the breach of Seller, (i) the sole and exclusive remedy of Buyer shall be the right to return of the Deposit, plus accrued interest, to extent provided herein and (ii) Buyer shall not be entitled to recover any monetary damages.

Section 9.12. References, Titles and Construction.

(a) All references in this Agreement to articles, sections, subsections, and other subdivisions refer to corresponding articles, sections, subsections, and other subdivisions of this Agreement unless expressly provided otherwise.

(b) Titles appearing at the beginning of any of such subdivisions are for convenience only and shall not constitute part of such subdivisions and shall be disregarded in construing the language contained in such subdivisions.

(c) The words “**this Agreement**”, “**this instrument**”, “**herein**”, “**hereof**”, “**hereby**”, “**hereunder**” and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

(d) Words in the singular form shall be construed to include the plural and vice versa unless the context otherwise requires. Pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.

(e) Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.

(f) The word “**or**” is not intended to be exclusive and the word “**includes**” and its derivatives means “includes but is not limited to” and corresponding derivative expressions.

(g) All references herein to “**\$**” or “**dollars**” shall refer to U.S. Dollars.

(h) The Schedule and Exhibits listed in the List of Schedules and Exhibit are attached hereto. Each such Schedule and/or Exhibit is incorporated herein by reference for all purposes, and references to this Agreement shall also include such Schedule and/or Exhibit unless the context in which used shall otherwise require.

Section 9.13. Severability. The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of any other provision.

[Remainder of Page Intentionally Left Blank; Signature Page Follows.]

IN WITNESS WHEREOF, this Agreement is executed by the parties hereto on the date set forth above.

SELLER:

OKLAHOMA JAZZ HALL OF FAME, INC.

By: _____

Stephen J. Moriarty

Its: Court Appointed Bankruptcy Trustee

BUYER:

THE JAZZ FOUNDATION, LLC
An Oklahoma limited liability company

By: _____

Name: James R. Moore

Title: President and Manager

The Jazz Foundation, LLC (i) offers to purchase the Purchased Assets of the Estate upon the terms and conditions set forth in this Asset Purchase Agreement, marked to show any proposed amendments and modifications thereto (the "Marked Agreement"); (ii) this is a cash offer and is not subject to any due diligence or financing contingency, and is irrevocable until the earlier of: (A) the closing of the sale of the Purchased Assets of the Estate, whether or not to The Jazz Foundation, LLC; or (B) the withdrawal of the Assets from the sale process; and (iii) The Jazz Foundation is ready and willing to close on its proposed purchase of the Purchased Assets of the Estate as provided in the Marked Agreement.

James R. Moore, in his capacity as President, Manager, and sole Member of The Jazz Foundation, LLC hereby authorizes this bid and offer to be made on this 4th day of May, 2021.

James R. Moore,
President, Manager, and sole Member

SCHEDULE A
To the Bid
Of The Jazz Foundation, LLC
Dated May 4, 2021

The Jazz Foundation, LLC proposes to acquire the following assets of the Estate. The Jazz Foundation is only interested in acquiring **all** of the following assets, and **not some** of the following assets. If **all** of the Estate's right, title and interest in and to the following are not part of the acquisition by The Jazz Foundation, LLC pursuant to the terms of this Asset Purchase Agreement and some of the following assets are proposed to be sold to another bidder, then this offer and bid is withdrawn:

- 1) An assignment of the Capital Improvements Lease dated August 1, 2004 as amended November 1, 2009 that governs the premises located at 111 East First Street, Tulsa, Oklahoma, 74103, along with all corporeal and incorporeal rights, all easements, all rights of way, and all hereditaments related thereto (the "Premises") free and clear of any subleases; and
- 2) All (and exclusive) rights to use the name "Oklahoma Jazz Hall of Fame, Inc."; and
- 3) All (and exclusive) rights to use the name "Union Depot" and "Jazz Depot"; and
- 4) All (and exclusive) other fictitious names owned or used by the Estate; and
- 5) The exclusive rights to the URL www.okjazz.org; and
- 6) All (and exclusive) other URLs and web addresses used by the Estate
- 7) All tangible personal property of the Estate located at 111 East First Street, Tulsa, Oklahoma, 74103 (the "Premises"), including all rights associated therewith; and
- 8) All and exclusive rights to the intangible property of the Estate, including all licenses, trademarks, tradenames, use rights, and other rights and privileges associated therewith; and
- 9) All and exclusive rights to the intellectual property of the Estate; and
- 10) All and exclusive rights to the leasehold rights of the Estate in and to the Premises under that certain lease agreement dated August 1, 2004, as amended on November 1, 2009 (hereafter the "Lease of Premises"); and
- 11) All personal property leases and maintenance contracts associated with property and equipment and fixtures located at or on the Premises; and
- 12) All recordings, artwork, memorabilia, copyrights, publishing rights, and broadcast rights owned by the Estate; and
- 13) All phone numbers, data, email, contact information, mailing lists, address lists, websites, codes, software, and hardware of the Estate; and
- 14) All personal property owned by the Estate located at locations other than the Premises; and
- 15) A transfer or assignment of all FCC licenses and operating rights and privileges associated with any broadcast permits, along with any and all equipment and leases associated therewith; and
- 16) All keys and access codes and alarm codes and copies (at Buyer's expense) of all business records, tax records, financial records, correspondence and communications that relate to Debtor which is property of the Estate; and
- 17) All passcodes, passwords, and keys to encryption associated with items 1-16, above,

(collectively the "Purchased Assets of the Estate") free and clear of all debts, obligations, liens, claims, and encumbrances that have accrued prior to the date of Closing. Purchased Assets of the Estate do not, and shall not, include any cash, receivables, or causes of action in tort, vested in the Estate as of the date of this Letter. Further, Purchased Assets of the Estate do not include the sublease of premises to the school.

SCHEDULE B
To the Bid
Of The Jazz Foundation, LLC
Dated May 4, 2021

ASSUMED LIABILITIES:

NONE, other than liabilities accruing from and after Closing under the Capital Improvements Lease dated August 1, 2004 as amended November 1, 2009 that governs the premises located at 111 East First Street, Tulsa, Oklahoma, 74103

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After recordation, return to:

Space Reserved For Recording Information

LEASE ASSIGNMENT AND BILL OF SALE

This Lease Assignment and Bill of Sale (“Assignment”) is dated and effective as of _____, 2021 (the “Effective Date”), and is from Stephen J. Moriarty as Trustee for the Oklahoma Jazz Hall of Fame, Inc. (“Assignor”), to The Jazz Foundation, LLC (“Assignee”).

RECITALS:

WHEREAS, Oklahoma Jazz Hall of Fame, Inc. (the “Debtor”) and its estate are the subject of a case under Chapter 11 of the Bankruptcy Code, pending before the United States Bankruptcy Court for the Northern District of Oklahoma (the “Bankruptcy Court”), Case No. 21-10047-M (the “Bankruptcy Case”), and is subject to the jurisdiction thereof; and

WHEREAS, pursuant to the *Order Granting Motion to Sell* Document No. ____ in the Bankruptcy Case (the “Bankruptcy Sale Order”), the Bankruptcy Court has approved the sale at auction of certain personal property and the assignment of certain leases as described more particularly in Exhibit A and Exhibit B attached hereto (the “OKJHOF Assets”), subject to the terms of the Bankruptcy Sale Order, other applicable orders of the Bankruptcy Court, and applicable law; and

WHEREAS, Assignee was the highest and best bidder for the OKJHOF Assets.

I.

GRANTING PROVISIONS

Section 1.1 – Conveyance of Saltwater Well Interests and Related Leasehold Interests.

For and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor does, subject to the terms and provisions of this Assignment, hereby assign and convey to Assignee, the following:

- A. All of Assignor’s right, title, and interest in and to the property described in Exhibit A attached hereto (the “Property”); and
- B. All of Assignor’s right, title, and interest in and to the leasehold estates created by the leases described in Exhibit B attached hereto (the “Leases”).

II. LIMITATIONS AND COVENANTS

Section 2.1 – Assumption of Obligations

Upon the execution and delivery of this Assignment, Assignee shall become primarily liable on, for, or with respect to, all of the duties, obligations, responsibilities, indemnities, covenants, warranties, and other liabilities of the Leases.

Section 2.2 – Disclaimer of Warranty

Notwithstanding anything in this Assignment to the contrary: (a) the Debtor executes and delivers this Assignment without any warranty, covenant, or representation of any kind whatsoever, either expressed or implied, including without limitation any warranty of title of the Property or validity or enforceability of the Leases; and (b) Debtor shall not be responsible for or have any liability with respect to any duties, liabilities, or obligations whatsoever that are or may be imposed on Assignor in this Assignment, or in any other agreement to which Assignee is a party. ASSIGNEE ACCEPTS THE OKJHOF ASSETS ON AN “AS IS”, “WHERE IS” BASIS, AND WITH ALL FAULTS.

Section 2.3 – Counterpart Execution

This Assignment may be executed in any number of counterparts, and each counterpart hereof shall be deemed to be an original instrument, but all counterparts shall constitute but one Assignment.

Section 2.4 – No Waiver

No waiver of any of the provisions of this Assignment shall be deemed or constitute a waiver of any other provision of this Assignment, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

Section 2.5 – Governing Law

THIS ASSIGNMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED UNDER, AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF OKLAHOMA AND THE BANKRUPTCY CODE, AND THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE AND SOLE JURISDICTION TO INTERPRET AND ENFORCE THIS ASSIGNMENT AND RESOLVE ANY DISPUTES REGARDING THE SAME.

Section 2.6 - Inurement

This Agreement shall be binding on and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

Section 2.7 – Agreement

This Assignment is subject to the terms of the Bankruptcy Sale Order. This Assignment may be amended or modified only by an agreement in writing executed by all of the parties hereto.

ASSIGNOR:

Oklahoma Jazz Hall of Fame, Inc.

Debtor in Bankruptcy Case
21-10047-M
United States Bankruptcy Court for
the Northern District of Oklahoma

By: _____
Stephen J. Moriarty, Trustee

STATE OF OKLAHOMA
COUNTY OF OKLAHOMA

This instrument was acknowledged before me on _____, by Stephen J. Moriarty as Trustee for Debtor in Bankruptcy Case No. 21-10047-M, United States Bankruptcy Court for the Northern District of Oklahoma

(Signature of notarial officer)

Title (and Rank)

My Commission Expires: _____

EXHIBIT A
DESCRIPTION OF PROPERTY

- 1) All (and exclusive) rights to use the name “Oklahoma Jazz Hall of Fame, Inc.”; and
- 2) All (and exclusive) rights to use the name “Union Depot” and “Jazz Depot”; and
- 3) All (and exclusive) other fictitious names owned or used by the Estate; and
- 4) The exclusive rights to the URL www.okjazz.org; and
- 5) All (and exclusive) other URLs and web addresses used by the Estate
- 6) All tangible personal property of the Estate located at 111 East First Street, Tulsa, Oklahoma, 74103 (the “Premises”), including all rights associated therewith; and
- 7) All and exclusive rights to the intangible property of the Estate, including all licenses, trademarks, tradenames, use rights, and other rights and privileges associated therewith; and
- 8) All and exclusive rights to the intellectual property of the Estate; and
- 9) All and exclusive rights to the leasehold rights of the Estate in and to the Premises under that certain lease agreement dated August 1, 2004, as amended on November 1, 2009 (hereafter the “Lease of Premises”); and
- 10) All personal property leases and maintenance contracts associated with property and equipment and fixtures located at or on the Premises; and
- 11) All recordings, artwork, memorabilia, copyrights, publishing rights, and broadcast rights owned by the Estate; and
- 12) All phone numbers, data, email, contact information, mailing lists, address lists, websites, codes, software, and hardware of the Estate; and
- 13) All personal property owned by the Estate located at locations other than the Premises; and
- 14) A transfer or assignment of all FCC licenses and operating rights and privileges associated with any broadcast permits, along with any and all equipment and leases associated therewith; and
- 15) All keys and access codes and alarm codes and copies (at Buyer’s expense) of all business records, tax records, financial records, correspondence and communications that relate to Debtor which is property of the Estate; and
- 16) All passcodes, passwords, and keys to encryption associated with items 1-16, above.

EXHIBIT B
DESCRIPTION OF LEASES

Capital Improvements Lease dated August 1, 2004 as amended November 1, 2009 that governs the premises located at 111 East First Street, Tulsa, Oklahoma, 74103, along with all corporeal and incorporeal rights, all easements, all rights of way, and all hereditaments related thereto (the "Premises")