

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC; et al.,

Defendants.

**STIPULATED ORDER OF PERMANENT INJUNCTION AND MONETARY
JUDGMENT AS TO DEFENDANT RICARDO DIAZ**

Plaintiff, the Federal Trade Commission (“FTC” or “Commission”), filed its First Amended Complaint for Permanent Injunction and Other Equitable Relief [ECF No. 109] (“First Amended Complaint”) under section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. section 53(b). The Commission and Defendant Ricardo Diaz stipulate to entry of this Stipulated Order of Permanent Injunction and Monetary Judgment (“Order”) to resolve all matters in dispute in this action between them.

Having carefully reviewed the parties’ stipulation and the record, it is

FINDINGS

- A. The Court has jurisdiction over this matter.
- B. The First Amended Complaint charges that Defendant Ricardo Diaz participated in deceptive acts or practices in violation of section 5 of the FTC Act, 15 U.S.C. section 45, in the marketing and sale of Google “claiming and verification” and search engine optimization services.

C. Defendant Ricardo Diaz neither admits nor denies any of the allegations in the First Amended Complaint, except as specifically stated in this Order. Only for purposes of this action, Defendant Ricardo Diaz admits the facts necessary to establish jurisdiction.

D. Defendant Ricardo Diaz waives any claim that he may have under the Equal Access to Justice Act, 28 U.S.C. section 2412, concerning the prosecution of this action through the date of this Order, and agrees to bear his own costs and attorney's fees.

E. Defendant Ricardo Diaz and the Commission waive all rights to appeal or otherwise challenge or contest the validity of this Order.

DEFINITIONS

For purposes of this Order, the following definitions apply:

A. **“Clear and Conspicuous”** means that a required disclosure is difficult to miss and easily understandable by ordinary consumers, including in all the following ways:

1. In any communication that is solely visual or solely audible, the disclosure must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the disclosure must be presented simultaneously in both the visual and audible portions of the communication even if the representation requiring the disclosure is made in only one means.

2. A visual disclosure, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.

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3. An audible disclosure, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for ordinary consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the disclosure must be unavoidable.
5. The disclosure must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the disclosure appears.
6. The disclosure must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The disclosure must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

B. “**Defendants**” means all the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

C. “**Established Business Relationship**” means a relationship between a seller and a consumer based on: (a) the consumer’s purchase, rental, or lease of the seller’s goods or services or a financial transaction between the consumer and seller, within the 18 months immediately preceding the date of a Telemarketing call; or (b) the consumer’s inquiry or application regarding

a product or service offered by the seller, within the three (3) months immediately preceding the date of a Telemarketing call.

D. **“Individual Defendants”** means Dustin Pillonato; Justin Ramsey; Aaron Michael Jones; Ricardo Diaz; Michael Pocker; Steffan Molina; Vincent Yates; and Daniel Carver; individually, collectively, or in any combination.

E. **“Corporate Defendants”** means Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Internet Marketing LLC; Modern Source Media, LLC; Perfect Image Online LLC; Allstar Data, LLC; National Business Listings, LLC; and Pinnacle Presence LLC; and their successors and assigns, individually, collectively, or in any combination.

F. **“Settling Defendant”** means Defendant Ricardo Diaz.

G. **“National Do Not Call Registry”** means the “do-not-call” registry of telephone numbers maintained by the Commission pursuant to 16 C.F.R. section 310.4(b)(1)(iii)(B).

H. **“Outbound Telephone Call”** means a telephone call initiated by a Telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

I. **“Receiver”** means Jonathan E. Perlman, Esq., who the Court appointed as Receiver in Section XI of the Preliminary Injunction as to Defendants Dustin Pillonato; Justin Ramsey; Aaron Michael Jones; Michael Pocker; Pointbreak Media, LLC; DCP Marketing, LLC; Modern Spotlight LLC; Modern Spotlight Group LLC; Modern Internet Marketing LLC; and Modern Source Media, LLC (*see* [ECF No. 64]); in Section XI of the Preliminary Injunction as to Defendants Steffan Molina and Perfect Image Online LLC [ECF No. 58]; and in Section XI of the Preliminary Injunction as to Defendants Allstar Data, LLC; National Business Listings, LLC; Pinnacle Presence LLC; Vincent Yates; and Daniel Carver [ECF No. 169].

J. “**Telemarketer**” means any person who, in connection with Telemarketing, initiates or receives telephone calls to or from a customer or donor, whether or not such person is under the jurisdiction of the Commission.

K. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call.

ORDER

I. PERMANENT BAN ON ROBOCALLS

The Settling Defendant, whether acting directly or through an intermediary, is permanently restrained and enjoined from:

- A. Initiating, causing the initiation of, or assisting others in initiating any Outbound Telephone Call that delivers a prerecorded message; and/or
- B. Owning or controlling, holding a managerial post, consulting for, serving as an officer in, having any revenue sharing agreement with, or holding any ownership interest, share or stock, other than the stock of a publicly traded company, in any company that engages in conduct banned in Subsection I.A.

II. PERMANENT BAN ON CALLING TELEPHONE NUMBERS LISTED ON THE NATIONAL DO NOT CALL REGISTRY

The Settling Defendant, whether acting directly or through an intermediary, is permanently restrained and enjoined from:

- A. Initiating, causing the initiation of, or assisting others in initiating any Outbound Telephone Call to any telephone number listed for more than 31 days on the National Do Not Call Registry, unless Settling Defendant maintains records that establish:

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1. Settling Defendant, or the person or entity Settling Defendant is assisting, has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of Settling Defendant, or the person or entity Settling Defendant is assisting, may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or

2. Settling Defendant, or the person or entity Settling Defendant is assisting, has an Established Business Relationship with such person, and that person has not previously stated that he or she does not wish to receive Outbound Telephone Calls made by or on behalf of Settling Defendant or the person or entity Settling Defendant is assisting.

B. Owning or controlling, holding a managerial post, consulting for, serving as an officer in, having any revenue sharing agreement with, or holding any ownership interest, share or stock, other than the stock of a publicly traded company, in any company that engages in conduct banned in Subsection II.A

III. REQUIRED TELEMARKETING DISCLOSURES

The Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from initiating, causing others to initiate, or assisting others in initiating any Outbound Telephone Call that fails to disclose truthfully, promptly, and in a Clear and Conspicuous manner (1) the identity of the seller, (2) that the purpose of the call is to sell goods and services, and (3) the nature of those goods or services.

IV. PROHIBITION AGAINST MISREPRESENTATIONS

The Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with promoting or offering for sale any good or service are permanently restrained and enjoined from misrepresenting or assisting others in misrepresenting, expressly or by implication:

- A. that they are authorized by, or affiliated with, Google or any other individual or entity;
- B. that any consumer is in danger of being removed from any internet search results or marked closed by Google or any other individual or entity;
- C. that they can assign keywords to any consumer that will affect the consumer's placement in internet search results;
- D. that any consumer will receive increased visibility in any internet search results; or
- E. any other fact material to consumers concerning any good or service, such as: the total costs; any material restrictions, limitations, or conditions; or any material aspect of its performance, efficacy, nature, or central characteristics.

V. MONETARY JUDGMENT AND PARTIAL SUSPENSION

- A. Judgment in the amount of **\$1,811,816.76** is entered in favor of the Commission and against Settling Defendant as equitable monetary relief.
- B. Settling Defendant is ordered to pay to the Commission **\$690,817.11** as follows, time being of the essence:
 - 1. Within seven days of entry of this Order, Settling Defendant shall take all steps necessary to transfer possession, custody, and control to the Receiver of the Rolex watch (valued at \$11,000) and the Hublot watch (valued at \$13,488.82)

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identified in the Financial Statement of Ricardo Diaz signed on May 15, 2018, for purposes of liquidation. Settling Defendant surrenders all control, title, dominion, and interest in the watches. After the Receiver's court-approved fees have been fully satisfied, the Receiver must transfer the balance, if any, to the Commission. The Commission and Settling Defendant waive the requirements of 28 U.S.C. section 2001 and 28 U.S.C. section 2004 in connection with any pending or contemplated sale by the Receiver.

2. Within seven days of entry of this Order, Settling Defendant is ordered to transfer to the Commission \$203,647.84. Such payment must be made by electronic fund transfer in accordance with instructions provided by a representative of the Commission.

3. Within 15 days of receiving notice of this Order, Bank of America, N.A., its parent corporation, subsidiaries, principals, and agents must transfer to the Commission by electronic fund transfer or certified bank or cashier's check, in accordance with instructions to be provided by a representative of the Commission, \$172,680.45 from Account Nos. XXXXXX0622 and XXXXXX3303, held in the name of, or for the benefit, of Settling Defendant and Michelle Diaz.

4. On or before 270 days after entry of this Order, Settling Defendant shall transfer \$290,000.00 to the Commission in accordance with instructions provided by a representative of the Commission.

C. Upon satisfaction of Subsections V.B.1-4, the remainder of the judgment is suspended, subject to the Subsections below.

D. To secure the payment obligations under Subsection V.B.4. of this Order, Settling Defendant grants the Commission a security interest in certain properties (“Collateral”), as set forth in the Security Instruments (“Instruments,” attached as **Attachments A and B**). The terms of the Instruments are incorporated by reference as if fully set forth verbatim and grant a security interest in the following Collateral:

1. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 4829 Lehigh Drive, Douglasville, GA 30135. Settling Defendant shall submit to the Clerk’s office for recording all security documents used to perfect the Commission’s lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

2. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 4002 Nations Drive, Douglasville, GA 30135. Settling Defendant shall submit to the Clerk’s office for recording all security documents used to perfect the Commission’s lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

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3. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 4751 Baron Road, Douglasville, GA 30135. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

4. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 3463 Birchwood Drive, Winston, GA 30187. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

5. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 2171 Chestnut Place, Lithia Springs, GA 30122. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order, and

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shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

6. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 6035 Cowan Mill Road, Douglasville, GA 30135. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

7. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 4827 Kim Court, Douglasville, GA 30135. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents and a statement showing the outstanding balance owed on any preexisting security deeds as of the date of entry of this Order within seven days after receipt of such documents;

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8. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 2338 Iron Horse Drive, Douglasville, GA 30135. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order, and shall deliver to the Commission and the Receiver copies of such officially recorded documents within seven days after receipt of such documents; and

9. Settling Defendant hereby grants to the Commission, pursuant to the attached Instrument, a lien on and security interest in real property located at 362 Fruit Hill Avenue, North Providence, RI 02911. Settling Defendant shall submit to the Clerk's office for recording all security documents used to perfect the Commission's lien on the property within 14 days after entry of this Order and shall deliver to the Commission and the Receiver copies of such officially recorded documents within seven days after receipt of such documents.

E. If Settling Defendant fails to make any required payment or transfer of assets when due under Subsection V.B. of this Order, or the Commission or Receiver is not allowed to retain any such payment, or if Settling Defendant fails to comply with the terms of an Instrument and such failure is not timely cured:

1. The amount in Subsection V.B., \$690,817.11, less any amounts previously paid and the value of any assets transferred, shall immediately become due and payable by Settling Defendant. Interest computed at the rate prescribed under 28 U.S.C. section 1961, as amended, shall immediately begin to accrue on the unpaid balance. Time is of the essence for the payments specified in this Section; and

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2. Settling Defendant consents to the appointment of Jonathan E. Perlman, Esq., as Receiver for purposes of taking possession and control of and liquidating the Collateral, with the rights and powers, and privileges of an equity receiver. The costs and expenses of the receivership, including reasonable compensation for the Receiver and personnel retained by the Receiver, shall be paid solely from the proceeds of the Collateral. The Commission and Settling Defendant waive the requirements of 28 U.S.C. section 2001 and 28 U.S.C. section 2004 in connection with any pending or contemplated sale by the Receiver.

F. Upon full payment of his obligation under Subsection V.B.4. of this Order and a subsequent written request by Settling Defendant, the Commission agrees to release the Instruments within a reasonable time. Settling Defendant shall pay all the fees and costs related to such release, including filing fees. In addition, the Commission shall promptly cancel the Instruments to the extent necessary to facilitate the sale or encumbrance of the Collateral if the funds owed to the Commission pursuant to Subsection V.B.4. of this Order are remitted directly to the FTC from the proceeds of such sale or encumbrance immediately upon closing of such sale or encumbrance. Settling Defendant shall pay all fees and costs related to such release, including filing fees.

G. The Commission's agreement to this Order is expressly based on the material representations that Settling Defendant has the right and authority to enter the Instruments related to his real property, and that such Collateral is not encumbered by any lien, assignment, security interest, or other interest not otherwise disclosed in the Instruments or Financial Disclosures previously made to the Commission. The Commission's agreement to this Order is expressly based on the material representations that Settling Defendant has

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the right and authority to designate the identified properties as collateral, and that such Collateral is not encumbered by any lien, assignment, security interest or other interest not otherwise disclosed to the Commission.

1. The Commission's agreement to this Order is expressly based on the material representations by Settling Defendant that the value of his equity in the Collateral is at least \$435,000.00.

2. If, upon motion of the Commission, a Court determines that Settling Defendant made a material misrepresentation or omitted material information concerning ownership or authority to pledge the Collateral, any encumbrance of the Collateral, or the value of the Collateral, the entire Judgment amount in Subsection V.A., less any amounts previously paid by Settling Defendant, shall immediately become due and payable by him. Interest computed at the rate prescribed under 28 U.S.C. section 1961, as amended, shall immediately begin to accrue on the unpaid balance.

H. The Commission's agreement to the suspension of part of the Judgment is expressly premised upon the truthfulness, accuracy, and completeness of Settling Defendant's sworn financial statements and related documents (collectively, "financial representations") submitted to the Commission, namely:

1. the Financial Statement of Ricardo Diaz signed on May 15, 2018, including all attachments and other documentation provided;

2. the Financial Statement of Ariel's Barbershop, LLC signed on May 15, 2018, including all attachments;

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3. the Financial Statement of M&RD Accounting & Consulting, LLC signed on May 15, 2018, including all attachments;
 4. the Financial Statement of M&RD Real Estate & Management LLC signed on May 15, 2018, including all attachments;
 5. the Financial Statement of Pointbreak Media, LLC signed on May 15, 2018, including all attachments;
 6. the additional documentation submitted by Settling Defendant's counsel Chad J. Gottlieb to Commission counsel dated May 22, 2018, including Settling Defendant's "Supplement to Financial Statement of Individual Defendant";
 7. the additional documentation submitted by Settling Defendant's counsel Chad J. Gottlieb to Commission counsel dated June 14, 2018 and June 15, 2018, including the documents regarding The Atlantic Trust; and
 8. the additional documentation submitted by Settling Defendant's counsel Chad J. Gottlieb to Commission counsel dated July 9, 2018, including the documents regarding M&RD Real Estate and Management LLC.
- I. Notwithstanding the provisions of Subsection V.C., the suspension of the Judgment will be lifted as to Settling Defendant if, upon motion by the Commission, the Court finds that Settling Defendant failed to disclose any material asset, materially misstated the value of any asset, or made any other material misstatement or omission in the financial representations identified above.
- J. If the suspension of the judgment is lifted under Section V.I. above, then the Judgment becomes immediately due as to Settling Defendant in the amount specified in Subsection V.A. above (which the parties stipulate only for purposes of this Section

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represents the consumer injury alleged in the First Amended Complaint during the time of Settling Defendant's participation in the activities alleged in the First Amended Complaint), less any payments previously made or the value of assets transferred pursuant to this Section, plus interest computed from the date of entry of this Order.

K. Settling Defendant grants to the Commission all rights and claims he has to any assets currently in the possession, custody, or control of the Receiver, and to any other asset of any Corporate Defendant.

Proceedings instituted under this provision would be in addition to, and not in lieu of, any other civil or criminal remedies, as may be provided by law, including but not limited to, contempt proceedings or any other proceedings that the Commission may initiate to enforce this Order.

VI. ADDITIONAL MONETARY PROVISIONS

A. Settling Defendant relinquishes dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets.

B. The facts alleged in the First Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case.

C. The facts alleged in the First Amended Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. section 523(a)(2)(A), and this Order will have collateral estoppel effect for such purposes.

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D. Settling Defendant acknowledges that his Taxpayer Identification Numbers (Social Security Numbers or Employer Identification Numbers), which Settling Defendant previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, consistent with 31 U.S.C. section 7701.

E. All money paid to the Commission under this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for the administration of any redress fund. If a representative of the Commission decides that direct redress to consumers is wholly or partially impracticable or money remains after redress is completed, the Commission may apply any remaining money for such other equitable relief (including consumer information remedies) as it determines to be reasonably related to Defendants' practices alleged in the First Amended Complaint. Any money not used for such equitable relief is to be deposited to the United States Treasury as disgorgement. Settling Defendant has no right to challenge any actions the Commission or its representatives may take pursuant to this Subsection.

VII. LIFTING OF ASSET FREEZE

The freeze against the assets of Settling Defendant pursuant to the May 8, 2018 Temporary Restraining Order [ECF No. 12], the May 21, 2018 Order Extending the Temporary Restraining Order [ECF No. 23], and the Preliminary Injunction as to Defendant Ricardo Diaz [ECF No. 40] shall be dissolved automatically, and without any further action by the parties or this Court, only upon Settling Defendant's payment or transfer of all assets pursuant to Subsections V.B.1 and V.B.2 of this Order and the earlier of (i) Settling Defendant's delivery to the Commission and Receiver of the officially recorded Instrument copies required under Subsection V.D. of this Order or (ii) Settling Defendant's payment in full of the amount set forth in Subsection V.B.4 of this

Order. A financial institution shall rely upon a confirmation letter, signed by Commission counsel, stating that these requirements have been met.

VIII. CUSTOMER INFORMATION

The Settling Defendant, Settling Defendant's officers, agents, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, are permanently restrained and enjoined from directly or indirectly:

- A. failing to provide sufficient customer information to enable the Commission to efficiently administer consumer redress. If a representative of the Commission requests in writing any information related to redress, Settling Defendant must provide it, in the form prescribed by the Commission, within 14 days;
- B. disclosing, using, or benefitting from customer information, including the name, address, telephone number, email address, social security number, other identifying information, or any data that enables access to a customer's account (including a credit card, bank account, or other financial account), that any Defendant obtained prior to entry of this Order in connection with the marketing and sale of Google "claiming and verification" and search engine optimization services; and
- C. failing to destroy such customer information in all forms in their possession, custody, or control within 30 days after receipt of written direction to do so from a representative of the Commission.

However, customer information need not be disposed of, and may be disclosed, to the extent requested by a government agency or required by law, regulation, or court order.

IX. COOPERATION

The Settling Defendant must fully cooperate with representatives of the Commission in this case and in any investigation related to or associated with the transactions or the occurrences

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that are the subject of the First Amended Complaint in this matter. Settling Defendant must provide truthful and complete information, evidence, and testimony. Settling Defendant must appear for interviews, discovery, hearings, trials, and any other proceedings that a Commission representative may reasonably request upon five days written notice, or other reasonable notice, at such places and times as a Commission representative may designate, without the service of a subpoena. Settling Defendant must also fully cooperate with the Receiver, and the representatives of the Receiver, in this case. Further, to assist the Commission with any investigation related to or associated with the transactions or the occurrences that are the subject of the First Amended Complaint, and with monitoring Settling Defendant's compliance with this Order, Settling Defendant consents, for purposes of the Electronic Communications Privacy Act, in relevant part at 18 U.S.C. sections 2701–2712, to the disclosure, by electronic communications service providers and remote computing service providers of the contents of his auto-dialed, Telemarketing, or prerecorded telephone communications and records or other information pertaining to his auto-dialed, telemarketing, or pre-recorded telephone communications. Settling Defendant further agrees to execute, within fourteen days of a request from the Commission, any forms or other documents evidencing his consent that may be required by such electronic communications service providers or remote computing service providers.

X. ORDER ACKNOWLEDGMENTS

The Settling Defendant shall obtain acknowledgments of receipt of this Order:

- A. Settling Defendant, within seven days of entry of this Order, must submit to the Commission an acknowledgment of receipt of this Order sworn under penalty of perjury.
- B. For five years after entry of this Order, Settling Defendant, for any business that Settling Defendant, individually or collectively with any other Defendants, is the majority

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owner or controls directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees having managerial responsibilities for conduct related to the subject matter of the Order and all agents and representatives who participate in conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within seven days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which Settling Defendant delivered a copy of this Order, Settling Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

XI. COMPLIANCE REPORTING

The Settling Defendant must make timely submissions to the Commission:

A. One year after entry of this Order, Settling Defendant must submit a compliance report, sworn under penalty of perjury. Settling Defendant must:

1. identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences;
2. identify all business activities, including any business for which Settling Defendant performs services, whether as an employee or otherwise, and any entity in which such Defendant has any ownership interest;
3. describe in detail Settling Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership;

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4. identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission may use to communicate with Settling Defendant;
 5. identify all Settling Defendant's businesses by all their names, telephone numbers, and physical, postal, email, and Internet addresses;
 6. describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Settling Defendant must describe if he knows or should know due to his own involvement);
 7. describe in detail whether and how that Settling Defendant is in compliance with each Section of this Order; and
 8. provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.
- B. For 20 years after entry of this Order, Settling Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:
1. name, including aliases or fictitious name or residence address;
 2. title or role in any business activity, including any business for which Settling Defendant performs services whether as an employee or otherwise and any entity in which Settling Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity;
 3. any designated point of contact; and
 4. the structure of any entity that Settling Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising

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under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

C. Settling Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against Settling Defendant within 14 days of its filing.

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. section 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the United States Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: *FTC v. Ricardo Diaz*, X180031.

XII. RECORDKEEPING

The Settling Defendant must create certain records for 20 years after entry of the Order and retain each such record for 5 years. Specifically, Settling Defendant for any business that Settling Defendant, individually or collectively with any other Defendants, is a majority owner or controls directly or indirectly, must create and retain the following records:

A. accounting records showing the revenues from all goods or services sold;

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- B. personnel records showing, for each person providing services, whether as an employee or otherwise, that person's: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;
- C. records of all consumer complaints and refund requests, whether received directly or indirectly, such as through a third party, and any response;
- D. all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and
- E. a copy of each unique advertisement or other marketing material, including sales scripts.

XIII. COMPLIANCE MONITORING

For the purpose of monitoring Settling Defendant's compliance with this Order, including the financial representations upon which part of the judgment was suspended and any failure to transfer any assets as required by this Order:

- A. Within 14 days of receipt of a written request from a representative of the Commission, Settling Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- B. For matters concerning this Order, the Commission is authorized to communicate directly with Settling Defendant. Settling Defendant must permit representatives of the Commission to interview any employee or other person affiliated with any Settling

Defendant who has agreed to such an interview. The person interviewed may have counsel present.

C. The Commission may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Settling Defendant or any individual or entity affiliated with Settling Defendant, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process under the FTC Act, 15 U.S.C. sections 49, 57b-1.

D. Upon written request from a representative of the Commission, any consumer reporting agency must furnish consumer reports concerning Settling Defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. section 1681b(a)(1).

XIV. RETENTION OF JURISDICTION

The Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

DONE AND ORDERED in Miami, Florida, this 25th day of April, 2019.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

SO STIPULATED AND AGREED:

FOR PLAINTIFF FEDERAL TRADE COMMISSION:

Evan M. Mendelson, Special Bar No. A5502430
Christopher J. Erickson, Special Bar No. A5502434
Brian M. Welke, Special Bar No. A5502432
Federal Trade Commission
600 Pennsylvania Ave. NW
Mailstop CC-9528

Washington, DC 20580
(202) 326-3320; emendelson@ftc.gov
(202) 326-3671; cerickson@ftc.gov
(202) 326-2897; bwelke@ftc.gov
Fax: (202) 326-3197

DEFENDANT RICARDO DIAZ:

Ricardo Diaz
Individually

FOR DEFENDANT RICARDO DIAZ:

Chad J. Gottlieb
Florida Bar No. 64838
Email: cgottlieb@darroweverett.com
DarrowEverett LLP
101 NE Third Avenue, Suite 1500
Fort Lauderdale, FL 33301
Tel: (954) 278-8355
Fax: (401) 453-1201

**THIS INSTRUMENT PREPARED BY
AND RETURN TO:**

[Space Above this Line For Recording Data]

DEED TO SECURE DEBT

STATE OF GEORGIA, County of _____.

This DEED TO SECURE DEBT, made the _____ day of _____, in the year _____, between **RICARDO JOSE DIAZ**, an individual having an address of 3921 SW 160th Ave., Apt. 207, Miramar, FL 33027 (hereinafter referred to as "Grantor") and **JONATHAN E. PERLMAN**, as Receiver in the case of *Federal Trade Commission v. Pointbreak Media, LLC, et al.*, United States District Court for the Southern District of Florida, Case No. 18-61017-CIV-ALTONGA/Seltzer, whose post office address is C/O Genovese Joblove & Battista, P.A., 100 SE Second Street, 44th Floor, Miami, Florida 33131 (hereinafter referred to as "Grantee") to secure for the benefit of the **FEDERAL TRADE COMMISSION**, whose address is 600 Pennsylvania Ave., NW, Washington, DC 20580 (hereinafter referred to as "Beneficiary") the payment of the monetary obligations of Grantor pursuant to Section V.B.4. of that certain Stipulated Order of Permanent Injunction and Monetary Judgment as to Ricardo Diaz dated _____ entered in the action captioned *Federal Trade Commission v. Pointbreak Media, LLC, et al.*, United States District Court for the Southern District of Florida, Case No. 18-61017-CIV-ALTONGA/Seltzer ("Order").

WITNESSETH: That Grantor has granted, bargained, sold, aliened, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, convey and confirm unto the said Grantee, its successors and assigns, all of the estate, right, title and interest of Grantor in and to those certain parcels of real property described in Exhibit A (collectively, the "Premises") for the benefit of the Beneficiary.

Grantor shall not, without the prior written consent of the Grantee and the Beneficiary, voluntarily or by operation of law, sell, transfer, convey or assign all or any part of the legal or equitable title to the Premises, or any part of, or interest in, the Premises, or any of the personalty located thereon or used or intended to be used in connection therewith, and any such sale, transfer, conveyance, or assignment, without the prior written consent of the Grantee and the Beneficiary, shall constitute a default under the terms of this Deed to Secure Debt.

Grantor shall not, without the prior written consent of the Grantee and the Beneficiary, transfer, convey or assign the Premises, or any part of, or interest in, the Premises as security for an indebtedness other than for the indebtedness secured hereby, and any such transfer, conveyance or assignment, without the prior written consent of the Grantee and the Beneficiary, shall constitute a default under the terms of this Deed to Secure Debt, excepting the existing security deeds granted by Grantor set forth on Exhibit A, to the extent of the outstanding amount of indebtedness secured by the existing security deeds as of the date of entry of the Order.

TO HAVE AND TO HOLD the said bargained Premises with all and singular the rights, members and appurtenances thereto appertaining, to the only proper use, benefit and behoof of Grantee, its successors and assigns, in fee simple; and Grantor, will warrant and forever defend the right and title to the above described property unto the said Grantee, its successors and assigns, against the claims of all persons whomsoever, except as may be otherwise expressly stated herein, set forth on Exhibit A, or Pursuant to the Order.

This conveyance is made under the provisions of the existing Code of the State of Georgia to secure a debt, and upon payment of the debt hereby secured, this security deed shall be cancelled and surrendered pursuant thereto, the debt hereby secured being the monetary obligations pursuant to Section V.B.4. of the Order. To effect the cancellation, Grantor shall prepare a cancellation of this security deed, Grantee and Beneficiary shall execute the cancellation, and Grantor shall record the cancellation.

As further security for the debt herein described, Grantor hereby sells, assigns, sets over and transfers to the Grantee all of the rent which shall hereafter become due or be paid for the use of the above described property, reserving only the right to the Grantor to collect said rents so long as there is no default in the monetary obligations of the Grantor under this deed or in payment of the debt hereby secured. In the event of such default in said debt or any part thereof, principal or interest, or in the performance of any obligation of the Grantor under this deed, Grantee may enter upon said premises and collect the rents therefrom and the Grantee is hereby constituted and appointed as

Grantor's agent and attorney in fact to collect such rents by any appropriate proceedings. The net amount of rent so collected shall be applied towards the debt hereby secured.

And the said Grantor hereby covenants, for so long as said indebtedness, or any part thereof, shall remain unpaid, to keep said Premises in as good condition as they now are; to pay all taxes and assessments that may be liens upon said Premises, as they become due; and to keep the improvements on said Premises insured in company or companies acceptable to said Grantee against loss or damage by fire or lightning in the sum of at least adequate dollars, with loss, if any, payable to said Grantee, and shall deliver the policies of insurance to the said Grantee upon request; and that any tax, assessment, or premium of insurance, not paid when due by the Grantor, may be paid by the Grantee, and any sum so paid shall be added to the amount of said principal debt as part thereof, and shall be covered by the security of this deed. And should the said Grantee receive any money for damages covered by insurance, such money may be retained and applied toward the payment of any amount hereby secured or may be paid over, either wholly or in part, to the said Grantor to enable said Grantor to repair or replace improvements, or for any other purpose, without affecting the lien of this deed for the full amount secured hereby before such damage or such payment took place.

The Grantee shall have the right to accelerate the maturity of the debt hereby secured, by declaring the entire debt to be in default and immediately due and payable, upon the failure of Grantor to make any payment when due, pursuant to Section V.B.4. of the Order hereby secured, or upon failure of Grantor to perform any obligation or make any payment required of Grantor by the terms of this deed.

And Grantor further covenants and agrees that the possession of said Premises, during the existence of said indebtedness, by Grantor, or any persons claiming under Grantor, shall be that of tenant under Grantee, or assigns, during the due performance of all of the obligations aforesaid, and that in case of a sale under the power as hereinafter provided or by foreclosure by process of law, Grantor, or any person in possession under Grantor, shall then become and be tenants holding over and shall forthwith deliver possession to the purchaser at such sale, or be summarily dispossessed, in accordance with the provisions of law applicable to tenants holding over.

In the event of default in the indebtedness pursuant to Section V.B.4. of the Order and hereby secured, either in due course or by acceleration as herein provided, or in the event of default in the performance of any of the obligations required of the Grantor by the terms of this deed, the Grantor grants to the Grantee, and its assigns, irrevocable power of attorney authorizing the Grantee to foreclose the Premises. Grantor agrees to the appointment of Grantee as receiver pursuant to Section V.E.2. of the Order, for purposes of foreclosure, without proof of insolvency or other equitable terms, and grants to the Grantee to take possession and control of and liquidate the Premises, with all the required rights, powers, and privileges of an equity receiver. The costs and expenses of said receivership, including reasonable compensation for the receiver and personnel retained by the receiver, shall be paid solely from the proceeds of the liquidation of the Premises. The Grantor and the Grantee waive the requirements of 28 U.S.C. § 2001 and 28 U.S.C. § 2004 in connection with any pending or contemplated sale by the receiver.

The power and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise and are granted as cumulative to the remedies for collection of said indebtedness provided by law.

This deed shall be deemed and construed to be contracts executed and to be performed in Georgia.

To the fullest extent permitted by law, Grantor agrees that Grantor will not at any time insist upon, plead, claim or take the benefit or advantage of any present or future law providing for any appraisal, valuation, stay, extension or redemption, homestead, moratorium, reinstatement, marshaling or forbearance, and Grantor, for Grantor, Grantor's heirs, devisees, representatives, successors and assigns, and for any and all persons ever claiming any interest in the Premises, to the fullest extent permitted by law, waives and releases all rights of redemption, valuation, appraisal, stay of execution, reinstatement (including all rights under O.C.G.A. Section 44-14-85), notice of intention to mature or declare due the whole of the obligations hereunder, and all rights to a marshaling of assets of Grantor, including the Premises.

This conveyance is intended to and shall constitute and be construed as 1) a deed passing fee title to the Premises to Grantee and is made under those provisions of the existing laws of the State of Georgia (O.C.G.A. Section 44-14-60 *et seq.*) relating to conveyances and deeds to secure debt (a/k/a "security deed"), and not a mortgage, and is given to secure the payment and performance of the indebtedness, and 2) a security agreement pursuant to the provisions of the Uniform Commercial Code of Georgia, Title 11 of the Official Code of Georgia. Moreover, use of the terms "Property" or "Mortgage Loan," whether in this Security Deed or in any other document, shall not be construed to mean that this Security Deed is a mortgage.

Grantee's acceptance, if any, of an assumption of the obligations of this Security Deed and the release of Grantee, shall not constitute a novation and shall not affect the priority of the lien created by this deed.

The interest of Grantee under this deed and the liability and obligation of Grantor for the obligations hereunder arise from a "commercial transaction" within the meaning of O.C.G.A. Section 44-14-260(1). Accordingly, pursuant to O.C.G.A. Section 44-14-263, Grantor waives any and all rights which Grantor may have to notice (other than as may be expressly provided for herein) prior to seizure by Grantee of any interest in personal property of Grantor which constitutes part of the Premises, whether such seizure is by writ of possession or otherwise.

IN WITNESS WHEREOF this Deed to Secure Debt has been executed by Grantor as of the date first written above.

Name: RICARDO JOSE DIAZ

STATE OF _____)
) ss:
COUNTY OF _____)

On the ____ day of _____ in the year _____ before me, the undersigned, personally appeared RICARDO JOSE DIAZ, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT ADESCRIPTION OF PROPERTIES

4829 Lehigh Drive, Douglasville, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on October 27, 2017 granted to MERS/Pacific Union Financial, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3537 Page 670
4002 Nations Drive, Douglasville, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on December 11, 2017 granted to MERS/Pacific Union Financial, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3549 Page 551
4751 Baron Road, Douglasville, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on April 19, 2017 granted to MERS/JG Wentworth Home Lending, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3481 Page 209
3463 Birchwood Drive, Winston, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on April 28, 2017 granted to MERS/JG Wentworth Home Lending, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3484 Page 458
2171 Chestnut Place, Lithia Springs, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on June 26, 2017 granted to MERS/JG Wentworth Home Lending, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3501 Page 629
6035 Cowan Mill Road, Douglasville, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on June 26, 2017 granted to MERS/JG Wentworth Home Lending, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3501 Page 645
4827 Kim Court, Douglasville, Douglas County, GA
*This security deed is subject to and subordinate to a Security Deed recorded on August 3, 2017 granted to MERS/JG Wentworth Home Lending, LLC recorded at the Douglas County Georgia Clerk of the Superior Court Georgia Land Records at Book 3512 Page 921
2338 Iron Horse Drive, Douglasville, Douglas County, GA

After Recording Return To:

_____ [Space Above This Line For Recording Data] _____

MORTGAGE DEED AND SECURITY AGREEMENT

This MORTGAGE DEED AND SECURITY AGREEMENT (this "Mortgage") is made this ____ day of _____, _____ between **RICARDO JOSE DIAZ**, an individual having an address of 3921 SW 160th Ave., Apt. 207, Miramar, FL 33027 (hereinafter referred to as "Mortgagor") and **JONATHAN E. PERLMAN**, Esq., as court-appointed Receiver in the action captioned *Federal Trade Commission v. Pointbreak Media, LLC et al.*, United States District Court for the Southern District of Florida, Case No. 18-61017-CIV-ALTONGA/Seltzer, whose post office address is C/O Genovese Joblove & Battista, P.A., 100 SE Second Street, 44th Floor, Miami, FL 33131 (hereinafter referred to as "Mortgagee") to secure for the benefit of the **FEDERAL TRADE COMMISSION**, whose address is 600 Pennsylvania Ave., NW, Washington, DC 20580 (hereinafter referred to as "Beneficiary") the payment of the monetary obligations of Mortgagor pursuant to Section V.B.4. of that certain Stipulated Order of Permanent Injunction and Monetary Judgment as to Ricardo Diaz dated _____ entered in the same action captioned *Federal Trade Commission v. Pointbreak Media, LLC et al.*, United States District Court for the Southern District of Florida, Case No. 18-61017-CIV-ALTONGA/Seltzer ("Order");

NOW THEREFORE, Mortgagor does hereby mortgage, grant and convey unto Mortgagee, with Mortgage Covenants the following described premises located at 362 Fruit Hill Avenue, North Providence, Rhode Island (Plat 9 Lot 247) and as more particularly described in Exhibit A attached hereto and incorporated herein by reference (the "Premises");

TOGETHER WITH all the buildings and improvements now or hereafter erected on the Premises, and all easements, rights, appurtenances, appliances, and fixtures now or hereafter a part of the Premises, including all replacements and additions thereto;

TO HAVE AND TO HOLD the Premises unto and to the use of Mortgagee, its successors and assigns forever.

A. **MORTGAGE COVENANTS.** Mortgagor hereby covenants with Mortgagee that Mortgagor is the true, sole and lawful owner of the Premises, is lawfully seized and possessed of the same in fee simple and has good right, full power and lawful authority to grant, bargain, sell and convey the Premises in manner aforesaid; that Mortgagee shall at all times hereafter, by virtue of these presents, lawfully, peaceably and quietly have and enjoy the Premises; that the same are free from all encumbrances; and that Mortgagor will warrant and defend the Premises to Mortgagee against the lawful claims or demands of all persons whatsoever, excepting only as aforesaid.

B. **ADDITIONAL COVENANTS.** Mortgagor hereby consents to, covenants, and agrees to and with Mortgagee to perform and observe the following covenants and agreements:

1. Payment of Debt and Liens: Mortgagor covenants and agrees to pay all indebtedness secured by this Mortgage at the time or times and in the manner specified in the Order; to pay as and when due and payable all sums secured by any other mortgages held by Mortgagee or mortgages permitted hereunder and held by others upon the Premises or any portion thereof; to pay, before accrual of interest or penalty, all taxes, assessments, water and sewer rates, mechanics' liens and other liens and charges of every nature assessed, levied or imposed upon or in respect of the Premises, or any portion thereof, or constituting in whole or in part a lien on the Premises or upon Mortgagee in respect of this Mortgage, whether under statutes now in force or that may be hereinafter enacted; and to pay all other sums hereby secured.

2. Insurance: (a) Mortgagor covenants and agrees to keep and maintain insurance against loss by fire, with extended coverage upon the buildings and improvements on the Premises in an amount equal to the full replacement value of said improvements; and, at the request of the Mortgagee, that the policy or policies of such insurance shall in case of loss be made payable to Mortgagee as collateral security hereto. Mortgagor hereby appoints Mortgagee to be the true and lawful attorney, irrevocable, of Mortgagor, in the name and stead of Mortgagor and does hereby agree that Mortgagee may, at its option, but without obligation to do so, demand, adjust, sue for, compromise and collect the proceeds of claims for losses which may occur under any such insurance, give discharging receipts for sums received in settlement of such losses, to reimburse Mortgagee therefrom for all expenses (including reasonable counsel fees) incurred in connection therewith, and apply the remainder thereof and any unearned premium of or dividend upon any canceled insurance, notwithstanding the claim of any intervening encumbrancer or lien or, at Mortgagee's election, in whole or in part, on account of the indebtedness secured by this Mortgage, whether or not then due, or to the cost of repair or restoration of the Premises.

(b) Upon written request of Mortgagee, Mortgagor covenants and agrees to furnish Mortgagee certificates of all renewals of the aforesaid insurance relating to Mortgagor or the Premises not less than twenty (20) days prior to the expiration date of the expiring policies. All policies of insurance shall carry an endorsement requiring at least twenty (20) days written notice to Mortgagee from the insurer or insurers issuing the same prior to their changing or canceling such policy, and Mortgagor hereby agrees to promptly deliver or cause the delivery of any certificate evidencing any such change or cancellation to Mortgagee. All policies of insurance shall provide independent insurance for Mortgagee, and the rights of Mortgagee in the policy shall in no event be subject to adverse effect or diminution by any act or neglect of Mortgagor.

3. Maintenance and Waste: Mortgagor covenants and agrees to keep the buildings and improvements on the Premises in good condition and repair and not to cause or permit strip or waste, major alteration, demolition, or removal of any part thereof without the prior written consent of Mortgagee and to

permit Mortgagee, and the officers, agents and servants of Mortgagee to enter upon the Premises at all reasonable times to view and inspect the same.

4. Compliance with Laws, etc.: Mortgagor covenants and agrees to comply with (a) all present and future laws, regulations and other requirements of every governmental body having jurisdiction over the Premises or the use or occupation of the improvements thereon, and (b) all terms, covenants and conditions of all instruments of record affecting the Premises, noncompliance with which may affect the security of this Mortgage or impose any duty or obligation upon the Mortgagor or Mortgagee.

5. Prohibition Against Sale, Encumbrances, etc.: Mortgagor covenants and agrees not to make, directly or indirectly, any mortgage, pledge, hypothecation, sale, assignment or other transfer of the Premises or any part thereof without the prior written consent of the Mortgagee and the Beneficiary. If all or any part of the Premises is sold or transferred without Mortgagee and the Beneficiary's prior written consent, Mortgagee may invoke its remedies in accordance with the Order and Section D.

6. Payment of Costs and Expenses: Mortgagor covenants and agrees to pay all reasonable costs, fees and expenses (including reasonable counsel fees) suffered or incurred by Mortgagee in the enforcement, exercise or defense of the rights or powers of Mortgagee hereunder, including without limitation, the making of repairs as aforesaid, and the collection of the indebtedness hereby secured.

7. Absence of Waiver: Mortgagor covenants and agrees that no waiver, forbearance, extension of time or indulgence shown by Mortgagee to Mortgagor or to any other person now or hereafter interested herein or in the Premises with respect to any or any combination of conditions, covenants or agreements on the part of Mortgagor to be paid, performed or observed as set forth or referred to herein or the Order shall affect the right of Mortgagee thereafter to require payment, performance or observance of the same or of any other covenant, condition or agreement.

8. Release: Upon complete payment of the monetary obligation pursuant to Section V.B.4. of the Order, Mortgagor shall prepare a release of lien, Mortgagee and Beneficiary shall execute the release, and Mortgagor shall record the release.

C. ASSIGNMENT. As additional security for the payment and performance of the obligations of Mortgagor hereunder, Mortgagor hereby assigns to Mortgagee all rents due and to become due in the future from occupants of the Premises or any part thereof under any existing or future lease or tenancy, hereby constituting and appointing Mortgagee the attorney or attorneys of Mortgagor to sue for and collect the same at any time and from time to time when a default exists hereunder, and further assigns to Mortgagee all rights and claims to compensation for the taking of title to, possession of, or any interest in, the Premises or any part thereof by exercise of the power of eminent domain.

D. MORTGAGOR DEFAULT; REMEDIES. If Mortgagor defaults in the monetary obligations pursuant to Section V.B.4. of the Order or in the performance and observance of any of the covenants and agreements contained in this Mortgage, it shall be lawful for Mortgagee, for purposes of foreclosure, to take possession and control of and liquidate the Premises, with all the required rights, and powers, and privileges of an equity receiver, and sell the Premises in accordance with applicable law, without further notice or demand on Mortgagor. The costs and expenses of the receivership, including reasonable compensation for the receiver and personnel retained by the receiver, shall be paid solely from the proceeds of the liquidation of

the Premises. The Mortgagor, the Mortgagee, and the Beneficiary waive the requirements of 28 U.S.C. § 2001 and 28 U.S.C. § 2004 in connection with any pending or contemplated sale.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURES TO FOLLOW]

[SIGNATURE PAGE; MORTGAGE DEED AND SECURITY AGREEMENT]

BY SIGNING BELOW, Mortgagor accepts and agrees to the terms and covenants contained in this Mortgage.

WITNESS/ATTEST:

Name: RICARDO JOSE DIAZ

STATE OF _____

COUNTY OF _____

In _____ in said county on the ____ day of _____, 201__, before me personally appeared RICARDO JOSE DIAZ, personally known to the notary or proved to the notary through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and he acknowledged to the notary that he signed it voluntarily for its stated purpose.

Notary Public
My Commission Expires:

EXHIBIT A

Legal Description – 362 Fruit Hill Avenue, North Providence, Rhode Island

See next page

PARCEL I

That certain parcel of land with all buildings and improvements thereon, situated southerly of Humbert Street in the Town of North Providence, County of Providence, State of Rhode Island is bounded and described as follows:

Beginning at a point, said point being located one hundred sixteen and $11/100$ (116.11) feet southerly of the southerly line of Humbert Street; as measured along the lot line separating land of Arthur G. Rotondo with land of this grantor, and said point also being the northwesterly corner of the herein described parcel; thence running southerly bounded westerly by land now or formerly of Arthur G. Rotondo a distance of thirty and $70/100$ (30.70) feet to an angle; thence turning an interior angle of 185 degrees 30' -56" and running southerly bounded westerly in part by land of Arthur G. Rodondo and in part by Anthony Cardarelli in all a distance of fifty (50.0) feet to a corner; thence turning an interior angle of 92 degrees 04' -46" and running easterly a distance of ninety-two and $35/100$ (92.35) feet to a corner; thence turning an interior angle of 100 degrees 17' -08" and running northerly bounded easterly by land now or formerly of Domenic Pastore a distance of ninety-six and $78/100$ (96.78) feet to a corner; thence turning an interior angle of 72 degrees 17' -10" and running westerly bounded northerly by other land of this grantor a distance of one hundred sixteen and $36/100$ (116.36) feet to the point and place of beginning the last course making an interior angle of 90 degrees with the first mentioned course.

PARCEL II

That parcel of land, with all buildings and improvements thereon, situated on the westerly side of Fruit Hill Avenue in the Town of North Providence and State of Rhode Island, bounded and described as follows:

Beginning at a point in the westerly line of Fruit Hill Avenue at the southeasterly corner of said parcel, said point being located three hundred forty-nine and $31/100$ (349.31) feet northerly from an iron pipe set in the westerly line of Fruit Hill Avenue at the northeasterly corner of land now or lately of Paul P. Testa and wife, said distance being measured along the westerly line of Fruit Hill Avenue, thence westerly in a line at right angles with said line of Fruit Hill Avenue, bounding southerly on land now or lately of Lorenzo Zambarano and wife two hundred twelve and $84/100$ (212.84) feet to a corner; thence turning an interior angle of 86 degrees 16' 20" and running northerly bounding westerly on said Zambarano land ninety-six and $78/100$ (96.78) feet to a corner; thence turning an interior angle of 107 degrees 42' 50" and running easterly bounding northerly on said Zambarano land one hundred sixty-three and $66/100$ (163.66) feet to Fruit Hill Avenue; thence turning an interior angle of 115 degrees and running southeasterly bounding northeasterly on Fruit Hill Avenue three and $59/100$ (3.59) feet; thence turning an interior angle of 165 degrees 13' 50" and running southeasterly bounding northeasterly on Fruit Hill Avenue one hundred ten and $66/100$ (110.66) feet; thence turning an interior angle of 155 degrees 47' and running southerly bounding easterly on Fruit Hill Avenue thirty-two and $20/100$ (32.20) feet to the first mentioned point or place of beginning.

SUBJECT to Any unrecorded leases and/or month-to-month tenancies.

SUBJECT to covenants, conditions, easements and restrictions, if any, of record.