

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA



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

ORDER GRANTING MOTION TO SELL PROPERTY, FREE AND CLEAR OF ALL CLAIMS, LIENS, INTERESTS AND ENCUMBRANCES
(relates to Dkt. 39)

NOW, on the 10th day of June, 2021, this matter came on before me, the undersigned Judge of the United States Bankruptcy Court, for hearing (the “Sale Hearing”) on the Motion of Stephen J. Moriarty as Trustee (“Trustee”) for Oklahoma Jazz Hall of Fame, Inc. (the “Debtor”) (the “Sale Motion”) for entry of an order (the “Sale Order”) (a) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests to the Prevailing Bidder; and (b) establishing procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases of the Debtors filed on the 2nd day of March, 2021 [Dkt. 39] (the “Motion”) wherein the Trustee moved this Court for the entry of an order authorizing the sale of substantially all of the Debtor’s Assets¹ less and except the Excluded Assets. Appearances were made as they appear of record. The Court having heard the presentation of the witnesses, considered the exhibits admitted into evidence and the argument of counsel in open Court finds that the relief requested in the Motion is in the best interests of the Debtor, its estate and creditors. The Court being fully advised in the premises and based on the findings of fact and conclusions of law read into the record in open court on June 10, 2021, finds that the Motion should be **GRANTED**.

¹Unless otherwise stated, capitalized terms have the meanings ascribed to them in the Motion.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M).
2. The relief requested in the Motion is **GRANTED** and the sale of assets is hereby authorized as follows:
 - a. the \$200,000.00 cash bid of The Jazz Foundation, LLC (“Buyer”) for the assets described in the APA attached as Exhibit “A” hereto (the “Sale Agreement”);
3. Any objections to the Sale Motion not resolved by the terms of this Order or withdrawn, waived, or settled, and all reservations of rights included therein are hereby overruled and denied.
4. Pursuant to § 363 of the Bankruptcy Code, the Trustee is hereby authorized to sell the Assets free and clear of all liens, claims, interests and encumbrances to Buyer, subject to the terms of the Sale Agreement and this Order.
5. Pursuant to § 363 of the Bankruptcy Code, the Trustee is hereby authorized to consummate the sale of the Assets to Buyer subject to the terms of the Sale Agreement and to execute such additional documents as may be reasonable and necessary to consummate the sale.
6. The Trustee and his respective representatives and attorneys are hereby authorized and empowered to carry out all of the provisions of the Sale Agreement and this Order and to issue, execute, deliver, file and record such documents and instruments provided in the Sale Agreement and such additional documents as may be reasonable and necessary to consummate the sale of the Assets and to take any action contemplated by the Sale Agreement and/or this Order.
7. The Trustee and Buyer are hereby directed and shall comply with all provisions of the Sale Agreement and this Order.
8. At closing of the sale and in accordance with the Sale Agreement, all of the Debtor’s

right, title, and interest in and to the Assets shall immediately vest in Buyer free and clear of all liens, claims, interests, and encumbrances of any type whatsoever pursuant to § 363 of the Bankruptcy Code. Except as expressly permitted or otherwise specifically provided for in the Sale Agreement or this Sale Order, pursuant to 11 U.S.C. §§ 105(a) and 363(f), the Assets shall be transferred to Buyer free and clear of all liens, claims, interests or encumbrances of any kind or nature whatsoever.

9. The transfer of the Assets to Buyer pursuant to the Sale Agreement constitutes a legal, valid, and effective transfer of the Assets and shall vest Buyer with all right, title, and interest of the Trustee in and to the Assets free and clear of all liens, claims, interests or encumbrances of any kind or nature whatsoever.

10. The county clerk of any counties in which any liens or encumbrances shall have been filed on Trustee's interests in the Assets are hereby authorized to cancel and remove from the public records of such counties all such liens or encumbrances from the Assets. [MODIFIED BY JUDGE MICHAEL]

11. [REMOVED BY JUDGE MICHAEL]

12. [REMOVED BY JUDGE MICHAEL]

13. Except as otherwise provided in the Sale Agreement and herein, all of the Debtor's rights and obligations under the Assets first arising subsequent to the closing date of the Sale Agreement are fully assumed by Buyer, including without limitation, all of Debtor's monetary and non-monetary rights and obligations under the Assets, and the Debtors shall not be liable or responsible in any way for such Assets or any obligations thereunder except as provided in the Sale Agreement.

14. The failure of the Trustee or Buyer to enforce at any time one or more terms or

conditions of the Assets shall not be a waiver of such terms or conditions or of the Trustee's and Buyer's rights to enforce every term and condition of the Assets.

15. [REMOVED BY JUDGE MICHAEL]

16. The consideration provided by Buyer for the Assets under the Sale Agreement shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States and any state. The consideration provided by Buyer for the Assets under the Sale Agreement is fair and reasonable and the sale pursuant thereto may not be avoided under 11 U.S.C. § 363(n).

17. Nothing contained in any plan of reorganization confirmed in this case or any order entered in this case confirming such plan shall conflict with or diminish the provisions of the Sale Agreement or the terms of this Sale Order.

18. The transactions contemplated by the Sale Agreement are undertaken by Buyer in good faith, as that term is used in 11 U.S.C. § 363(m), and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale pursuant thereto shall not affect the validity of such sale to Buyer, unless such authorization is duly stayed pending any appeal. Buyer is a purchaser in good faith of the Assets, and Buyer is entitled to all of the protections afforded by 11 U.S.C. § 363(m).

19. The failure specifically to include any particular provisions of the Sale Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Sale Agreement is approved in its entirety.

20. The Sale Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that

any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

21. Except as provided in the Sale Agreement, after the closing of the Sale Agreement the Debtors and its estate shall have no further liabilities or obligations with respect to the liabilities assumed by Buyer pursuant to the Sale Agreement and the Assets, and all holders of such claims are forever barred and estopped from asserting such claims against the Debtors, its successors or assigns, its property or the Assets. With respect to claims asserted against the Assets, those claims shall attach to the sale proceeds of the Assets and the proceeds from the sale of the Assets shall be retained by the Trustee until further order of the court.

22. As provided by Fed. R. Bankr. P. 6004(g) and Fed. R. Bankr. P. 6006(d), this Sale Order shall not be stayed for 14 days after the entry of the Sale Order and shall be effective and enforceable immediately upon entry.

23. On the Closing Date, or as soon thereafter as reasonably practicable, the Debtor will pay \$46,145.64 to the Tulsa County Industrial Authority to cure all existing defaults under that certain 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, and assign said lease to Buyer, provided that prior to the Closing Date, the Trustee may amend his decision with respect to the assumption and assignment of the Assumed Contract.

24. The provisions of this Sale Order are nonseverable and mutually dependent.

IT IS SO ORDERED.

BY THE COURT:



TERRENCE L. MICHAEL
UNITED STATES BANKRUPTCY JUDGE

Submitted by:

/s/ Stephen J. Moriarty
Stephen J. Moriarty, OBA #6410
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
100 N. Broadway, Suite 1700
Oklahoma City, OK 73102
Telephone: (405) 232-0621
Facsimile: (405) 232-9659
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TRUSTEE

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement, dated June 10, 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 6/30, 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.

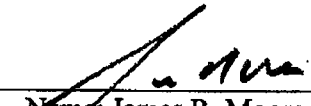
SELLER:

OKLAHOMA JAZZ HALL OF FAME, INC.

By: 
Stephen J. Moriarty
Its: Court Appointed Bankruptcy Trustee

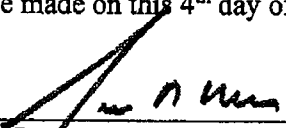
BUYER:

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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