# No. 23-0722

IN THE SUPREME COURT OF TEXAS

GREAT VALUE STORAGE, LLC AND WORLD CLASS CAPITAL GROUP, LLC

*Petitioners,*

v.

PRINCETON CAPITAL CORPORATION,

*Respondent.*

On Petition for Review from the
First Court of Appeals, Houston, Texas
Case No. 01-21-00284-CV

## PETITION FOR REVIEW


**BURFORD PERRY, LLP**
Brent C. Perry
Texas Bar No. 15799650
bperry@burfordperry.com
Zachary R. Carlson
Texas Bar No. 24116165
zcarlson@burfordperry.com
909 Fannin Street, Suite #2630
Houston, Texas 77010
Telephone: (713) 401-9790
Facsimile: (713) 993-7739

**SQUIRE PATTON BOGGS LLP**
Greg R. Wehrer
Texas Bar No. 24068592
Greg.Wehrer@squirepb.com
Amanda D. Price
Texas Bar No. 24060935
Amanda.Price@squirepb.com
Trevor Pirouz Kehrer
Texas Bar No. 24123297
Trevor.Kehrer@squirepb.com
600 Travis Street, Suite 6700
Houston, Texas 77002
Telephone: 713-546-5850
Facsimile: 713-546-5830

## IDENTITY OF PARTIES AND COUNSEL

**Petitioners:** Great Value Storage, LLC and World Class Capital Group, LLC

**Trial Counsel:**

Brian Elliott
brian@scalefirm.com
315 Montgomery St, 10th Floor
San Francisco, CA 94104

**Appellate Counsel:**

Brent C. Perry
bperry@burfordperry.com
Zachary R. Carlson
zcarlson@burfordperry.com
BURFORD PERRY, LLP
909 Fannin St., Ste. 2630
Houston, Texas 77010

Greg R. Wehrer
Greg.Wehrer@squirepb.com
Amanda D. Price
Amanda.Price@squirepb.com
Trevor Pirouz Kehrer
Trevor.Kehrer@squirepb.com
SQUIRE PATTON BOGGS (US) LLP
600 Travis Street, Suite 6700
Houston, Texas 77002
Telephone: 713-546-5850
Facsimile: 713-546-5830

**Respondent:** Princeton Capital Corporation

**Trial and Appellate Counsel:**

Mark L.D. Wawro
mwawro@susmangodfrey.com
Abigail C. Noebels
anoebels@susmangodfrey.com
1000 Louisiana Street, Suite 5100
Houston, Texas 77002-5096

**Interested Party:** Seth Kretzer (Receiver)

Seth Kretzer
seth@kretzerfirm.com
James Volberding
jamesvolberding@gmail.com
9119 South Gessner, Suite 105
Houston, TX 77074

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**CASES**

**STATUTES**

## STATEMENT OF THE CASE

| | |
|---|---|
| *Nature of the case:* | Interlocutory appeal of post-judgment turnover receivership order. |
| *Trial Court:* | 165th Judicial District Court, Harris County, Hon. Ursula Hall, presiding. |
| *Trial Court Disposition:* | Respondent on June 30, 2021, moved for appointment of a post-judgment turnover receiver under TEX. CIV. PRAC. & REM. CODE § 31.002. 3 Supp CR 148. On September 8, the trial court signed an Order Appointing Receiver and Compelling Discovery. 3 Supp CR 193. |
| *Court of Appeals:* | First Court of Appeals (Justices Kelly, Countiss, and Rivas-Molloy) (Kelly, J., author). |
| *Citation to Opinion:* | *Great Value Storage, LLC v. Princeton Capital Corp.,* No. 01-21-00284-CV, 2023 WL 3010773 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, no pet. h.) |
| *Appeals Court Disposition:* | On April 20, 2023, the court of appeals affirmed the receiver appointment and held that Petitioners waived their objections to the receivership order. The opinion encompassed two appeals—one as to the receivership order and one as to the trial court's judgment. *Great Value Storage,* 2023 WL 3010773. Petitioners filed a motion for rehearing on May 22, 2023. The court denied the motion for rehearing on July 27, 2023. |

## STATEMENT OF JURISDICTION

The Court has jurisdiction over this appeal because the appeal presents one or more questions of law that are important to the jurisprudence of the state. *See* TEX. GOV'T CODE § 22.001(a).

## ISSUES PRESENTED

(1) Texas statutes provide that a charging order is the "exclusive remedy" for a judgment creditor seeking to satisfy a debt out of a judgment debtor's LLC membership and partnership interests. TEX. BUS. ORGS. CODE §§ 101.112(a)-(g); TEX. BUS. ORGS. CODE § 153.256(a)-(f). A charging order can only reach a debtor's distributions, if any, and a creditor expressly "does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of" the LLC or limited partnership. *Id.* Can a trial court permit a Receiver appointed under a Turnover Order to seize, sell, manage, and operate a non-judgment debtor LLC or limited partnership consistent with TEX. BUS. ORGS. CODE § 101.112 and TEX. BUS. ORGS. CODE § 153.256?

(2) This Court has held that when parties appeal, they "may construct new arguments in support of issues that were raised" below. *Li v. Pemberton Park Cmty. Ass'n*, 631 S.W.3d 701, 704 (Tex. 2021) (cleaned up). But the Court of Appeals held that if "specific arguments" "were never raised in the trial court," then they are waived on appeal. *Great Value Storage, LLC v. Princeton Capital Corp.,* No. 01-21-00284-CV, 2023 WL 3010773, at *15 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, no pet. h.). To preserve error, must a party make every specific argument in the trial court that may support an issue on appeal?

(3) Whether the trial court abused its discretion by signing a receivership order that sets the Receiver's fees in advance without requiring evidence to establish the reasonableness of the fee and without providing for any later reasonableness review? [unbriefed]

## WHY THIS COURT SHOULD GRANT REVIEW

The trial court signed an Order Appointing Receiver (Tab A) (the "receivership order" or "turnover order") under the Texas Turnover Statute on September 8, 2021. That statute allows a "judgment creditor" to seek "aid from a court of appropriate jurisdiction" and authorizes that court "to appoint a receiver with the authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor." TEX. CIV. PRAC. & REM. CODE § 31.002(a) and (b)(3). Under Texas's charging order statutes, a charging order is the "exclusive remedy" available to a judgment creditor seeking to satisfy a judgment debt out of LLC or partnership interests. TEX. BUS. ORGS. CODE § 101.112(d) (LLC) and TEX. BUS. ORGS. CODE § 153.256(d) (limited partnership).

This Court has never written on the interplay between charging order and turnover order statutes.[1] The appellate courts applying the statutes are split. Some require strict enforcement based on the plain

[1] *Jiao v. Xu*, 28 F.4th 591, 600 (5th Cir. 2022) ("The Texas Supreme Court has not spoken to the interplay between turnover orders and § 101.112(d)"). In *Jiao*, the Fifth Circuit, forced to make an *Erie* guess in the absence of this Court's guidance, affirmed a trial court order requiring the turnover of an LLC membership interest as partial satisfaction of the LLC's monetary judgment against him. This is inconsistent with Texas statutes.

language of the charging order statutes while others allow non-textual exceptions to the statutes. *Compare Pajooh v. Royal W. Invs. LLC, Series E*, 518 S.W.3d 557, 565 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (strict enforcement) and *Heckert v. Heckert*, No. 02-16-00213-CV, 2017 WL 5184840, at *8 (Tex. App.—Fort Worth Nov. 9, 2017, no pet.) (statute did not apply when turnover of member interest would not disrupt LLC's business). This precise issue is currently before the Third, Eighth, and Fourteenth Courts of Appeals in appeals arising from the receivership order at issue in this Petition.[2]

The receivership order at issue here openly flouts the plain language of Texas's charging order statutes, which protect the integrity of business entities. The receivership order expressly commands Petitioners to turn over all their business interests, including LLC and limited partnership interests:

> Judgment Debtors . . . are ORDERED to identify and turn over to the receiver all interests of the Judgment Debtors in any business or venture, including limited liability companies and limited

[2] *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00073-CV, 2023 WL 3663550 (Tex. App.—El Paso May 25, 2023, no pet.); *WC 4th & Rio Grande, LP v. La Zona Rio, LLC*, No. 08-22-00225-CV, 2023 WL 3672025, at *1 (Tex. App.—El Paso May 25, 2023, no pet.); *World Class Capital Grp., LLC v. Colorado Third St., LLC*, No. 03-22-00781-CV; and *World Class Capital Grp., LLC v. Colorado Third St., LLC*, No. 14-22-00764-CV.

> partnerships, and all agreements, stock certificates and other documents pertaining to the Judgment Debtors' ownership in the business or venture.

Tab A at 5; 3 Supp CR at 197. The order expressly authorizes the Receiver to disregard the charging order statutes, seize Petitioners' LLC interests, and take control of the LLCs:

> In addition, the Receiver is authorized to seize the membership interest of any Limited Liability Company in which [judgment debtor] is a member, and to sell, manage, and operate the Limited Liability Company as the Receiver shall think appropriate.

Tab A at 8; 3 Supp CR at 200. This Petition seeks to clarify in what circumstances, if any, a court may authorize a judgment creditor or receiver to disregard the plain language of the charging order statutes.

The appellate court declined to address Petitioners' objections to the receivership order; instead, it applied a novel waiver doctrine requiring Petitioners to make all their "specific arguments" in the trial court to preserve them for appeal. But this Court has continuously commanded that "[a]ppellate courts should hesitate to turn away claims based on waiver" and this Court has warned that its admonition is "especially" strong where the appellant has "clearly and timely registered

its objection to the ruling challenged on appeal." *Li v. Pemberton Park Cmty. Ass'n*, 631 S.W.3d 701, 704 (Tex. 2021) (cleaned up).

Neither the trial court nor the appellate court in this case attempted to justify the unlawful provisions in the receivership order. The result is a receivership order that disregards the plain language of the charging order statutes and wreaks havoc on non-judgment debtor entities. This Court must step in now to ensure uniformity and prevent similar abuse.

## I. STATEMENT OF FACTS

The Court of Appeals correctly stated the nature of the case, except in any particulars pointed out below.

### A. The Underlying Lawsuit

Princeton brought claims arising from promissory notes. CR 5-15. The trial court granted Princeton partial summary judgment on its breach of contract claim against Petitioners on January 22, 2021. CR 333. The court then severed all other pending claims and parties. 1 Supp CR 126-28. The Court signed a Final Judgment Order awarding $9.8 million in damages plus attorney's fees. CR 350-51.[3]

[3] The underlying opinion covered two notices of appeal: (1) Final Judgment Order (filed June 2, 2021); and (2) Order Appointing Receiver (filed September 21, 2021).

## B. The Receivership Order

Princeton filed its Motion for Post-Judgment Receivership on June 30, 2021. 3 Supp CR 148-53. The motion asked the trial court to "sign the attached order" because "[t]he Court has authority to do so under Texas Civil Practices and Remedies Code § 31.002." 3 Supp SR 148. Princeton asked for "a receiver with all of the power and authority necessary to take possession of and sell all non-exempt assets of the Judgment Debtors." *Id.* at 151-52. Princeton's motion did not ask the trial court to grant the Receiver powers beyond those allowed under the Turnover Statute.

Petitioners timely filed their Objection to Plaintiff's Motion for Post-Judgment Receivership. 3 Supp CR 167-71. In addition to general objections to the receivership, they "object[ed] to Princeton's proposed form of receiver order as being *grossly overbroad* [and] *not authorized by section* [*31.002*]." 3 Supp CR 171 (emphasis added). The trial court signed the Order Appointing Receiver on September 8. The trial court, "pursuant to the Texas Turnover Statute," appointed the Receiver "to

---

*Great Value Storage, LLC v. Princeton Capital Corp.*, No. 01-21-00284-CV, 2023 WL 3010773, at *1 (Tex. App.—Houston [1st Dist.] Apr. 20, 2023, no pet. h.). This Petition does not challenge the Final Judgment Order.

take possession of and sell the leviable assets" belonging to Petitioners. 3 Supp CR 193.

The receivership order contains clearly unlawful provisions.[4] First, the order treats Petitioners' protected limited partnership and LLC interests as assets that can be seized and managed in violation of the charging order statutes. The order states:

> Judgment Debtors, Great Value Storage LLC and World Class Capital Group LLC are ORDERED to identify and turn over to the receiver all interests of the Judgment Debtors in any business or venture, including limited liability companies and limited partnerships, and all agreements, stock certificates and other documents pertaining to the Judgment Debtors' ownership in the business or venture.

*Id*. at 197. The order then authorizes the Receiver to seize Petitioners' LLC membership interests and sell or manage the LLCs:[5]

> In addition, the Receiver is authorized to seize the membership interest of any Limited Liability Company in which Great Value Storage LLC or World Class Capital Group LLC is a member, and to sell, manage, and operate the Limited Liability Company as the Receiver shall think appropriate.

---

[4] This Petition also contests an unlawful provision setting the Receiver's fees in advance without any evidence of reasonableness. This issue is unbriefed.

[5] There is no provision allowing similar seizure of limited partnership interests.

*Id*. at 200.

### C. The Appellate Court Opinion

The First Court of Appeals did not treat the interlocutory appeal of the receivership order as an accelerated appeal separate from the final judgment. The court heard argument on June 1, 2022 and issued its opinion on April 20, 2023, holding that Petitioners waived their objections to any specific provisions in the receivership order on appeal by failing to present the same "specific arguments" in the trial court. *Great Value Storage*, 2023 WL 3010773, at *15.

The court stated:

> On appeal, [Petitioners] argue about *specific provisions that were in the draft order* that was attached to the motion for appointment of a post-judgment receiver and which Princeton expressly asked the court to enter.
>
> [Petitioners] argue that their general objection to entry of the order appointing a receiver was sufficient to preserve error as to *these specific arguments* that were never raised in the trial court. . . .
>
> We conclude that these issues are waived . . . .

*Id*. (emphasis added).

The appellate court's holding elevated Princeton's simple request to "sign the attached order" to an undeserved status while ignoring

Petitioners' written objections to that order—objections that the trial court overruled by entering the order. *See* TEX. R. APP. P. 33.1 (a) (1) and (2).

## II. SUMMARY OF ARGUMENT

### A. The Order Appointing Receiver conflicts with the plain language of the charging order statutes.

Texas statutes plainly state that a charging order is the "exclusive remedy" available to a judgment creditor seeking to satisfy a debt out of a judgment debtors' LLC or partnership interests. TEX. BUS. ORG. CODE §§ 101.112 (LLCs), 153.256 (limited partnerships); *Pajooh*, 518 S.W.3d at 565. The statutes mean what they say: a judgment creditor can only seize distributions, that would otherwise go to the judgment debtor, to satisfy the outstanding judgment. *Id.*

Despite the plain statutory text, Texas courts are split over whether a charging order is an exclusive remedy. *Compare, e.g.*, *Pajooh*, 518 S.W.3d at 565 ("a charging order is the exclusive remedy") *with Henderson v. Chrisman*, No. 05-14-01407-CV, 2016 WL 1702221, at *2 (Tex. App.—Dallas Apr. 27, 2016, no pet.) ("a charging order was not the exclusive remedy"). They are similarly divided over whether a turnover order can transfer LLC and partnership interests—with or without a

charging order. *Compare Scheel v. Alfaro*, 406 S.W.3d 216, 225, 228 (Tex. App.—San Antonio 2013, pet. denied) (affirming sanctions where trial court held that seeking turnover order transferring LLC interests instead of charging order was "prohibited by statute") *and Pajooh*, 518 S.W.3d at 565 (error to "impos[e] a receivership and turnover order") *with Jiao*, 28 F.4th at 600 (concluding that Texas intermediate courts allow for turnover of LLC interests to satisfy a judgment).

The Fifth Circuit recently affirmed a turnover order that is inconsistent with Texas statutes. *Jiao*, 28 F.4th at 599-600. The Fifth Circuit made an "*Erie* guess" because this Court "has not spoken to the interplay between turnover orders" and the statutes protecting judgment debtors' LLC membership and partnership interests. *Id*. Confusion over this issue and splits of authority are significant. *Compare Pajooh*, 518 S.W.3d at 563 (rejecting argument that interest in one-member entity can be reached without a charging order) *with, e.g.*, *Heckert*, 2017 WL 5184840, at *8-9 (charging order is not necessary to reach interest in single-member LLC).

The confusion in the Courts of Appeals extends to the appeals involving the receivership order at issue here. *See* n.2, *supra.* The Eighth

Court of Appeals held in *WC 4th & Rio Grande, LP* that the Receiver did not have authority to seize control of Petitioners' LLC membership interests on the record presented. 2023 WL 3663550, at *8. That court, however, acknowledged a possible, non-textual exception if all the partners are "connected to" the judgment debtor. *Id.* at *7. This widening split calls for this Court's guidance.

### B. The First Court's novel waiver doctrine conflicts with this Court's precedents.

The First Court's opinion below announced a novel waiver doctrine: that appellants must make all their "specific arguments" in the trial court to raise them on appeal. *Great Value Storage*, 2023 WL 3010773, at *15. But this Court has continuously commanded that "[a]ppellate courts should hesitate to turn away claims based on waiver," warned that this admonition is "especially" strong where the appellant has "clearly and timely registered its objection to the ruling challenged on appeal," and held that parties can "construct new arguments in support of issues that were raised" below. *Li*, 631 S.W.3d at 704 (cleaned up). The First Court of Appeals' novel approach to waiver is far adrift from this Court's clear instructions.

The opinion below blessed a plain violation of Texas law. This Court should reverse the Court of Appeals' judgment and clarify that TEX. BUS. ORGS. CODE §§ 101.112(d) and 153.256(d) mean what they say: A judgment creditor seeking to satisfy a debt out of LLC and partnership interests has only one remedy—a charging order against distributions.

## III. STANDARD OF REVIEW

An interlocutory order under the Texas Turnover Statute is reviewed under an abuse of discretion standard. *Beaumont Bank, N.A. v. Buller*, 806 S.W. 2d 223, 226 (Tex. 1991). "A trial court's failure to analyze or apply the law correctly is an abuse of discretion." *In re Academy, Ltd.*, 625 S.W.3d 19, 25 (Tex. 2021) (cleaned up).

When the dispute is solely over questions of law, this Court "determin[es] all legal questions presented" and reviews legal questions *de novo*. *Godoy v. Wells Fargo Bank, N.A.*, 575 S.W.3d 531, 536 (Tex. 2019) (citation omitted). "The meaning of a statute is a legal question," and so this Court interprets TEX. CIV. PRAC. & REM. CODE § 31.002 and TEX. BUS. ORG. CODE § 101.112 and § 153.256 *de novo*. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009).

## IV. ARGUMENT

In the absence of a definitive statement from this Court, the Courts of Appeals are divided over whether turnover orders can allow judgment creditors (and receivers acting for their benefit) to seize judgment debtors' interests in LLCs and partnerships. The plain text of the statutes declares that they cannot. To ensure uniformity in a context the Legislature intended to be simple, this Court should hear this case.

### A. This Court should grant review, apply the plain meaning of the charging order statutes, and hold that the trial court's turnover order exceeded its authority.

"[I]t is cardinal law in Texas that a court construes a statute, 'first by looking to the plain and common meaning of the statute's words.'" *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999) (citation omitted). This Court has held for more than a century that "[c]ourts must take statutes as they find them" and "must find [the statute's] intent in its language, and not elsewhere." *Maxim Crane Works, L.P. v. Zurich Am. Ins. Co.*, 642 S.W.3d 551, 557 (Tex. 2022) (quoting *Simmons v. Arnim*, 220 S.W. 66, 70 (Tex. 1920)). Prioritizing the enacted text "ensures that ordinary citizens are able to rely on the

language of a statute to mean what it says." *Molinet v. Kimbrell*, 356 S.W.3d 407, 414 (Tex. 2011).

**i. A turnover order is a procedural device and cannot create additional remedies.**

Under the Texas Turnover Statute, "[a] judgment creditor is entitled to aid from a court . . . to reach property to obtain satisfaction on the judgment if the judgment debtor owns property . . . that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities." TEX. CIV. PRAC. & REM. CODE § 31.002(a). The Turnover Statute allows courts to "appoint a receiver with authority to take possession of the nonexempt property, sell it, and pay the proceeds to the judgment creditor to the extent required to satisfy the judgment." *Id.* at § 31.002(b)(3). Because receiverships are "harsh, drastic, and extraordinary" remedies, a receiver appointed under the Turnover Statute has strictly limited authority. *Pajooh*, 518 S.W.3d at 567 (citation omitted).

This Court has made clear that the Turnover Statute is a "purely procedural" device to help judgment creditors collect—but turnover proceedings cannot be used "to determine parties' and non-judgment debtors' substantive rights." *See Alexander Dubose Jefferson &*

*Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577, 583 (Tex. 2018). The Turnover Statute, as a purely procedural device, does not create additional remedies.

**ii. Texas statutes mean what they say: A charging order is the exclusive remedy against a judgment debtor's membership or partnership interests.**

"[A] charging order is the *exclusive remedy* by which a judgment creditor of a [member or partner] or of any other owner of a [membership or partnership] interest may satisfy a judgment out of the judgment debtor's [membership or partnership] interest." TEX. BUS. ORG. CODE §§ 101.112(d) and 153.256(d) (emphasis added). When the Texas Legislature created this exclusive mechanism for satisfying a judgment from a judgment debtor's membership or partnership interest, it expressly limited the scope of what judgment creditor could reach:

- "To the extent that the [membership or partnership] interest is charged . . ., *the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled* in respect of the [membership or partnership] interest." TEX. BUS. ORG. CODE §§ 101.112(b) and 153.256(b) (emphasis added).

- "A creditor of a member or of any other owner of a [membership or partnership] interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the [LLC or partnership]." TEX. BUS. ORG. CODE §§ 101.112(f) and 153.256(f); *see also Pajooh*,

518 S.W.3d at 563 (a charging order "does not entitle a creditor to participate in the partnership or to compel a distribution of profits.").

That is because a business organization, such as an LLC or a partnership, is a distinct legal entity, separate and apart from its partners and members. *See Pike v. Texas EMC Mgmt., LLC*, 610 S.W.3d 763, 778 (Tex. 2020). Even if several corporate entities are related or engaged in the same enterprise together, a creditor of one cannot make a claim upon another as though they were one unit. *SSP Partners v. Gladstone Invs. (USA) Corp.*, 275 S.W.3d 444, 452, 455 (Tex. 2008). The legislature's implementation of the charging order furthers this "bedrock principle" of Texas corporate law. *Id.*; *see also Pajooh*, 518 S.W.3d at 562 ("The charging order was developed to prevent disruption of a partnership's business by a judgment creditor seeking to force an execution sale of a partner's interest to satisfy a non-partnership debt.")

### iii. There is only one possible reading of the statutes under settled Texas law.

This Court's precedents establish that when statutory language is clear, its plain meaning governs. *Maxim Crane*, 642 S.W.3d at 557. There is nothing ambiguous here. The statutes provide that judgment

creditors have only one way to satisfy a judgment from a judgment debtor's LLC or partnership interests: get a charging order.[6]

A turnover order—a purely procedural device—cannot provide a judgment creditor with broader relief than that allowed by the charging order statutes. A receiver appointed under a turnover order must, like any judgment creditor, obtain a charging order to get at a debtor's membership or partnership interest and, even then, the remedy is limited to receiving distributions that would otherwise go to the judgment debtor. No broader relief in law or equity is permitted. TEX. BUS. ORGS. CODE §§ 101.112(b), 153.256(b).

Ignoring these clear statutory provisions, the trial court's turnover order required Petitioners to turn over their LLC and limited partnership interests, authorized the Receiver to "seize the membership interest" Petitioners held in any LLCs, and empowered the Receiver to "sell, manage, and operate" the LLCs. 3 Supp CR 200. This exceeds the remedy available under clear Texas statutes.

[6] The plain, common meaning of "exclusive" is "single" or "sole." *Exclusive*, Merriam-Webster.com, https://www.merriam-webster.com/dictionary/exclusive (last visited Oct. 23, 2023).

### iv. Texas courts are divided over whether the statutes mean what they say.

Despite the clear statutory text, there are splits of authority on this issue within and across the Courts of Appeals. Some opinions, like that of the First Court of Appeals in *Pajooh*, interpret the statute properly. *See also Spates v. Office of Attorney Gen., Child Support Div.*, 485 S.W.3d 546, 556 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("Under the statutory scheme creating the charging order as the exclusive remedy," a judgment creditor cannot "take possession of [debtor's LLC] membership interest" or "exercise any other legal or equitable remedies with respect to company property"); *Scheel*, 406 S.W.3d at 225, 228 (affirming sanctions against attorney who attempted to secure a turnover order for LLC interests rather than charging order, which the trial court found to be "prohibited by statute").

Others, like the Fourteenth Court of Appeals in *Klinek v. LuxeYard, Inc.*, apparently endorsed extra-statutory exceptions created by other appellate courts. 672 S.W.3d 830, 839-40 (Tex. App.—Houston [14th Dist.] 2023, no pet.) ("*Despite the statute's plain language*, however, some courts have upheld turnover relief when a member's interest in a limited liability company is at issue") (emphasis added). For its part, the Eighth

Court of Appeals in *WC 4th & Rio Grande, LP*—involving the same turnover order at issue here—concluded that while the Receiver did not have authority to seize LLC interests, the Receiver *could* have that authority on another factual record. 2023 WL 3663550, at *7-8.

And other opinions have simply gotten the statutory analysis wrong. *See, e.g.*, *Heckert*, 2017 WL 5184840, at *8 (charging order was not exclusive remedy because "the purpose of a charging order has not come into play"); *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 758 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (charging order was not exclusive remedy because "the reasoning behind requiring a charging order as the exclusive remedy is inapposite"); *Henderson*, 2016 WL 1702221, at *2 ("a charging order was not the exclusive remedy available in this case").

These incorrect opinions were numerous enough for the Fifth Circuit to affirm a district court's turnover order last year, holding that TEX. BUS. ORGS. CODE § 101.112(d) "does not preclude the turnover of [the debtor's LLC membership] interest" because "the reasoning behind requiring a charging order as the exclusive remedy is inapposite." *Jiao*, 28 F.4th at 600 (citation omitted). The Fifth Circuit's erroneous justification underscores the urgency presented here. This Court must

address the widening conflict between the statutory text and the appellate courts' mistaken interpretations allowing judgment creditors to leverage broad—and unlawful—remedies.

### B. The First Court's new waiver standard contradicts this Court's precedents and improperly narrows appellate review.

While ruling on Petitioners' appeal, the First Court of Appeals announced and applied a novel doctrine of waiver: It held that to raise any arguments on appeal, appellants must have made those "specific arguments" in the trial court. *Great Value Storage*, 2023 WL 3010773, at *15. The waiver doctrine articulated by the appeals court requires litigants to be clairvoyant: to anticipate that the trial court will sign the opposing party's proposed order as written. But there is no way for a litigant to know beforehand what *the court's* signed order will include. The Court of Appeals' waiver doctrine demands the impossible of litigants and turns this Court's error preservation jurisprudence on its head.

This Court has "urged courts of appeals, and reminded [itself], to construe briefing 'reasonably, yet liberally, so that the right to appellate review is not lost by waiver.'" *First United Pentecostal Church of*

*Beaumont v. Parker*, 514 S.W.3d 214, 222 (Tex. 2017) (citation omitted). This Court has likewise been clear that "[a]ppellate courts should 'hesitate to turn away claims based on waiver or failure to preserve the issue,'" and "[t]his is especially so 'where the party has clearly and timely registered its objection.'" *Li*, 631 S.W.3d at 704 (citations omitted). This Court allows appellants to "construct new arguments in support of issues" they raised below. *Id.* (cleaned up). And even if an argument made in the trial court was "lacking in specificity," this Court construes it liberally to avoid waiver on appeal. *See Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 896 n.2 (Tex. 2018).

To preserve error, Petitioners only had to raise sufficiently specific objections to make the trial court aware of their complaints and their grounds for a ruling, and the trial court had to rule on those objections. Tex. R. App. P. 33.1(a)(1)-(2). That happened here. Petitioners opposed Princeton's Motion for Post-Judgment Receivership and its proposed order, arguing that "Princeton's motion is unsupported by *any* evidence," that "Princeton's proposed form of receiver order [is] grossly overbroad [and] not authorized by section [31.002]," and informed the court that, "based on the current record, the Court cannot, as a matter of law" adopt

the proposed order. 3 Supp CR 167, 171. The trial court implicitly overruled Petitioners' objections by entering the turnover as submitted. *See McAllen Med. Ctr., Inc. v. Cortez*, 66 S.W.3d 227, 231 (Tex. 2001). It is hardly surprising that Petitioners' arguments against the order were more detailed on appeal, as there was a signed order from which to appeal and make specific, substantive arguments. Petitioners preserved error under Tex. R. App. P. 33.1 and this Court's precedents.

The Court of Appeals' new waiver doctrine "impose[s] too strict a view of error preservation" and disobeys this Court's consistent command that "[r]ules of error preservation should not be applied so strictly as to unduly restrain appellate courts from reaching the merits of a case." *Adams*, 547 S.W.3d at 896. "Simply stated, appellate courts should reach the merits of an appeal whenever reasonably possible." *Perry v. Cohen*, 272 S.W.3d 585, 587 (Tex. 2008). Reaching the merits was possible here.

This Court should nip the Court of Appeals' novel approach to waiver in the bud and either resolve the issues presented in this Petition

or remand them to the Court of Appeals for appropriate consideration.[7] *Id.* at 588 (remanding without oral argument).

## PRAYER

This Court should grant this Petition and reverse the Court of Appeals' judgment as to the Order Appointing Receiver or, alternatively, vacate the Court of Appeals' judgment as to that order and remand with instructions to consider Petitioners' arguments.

[7] The Court of Appeals, prior to issuing its opinion, ordered the parties on March 30 to address "whether the appeal is moot as to both the final judgment and the order appointing a receiver" based on its understanding that a settlement agreement had been reached. Tab B-1. The Petitioners are not parties to that agreement. Tab B-2. Petitioners have standing to challenge the receivership order because their interests remain at stake. *See, e.g.*, *Fry Sons Ranch, Inc. v. Fry*, No. 03-19-00684-CV, 2020 WL 6685772, at *1 (Tex. App.—Austin Nov. 13, 2020, pet. denied) (listing conditions for mootness in receivership order appeal). After all parties responded, the Court of Appeals issued its opinion, impliedly concluding that this case is not moot. This Court can take notice of the records of the First Court of Appeals in this case. *Freedom Commc'ns., Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012). To the extent this Court believes this appeal could be moot, Petitioners respectfully request an opportunity to brief the issue.

Respectfully submitted,

**BURFORD PERRY, LLP**

*/s/ Brent C. Perry*

Brent C. Perry
State Bar No. 15799650
bperry@burfordperry.com
Zachary R. Carlson
State Bar No. 24116165
zcarlson@burfordperry.com
909 Fannin Street, Suite #2630
Houston, Texas 77010
Telephone: (713) 401-9790
Facsimile: (713) 993-7739

**SQUIRE PATTON BOGGS LLP**
Greg R. Wehrer
Texas State Bar No. 24068592
Greg.Wehrer@squirepb.com
Amanda D. Price
Texas State Bar No. 24060935
Amanda.Price@squirepb.com
Trevor Pirouz Kehrer
Texas State Bar No. 24123297
Trevor.Kehrer@squirepb.com
600 Travis Street, Suite 6700
Houston, Texas 77002
Telephone: 713-546-5850
Facsimile: 713-546-5830

***Attorneys for Petitioners***

## CERTIFICATE OF COMPLIANCE

As required by Tex. R. App. P. 9.4(i)(2)(D) and (3), I certify that the number of words in the foregoing document is 4,499. I relied on the computer program used to prepare the document for the word count.

*/s/ Brent C. Perry*
Brent C. Perry

## CERTIFICATE OF SERVICE

I certify that on December 1, 2023, a true and correct copy of Petitioners' Petition for Review was served on all counsel of record via the Court's electronic filing system.

*/s/ Brent C. Perry*
Brent C. Perry

## INDEX TO APPENDIX

EXHIBIT A

CAUSE NO. 2019-18855



| | | |
|---|---|---|
| PRINCETON CAPITAL CORPORATION,<br>*Plaintiff*, | § | IN THE DISTRICT COURT |
| v. | § | |
| GREAT VALUE STORAGE LLC,<br>WORLD CLASS CAPITAL GROUP LLC,<br>AND NATIN PAUL | § | HARRIS COUNTY, TEXAS |
| *Defendants*. | § | 165th JUDICIAL DISTRICT |

**ORDER APPOINTING RECEIVER AND COMPELLING DISCOVERY**

---

SEP CAME ON to be heard the Motion for Post-Judgment Receivership of Princeton Capital Corporation ( "Applicant"); whereupon, the Court, after a review of the papers herein on file, became of the opinion that a Receiver should be appointed to take possession of and sell the leviable assets of Great Value Storage LLC and World Class Capital Group LLC ("Judgment Debtors").

Based on the pleadings, the evidence and the argument of counsel, the Court finds that the Judgment Debtors own non-exempt property and that there exists an unpaid final judgment against them. Notwithstanding any contrary language herein, this order does not compel turn over of Judgment Debtors' homestead, or checks for current wages or other exempt property.

IT IS THEREFORE, ORDERED, ADJUDGED, and DECREED by this Court that Mr. Seth Kretzer, 440 Louisiana Street, Suite 1440, Houston, Texas 770022, (713) 775-3050, is hereby appointed Receiver in this case pursuant to the Texas Turnover Statute with the power and authority to take possession of and sell all leviable property of Judgment Debtors, including, but not limited to the following non-exempt property: (1) all documents

or records, including financial records, related to such property that is in the actual or constructive possession or control of the Judgment Debtors; (2) all financial accounts (bank account), certificates of deposit, money-market accounts, accounts held by any third party; (3) all securities; (4) all real property, equipment, vehicles, boats, and planes; (5) all safety deposit boxes or vaults; (6) all cash; (7) all negotiable instruments, including promissory notes, drafts, and checks; (8) causes of action or choses of action; (9) contract rights, whether present or future; and (10) accounts receivable; and that all such property shall be held in custodia legis of said Receiver as of the date of this Order.

Judgment Debtors are **ORDERED** to turnover to the Receiver within ten (10) days from the Judgment Debtors' receipt of a copy of this Order: 1) the documents listed below, together with all documents and financial records which may be requested by the Receiver; 2) all checks, cash, securities (stocks and bonds), promissory notes, documents of title, and contracts owned by or in the name of the Judgment Debtors:

> Any and all records, as hereinafter described, concerning affairs of the Judgment Debtors; unless otherwise noted, for the period January 1, 2018 through the present:
>
> 1. Monthly statements for every financial institution account in which Great Value Storage LLC or World Class Capital Group LLC has been a signatory or owner since January 1, 2018;
>
> 2. Cancelled checks and wire transfers for every financial institution account in which Great Value Storage LLC or World Class Capital Group LLC. has been a signatory or owner since January 1, 2018;
>
> 3. Copies of the articles of incorporation, Secretary of State charters, operating agreements, membership agreements, and all documents of creation and ownership of any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

4. Federal income and state franchise tax returns for Great Value Storage LLC and World Class Capital Group LLC. and any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

5. All motor vehicle Certificates of Title owned or leased by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2019;

6. Stock certificates and bonds owned by Great Value Storage LLC or World Class Capital Group LLC., and any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

7. Promissory notes owned by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

8. Bills of sale owned by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

9. Real property deeds and deeds of trust (regardless of date), owned or interest held by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

10. Business journals, ledgers, accounts payable and receivable files belonging to Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional

corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

11. Pledges, security agreements and copies of financial statements owned by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

12. State sales tax reports filed by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

13. Any other record or document evidencing any ownership to real or personal property or to any debt owed or money had (regardless of date) owned or interest held by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

14. All personal property returns filed with any taxing authority, including but not limited to any Central Appraisal District, filed by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018;

15. All documents listing or summarizing property owned by or held by Great Value Storage LLC or World Class Capital Group LLC or any limited liability company, professional corporation, corporation, general partnership, limited partnership, trust or any other corporate entity in which Great Value Storage LLC or World Class Capital Group LLC currently holds or has held an interest since January 1, 2018; and

16. Credit applications and other documents stating Great Value Storage LLC or World Class Capital Group LLC's financial condition since January 1, 2018.

Judgment Debtors, Great Value Storage LLC and World Class Capital Group LLC are **ORDERED** to identify and turn over to the receiver all interests of the Judgment Debtors in any business or venture, including limited liability companies and limited partnerships, and all agreements, stock certificates and other documents pertaining to the Judgment Debtors' ownership in the business or venture. Judgment Debtors are **ORDERED** to continue, until the Judgment in this cause is fully paid, to turnover to the Receiver at the Receiver's address all checks, cash, securities, promissory notes, documents of title, and contracts within three (3) days from the Judgment Debtors' receipt and possession of such property, if, as and when Judgment Debtors becomes in receipt and possession of any such property. Paychecks for current wages are exempt from this order.

In light of the refusal of Judgment Debtors to pay the judgment, the Receiver is authorized to provide notice of this order, or any discovery requests, or any other document or motion, to Judgment Debtors, by delivering such notice and order and discovery requests in any of the following manner: (1) to the Judgment Debtors' home addresses by first-class U.S. Mail, without requiring signature or restricted delivery; (2) to Judgment Debtors' attorney, by fax, U.S. Mail or email, unless he or she indicates that he or she no longer represent the Judgment Debtors, or (3) by email to the Judgment Debtors' email address.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the following rights, authority and powers with respect to the Judgment Debtors' property, to: 1) collect all accounts receivable of Judgment Debtors and all rents due to the Judgment Debtors from any tenant; 2) to change locks to all premises at which any property is

situated; 3) direct the delivery of the Judgment Debtors' mail and the mail of any business of the Judgment Debtors to the Receiver's address and open all mail directed to the Judgment Debtors and any business of the Judgment Debtors; 4) endorse and cash all checks and negotiable instruments payable to the Judgment Debtors, except paychecks for current wages; 5) hire a real estate broker to sell any real property and mineral interest belonging to the Judgment Debtors; 6) hire any person or company to move and store the property of the Judgment Debtors; 7) (but not the obligation) to insure any property belonging to the Judgment Debtors; 8) obtain from any financial institution, bank, credit union, credit bureau, savings and loan, title company, or any other third party, any financial records belonging to or pertaining to the Judgment Debtors; 9) obtain from any Texas state agency or official, Texas county agency or official, or Texas municipality or official, any government records belonging to or pertaining to the Judgment Debtors, including financial and personal identifying information; 10) obtain from any landlord, building owner or building manager where the Judgment Debtors or the Judgment Debtors' business is a tenant copies of the Judgment Debtors' lease, lease application, credit application, payment history and copies of the Judgment Debtors' checks for rent or other payments; 11) hire any person or company necessary to accomplish any right or power under this Order; 12) take all action necessary to gain access to all storage facilities, safety-deposit boxes, real property, and leased premises wherein any property of the Judgment Debtors may be situated, and to review and obtain copies of all documents related to same, and 13) file any lawsuit necessary to seize or recover any non-exempt assets from any third parties who have acquired possession or control.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from the Judgment Debtors' attorney all files, correspondence, emails, records, papers and documents, whether paper or electronic, pertaining to Great Value Storage LLC and World Class Capital Group LLC's ownership of any property or legal interest, or any negotiation of the purchase, sale, acquisition or creation of any property or legal interest. This order does not compel to provide any documents protected by the attorney-client privilege.

In addition to the powers of the Receiver set forth herein, the Receiver shall have the right, authority and power to request and obtain from providers of utilities, telecommunications, telephone, cell phone, cable, internet, data services, internet website hosts, satellite television services, and all similar services, (including Time Warner, AT&T, Verizon, Sprint, Satellite TV, Direct TV, EV1, Google, Yahoo, and internet blogs and chat rooms) compelling the production of any information regarding the Judgment Debtors' payments, payment history and financial information, including account information, telephone numbers, names, service addresses, telephone numbers, IP addresses, call detail records, payment records, and bank and credit card information. This Order specifically serves as the court order required by 47 USC § 551, and satisfies all obligations of the responding party to obtain or receive a court order prior to disclosing material containing personally identifiable information of the subscriber and/or customer.

In addition, the Receiver shall have the authority to cooperate with and provide assistance to, as he deems best, to any law enforcement officer, official or grand jury to provide information or documents pertaining to any possible criminal act committed by Great Value Storage LLC or World Class Capital Group LLC.

Further, the Receiver is authorized to seize all assets of which Great Value Storage LLC or World Class Capital Group LLC is beneficiary of any trust for which no valid spendthrift provision applies. Any trustee holding money or property for the benefit of Great Value Storage LLC or World Class Capital Group LLC is ordered to turn such money or property over to the Receiver upon request by the Receiver or to deposit said funds into the Court's registry. Any financial institution holding money or property for any trustee for the benefit of Great Value Storage LLC or World Class Capital Group LLC is ordered to turn such money or property over to the Receiver upon request by the Receiver or to deposit said funds into the Court's registry.

In addition, the Receiver is authorized to seize the membership interest of any Limited Liability Company in which Great Value Storage LLC or World Class Capital Group LLC is a member, and to sell, manage, and operate the Limited Liability Company as the Receiver shall think appropriate. In addition, the Receiver is authorized to obtain all bank accounts and records and invest accounts and records held by Great Value Storage LLC or World Class Capital Group LLC from any financial institution.

Princeton is awarded judgment over and against Great Value Storage LLC or World Class Capital Group LLC for the amount of $2,400.00 for reasonable and necessary legal fees for this motion, and shall pay $1,000.00 of that amount to the Receiver for preparation.

Any Sheriff or Constable, and their deputies, and any other peace officer, are hereby directed and ordered to assist the Receiver in carrying out his duties and exercising his powers hereunder and prevent any person from interfering with the Receiver in taking control and possession of the property of the Judgment Debtors, without the necessity of a

Writ of Execution. The Receiver is authorized to direct any Constable or Sheriff to seize and sell property under a Writ of Execution.

The Court authorizes and orders any Sheriff or Constable, and their deputies, and any other peace officer, to break and open any locks or gates erected by the Debtor as necessary to assist the Receiver and carry out this order.

In light of the circumstances of this case, the Court sets the bond at $50.00.

The Receiver's fee is twenty-five percent (25%) of all gross proceeds coming into his possession, not to exceed twenty-five percent of the balance due on the judgment, plus any out-of-pocket expenses incurred by the Receiver in his scope as a receiver in this case. The Court finds this a fair, reasonable and necessary fee for the Receiver and the Receiver if further directed and authorized to pay Creditors' attorney as Trustee for the Creditors the remaining seventy-five percent (75%) of all proceeds coming into Receiver's possession, with adjustment for Receiver's expenses as necessary. All Receiver's fees will be taxed as costs against the Debtor, which means that the Receiver is authorized to seek and recover 125% of the judgment plus expenses. All payments made by the Receiver to the Judgment Creditor shall be applied to the Judgment as a credit towards the balance of the Judgment.

The Receiver is further ordered to take the oath of his office.

SIGNED _____.

Signed:
9/8/2021 Ursula Hall

**HON. JUDGE URSULA HALL**
165th District Court
Harris County, Texas

# EXHIBIT B-1

**COURT OF APPEALS FOR THE**
**FIRST DISTRICT OF TEXAS AT HOUSTON**

ORDER

Appellate case name: Great Value Storage, LLC and World Class Capital Group, LLC v. Princeton Capital Corporation

Appellate case number: 01-21-00284-CV

Trial court case number: 2019-18855

Trial court: 165th District Court of Harris County

This appeal is a consolidation of two notices of appeal, docketed together as required by the Texas Rules of Appellate Procedure. *See* TEX. R. APP. P. 12.2(c) ("Multiple Notices of Appeal. All notices of appeal filed in the same case must be given the same docket number."). As to the first notice of appeal, Great Value Storage LLC ("Great Value") and World Class Capital Group LLC ("WCCG") challenge the final judgment in favor of Princeton Capital Corporation ("Princeton Capital") on its breach of contract claim. As to the second notice of appeal, Great Value and WCCG challenge the order appointing a receiver.

This Court previously abated this appeal on the parties' representation that they had reached a settlement agreement. We further ordered the parties to file quarterly updates to inform this Court whether the settlement had been finalized and the receivership wound down.

The receiver has informed this Court that the parties have settled on the amount owed under the trial court's judgment. In a letter to the trial court dated March 13, 2023, the receiver stated that the March 4, 2021 judgment in favor of Princeton Capital has been fully paid, and proceeds have been distributed to Princeton Capital's public shareholders.

"A case becomes moot if, since the time of filing, there has ceased to exist a justiciable controversy between the parties—that is, if the issues presented are no longer 'live,' or if the parties lack a legally cognizable interest in the outcome." *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 162 (Tex. 2012). When a party appeals an order appointing a receiver or authorizing sale of certain property and the property has been sold, the appeal of the order becomes moot." *Mitchell v. Turbine Res. Unlimited, Inc.*, 523 S.W.3d 189, 196 (Tex. App.—Houston [14th Dist.] 2017, pet. denied).

The receiver's representation that the parties have settled and that proceeds have been distributed to Princeton Capital's public shareholders suggests that the appeal is moot as to both the final judgment and the order appointing a receiver.

Accordingly, we **order the appeal reinstated**.

The Court intends to dismiss this appeal for want of jurisdiction. The **parties are ordered** to **file a response** to this order indicating why this Court should not dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a). **The parties' responses must be filed no later than ten (10) days from the date of this order.**

It is so ORDERED.

Judge's signature: _____/s/ Peter Kelly_____
☐ Acting individually ☑ Acting for the Court

Panel consists of Justices Kelly, Countiss, and Rivas-Molloy.

Date: ___March 30, 2023_____

# EXHIBIT B-2

**EXECUTION VERSION**

# AMENDED AND RESTATED SETTLEMENT, ASSIGNMENT AND ACCEPTANCE AGREEMENT

This AMENDED AND RESTATED SETTLEMENT, ASSIGNMENT AND ACCEPTANCE AGREEMENT (the "Agreement") is made as of this 15th day of September 2022 (the "Execution Date"), by and between (i) Natin Paul, (ii) the Reorganized Debtors (as defined below), (iii) World Class Holdings I, LLC ("WCH") (iv) the Adversary Defendants (as defined below), (v) Princeton Capital Corporation ("Princeton" or "Assignor"), and (vi) Phoenix Lending, LLC (the "Assignee"). Natin Paul, the Reorganized Debtors, WCH and the Adversary Defendants are referred to collectively as the "Great Value Parties"), The Great Value Parties and Princeton are referred to collectively as the "Settlement Parties" and the Assignor and the Assignee are referred to collectively as the "Assignment Parties," together with the Settlement Parties, the "Parties."

## RECITALS

**WHEREAS**, Capital Point Partners II, L.P. ("CPP"), a predecessor-in-interest to the Assignor, Great Value Storage, LLC ("Great Value"), and World Class Capital Group, LLC ("WCCG") are parties to that certain Note Purchase Agreement, dated July 31, 2012, as amended from time to time (so amended, the "Note Purchase Agreement");

**WHEREAS**, pursuant to the Note Purchase Agreement, Great Value issued to CPP (a) that certain Senior Secured Promissory Note, dated July 31, 2012 ("Note A") in the principal amount of $2,000,000, (b) that certain Senior Secured Promissory Note, dated July 31, 2012 ("Note B") in the principal amount of $500,000 and (c) that certain Senior Secured Promissory Note, dated November 12, 2014 ("Note C" and together with Note A and Note B, the "Notes") in the principal amount of $3,100,000. The Note Purchase Agreement, the Notes and each other document, agreement, instrument or certificate executed in connection therewith or pursuant thereto are hereinafter referred to as the "Transaction Documents."

**WHEREAS**, pursuant to that certain Assignment and Acceptance Agreement, dated March 13, 2015, CPP assigned all of its rights to and obligations under the Transaction Documents to Princeton.

**WHEREAS**, Princeton asserted a default under the Transaction Documents and on March 14, 2019, commenced an action styled as *Princeton Capital Corporation vs Great Value Storage LLC, et al.* pending in the 165th District Court of Harris County, Texas (the "Texas District Court"), Case No. 2019-18855 (the "State Action").

**WHEREAS**, the defendants in the State Action are Great Value and WCCG (the "State Defendants"), along with Natin Paul in his individual capacity;

**WHEREAS**, Princeton alleged causes of action against the State Defendants in the State Action for, among other things, breach of the Notes (the "State Claims");

**WHEREAS**, on March 4, 2021, the Texas District Court ordered that Great Value and World Class were liable to Assignor for contract damages of $9,759,713.84 and attorneys' fees of $150,887.50 (the "Judgment").

**WHEREAS**, certain of the parties against whom the Judgment was entered have appealed the Judgment.

**WHEREAS**, after the entry of the Judgment, Princeton obtained the appointment of Seth Kretzer, as receiver for GVS and WCCG (the "Receiver"); however, as of the Execution Date, the Receiver has made no distribution to Princeton on account of the Judgment.

**WHEREAS**, on June 17, 2021 and June 23, 2021, GVS Texas Holdings I, LLC and certain of its affiliates (collectively, the "Reorganized Debtors")[1] each filed a voluntary petition for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the "Bankruptcy Court");

**WHEREAS**, the Reorganized Debtors' bankruptcy cases are being jointly administered under Case No. 21-31121-MVL (the "Bankruptcy Cases");

**WHEREAS**, in connection with the Promissory Notes and the Judgment, Princeton filed the following proofs of claim in the Bankruptcy Cases: (i) Claim No. 119-8 filed against GVS Portfolio I B, LLC; (ii) Claim No. 120-4 filed against GVS Portfolio I, LLC; (iii) Claim No. 121-78 filed against GVS Texas Holdings I, LLC; (iv) Claim No. 122-32 filed against GVS Texas Holdings II, LLC; (v) Claim No. 123-12 filed against GVS Ohio Holdings I, LLC; (vi) Claim No. 124-10 filed against GVS Ohio Holdings II, LLC; (vii) Claim No. 125-10 filed against WCH Mississippi Storage Portfolio I, LLC; (viii) Claim No. 126-6 filed against GVS Nevada Holdings I, LLC; (ix) Claim No. 127-7 filed against GVS Missouri Holdings I, LLC; (x) Claim No. 128-9 filed against New York Holdings I, LLC; (xi) Claim No. 129-8 filed against GVS Indiana Holdings I, LLC; (xii) Claim No. 130-7 filed against GVS Illinois Holdings I, LLC; (xiii) Claim No. 131-13 filed against GVS Tennessee Holdings I, LLC; (xix) Claim No. 132-7 filed against GVS Colorado Holdings I, LLC; and (xx) Claim No. 164-2 filed against GVS Portfolio I C, LLC (collectively, the "Princeton Proofs of Claim");

**WHEREAS**, WCH and the Reorganized Debtors each filed objections to the Princeton Proofs of Claim in the Bankruptcy Cases (collectively the "Claim Objections");

**WHEREAS**, on April 27, 2022, Princeton commenced an adversary proceeding in the Bankruptcy Court captioned *Princeton Capital Corporation v. GVS Texas Holdings I, LLC, et al*, Adv. Proceeding No. 22-03043 (the "Adversary Proceeding") alleging causes of action against the

[1] The Reorganized Debtors in the chapter 11 cases are: GVS Texas Holdings I, LLC; GVS Texas Holdings II, LLC; GVS Portfolio I, LLC; GVS Portfolio I B, LLC; GVS Portfolio I C, LLC; WC Mississippi Storage Portfolio I, LLC; GVS Nevada Holdings I, LLC; GVS Ohio Holdings I, LLC; GVS Missouri Holdings I, LLC; GVS New York Holdings I, LLC; GVS Indiana Holdings I, LLC; GVS Tennessee Holdings I, LLC; GVS Ohio Holdings II, LLC; GVS Illinois Holdings I, LLC; and GVS Colorado Holdings I, LLC.

Adversary Defendants[2] (defined below) for, among other things, fraudulent transfer and breach of contract, (together with all causes of action in the Adversary Proceeding, the "AP Claims");

**WHEREAS**, certain of the Adversary Defendants have moved to dismiss the Complaint filed by Princeton that commenced the Adversary Proceeding due to, *inter alia*, the failure to state a claim upon which relief can be granted and the lack of jurisdiction of the Bankruptcy Court over the matter;

**WHEREAS**, recognizing the dispute between Princeton, the Reorganized Debtors and the other Adversary Defendants, pursuant to the *Stipulation and Agreed Order with World Class Holdings I, LLC* [Docket No. 873-B] filed in the Bankruptcy Cases, the Reorganized Debtors established a $15 million reserve for Princeton's outstanding claims (the "Princeton Reserve"), which is held in trust by Fidelity National Title (the "Title Company") pursuant to an escrow agreement and an Order of the Bankruptcy Court that does not permit disbursement of the Princeton Reserve absent a final, non-appealable order of the Bankruptcy Court or another court of competent jurisdiction;

**WHEREAS**, on August 22, 2022, Princeton and the Great Value Parties executed that certain settlement term sheet providing for the resolution of claims and issues between such parties and separately contemplated the negotiation and execution of a note purchase agreement in furtherance of that resolution. The terms and conditions in this Agreement are the culmination of the negotiations over such note purchase agreement and is new and separate from the settlement agreement discussed in the term sheet;

**WHEREAS**, the Parties have agreed to resolve, settle, and compromise all claims, demands, and differences between them, including, but not limited to, relating to the Bankruptcy Cases, the State Action, the State Claims, the Judgment, the Adversary Proceeding, the AP Claims, the Princeton Proofs of Claims, and the Claim Objections pursuant to the terms of this Agreement.

**WHEREAS**, as part of the resolution of the claims set forth in this Agreement, Princeton wishes to assign all of its rights to and obligations under the Transaction Documents and the Judgment to the Assignee on the terms and subject to the conditions set forth herein and the

---

[2] The defendants in the Adversary Proceeding are GVS Texas Holdings I, LLC; GVS Texas Holdings II, LLC; GVS Portfolio I, LLC; GVS Portfolio I B, LLC; GVS Portfolio I C, LLC; WC Mississippi Storage Portfolio I, LLC; GVS Nevada Holdings I, LLC; GVS Ohio Holdings I, LLC; GVS Missouri Holdings I, LLC; GVS New York Holdings I, LLC; GVS Indiana Holdings I, LLC; GVS Tennessee Holdings I, LLC; GVS Ohio Holdings II, LLC; GVS Illinois Holdings I, LLC; GVS Colorado Holdings I, LLC; World Class Capital Group, LLC; Great Value Storage, LLC; Natin Paul; Sheena Paul; Barbara Lee; Jason Rogers; WC Ohio Storage Portfolio I, LP; WC Texas Storage Portfolio I, LP; WC Texas Storage Portfolio II, GP, LLC; WC Memphis Storage II, LP; WC Ohio Storage Portfolio I GP, LLC; WC Ohio Storage Portfolio II TIC, LLC; WC Ohio Storage Portfolio II Equity, LLC; WC Texas Storage Portfolio III MM, LLC; WC Mississippi Storage Portfolio I MM, LLC; WC Illinois Storage Portfolio I, LLC; WC Illinois Storage Portfolio TIC, LLC; WC 4641 Production MM, LLC; WC New York Storage Portfolio I, LLC; WC 4641 Production, LLC; WC TSPIGP, LLC; WC Texas Storage Portfolio II, LP; WC Texas Storage Portfolio III Property, LLC; WC Texas Storage Portfolio III, LLC; WC San Benito Storage, LP; WC San Benito GP, LLC; WC Memphis Storage GP, LLC; WC Memphis Storage II GP, LLC; WC Las Vegas Storage, LP; WC Kansas City Storage, LP; WC Las Vegas Storage GP, LLC; World Class Real Estate LLC; WC Memphis Storage, LP; WC 7116 S IH 35, L.P.; WC 10013 RR 620 N, LP; WC 13825 FM 306, L.P.; WC Kansas City Storage GP, LLP; and John Does (collectively, the "Adversary Defendants").

Assignee wishes to accept assignment of such rights and to assume such obligations from the Assignor on such terms and subject to such conditions.

**NOW THEREFORE,** in consideration of good and valuable consideration, the receipt and sufficiency of which is acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Note and Judgment Assignment and Acceptance**.

a. Agreement of Assignor and Assignee.

i. Upon the receipt by Assignor of the Settlement Payment in good funds, the Assignor hereby sells, transfers, conveys and assigns to the Assignee, and the Assignee hereby purchases, accepts, assumes, and undertakes from the Assignor all right and title to all rights, benefits, obligations, liabilities, and indemnities of the Assignor under and in connection with the (i) the Note Purchase Agreement, (ii) the Notes and (iii) the Judgment.

ii. Upon the receipt by Assignor of the Settlement Payment in good funds, the Assignor hereby sells, transfers, conveys and assigns to the Assignee and the Assignee hereby accepts, assumes, and undertakes from the Assignor (i) all right and title to all rights, benefits, obligations, liabilities, and indemnities of the Assignor under and in connection with the other Transaction Documents and the Judgment, and (ii) except to the extent released pursuant to the provisions of this Agreement, all claims, suits, causes of action, and any other right of the Assignor against any person, whether known or unknown, arising under or in connection with any or each of the Transaction Documents, including, but not limited to, the Judgment and any and all contract claims, commercial tort claims, malpractice claims, statutory claims, and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above. For the avoidance of doubt, the parties hereto acknowledge and agree that the Assignor's right and title to all rights and benefits under the Final Judgment Order signed by Judge Ursula Hall on March 4, 2021 in *Princeton Capital Corporation v. Great Value Storage, LLC, World Class Capital Group, LLC and Natin Paul* are included in item (ii) of the foregoing.

iii. With effect on and after the Effective Date (as defined below), the Assignee shall be party to the Transaction Documents and succeed to all of the rights and be obligated to perform all of the obligations of the Assignor under the Transaction Documents and the Judgment. The Assignee agrees that on and after the Effective Date it will perform all obligations which by the terms of the

Transaction Documents are required to be performed by it thereunder.

b. Representations, Warranties and Covenants of Assignee and Assignor.

i. The Assignor represents, warrants and covenants as of the Execution Date and the date when this Agreement becomes effective pursuant to section 3 herein (the "Effective Date") that:

(a) it is the legal and beneficial owners of the interests being assigned by the Assignor hereunder and that such interests are free and clear of any lien or other adverse claim;

(b) it is duly organized and existing and it has the full power and authority to take, and have taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by the Assignor in connection with this Agreement and to fulfill its obligations hereunder;

(c) no notices to, or consents, authorizations, or approvals of, any person are required (other than any already given or obtained and still in full force and effect) for its due execution, delivery, and performance of this Agreement, and apart from any agreements or undertakings or filings required by the Transaction Documents, no further action by, or notice to, or filing with, any person is required for such execution, delivery, or performance;

(d) this Agreement has been duly executed and delivered by the Assignor and constitutes the legal, valid, and binding obligation of the Assignor, enforceable against the Assignor in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium, reorganization, and other laws of general application relating to or affecting creditors' rights and to general equitable principles;

(e) the Assignor has received no distributions or payments in satisfaction of the Judgment from the Receiver, is not a party to or beneficiary of any agreements made with or by the Receiver and, after the Execution Date and the Assignor shall not accept any distributions or payments in satisfaction of the Judgment or make any other agreements with the Receiver in satisfaction of the Judgment or in relation to any fees or expenses that may be determined payable to the Receiver, unless otherwise agreed to by the Parties;

(f) unless compelled to do so by a court of competent jurisdiction, the Assignor agrees it will make no statement regarding (i) any motion by the Assignee to terminate the receivership or (ii) the amount of fees to be awarded to the Receiver;

(g) the Assignor shall not take or support any action adverse to the World Class Release Parties in the Bankruptcy Court or any other court related to this Agreement, the Judgment or the settlement of disputes between the Settlement Parties unless such action relates to the enforcement of this Agreement including any provision hereof; and

(h) the Assignor makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition, or statements of any party to the Notes, or the performance or observance by any party to the Notes of any of its obligations under the Transaction Documents or any other instrument or document furnished in connection therewith.

ii. The Assignee represents, warrants and covenants as of the Execution Date and the Effective Date that:

(a) it is duly organized and existing and has full power and authority to take, and has taken, all action necessary to execute and deliver this Agreement and any other documents required or permitted to be executed or delivered by it in connection with this Agreement, and to fulfill its obligations hereunder;

(b) no notices to, or consents, authorizations, or approvals of, any person are required (other than any already given or obtained and still in full force and effect) for its due execution, delivery, and performance of this Agreement; and apart from any agreements or undertakings or filings required by the Transaction Documents, no further action by, or notice to, or filing with, any person is required of them for such execution, delivery, or performance;

(c) this Agreement has been duly executed and delivered by the Assignee and constitutes the legal, valid, and binding obligation of the Assignee, enforceable against the Assignee in accordance with the terms hereof, subject, as to enforcement, to bankruptcy, insolvency, moratorium,

reorganization, and other laws of general application relating to or affecting creditors' rights and to general equitable principles;

(d) the Assignee has been advised that none of the Notes have been registered under the Securities Act of 1933, as amended (the "Securities Act") or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available;

(e) the Assignee is aware that the Assignor is under no obligation to effect any such registration with respect to the Notes or to file for or comply with any exemption from registration;

(f) the Assignee is receiving the Notes from the Assignor for its own account and not with a view to, or for resale in connection with, the distribution thereof in violation of the Securities Act; and

(g) the Assignee has such knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of an investment in the Notes, is able to incur a complete loss of such investment in the Notes and to bear the economic risk of such investment for an indefinite period of time.

c. Subject to the indemnification provisions in section 1.e, Assignee does not assume any liability or responsibility for any action taken by Assignor in connection with the Notes, the Transaction Documents or the Judgment taken prior to the Effective Date, with all such liabilities and responsibilities remaining with the Assignor.

d. The Assignor and the Assignee hereby agree to promptly execute and deliver such other instruments, and take such other action, as either party may reasonably request in connection with the transactions contemplated by this Agreement, which may be required in connection with this Agreement under the Transaction Documents.

e. Assignee and the Reorganized Debtors hereby indemnify and hold Assignor harmless from any and all of the following, which only arise out of the assignment of the Note and assignment of the Judgment as set forth in section 1 hereof: (i) all claims, liabilities, damages, judgments, fines and penalties asserted by the Receiver or Great Value Parties, including the Adversary Defendants, including any litigation by the Receiver acting as WCCG or Great Value Storage ("Losses") that are determined by entry of a final, non-appealable order by the Bankruptcy Court or a court of competent jurisdiction to be Losses, except to the extent the same shall have

been finally adjudicated in a court of competent jurisdiction to have been directly caused by Assignor's gross negligence, fraud or willful misconduct; and (ii) reasonable expenses, including out-of-pocket, incidental expenses and reasonable legal fees and expenses incurred in connection with Losses ("Expenses" and together with the Losses, the "Indemnification Obligation"). The Indemnification Obligation shall be secured by $1 million dollars of the funds retained in the Princeton Reserve after payment of the Settlement Amount to Princeton, as contemplated by this Agreement (the "Indemnification Security").[3] The Indemnification Security shall be held by the Title Company and shall be disbursed either (i) upon submission thereto of joint written instructions executed by Princeton and the Great Value Parties, a form of which is attached hereto as Exhibit A or (ii) submission to the Title Company of a final, non-appealable order of the Bankruptcy Court authorizing and directing payment of all or portions of the Indemnification Obligation. Notwithstanding anything to the contrary in this section 1.e, the Indemnification Obligation shall not be applicable or enforceable against the Assignee or any Great Value Party to the extent any of the Indemnification Obligation is incurred as a result of the consent, acquiescence or other affirmative action of the Assignor. Notwithstanding anything to the contrary in this section 1.e, Princeton may periodically seek payment on account of an Expenses by filing a request for such payment to the Bankruptcy Court; *provided, however,* Assignor and the Great Value Parties reserve all rights with respect to any such request. For the avoidance of any doubt, the Receiver cannot assert any benefits under nor seek to obtain any benefits from this section 1.e.

f. Assignor will be provided copies of all statements prepared by the Title Company when generated by the Title Company.

2. **Settlement Payment**. As consideration for the sale, assignment and transfer of the Notes and the Judgment and the in exchange for the dismissal of the actions described in section 4 and the releases described in sections 6 and 7 of this Agreement, upon the Effective Date, Assignee shall pay, or cause to be paid, to Princeton the amount of $11,372,698.89 (the "Settlement Amount") from funds currently held in the Princeton Reserve. Within three (3) business after the Effective Date, the Title Company shall effectuate the Escrow Instructions and the date upon which the Title Company remits payment to Princeton shall be the "Payment Date."

3. **Settlement Effective Date**. This Agreement shall become effective on the first day upon which all of the following conditions have been satisfied (the "Effective Date"):

a. the execution of this Agreement by all Parties;

b. the filing of a motion, mutually acceptable to the Parties, seeking the approval of this Agreement and directing the Title Company to release the Settlement Amount from the Princeton Reserve (the "Settlement Motion")

[3] For the avoidance of doubt, should a court of competent jurisdiction find that entry into this Agreement shall be deemed to be gross negligence, fraud or willful misconduct against the Receiver, no exclusion for such gross negligence, fraud or willful misconduct shall be applicable.

c. The entry of a final, non-appealable Order[4] by the Bankruptcy Court, mutually acceptable to the Parties, approving the Motion (including, without limitation the provisions contained in paragraph 5 of the order attached as Exhibit B) and Escrow Instructions, a form of which is attached hereto as Exhibit B (the "Settlement Order");

d. Princeton and the Reorganized Debtors have delivered to the Title Company the Settlement Order and the Escrow Instructions, a copy of which is attached hereto as Exhibit C; along with Escrow Instructions to the Title Company, which will leave the Indemnity Security Escrow on deposit with the Title Company; and

e. Delivery to Title Company of the documents and evidence set forth in section 4 hereof.

f. Any of the foregoing provisions set forth in sections 3.a, 3.b, 3.c, 3.d, 3.e hereof may be waived upon the mutual written agreement of the Parties.

4. **Conditions Precedent to Effective Date**.

a. Unless otherwise agreed to by the Parties in writing, on or before September 9, 2022, Princeton shall deliver to the Title Company:

i. duly endorsed promissory notes (or lost note affidavits) as applicable, and other Transaction Documents (including official correspondence and further documents delivered pursuant to the terms of the Transaction Documents), the transactions related thereto and the Judgment, along with information showing calculation of the Judgment, but only insofar as any of such information is available to Princeton;

ii. notices of dismissal with prejudice in the Adversary Proceeding substantially in the form attached hereto as Exhibit D, which the Great Value Parties or the Assignee, as applicable, may file after the Effective Date;

iii. notices of the assignment of the Notes and Judgment and substitutions of parties in any and all actions pending in any court (including actions against Natin Paul in his individual capacity) as such relate to the enforcement of the Notes or collection of the Judgment, which the Great Value Parties or the Assignee, as applicable, may file after the Effective Date, the form of which is attached hereto as Exhibit E; and

iv. notices withdrawing the Princeton Proofs of Claim with prejudice which the Great Value Parties or the Assignee, as applicable, may

[4] For the avoidance of doubt, no Party hereto will appeal the Settlement Order so long as this Agreement is approved by the Bankruptcy Court as drafted and executed.

file after the Effective Date, the form of which is attached hereto as Exhibit F.

b. The Title Company shall provide notice to the Parties of its receipt of the items set forth in section 4.a hereof.

5. **Further Assurances**. In addition to the requirements of section 1.d hereof, the Parties shall cooperate reasonably with each other and with the other's respective representatives in connection with any steps required to be taken as part of their respective obligations under this Agreement, and shall (a) furnish upon request to each other such further information reasonably requested by the Assignee from time to time for the purposes of enforcing its rights under the Transaction Documents and the Judgment; (b) execute and deliver to each other such other documents; and (c) do such other acts and things, all as any other Party may reasonably request for the purpose of carrying out the transactions contemplated by this Agreement, including but not limited to, with respect to the Escrow Instructions. The Parties shall cooperate with each other as necessary to obtain all consents and authorizations of third-parties, if any, to make all filings with and give all notices to third-parties which may be necessary or reasonably required in order to carry out the intent of this Agreement and the transactions contemplated hereby.

6. **Release by the Great Value Parties**. Effective upon the Payment Date, except as provided in Paragraph 8 or herein, Natin Paul, on behalf of himself as well as any persons he controls and any entities that he either owns or controls (in whole or in part), the Great Value Parties, and all of their respective officers, directors, members, managers, employees, insurers, advisory board members, and each of their successors, predecessors, beneficiaries, assigns, agents, attorneys, accountants, advisors, and representatives (the "World Class Release Parties") hereby forever release Princeton, and each of its officers, directors, owners, members, managers, shareholders, subsidiaries, investment funds employees, insurers, and each of their successors, predecessors, beneficiaries, assigns, agents, attorneys, accountants, advisors, and representatives (the "Princeton Released Parties") from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, controversies, agreements, promises, damages, judgments, executions, and demands whatsoever, in law or equity, whether known or unknown, liquidated or unliquidated, which the World Class Releasee Parties ever had, now have or hereafter can, shall or may have against any of the Princeton Released Parties for any matter, cause, thing, or reason whatsoever as of the Effective Date, including but not limited to, for or arising out of, or related to, the Bankruptcy Cases, the State Action, the State Claims, the Judgment, the Adversary Proceeding, the AP Claims, the Princeton Proofs of Claims, the Claim Objections, and other actual or potential claims that were or could have been asserted in the State Action, Adversary Proceeding, or the Princeton Proofs of Claim*; provided, however,* the foregoing release shall not (i) apply to any claim or cause of action against any third-party, including the Receiver (excluding the Princeton Released Parties) seeking damages or the return or recovery of monies, properties or assets otherwise taken, seized, transferred, conveyed or otherwise removed from such party's possession or control in connection with the efforts of any party to collect the Judgment on behalf of Princeton or (ii) result in the dismissal of any pending action or appeal of any action in which Princeton is a named party related to the Judgment (the "Appeal Actions"); *provided, further, however,* the World Class Release Parties shall not and shall be prohibited and enjoined from seeking any recovery (monetary or otherwise) from Princeton in connection with an Appeal Action.

7. **Release by Princeton**. Effective upon the Payment Date, except as provided in Paragraph 8, Princeton on behalf of itself and on behalf of each of the Princeton Released Parties, each hereby forever release and discharge Natin Paul, on behalf of himself as well as any persons he controls and any entities that he either owns or controls (in whole or in part), the Great Value Parties, the Adversary Defendants and their respective officers, directors, members, managers, employees, insurers, advisory board members, and each of their successors, predecessors, beneficiaries, assigns, agents, attorneys, accountants, advisors, and representatives (collectively, the "World Class Released Parties") from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, controversies, agreements, promises, damages, judgments, executions, and demands whatsoever, in law or equity, whether known or unknown, liquidated or unliquidated, which the Princeton Released Parties ever had, now have or hereafter can, shall or may have against any of the World Class Released Parties for any matter, cause, thing, or reason whatsoever as of the Effective Date, including but not limited to, for or arising out of, or related to, the Bankruptcy Cases, the State Action, the State Claims, the Judgment, the Adversary Proceeding, the AP Claims, the Princeton Proofs of Claims, the Claim Objections, and other actual or potential claims that were or could have been asserted in the State Action, Adversary Proceeding, or the Princeton Proofs of Claim save and except for the Indemnification Obligation.

8. **Exceptions to Releases**. Notwithstanding any language to the contrary in sections 6, and 7 hereof, or any other provision of this Agreement, the Parties agree and acknowledge that this Agreement and the releases provided herein does not release or waive: (a) any obligation of a Party arising under or created by this Agreement; (b) the Indemnification Obligation; or (c) any present or future claim, appeal or litigation by the Great Value Parties against the Receiver or its agents, attorney, or representatives.

9. **Fees and Costs**. Each Party and Assignment Party shall bear its own fees and costs in connection with the Adversary Proceeding, the Settlement Motion and this Agreement. For the avoidance of doubt there shall be no other cost and expenses due to Princeton whatsoever other than the Settlement Amount, except any amounts that may be due under the Indemnification Obligation.

10. **Consultation with Counsel**. Each of the Parties has freely and voluntarily entered into this Agreement after an adequate opportunity and sufficient period of time to review, analyze and discuss all terms and conditions of this Agreement and all factual and legal matters relevant hereto with its counsel. Each of the Parties further acknowledges that it has actively and with full understanding participated in the negotiation of this Agreement and that this Agreement has been negotiated, prepared and executed without fraud, duress, undue influence or coercion of any kind or nature whatsoever having been exerted by or imposed upon any party to this Agreement.

11. **No Assignment**. No Party has assigned any of its claims, rights, and/or remedies arising under or relating in any way to the litigation being resolved hereby or associated property to any third party.

12. **No Admission of Wrongdoing**. This Agreement constitutes a compromise of disputes between the Parties. Nothing contained herein shall constitute or be deemed to be an admission by any Party as to any matter unless specifically stated herein. Nothing in this

Agreement, nor any of the negotiations or proceedings connected with the Agreement, nor any of the documents or statements contained or referred to therein shall be offered or received against any Party in any litigation as evidence of, or be construed as or be deemed to be evidence of, any concession or admission by any Party with respect to the truth of any fact alleged by any Party against the other or the validity of any claim or defense that has been or could have been asserted in any proceeding or litigation involving the Parties.

13. **Time is of the Essence.** Time is of the essence for all dates and/or time described in this this Agreement.

14. **Remedies**. The Parties agree that irreparable damage would occur in the event of a breach of any provision of this Agreement that would result in the failure of the Effective Date and Payment Date to occur and that money damages or other legal remedies would not be an adequate remedy for any such damages. Accordingly, the Parties acknowledge and agree that in the event of any breach or threatened breach of the covenants, agreements and obligations set forth in this Agreement, each Party shall be entitled to any injunction or injunctions to prevent or restrain breaches or threatened breaches of this Agreement, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations under this Agreement (including those conditions precedent set forth in section 4 hereof), in addition to any other remedy to which such party is entitled at law or in equity. Each Party hereby agrees not to raise any objections to the availability of specific performance to prevent breaches or threatened breaches of, or to enforce compliance with, the covenants and obligations under this Agreement. Each Party hereby waives (i) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate and (ii) any requirement under any law to post a bond or other security as a prerequisite to obtaining equitable relief.

15. **Miscellaneous**.

a. Each of the Parties acknowledges, represents, and agrees that no promise, inducement or consideration has been offered or promised to any Party except as expressly set forth herein.

b. This Agreement is executed without reliance upon any statement or representation by any other Party or other Party's attorneys or representatives concerning the nature and extent of any claims and/or damages or legal liability therefor.

c. No failure or delay by any party hereto in exercising any right, power, or privilege hereunder or under that settlement term sheet dated August 22, 2022 (the "Settlement Term Sheet") shall operate as a waiver thereof, with all such rights, powers or privileges being expressly preserved, and any waiver of any breach of the provisions of this Agreement shall be without prejudice to any rights with respect to any other or further breach thereof or under the Settlement Term Sheet, which shall remain in force and effect.

d. All payments made hereunder shall be made without any set-off or counterclaim.

e. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile, electronic mail, or by any other electronic form of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Signatures exchanged by email or facsimile transmission shall be deemed original signatures for all purposes and shall indicate and evidence such Party's final and fully-enforceable agreement to the terms of this Agreement.

f. This Agreement constitutes the final and fully-integrated agreement of the Parties concerning the subject matter hereof and supersedes all prior or contemporaneous oral and written statements, understandings, and agreements between them or their counsel regarding the subject matter hereof. If any provision of this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect.

g. This Agreement shall be governed by the laws of the State of Texas without regard to any choice of law analysis that might call for application of some different law. The Parties each irrevocably submits to the non-exclusive jurisdiction and venue of the United States Bankruptcy Court for the Northern District of Texas, Dallas Division over any suit, action, or proceeding arising out of or relating to any dispute and irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such court. Each party to this Agreement hereby irrevocably waives, to the fullest extent it may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding.

h. This Agreement may not be modified except in a writing signed by each of the Parties and no Party shall be entitled to rely on any other manner of attempted modification, which shall be void (and not merely voidable).

i. No Party has assigned or purported to assign any claim that otherwise would be released or discharged by this Agreement.

j. The captions of Sections herein are intended for convenience only and shall not be used in any way to interpret the contents of such Section.

k. In the event of any dispute between the parties arising out of, under, or in connection with this Agreement, the Transaction Documents, any related documents and agreements, or any course of conduct, course of dealing, or statements (whether oral or written) (collectively, the "Disputes"), the prevailing party shall be entitled to recover all of its reasonable costs and attorneys' fees incurred in such dispute, in addition to all other sums that it may be entitled.

l. This Agreement is enforceable regardless of whether or not the Appeal Actions are decided in favor of any or all of the Great Value Parties.

m. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON ANY DISPUTE.

16. **Authority**. Each Party and each signatory below represents that the signatory has all necessary authority to enter into the terms of this Agreement on behalf of the Party for which she or he is signing and to bind that Party to the terms of this Agreement. The Parties acknowledge that the other Party is specifically relying on these representations in entering into this Agreement and that the Parties' respective signatories have apparent and inherent authority to bind the Parties to the terms of this Agreement.

[Signature Pages to Follow]

**EXECUTION VERSION**

**IN WITNESS WHEREOF**, the Parties have hereunto signed their names on the dates indicated.

NATIN PAUL, ON BEHALF OF ALL ENTITIES THAT HE EITHER OWNS OR CONTROL (IN WHOLE OR IN PART) FOR WHOM HE HAS ACTUAL AUTHORITY and specifically excluding, without limitation, WCCG, GVS and the Austin Debtors[5]

Name: Natin Paul
Title: Authorized Representative
Date: September 19, 2022

[5] "Austin Debtors" means the debtors in In re WC South Congress Square LLC, Case No. 20-11107-TMD; In re WC 3rd and Trinity, LP, Case No. 21-10252-TMD; In re WC 511 Barton Blvd, LLC, Case No. 21-10943-TMD; In re WC Met Center, LLC, Case No. 21-10698-TMD; In re WC 717 N Harwood Property LLC, Case No. 21-10630-TMD; In re 6th and San Jacinto, LLC, Case No. 21-10942-TMD; In re WC Braker Portfolio, LLC, Case No. 22-10293-TMD; In re Arboretum Crossing LLC, Case No. 21-10546-TMD; In re WC Manhattan Place Property, LLC, Case No. 22-10047-TMD; In re WC Alamo Industrial Center, LP, Case No. 22-10026-TMD; and In re WC Culebra Crossing SA, LP, Case No. 21-10360-TMD, all pending in the United States Bankruptcy Court for the Western District of Texas, Austin Division (J. Davis, presiding).

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

NATIN PAUL

_____

Name: Natin Paul
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

SHEENA PAUL 

_____

Name: Sheena Paul
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

BARBARA LEE

Barbara Lee

Name: Barbara Lee
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

JASON ROGERS

Name: Jason Rogers
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

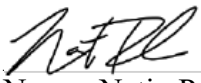
WC OHIO STORAGE PORTFOLIO I, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

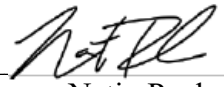
WC TEXAS STORAGE PORTFOLIO I, LP



Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC TEXAS STORAGE PORTFOLIO II, GP, LLC



Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC MEMPHIS STORAGE II, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC OHIO STORAGE PORTFOLIO I GP, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC OHIO STORAGE PORTFOLIO II TIC, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC OHIO STORAGE PORTFOLIO II EQUITY, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC TEXAS STORAGE PORTFOLIO III MM, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC MISSISSIPPI STORAGE PORTFOLIO I MM, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC ILLINOIS STORAGE PORTFOLIO I, LLC

_____ _____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC ILLINOIS STORAGE PORTFOLIO TIC, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC 4641 PRODUCTION MM, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC NEW YORK STORAGE PORTFOLIO I, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC 4641 PRODUCTION, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC TSPIGP, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC TEXAS STORAGE PORTFOLIO II, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC TEXAS STORAGE PORTFOLIO III PROPERTY, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC TEXAS STORAGE PORTFOLIO III, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC SAN BENITO STORAGE, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC SAN BENITO GP, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC MEMPHIS STORAGE GP, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC MEMPHIS STORAGE II GP, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC LAS VEGAS STORAGE, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC KANSAS CITY STORAGE, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC LAS VEGAS STORAGE GP, LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WORLD CLASS REAL ESTATE LLC

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC MEMPHIS STORAGE, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC 7116 S IH 35, L.P.

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC 10013 RR 620 N, LP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC 13825 FM 306, L.P.

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WC KANSAS CITY STORAGE, LLP

_____

Name: Natin Paul
Title: Authorized Representative
Date: September 15, 2022

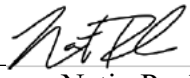
**IN WITNESS WHEREOF**, the Parties have hereunto signed their names on the date indicated.

NATIN PAUL, ON BEHALF OF THE REORGANIZED DEBTORS

Name: Natin Paul
Title: Manager
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Party hereunto has signed their name on the date indicated.

WORLD CLASS HOLDINGS I, LLC



Name: Natin Paul
Title: Manager
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Parties have hereunto signed their names on the date indicated.

PRINCETON CAPITAL CORPORATION ON BEHALF OF ITSELF AND THE PRINCETON RELEASED PARTIES

Name: Mark S. DiSalvo
Title: Chief Executive Officer
Date: September 15, 2022

**IN WITNESS WHEREOF**, the Parties have hereunto signed their names on the dates indicated.

PHOENIX LENDING, LLC

Name: Mickey Altman
Title: Vice President
Date: September15, 2022