

G.E.T. MARKETING, LLC,	§	IN THE DISTRICT COURT
	§	
<i>Plaintiff</i>	§	
	§	
v.	§	459 <sup>th</sup> JUDICIAL DISTRICT
	§	
PSW REAL ESTATE, LLC,	§	
	§	
<i>Defendant</i>	§	TRAVIS COUNTY, TEXAS

**RECEIVER’S INITIAL STATUS REPORT**

The Stapleton Group, Inc., in its capacity as receiver (“*Receiver*”) for Defendant PSW Real Estate, LLC (“*PSW*”) files this *Initial Status Report*, and would respectfully show this Court as follows:

**I. INTRODUCTION**

1. PSW is an extremely troubled business. The Receiver is attempting to salvage value for all parties involved pursuant to the terms of the Order entered by this Court.

2. At the time the Receiver was appointed, PSW was in the process of developing twenty-nine (29) residential properties across four states. The developments have complicated capital structures including multiple lenders, hundreds of individual and small family office investors, institutional investors, and developers. At the time of the appointment of the Receiver, the developments were in various stages of development or construction. A handful of projects were in the beginning design phase, while others included homes that were build-to-suit projects that were presold to future residents.

3. The appointment of the Receiver was vital and necessary as PSW simply ran out of funds to make its debt service payments, pay employees, and keep the business operating as a going concern. As a result, construction of many projects stopped, leaving employees, buyers,

investors, lenders, and contractors in the lurch. In addition, many lenders were seeking to foreclose on properties, putting the investments of hundreds of individual and small family investors in jeopardy. Indeed, some investors had already filed suit against PSW prior to the appointment of the receiver. In short, creditors and investors in PSW were all scrambling to raid any available asset from PSW, while in the process destroying any remaining equity in PSW's assets.

4. Since the appointment of the Receiver, all pending litigation and foreclosures are stayed, the Receiver has taken control of PSW's finances, and constituent holders are actively engaging in discussions with the Receiver regarding the preservation of value of PSW's assets. The Receiver has entered into multiple Rule 11 agreements with lenders to forestall foreclosure and is currently negotiating with other developers and lenders to realize significant value in the developments. Although the receivership is still in its infancy, the Receiver believes that it has already provided value for creditors, investors, and all other parties-in-interest by installing order, organizing an orderly claims process, and beginning negotiations with lenders and investors to sell, preserve and increase the value of Receivership Assets.

5. The Receiver files this report to provide the Court with information on the status and expectations for the continuation of the Receivership.

## **II. BACKGROUND**

### **A. Pre-Receivership Activity of PSW**

6. PSW, operating under the brand name of StoryBuilt, is an Austin based company that specializes in developing single-family and multi-family residential housing in Austin, Dallas, Seattle, and Denver. PSW has completed over fifty (50) residential housing developments and sold or leased over 1,500 residential units. PSW's involvement in projects

takes one of three forms: (i) PSW solely owns and develops a project, (ii) PSW serves as sponsor and managing member for a development in which other investors provide capital; or (iii) PSW transitions development to another developer and serves as a non-managing member of the project.

7. In order to capitalize developments, PSW utilizes complicated capital structures and multiple lines of credit. Most developments involving third parties include several layers of ownership with various interest holders at each level. In a typical development, PSW would acquire vacant real property in the name of a special purpose entity ("**Owner SPE**"). The land acquisition would be funded by a loan (and accompanying lien) in which the Owner SPE is the borrower and the property is the collateral. The Owner SPE would be indirectly managed by PSW and would be capitalized by an investment from a PSW affiliate and other property level investors (the number of investors varies by property). Frequently, the property level investors were parties to a Revenue Sharing Agreement ("**RSA**") with a PSW affiliate (the "**RSA Investors**") and were entitled to a preferred return of their capital upon the sale of residential units developed on the property. Thus, properties were frequently acquired using a combination of PSW's own capital, RSA Investors' capital, and loan proceeds.

8. In order to develop the properties, PSW would also create a development level special purpose entity ("**Developer SPE**"). The Developer SPE would also utilize financing, investor capital, and PSW's capital to fund the development of the raw land into residential units. Developer SPE is typically a member of Owner SPE, along with other developer level investors, who may be entitled to preferred returns on their investment. For many, but not all, developments PSW's wholly owned subsidiary PSW GC, LLC served as the general contractor,

for which it was entitled to contractor fees and development fees. Thus, for each development there are a number of interest holders.

9. At the time the Receiver was appointed, PSW served as the general contractor and primary developer on 13 projects at various stages of construction and served as a joint venture partner on 16 projects at various stages of construction.

10. In addition to property and developer level financing, PSW was also capitalized with a combination of debt and investor equity. PSW is the borrower on approximately \$12.75 million of corporate notes for which all of PSW's property serves as collateral, including its interest in each development. PSW is also capitalized by a number of third-party investors.

## **B. The Receiver Order**

11. In 2022, PSW began to suffer financial difficulties and were named defendants in lawsuits filed by various investors and lenders (details below). On July 31, 2023, G.E.T. Marketing, LLC filed this lawsuit and that same day Judge Amy Clark Meachum entered the Order Appointing Receiver (the "***Receiver Order***") and appointed Stapleton Group, Inc. as the Receiver. The Receiver Order was effective on August 1, 2023, when the required bond was deposited by the Receiver and the requisite oath was filed.

12. The purpose of the receivership is to marshal all assets of PSW and, thereafter, "to determine whether and to what extent, in the Receiver's discretion, such Operations could and/or should be continued" or, if not, "to conduct an orderly marketing and sale of ... all or part of the assets." The receivership property consists of all property in which PSW has an interest, including over 50 affiliate and/or subsidiaries (together, the "***Receivership Entities***") in which PSW has an interest (the "***Receivership Estate***").

13. To fulfill his duties the Receiver is required to, among other things: (i) identify and take control of all Receivership Property; (ii) identify all claims against the Receivership Entities; and (iii) determine the best manner of preserving value of the Receivership Estate to maximize the return for all creditors and other constituent groups. Administering PSW's assets in receivership provides a benefit to all constituent groups, including:

- preventing a race to the courthouse by the various creditors and investors already suing PSW and that are likely to sue PSW in the future;
- preventing PSW from spending its scarce resources on litigation costs for such lawsuits;
- preventing conflicting and duplicative orders from being entered by different courts related to PSW's assets, including TROs and foreclosures;
- preserving the value of PSW's assets by avoiding judicial sales or forced sales; and
- protecting the public by allowing the organized completion of residential property developments rather than abandoning such developments pending resolution of litigation.

14. The Receiver has been in place for less than a month. However, the Receiver has already taken several actions to protect the public and preserve significant value for PSW's interest holders. The Receiver believes that the receivership should continue at this time because many valuable assets will be devalued without the protection of receivership and many innocent third parties will be harmed if the developments are the subject of litigation.

### **III. RECEIVERSHIP OBLIGATIONS**

15. Receivership is one of several remedies creditors and other interest holders may utilize in seeking to exercise control over a business or property. Texas law provides for the appointment of a receiver in many ways:

- by a vendor to vacate a fraudulent purchase of property (Texas Business Organizations Code section 11.403(1));

- by a creditor to subject property or funds to the creditor’s claim (Texas Business Organizations Code section 11.403(2));
- between partners or others jointly owning or interested in property or funds (Texas Business Organizations Code section 11.403(3));
- by a mortgagee of the property for the foreclosure of the mortgage and sale of the property (Texas Business Organizations Code section 11.403(4));
- for a corporation that is insolvent, is in imminent danger of insolvency, has been dissolved, or has forfeited its corporate rights (Texas Civil Practices and Remedies Code 64.001(5));
- “in any other case in which a receiver may be appointed under the rules of equity” (Texas Civil Practices and Remedies Code 64.001(6));
- to rehabilitate a domestic or foreign entity (Texas Business Organizations Code section 11.404, 11.409);
- to liquidate a domestic or foreign entity (Texas Business Organizations Code section 11.405, 11.409);
- to preservation and protection marital property during a divorce proceeding (Texas Family Code 6.502);
- over the assets of a missing person (Texas Civil Practices and Remedies Code 64.001(d));
- to preserve mineral interest or leasehold interest under a mineral lease owned by a nonresident or absent defendant (Texas Civil Practices and Remedies Code 64.091);
- to sell property incapable of division (Texas Rule of Civil Procedure 770);
- over property in a municipality that is not in compliance with certain life, health, and safety ordinances (Texas Local Government Code 214.0031); and
- over property of a nonprofit housing organization that presents a life, health, or safety risk (Texas Local Government Code 214.0031).

16. Texas courts are authorized to broadly define a receiver’s powers to accomplish the objectives of the receivership and to modify the scope of the receiver’s powers as necessary. Texas Business Organizations Code 11.406(5) (“[The Receiver] has the powers and duties that are stated in the order appointing the receiver or that the appointing court: considers appropriate

to accomplish the objectives for which the receiver was appointed and may increase or diminish at any time during the proceedings.”). A receiver’s authority and duties are governed by the receivership order and, thus, can be tailored to each particular circumstance and the needs of the case. Rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver, and to the powers of a court regarding receivers, to the extent that they are not inconsistent with applicable statutory provisions or with the general laws of the state. Tex. Civ. Prac. & Rem. Code § 64.004.

17. The job of a receiver appointed over a company is to provide for the orderly collection and disposition of assets for the purpose of rehabilitating or liquidating the business. Texas Business Organizations Code section 11.404, 11.450, 11.409. To accomplish those purposes, a receiver typically follows the foregoing process:

- (1) marshaling receivership assets;<sup>1</sup>
- (2) preserving the value of receivership assets;<sup>2</sup>
- (3) identifying and organizing claims against the receivership estate;<sup>3</sup>

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<sup>1</sup> *Bennett v. Brooks Baker & Lange, LLP*, No. 01-13-00674-CV, 2014 Tex. App. LEXIS 7317, at \*6 (Tex. App.—Houston [1st Dist.] July 8, 2014, no pet.) (“The trial court expressly relied on Chapter 64 of the Civil Practice and Remedies Code—the receivership statute—in appointing the receiver to ‘administer and manage the business affairs, funds, assets, choses in action and other property’ belonging to Bennett; marshal and safeguard all of the assets of Bennett; and take whatever actions necessary for the protection of creditors.”); *Day v. State*, 489 S.W.2d 368, 370 (Tex. Civ. App.—Austin 1972, writ ref’d n.r.e.) (“The temporary mandatory relief hereinafter granted is necessary in order to enable the receiver of this Court to marshal the assets and to ascertain the liabilities of the defendant. . . .”).

<sup>2</sup> *In re Davis*, 418 S.W.3d 684, 691 (Tex. App.—Texarkana 2012, no pet.) (“A trial court is statutorily authorized to appoint “a receiver for the preservation and protection of the property of the parties.”); *Magaraci v. Espinosa*, Nos. 03-14-00515-CV and 03-14-00518-CV, 2016 Tex. App. LEXIS 2345, 2016 WL 858989, at \*8 (Tex. App.—Austin Mar. 4, 2016, no pet.) (mem. op.) (receiver has standing to sue under TUFTA as representative of corporation and corporation’s creditors to preserve and recover corporation’s assets).

- (4) liquidating receivership assets;<sup>4</sup> and
- (5) distributing proceeds to claims holders.<sup>5</sup>

18. To that end, the Texas general receivership statute authorizes receivers to take charge and keep possession of the property, receive rents, collect and compromise demands, make transfers, and perform other acts in regard to the property as authorized by the court in the order appointing the receiver. Tex. Civ. Prac. & Rem. Code § 64.031.

#### IV. SUMMARY OF RECEIVERSHIP OPERATIONS

##### A. Marshaling and Preserving Assets

###### Identifying Assets

19. The Receiver has collected the books and records detailing all of PSW's active and dormant projects and is in the process of reviewing and updating the same. Because of the complex nature of the PSW enterprise, the Receiver is in the process of identifying and understanding the capital structure for all PSW projects. At this time, the Receiver believes that the Receivership Estate may hold an interest in 13-Storybuilt developments,<sup>6</sup> and 16 joint-venture projects<sup>7</sup> across four states. The majority of all PSW projects have senior secured debt,

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<sup>3</sup> Tex. Bus. Orgs. Code § 11.407 ("In a proceeding involving a receivership of the property or business of a domestic entity, the court may require all claimants of the domestic entity to file with the clerk of the court or the receiver, in the form provided by the court, proof of their respective claims under oath.").

<sup>4</sup> *Spiritas v. Davidoff*, 459 S.W.3d 224, 233 (Tex. App.—Dallas 2015, no pet.) ("A court "may order the liquidation of the property and business of [a] domestic entity and may appoint a receiver to effect the liquidation").

<sup>5</sup> *Neel v. Fuller*, No. B-6016, 1976 Tex. LEXIS 272, at \*4 (Dec. 22, 1976) ("In our case the court, through its receiver, took possession to oversee the orderly administration and distribution of the estate.").

<sup>6</sup> The Storybuilt projects include Willa, Frank Commercial, Bruno, Goose, Lucy, Clementine, Frank West, Project Ruby, Charley, Ozzie, North Bluff, Kramer, and Nora.

<sup>7</sup> The joint-venture projects and related JV Partners include George- (Hearthstone), Ellie May (IHP), Scout, Project Stanley, Project Archie, Sumie, Jolene, Frank North, Frank South, Longview, Polaris, Callie, Judy, Josephine, Thornton Flats, Thornton MU (All Partners Group).



Class A and Class B investors, and preferred equity investors. The Receiver is still in the process of determining PSW's interest in all projects and developments.

20. Since commencing his duties, the Receiver has worked to determine and identify all project senior secured noteholders, the amounts owed on the notes, the investors for each project, and the status of each project. The Receiver is in the process of evaluating and analyzing each PSW project to determine how best to maximize value for the Receivership Estate and PSW creditors. The Receiver has already entered into several agreements with senior secured noteholders to allow the foreclosure of specific Receivership assets in the event the Receiver is unable to market and sell the asset to provide value to the Receivership Estate. Furthermore, the Receiver is in the process of marketing specific projects to determine whether a recapitalization or sale of the project is in the best interest of the Receivership Estate. The Receiver is working to determine the most economical manner with which to provide value of the Receivership Estate. This process includes identifying the best way to sell Receivership assets as well.

21. Upon taking over, the Receiver has located and taken possession of all known bank accounts of the Defendants. These included several accounts at different banks. At the date of this report, the Receiver controls \$350,000 in the Receiver bank account and in PSW bank accounts controlled by the Receiver.

### Operations

22. PSW and its affiliates are currently operating with a skeleton staff necessary to complete construction in process, development and entitlement, support PSW's Joint Venture interests, performing accounting tasks, and sell completed homes. Prior to the appointment of the Receiver, PSW furloughed all employees based on an inability to meet payroll obligations.

After the Receiver was appointed, Receiver terminated all employees as PSW had only minimal liquid assets available to meet payroll obligations.

23. On August 15, 2023, the Receiver filed its *Notice of Rehiring of Certain Employees* (the “*Notice of Rehiring*”) to rehire approximately fifty (50) employees of PSW for until further notice. The employees primarily work in the areas of development management, project management, accounting, marketing, and sales. The rehiring of these employees was for the purpose of identifying the assets of PSW and preserving the value of such assets. Approximately half of these employees will support the Joint Venture projects and be reimbursed by the Joint Venture partners. The Notice of Rehiring provides that the employees will be paid their ordinary wages from cash on hand and through receivership certificates.

*Employment of Professionals.*

24. Immediately following the Receiver’s appointment, it became necessary for the Receiver to employ Reed Smith LLP as its counsel in order to advise the Receiver in connection with identification and preservations of assets of the Receivership Estate and to assist in negotiating with claims holders, preparation and filing of pleadings and appearances in court and to organize the receivership proceeding.

*Litigation Claims.*

25. At the time the Receiver was appointed, there were approximately 25 foreclosures and lawsuits pending against PSW or an affiliated entity. The Receiver has notified all known parties to pending litigation claims that all litigation is stayed pursuant to the Receivership Order.

*Proposed Transactions*

26. At the time the Receiver was appointed PSW held an interest in at least 29 projects at various stages of development. In order to preserve and maximize the value of the

developments, the Receiver intends to enter into a number of transactions for certain developments. These transactions may include entering into new financing agreements to avoid foreclosure of properties or to initiate or continue the developments, replacing PSW as general contractor, replacing PSW as primary developer, and other transactions to avoid losses and maximize the value of assets.

## **B. Identifying and Organizing Claims**

27. The Receiver is in the process of identifying all creditors of any Receivership Entity. This is an ongoing process that requires a sizeable portion of the Receiver's time. Additionally, the Receiver is working with the rehired Storybuilt employees in order to identify all Receivership assets.

28. To this end, on August 9, 2023, the Receiver filed its *Motion to Establish Claims Procedures, To Approve Claim Form, and to Approve Injunction Notice* (the "**Claims Motion**") to establish a claims process. The Claims Motion requests authority to establish an official claim form, a Notice of Injunction Form to provide litigation parties notice that the continuation of litigation against a Receivership party is enjoined pending resolution of the receivership proceeding, and a claims bar date. Because of the scope of the Receivership Estate, the relief requested in the Claims Motion is necessary to preserve estate resources for the repayment of claims. Without such relief, the Receiver will have to spend an inordinate amount of time responding to discovery and other pleadings from individual creditors.

## **C. Liquidating Assets**

29. To maximize returns to creditors, the Receiver's objectives are to market all monetizable Receivership Property efficiently as possible or to identify capital partners to recapitalize the entire portfolio as a whole, by region, or by project. To effectuate a sale, the

Receiver is actively in the process of interviewing investment bankers to assist in the sale of the Receivership portfolio. If the Receiver chooses to move forward with this strategy it will file a motion for court approval to employ the selected investment banker. After being retained, the investment banker will market all of the Receivership Property for sale in either a single sale or multiple sales based on market conditions. Once buyer(s) are identified, the Receiver will file a motion to sell the Receivership Property with the Court.

30. In the event the Receiver is unable to find a suitable purchaser for all the assets, the Receiver will analyze the sale of receivership process on an asset-by-asset basis.

#### **D. Distribution and Claims Resolution**

31. After liquidating the Receivership's assets, the Receiver will file a motion to establish a distribution plan with the Court. The Receiver will not distribute any assets of the estate without an order from the Court.

32. In light of the foregoing, the Receiver requests that upon final consideration of this motion, the Court enter an order consistent with the foregoing requested relief and for such other and further relief, general or special, at law or in equity, to which the Receiver may how himself justly entitled.

Respectfully submitted,

**REED SMITH, LLP**

*/s/ Bradley J. Purcell*

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**CERTIFICATE OF SERVICE**

I hereby certify that, on August 25, 2023, a true and correct copy of the foregoing document was served on all counsel of record pursuant to the Texas Rules of Civil Procedure via the Court's electronic filing system.

*/s/ Bradley J. Purcell*

Bradley J. Purcell