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12 THOMAS A. SEAMAN

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA
15 SOUTHERN DIVISION

16 SECURITIES AND EXCHANGE
COMMISSION,
17 Plaintiff,
18 v.
19 EMILIO FRANCISCO; PDC CAPITAL
GROUP, LLC; CAFFE PRIMO
INTERNATIONAL, INC.; SAL
20 ASSISTED LIVING, LP; SAL
CARMICHAEL, LP; SAL CITRUS
21 HEIGHTS, LP; SAL KERN
CANYON, LP; SAL PHOENIX, LP;
22 SAL WESTGATE, LP;
SUMMERPLACE AT SARASOTA, LP;
23 SUMMERPLACE AT
CLEARWATER, LP; SUMMERPLACE
24 AT CORRELL PALMS, LP;
TRC TUCSON, LP; CLEAR
25 CURRENTS WEST, LP; CAFFE
PRIMO MANAGEMENT, LP; CAFFE
26 PRIMO MANAGEMENT 102, LP; et al.,
27 Defendants.

Case No. 8:16-cv-02257-CJC-DFM
**NOTICE OF MOTION AND
MOTION OF RECEIVER,
THOMAS A. SEAMAN, FOR
ORDER APPROVING: (1) SALE OF
CITRUS HEIGHTS PROPERTY,
SACRAMENTO PROPERTY,
LINCOLN RED ROCK PROPERTY,
AND CARMICHAEL PROPERTY;
(2) OVERBID PROCEDURES; AND
(3) REAL ESTATE BROKER
COMMISSION; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**
Date: February 26, 2018
Time: 1:30 p.m.
Ctrm: 9B, 9th Floor
Judge: Hon. Cormac J. Carney

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on February 26, 2018, at 1:30 p.m. in Courtroom 9B
3 of the above-entitled Court, located at 411 W. Fourth Street, Santa Ana, California
4 92701, Thomas A. Seaman ("Receiver"), the Court-appointed receiver for the
5 Receivership Entities,¹ will and hereby does move the Court for an order from this
6 Court approving the sale of the Citrus Heights Property, Sacramento Property,
7 Lincoln Red Rock Property, and Carmichael Property (collectively, the "California
8 Properties"), overbid procedures; and a real estate broker's commission ("Motion").
9 Pursuant to the sale and overbid procedures that were previously approved by the
10 Court pursuant to the Order Granting Receiver's Motion for Order Authorizing the
11 Receiver to Market Receivership Assets for Sale, Establish Sale Procedures, and
12 Engage Brokers, ("Sale Procedures Order") (Dkt. No. 102), the Receiver requests the
13 Court approve the sale of the California Properties to Carefield SH Management,
14 LLC ("Buyer") free and clear of liens and encumbrances (with such liens attaching to
15 the sale proceeds), pursuant to the purchase and sale agreement or to the highest

16 _____
17 ¹ As used herein, "Receivership Entities" refers to the following specifically named entities:
18 PDC Capital Group, LLC; Caffè Primo International, Inc.; SAL Assisted Living, LP; SAL
19 Carmichael, LP; SAL Citrus Heights, LP; SAL Kern Canyon, LP; SAL Phoenix, LP; SAL
20 Westgate, LP; Summerplace at Sarasota, LP; Summerplace at Clearwater, LP; Summerplace at
21 Correll Palms, LP; TRC Tucson, LP; Clear Currents West, LP; Caffè Primo Management, LP;
22 Caffè Primo Management 102, LP through Caffè Primo Management 108, LP (collectively,
23 "**Named Entities**"); and their subsidiaries and affiliates Summerplace Management, LLC;
24 PDC Partners Management, Inc.; FDC Partners Management, Inc.; KPF Capital, LLC;
25 FDC Capital Partners, LLC; MSL US Fund I, LLC; MPoint Land & Development, Inc.;
26 Woodcrest Construction Management, Inc.; Professional Loading Service, LLLP; WDC Capital
27 Group, LLC; WDC Capital Partners, LLC; KPF Investment Management, Inc.; Meridian
28 Summerplace at Snug Harbor, LLC; Meridian Summerplace at Snug Harbor, LP; Summerplace
at Correll Palms, LLC; Summerplace at Correll Palms, LP; Summerplace at Winter
Haven, LLC; Summerplace at Winter Haven, LP; Summerplace at Sun City, LLC;
Summerplace at Sun City, LP; Meridian at Sun City, LLC; Summerplace at Orlando-
Summerfield, LLC; Summerplace at Orlando-Summerfield, LP; Summerplace at
Kissimmee, LLC; Summerplace at Kissimmee, LP; Summerplace at Merced, LLC;
Summerplace at Merced, LP; SAL-PDC, LLC; SLALMC, LLC ("SLALMC"); SAL Lincoln
Village, IL; Lincoln Village IL, LLC; Lincoln Village IL, LP; Lincoln Village SNF, LLC;
Lincoln Village SNF, LP; FCM Development Group, LLC; ADC Capital Group, LLC; NCDC
Capital Partners, LLC; Summerplace at Bonney Lake MC, LLC; Summerplace at Bonney
Lake MC, LP; Summerplace Management, LLC; Summerplace Development, LLC; Defiance
Charters, LLC; and Red Sunshine Holdings, Ltd. (collectively, "**Affiliated Entities**").

1 bidder at the conclusion of the auction, if qualified overbids are received. The
2 Receiver also requests the Court to approve a real estate broker's commission.

3 This Motion is based on this Notice of Motion and Motion, the attached
4 Memorandum of Points and Authorities, the Declaration of Thomas A. Seaman, the
5 documents and pleadings already on file in this action, and upon such further oral
6 and documentary evidence as may be presented at the time of the hearing.

7 **Procedural Requirements:** If you oppose this Motion, you are required to
8 file your written opposition with the Office of the Clerk, United States District Court,
9 411 W. Fourth Street, Santa Ana, California 92701, and serve the same on the
10 undersigned not later than 21 days prior to the hearing.

11 IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION by the
12 above date, the Court may grant the requested relief without further notice. This
13 Motion is made following the conferences of counsel pursuant to L.R. 7-3, which
14 was initiated on January 10 and 11, 2018.

15
16 Dated: January 16, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

17
18 By: /s/ David R. Zaro

19 DAVID R. ZARO
20 Attorneys for Receiver
THOMAS A. SEAMAN

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with the Sale Procedures Order, the Receiver moves this Court
4 for an order authorizing him to sell the real properties more particularly described in
5 Exhibit A, to the concurrently filed Declaration of Thomas A. Seaman ("Seaman
6 Declaration" or "Seaman Decl."), which properties are commonly known as the
7 Citrus Heights Property, the Sacramento Property, the Lincoln Red Rock Property
8 and the Carmichael Property including all permits, entitlements and architectural
9 plans (collectively, the "California Properties") on the terms generally described
10 below and more specifically set forth in the Purchase and Sale Agreement and Joint
11 Escrow Instructions, dated as of October 25, 2017 ("PSA"). A true and correct copy
12 of the PSA is attached as Exhibit B to the Seaman Declaration.

13 As permitted by the Sale Procedures Order, the Receiver and Howard Hamlin
14 of Hamlin Gooding (the "Broker") have worked diligently to locate a buyer for the
15 California Properties through commercially reasonable and customary channels,
16 including, but not limited to, specifically targeting buyers reasonably believed to be
17 interested or specializing in the purchase of real properties like the California
18 Properties. The California Properties were thoroughly exposed to the market place
19 and were listed on Costar – Loopnet, the most widely used commercial real estate
20 website. The Broker also contacted 1,117 land buyers in its database. In addition,
21 contact was made with 636 senior housing investors. As a result of these efforts, 52
22 potential buyers requested and were provided due diligence packages and offers
23 from 11 buyers were entertained and negotiated with the prospective buyers. The
24 highest offer the Receiver was able to negotiate was from, Carefield SH
25 Management, LLC ("Buyer"), and the Receiver agreed to a sales price of \$8,400,000
26 ("Purchase Price"), on an "as-is, where-is" basis, subject to the PSA. Based upon
27 the present facts and circumstances, and absent an overbid, the Receiver believes the
28 Purchase Price is the best price attainable for the California Properties and

1 respectfully requests the Court grant this Motion and approve: (1) the sale of the
2 California Properties (either to Buyer or a successful overbidder) pursuant to the
3 terms of the PSA; (2) the proposed overbid procedures described herein; (3) the
4 release of the below described lien of MCC U.S., Inc. ("MCC") from the Lincoln
5 Red Rock Property with the attachment of such lien to the sale proceeds; (4) the
6 release of the below described lien of Neil Richardson ("Richardson") with the
7 attachment of such lien to the sale proceeds; and (5) payment of Broker's
8 commission.

9 **II. RELEVANT FACTS**

10 **A. The Receiver's Appointment And Authority To Sell The California**
11 **Properties**

12 On January 5, 2017, the Receiver was appointed temporary receiver for the
13 Receivership Entities,² with full powers of an equity receiver, including, but not
14 limited to, full power over all assets and property belonging to, being managed by or
15 in the possession or control of the Receivership Entities, and was immediately
16 authorized, empowered and directed to take certain actions as set forth in the
17 Temporary Restraining Order ("TRO"). (Dkt. No. 17.) On January 23, 2017, the
18 Court entered its Preliminary Injunction Against All Defendants ("PI Order"),
19 which, among other things, made the Receiver's appointment permanent. (Dkt.
20 No. 36.)

21 Pursuant to the terms of the PI Order, the Receiver was appointed as the
22 permanent receiver of the Receivership Entities, "with full powers of an equity
23 receiver, including, but not limited to, full power over all funds, assets,
24 collateral, . . . and other property belonging to, being managed by or in possession of
25 or control of the [Receivership Entities] . . ." *Id.* The PI Order authorized the
26 Receiver to take immediate possession of all real and personal property of the
27

28 ² Terms previously defined in the Motion will be used and have the same meaning
in this Memorandum of Points and Authorities.

1 Receivership Entities, wherever located, and to take such action as is necessary to
2 preserve the assets of the Receivership Entities. *Id.*

3 On July 7, 2017, the Receiver filed the Motion of Receiver for Order
4 Authorizing Receiver to Market Receivership Assets for Sale, Establish Sale
5 Procedures and Engage Brokers ("Sale Procedures Motion") (Dkt. No. 81). On
6 August 7, 2017 the Court granted the Sale Procedures Motion (Dkt. No. 102).

7 On December 5, 2017, the Court granted the Receiver's Motion to Sell the
8 Sarasota Property. Pursuant to this order, the Court agreed that the sale would be
9 free and clear of mortgage recorded against the Sarasota Property in favor of MCC,
10 with MCC's lien interest attaching to the sale proceeds.

11 **B. The California Properties**

12 1. The Lincoln Red Rock Property.

13 The Lincoln Red Rock Property was purchased by the Receivership Entities
14 for \$1.253 million on July 18, 2014 and transferred to SLALMC, LLC
15 ("SLALMC"). Seaman Decl. ¶ 3. PDC raised \$6.0 million from 12 EB-5 Investors
16 (not including administrative fees.) These funds were pooled or commingled with
17 funds from other PDC controlled entities prior to the purchase of the Lincoln Red
18 Rock Property.

19 On December 2, 2016, MPoint Land and Development ("MPoint") borrowed
20 \$5 million from MCC. The Receiver disputes the validity of this loan and related
21 liens. As security for this loan, MCC was given security interests in two properties
22 owned by the Receivership Entities, the Lincoln Red Rock Property and the
23 property located at 5710 Draw Lane, Sarasota, Florida ("Sarasota Property").
24 MPoint had no interest in these two properties. In connection with the foregoing
25 loan, Seller executed a Mortgage, Assignment of Leases and Rents, Security
26 Agreement and Fixture Filing dated as of December 2, 2016, and recorded on
27 December 6, 2016, as Instrument No. 2016-0106587-00 in favor of MCC ("MCC
28 Mortgage").

1 Since his appointment, the Receiver has worked to address various pressing
2 issues relating to the Lincoln Red Rock Property and evaluated the viability of
3 development and disposition options. As was previously reported, Mr. Francisco,
4 Mr. Ferrante, and Mr. Fox (sometimes collectively referred to as the "Principals")
5 represented to the Receiver at the outset of the receivership that the Lincoln project
6 was already under construction and that they were on the verge of obtaining a bond
7 financing to complete the project. In analyzing and evaluating the proposed bond
8 financing, the Receiver and counsel spent significant time to reviewing Lincoln
9 project records and accounting information and meeting and communicating with
10 the bond underwriter, Mr. Ferrante and Mr. Fox, the contractor, and others; all in an
11 effort to evaluate the bond financing to fund the project. The Receiver was not able
12 to verify or reconcile the financial information, construction budgets, cost estimates,
13 and bond financing materials. Moreover, there were a myriad of inconsistencies and
14 anomalies in the records including the so-called "sources and uses" for the proposed
15 bond financing. After repeated requests for information went unsatisfied or were
16 incomplete, the Receiver concluded that there were substantial problems with the
17 viability of the proposed bond financing.

18 The Receiver also attempted to find alternative sources of financing and
19 restructuring of the Lincoln project to allow for the infusion of new capital and to
20 explore options for successful completion of the Lincoln project. However, no
21 suitable investor or transaction has been identified. Seaman Decl., ¶¶ 3, 11-15.

22 As previously reported, given the current circumstances and the Receiver's
23 role as a federal equity receiver, the Receiver does not believe it would be cost
24 effective, appropriate, or feasible for him to attempt to raise new equity in the
25 market, and it is unlikely the amount of funds needed to complete construction of
26 the Lincoln Red Rock Property can be borrowed based on the lack of equity in the
27 property above the amount of debt. *Id.* Even if such funding could be secured, the
28 continued development of the Lincoln Red Rock Property represents a far greater

1 risk and a potentially lower return to the receivership estate than an immediate sale
2 of the property. In light of the foregoing, the Receiver believes the sale of the
3 Lincoln Red Rock Property, on an "as-is, where is" basis, will return the highest
4 value for the receivership estate. Seaman Decl. ¶ 15.

5 2. Carmichael Property.

6 The Carmichael Property is owned by SAL Carmichael, LLC. This project
7 involved the development of a 130 unit assisted living facility in Carmichael,
8 California. Seaman Decl. ¶ 3. PDC raised \$5 million from 10 EB 5 Investors in
9 connection with the SAL Carmichael offering (not including administrative fees.)
10 Only a portion of these proceeds went toward the purchase of the land. The USCIS
11 initially approved one application, then revoked the approval. The USCIS denied
12 eight applications, and issued a Notice of Intent to Deny one application.

13 Richardson, who is an insider and appears to have worked for FCM Capital
14 Partners and PDC, claims to be owed \$2 million from this Project. The Receiver
15 disputes that Richardson is owed any money. Seaman Decl. ¶¶ 16-19.

16 The Receiver's investigation to date indicates that in or around 2013, Neil
17 Richardson and Chris Miller of FCM Capital Partners ("FCM") were allegedly
18 working together to identify properties for development. Richardson claims he
19 loaned significant sums of his personal funds to Miller/FCM. However, to date, no
20 evidence of these personal loans has been provided to the Receiver by Richardson.
21 In 2013, FCM purchased a property located in Carmichael, California [the
22 Carmichael Property]. Id. The working relationship between Richardson and Miller
23 apparently soured and the two sued each other (and related entities) in or around
24 2014. Richardson recorded a *lis pendens* against the Carmichael Property.

25 In 2014, Richardson began working for PDC. In July 2015, SAL Carmichael
26 bought the Carmichael Property from FCM for \$1.9 million. Id. At the same time,
27 PDC, SAL Carmichael, and Richardson signed a Settlement Agreement by which
28 PDC and SAL Carmichael agreed to pay Richardson \$2 million. Id. A promissory

1 note in the amount of \$2 million in favor of Richardson was issued, but not by PDC
2 or SAL Carmichael. Instead, an entirely separate entity, SAL Westgate signed a
3 deed of trust securing the obligation to Richardson which was recorded against the
4 Westgate Property. Id. SAL Westgate was not involved in the purchase of the
5 Carmichael Property or the Richardson settlement in any manner and received
6 nothing of value from the transaction. Id.

7 In 2016, Richardson had a falling out with PDC. In May 2016, Richardson
8 sued Robert Ferrante, Defendant Emilio Francisco, PDC, and FDC Capital Group,
9 LLC ("FDC") in Orange County Superior Court. Later the same month, PDC,
10 Francisco and Ferrante filed two separate lawsuits against Richardson, his family
11 members, and related entities in Orange County Superior Court. Among other
12 things, Richardson claimed PDC misled him into performing services, but never
13 paid him the agreed upon amounts or commissions for his work. PDC claimed
14 Richardson misrepresented his expertise in real estate development, failed to
15 provide promised services, and then created his own company to compete with
16 PDC, including stealing clients, trade secrets, and business opportunities. The
17 complaints allege that Richardson participated in obtaining a boat and Ferrari
18 automobile, although the two sides dispute who had control of these luxury assets
19 and for whose benefit they were obtained.

20 After the filing of this action by the Securities and Exchange Commission and
21 the appointment of the Receiver by the Court, the Orange County Superior Court
22 held a hearing and determined that all claims against PDC and FDC were enjoined
23 and stayed pursuant to the Court's Preliminary Injunction Against All Defendants.
24 Id. at ¶ 20.

25 On December 8, 2016, the Principals of PDC caused PDC to borrow
26 \$650,000, secured by a deed of trust on the Carmichael Property. These funds were
27 diverted elsewhere. The Receiver is servicing the secured debt. The Receiver has
28 worked to preserve entitlements and maintain the value of the Carmichael Property,

1 however, for the reasons discussed above, there is no realistic prospect of the
2 Receiver to obtain financing to develop the project.

3 3. The Sacramento Property.

4 The Sacramento Property is owned by SAL Westgate, LLC. The property
5 was purchased on April 14, 2014 , for \$2.022 million. Seaman Decl. ¶ 3. It consists
6 of a 6.72 acre site which was to be developed as a 94 unit assisted living and 80 unit
7 memory care facility in West Sacramento. PDC raised \$5 million from 10 EB-5
8 Investors for SAL Westgate LLC (not including administrative fees), however, not
9 all of the EB-5 Investor money went to the project. Of the 10 EB-5 applications
10 submitted to the USCIS, six have been denied and four Notices of Intent to Deny
11 have been issued.

12 As noted above, there is a recorded deed of trust in favor of Richardson for
13 \$2,000,000 encumbering the Sacramento Property. Some design and architectural
14 work has been completed and the Receiver obtained an extension in the
15 entitlements. For the reasons discussed above, there is no reasonable prospect for
16 the Receiver to develop the project.

17 4. The Citrus Heights Property.

18 The Citrus Heights Property is owned by SAL Citrus Heights, LLC. The
19 property was purchased on July 3, 2014 for \$1.288 million. Seaman Decl. ¶ 3. It
20 consists of a 4.55 acre site to be developed as a 109 unit assisted living and memory
21 care facility in Citrus Heights, California.

22 PDC raised \$5,500,000 from 11 EB-5 Investors for the SAL Citrus Heights
23 project (not including administrative fees). The USCIS has issued a Notice of Intent
24 to Deny as to all 11 EB-5 Investors.

25 PDC records show that certain of the funds raised from the EB-5 Investors
26 were diverted and that only \$2.325 million went to the project. The Principals also
27 arranged for an \$850,000 loan secured by the Citrus Heights Property on
28 December 8, 2016. Most of these loan proceeds were immediately diverted from

1 the Citrus Heights project, notwithstanding that the project architects are owed over
2 \$200,000. The Citrus Heights project is fully entitled and construction could
3 commence if funding can be obtained. For the reasons discussed above, there is no
4 reasonable prospect for the Receiver to develop the project.

5 **C. EB-5 Issues**

6 The Receiver understands that a primary goal of the EB-5 Investors is to
7 obtain permanent United States ("U.S.") residency through participation in the EB-5
8 Program administered by the USCIS, and that a sale of the California Properties will
9 likely be deemed a "material change" and a failure to sustain the planned investment
10 that will jeopardize the EB-5 Investors' eligibility for U.S. permanent residency.
11 Seaman Decl. at ¶¶ 9, 11, 13. With regard to each of the California Properties,
12 most, if not all, the EB-5 Investors' I-526 petitions have been denied or revoked by
13 USCIS. The prospects for approval of petitions by USCIS were doomed by the
14 prior actions of the "Principals", including but not limited to, the commingling of
15 funds from different projects and diverting millions of dollars away from each of the
16 California projects in contravention of their business plans and violations of the
17 rules and regulations governing EB-5 immigration. *Id.* As such, there is no realistic
18 prospect of overcoming (or undoing) the pre-receivership actions in contravention of
19 the USCIS guidelines or otherwise reaching the investors' immigration goals. *Id.* at
20 ¶ 13. Therefore, the Receiver is pursuing the most financially viable option rather
21 than pursuing a futile effort to reverse USCIS decisions by proposing new
22 developments. *Id.*

23 **D. The Proposed Sale**

24 The Receiver has considered four disposition options with regard to the
25 California Properties: (1) proceed with the developments as originally conceived
26 and described in the offering memorandum, which offering memorandum was used
27 to raise funds from investors seeking qualification as EB-5 investor applicants under
28 the United States Customs and Immigration Service ("USCIS"), Immigrant Investor

1 Program ("EB-5 Investors"); (2) sell a controlling interest in each of the California
2 Properties to a new financial partner with or without regard to the impact on the
3 applications or petitions of EB-5 Investors that are pending before USCIS; (3) sell
4 each of the California Properties separately in its "as-is" condition, including all
5 present entitlements and project documents; and (4) sell the California Properties as
6 a bulk sale to one buyer, subject to overbids. Seaman Decl. ¶ 9. The Receiver also
7 considered his role as a federal equity receiver, the nature of these proceedings, the
8 propriety of an equity receiver engaging in a lengthy and complex development of
9 real estate projects, and the fact that development of these projects would also
10 involve the Court's oversight of the financing, construction and start-up of an
11 operating business. Id. at ¶ 10.

12 The Receiver has explored the prospects for obtaining financing or a
13 development partner as to each of the California Properties, without success. Based
14 upon his investigation and analysis, the Receiver believes the sale of the California
15 Properties as a bulk sale is in the best interest of the receivership. Id. at ¶¶ 15, 20.

16 The Buyer has presented an offer exceeding the amount of the combined
17 separate offers received for the California Properties. The Receiver's real estate
18 broker, Hamlin Gooding, commenced marketing the California Properties in the
19 spring of 2017. A virtual data room was established for each property to enable
20 prospective buyers to conduct due diligence in an effective and cost efficient
21 manner. The Broker has worked with numerous parties to explore possible
22 development, joint ventures, and purchases of the California Properties. To date, the
23 Broker has received 52 formal inquires and generated offers from 11 parties.

24 The Receiver and the Broker have negotiated with parties interested in
25 purchasing individual assets. The Receiver has also considered the auction of each
26 of the 4 properties based upon offers that have been received. Based upon the
27 Receiver's analysis, the offer by the Buyer to purchase these 4 properties in bulk for
28 \$8.4 million, exceeds the combined best offers received for the 4 separate

1 properties. As such, the Receiver believes he has established a mechanism to ensure
2 the highest recovery possible from the sale of the California Properties.

3 **E. Purchase and Sale Agreement**

4 A copy of the PSA for the sale to Buyer is attached as Exhibit B to the
5 Seaman Declaration. Its terms are summarized as follows:³

6 **Court Approval.** All aspects of the PSA and the sale are subject to Court
7 approval.

8 **Purchase Price.** \$8,400,000. The estimated net proceeds to the receivership
9 estate after deducting payoffs of the undisputed loans on the California Properties,
10 estimated escrow, tax, proration and other costs, will be approximately \$6,288,000
11 (all subject to the MCC lien and the Richardson lien as provided in the proposed
12 order).⁴

13 **Closing Date.** Escrow to close within 21 days after Court approval of the
14 sale.

15 **Deposit.** Buyer has deposited \$400,000 ("Deposit") into escrow. This
16 reflects a non-refundable Deposit to be applied to the Purchase Price, subject to the
17 overbid procedures and other terms set forth in the PSA.

18 **Sale Free and Clear of Richardson and MCC Liens.** The California
19 Properties will be sold free and clear of the Richardson and MCC liens, with
20 Richardson and MCC's liens attaching to the sale proceeds. The Receiver will hold
21 the sale proceeds in a separate bank account subject to Richardson and MCC's
22 disputed lien interests pending further order of the Court.

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26 ³ The terms of the PSA are summarized herein for convenience only. In the event
27 of any conflict between the PSA and the summary provided herein or any
28 ⁴ ambiguity as to the language used herein, the PSA shall govern and control.
The combined face amounts of the Richardson and MCC liens is \$5,800,000.
As such, there are sufficient funds available to pay both lien claims should the
Court ultimately find their liens to be valid, which the Receiver disputes.

1 **As Is/Where Is Purchase.** Buyer agrees to purchase the California
2 Properties on an "as-is, where is" basis, with no representations or warranties made
3 by the Receiver, his professionals, or the Receivership Entities.

4 **Buyer's Representations and Warranties.** Buyer represents and warrants
5 that it is qualified and capable of closing the purchase and sale transaction.

6 **Overbid Procedures.** The sale is subject to the proposed overbid procedures
7 detailed in the PSA and Section III below. Pursuant to these procedures, if Buyer is
8 not the highest qualified bidder at the auction, its Deposit will be returned.

9 **Notice.** The Receiver has provided notice to investors, creditors and others in
10 accordance with the Sale Procedures Order and 28 U.S.C. § 2002.

11 **III. PROPOSED OVERBID PROCEDURES**

12 The Receiver requests the following overbid procedures be approved:

13 (a) **Qualified Bidders.** All those appearing to bid at the auction must be
14 Qualified Bidders as described herein. A Qualified Bidder is a prospective
15 purchaser who: (i) provides a fully executed purchase and sale agreement for the
16 Property in a form substantially similar to the PSA; (ii) provides evidence in a form
17 reasonably acceptable to the Receiver that the qualified bidder has the present ability
18 to pay at least the minimum overbid amount; and (iii) provides an earnest money
19 deposit by wire transfer or cashier's check in the amount of 10% of the Purchase
20 Price payable to the Receiver, which amount shall be non-refundable to the
21 Qualified Bidder with the highest and best bid at the auction if for any reason (a) the
22 highest and best bidder fails to timely close the sale or (b) the highest and best
23 bidder fails to provide the balance of the purchase price to the Receiver [one day]
24 prior to the Closing Date in accordance with the PSA. Buyer is a Qualified Bidder.
25 Each Qualified Bidder must provide the above-described executed PSA and earnest
26 money deposit to the Receiver no later than 10 calendar days before the hearing date
27 on the instant motion.

28

1 (b) **The Auction Process.** Qualified Bidders shall appear at the
2 hearing/auction in person, through a duly authorized representative. At that hearing,
3 the Court, or at the Court's request, the Receiver, will conduct an auction of the
4 California Properties among any Qualified Bidders. The highest and best bidder's
5 deposit shall be applied to the purchase price, if the sale is approved by the Court.
6 The initial overbid shall be no less than \$400,000 over the Purchase Price, or
7 \$8,800,000 ("Initial Overbid"). Subsequent overbids shall be in increments of at
8 least \$50,000. If no Qualified Bidder submits a bid in the amount of the Initial
9 Overbid or higher, the PSA will be submitted to the Court for approval in its current
10 form. If the sale is concluded in which the buyer is a third party Qualified Bidder,
11 then Seller shall pay Buyer a flat fee equal to \$175,000 as a "Break-up Fee." The
12 Court may reject any and all bids following conclusion of the auction.

13 (c) **Due Diligence.** All prospective bidders shall have had the opportunity to
14 inspect the California Properties and any documentation relating thereto prior to the
15 auction.

16 (d) **No Contingencies.** The sale to any Qualified Bidder shall not be subject
17 to any contingencies, including, without limitation, for financing, due diligence, or
18 inspection.

19 (e) **As Is/Where Is Purchase.** The sale to any Qualified Bidder shall be on
20 an "as-is, where is" basis as described in the PSA.

21 These procedures were formulated by the Receiver with the goal of obtaining
22 the highest and best price for the California Properties, thus ensuring a maximum
23 return to the receivership estate.

24 **IV. BROKER'S COMMISSION**

25 By separate agreement, the Receiver has agreed, subject to Court approval, to
26 pay a total commission of 6% of the amount of the purchase price. Pursuant to that
27 agreement, Broker shall be solely responsible for and will compensate cooperating
28 and referring brokers.

1 Since the PSA with Buyer was signed, the Receiver and Broker have sought
2 out qualified overbidders for the California Properties and promoted active
3 overbidding at the auction. Based on the Receiver's extensive experience in real
4 estate transactions, and in light of the challenges presented, the amount of the
5 commission to Broker represents commercially reasonable compensation for the
6 work required in order to secure prospective overbidders.

7 **V. NOTICE OF THE PROPOSED SALE**

8 Prior to filing this Motion, the Receiver has transmitted the PSA to counsel
9 for the Securities and Exchange Commission, Mr. Francisco's counsel, and several
10 attorneys who appeared in the action, representing various investors. The PSA was
11 also posted on the Receiver's website.

12 The Receiver's counsel is serving this Motion by mail on all parties to the
13 action who do not already receive electronic service, and by electronic means on all
14 known parties with potential interest in purchasing the California Properties. The
15 Receiver is also posting a copy of this Motion on the receivership website
16 accompanied by the following notice of the proposed sale and the opportunity to
17 overbid at the hearing:

18 **NOTICE OF SALE AND REQUEST FOR OVERBIDS**

19 In the action pending in U.S. District Court for the Central District of
20 California, Case No. SACV 16-02257-CJC (DFMx), Securities and Exchange
21 Commission v. Emilio Francisco, PDC Capital Group, LLC, et al., notice is
22 hereby given that the court-appointed receiver for SLALMC, LLC, SAL
23 Carmichael, LLC, SAL Westgate, LLC and SAL Citrus Heights, LLC will
24 seek confirmation of the sale of land located at 850 Red Rock Rd / 950 Red
25 Rock Rd, Lincoln, CA, APN: 329-010-062; 7411 Fair Oaks Blvd,
26 Carmichael, CA, APN: 258-0310-035; 2305 Jefferson Blvd, West
27 Sacramento, CA, APN: 046-010-050-000; and 8220 Sunrise Blvd, Citrus
28 Heights, CA, APN: 216-0090-012 for \$8,400,000, subject to an overbid

1 auction. The minimum or first overbid price at the auction will be
2 \$8,800,000, with incremental bids of \$50,000. The hearing to confirm the
3 sale and the auction will take place on February 26, 2018, at 1:30 p.m. Pacific
4 time in the courtroom of the Honorable Cormac J. Carney located at 411 W.
5 Fourth St., Santa Ana, CA, 92701, Courtroom 9B, 9th Floor (or at such time
6 and place as the Court directs). To qualify as bidder at the auction,
7 prospective buyers must: 1) execute a non-contingent purchase and sale
8 agreement, a copy of which may be obtained from the Receiver's broker
9 Howard Hamlin at (562) 537-5840 or by email at
10 Howard@hamlingooding.com; 2) make a non-refundable earnest money
11 deposit of \$840,000, which is applicable to the sale price and refundable
12 immediately to unsuccessful overbidders; and 3) provide proof of liquid funds
13 sufficient to conclude the sale as soon as practicable following Court
14 approval. All bidders must be qualified by 4:00 p.m. Pacific time on February
15 16, 2018, by submitting the foregoing to Thomas Seaman Company at 3 Park
16 Plaza, Suite 550, Irvine, California, 92614.

17 **VI. ARGUMENT**

18 "The power of a district court to impose a receivership or grant other forms of
19 ancillary relief does not in the first instance depend on a statutory grant of power
20 from the securities laws. Rather, the authority derives from the inherent power of a
21 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
22 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
23 and efficient administration of the estate by the district court for the benefit of
24 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
25 of a receiver is authorized by the broad equitable powers of the court, any
26 distribution of assets must also be done equitably and fairly. *See SEC v. Elliott*,
27 953 F.2d 1560, 1569 (11th Cir. 1992).

28

1 District courts have the broad power of a court of equity to determine the
2 appropriate action in the administration and supervision of an equity receivership.
3 *See SEC v. Capital Consultants, LLC*, 397 F.3d 733, 738 (9th Cir. 2005). The Ninth
4 Circuit explained:

5 A district court's power to supervise an equity receivership and
6 to determine the appropriate action to be taken in the
7 administration of the receivership is extremely broad. The
8 district court has broad powers and wide discretion to determine
9 the appropriate relief in an equity receivership. The basis for
10 this broad deference to the district court's supervisory role in
11 equity receiverships arises out of the fact that most receiverships
12 involve multiple parties and complex transactions. A district
13 court's decision concerning the supervision of an equitable
14 receivership is reviewed for abuse of discretion.

15 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
16 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
17 and 'we generally uphold reasonable procedures instituted by the district court that
18 serve th[e] purpose' of orderly and efficient administration of the receivership for
19 the benefit of creditors.").

20 Accordingly, this Court has broad equitable powers and discretion in
21 formulating procedures, schedules and guidelines for administration of the
22 receivership estate and sale of receivership assets.

23 **A. The Sale Subject To Overbid Should Be Approved**

24 It is generally conceded that a court of equity having custody and control of
25 property has power to order a sale of the same in its discretion. *See, e.g., Elliott*,
26 953 F.2d at 1566 (11th Cir. 1992) (finding that the District Court has broad powers
27 and wide discretion to determine relief in an equity receivership). "The power of
28 sale necessarily follows the power to take possession and control of and to preserve
property." *See also SEC v. Am. Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (citing
2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
(citing *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). "When a court of equity

1 orders property in its custody to be sold, the court itself as vendor confirms the title
2 in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of Receivers
3 § 487).

4 "A court of equity, under proper circumstances, has the power to order a
5 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
6 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing
7 Clark, Treatise on Law & Practice of Receivers § 500. To that end, a federal court
8 is not limited or deprived of any of its equity powers by state statute. *Beet Growers*
9 *Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925) (state statute
10 allowing time to redeem property after a foreclosure sale not applicable in a
11 receivership sale).

12 Generally, when a court-appointed receiver is involved, the receiver, as agent
13 for the court, should conduct the sale of the receivership property. *Blakely Airport*
14 *Joint Venture II v. Fed. Sav. and Loan Ins. Corp.*, 678 F.Supp. 154, 156 (N.D. Tex.
15 1988). A receiver's sale conveys "good" equitable title enforced by an injunction
16 against the owner and against parties to the suit. *See* 2 Ralph Ewing Clark, Treatise
17 on Law and Practice of Receivers §§ 342, 344, 482(a), 487, 489, 491. "In
18 authorizing the sale of property by receivers, courts of equity are vested with broad
19 discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir.
20 1925).

21 1. Sale Free and Clear of the MCC Mortgage.

22 The PSA provides that the California Properties shall be sold free and clear of
23 liens, including the MCC Mortgage. The facts of this case and the law support the
24 sale of the California Properties free and clear of the MCC Mortgage, with MCC's
25 lien interest attaching to the proceeds of the sale of the California Properties.

26 The MCC Mortgage is disputed by the SEC and the Receiver. MCC's role as
27 a joint venturer with MPoint clearly makes it an insider and calls into question the
28 entire MCC MPoint loan transaction. *See* Receiver's Request for Judicial Notice

1 filed concurrently herewith, Exh. 2. At a minimum, the MCC Mortgage on the
2 California Properties should be set aside as a fraudulent conveyance. The borrower,
3 MPoint, has no interest whatsoever in the California Properties. *Id.* at Exhs. 1-4.

4 The MCC Mortgage is also subject to the defenses described in detail in the
5 Receiver's Opposition to MCC U.S., Inc.'s Motion for Orders and Relief From Stay
6 [Dkt. No. 88, pp. 13-16] and the Declaration of Thomas A. Seaman in Support of
7 Receiver's Opposition to MCC's Motion for Orders and Relief From Stay [Dkt.
8 No. 89, ¶¶ 12-17, pp. 4-6.] *Id.* Among other things, as a joint venturer, MCC's so
9 called loan should be treated as an equity investment and not as a loan. *Id.* Finally,
10 the Receiver notes that the MCC Mortgage was, at best, a mere guaranty instrument,
11 and therefore MCC must first exhaust all remedies against MPoint before pursuing
12 its claim against the California Properties. *Id.* ¶ 2, pp. 13-16.

13 Setting aside these disputes, MCC is in no way prejudiced by the sale of the
14 California Properties and release of the MCC Mortgage because MCC's lien will
15 attach to the sale proceeds subject to a further order of this Court, with all parties
16 reserving their rights and defenses. As such, MCC's real property collateral has
17 merely been replaced with equivalent or better personal property collateral. MCC is
18 not impacted by the sale any more than if the Receiver did not sell the California
19 Properties.

20 2. Sale Free and Clear of Richardson Lien.

21 The alleged debt owed to Richardson and the deed of trust on the Sacramento
22 Property are in serious dispute. The Receiver believes the deed of trust is void. In
23 addition to the claims asserted in the state court litigation by Richardson and related
24 entities, on the one hand, and PDC, Mr. Francisco, and Mr. Ferrante, on the other
25 hand, there is the fact that the Sacramento Property was saddled with a \$2 million
26 deed of trust on its property, but had no dealings with Richardson, Miller, or FCM
27 and received nothing of value from the settlement with Richardson or the purchase
28 of the Carmichael Property. Indeed, the entire transaction raises suspicion in that

1 Richardson claimed to be owed money by Miller/FCM, but PDC/SAL Carmichael
2 agreed to pay Richardson \$2 million (in addition to purchasing the Carmichael
3 Property from FCM for \$1.9 million). This suggests adequate consideration may
4 not have been given by FCM in connection with the settlement/purchase transaction.
5 Accordingly, the Receiver believes there are strong claims against Richardson to
6 avoid the promissory note and deed of trust given to him by SAL Westgate as
7 fraudulent transfers made while SAL Westgate was under the control of Francisco
8 and Ferrante.⁵

9 For the purposes of this Motion, the Court need only determine that there is a
10 bona fide dispute regarding the deed of trust on the Sacramento Property in favor of
11 Richardson, which there clearly is. Indeed, PDC and Richardson were involved in
12 litigation against one another prior to the receivership and the validity of the
13 Richardson deed of trust on the Sacramento property is in serious doubt.
14 Accordingly, the Richardson deed of trust should be transferred to the sale proceeds
15 from the Sacramento property with the same validity and priority as it had with
16 respect to the Sacramento property. The sale process ensures that the highest and
17 best value is obtained for the Sacramento property, so Richardson is not prejudiced
18 in any way by the transfer of the lien to the sale proceeds.

19 Within the next week, the Receiver will file a motion for authority to pursue
20 claims against Richardson and his related entities to avoid the deed of trust and
21 promissory note as fraudulent transfers and to subordinate any claims held by
22 Richardson to the claims of the EB-5 investors. The Receiver will request authority
23 to file a related action in this Court, which will conserve receivership estate
24 resources and judicial resources due to the Court's familiarity with the case.
25 Richardson has filed a motion seeking leave to sue the Receiver in state court, which
26

27

28 ⁵ There may also be fraudulent transfer claims against FCM to the extent it is
determined that PDC, SAL Carmichael, or SAL Westgate owe money to
Richardson.

1 the Receiver opposes. There is no basis to have the state court adjudicate claims
2 asserted against the receivership estate, which is a core aspect of this receivership.
3 Instead, Richardson can assert his claims against the receivership estate as
4 counterclaims in the action brought by the Receiver in this Court.

5 3. The Proposed Sale Is In The Best Interest of the Receivership Estate.

6 Here, the proposed sale to the Buyer for \$8,400,000, subject to the proposed
7 overbid procedures, should be approved. Having addressed treatment of the
8 MCC Mortgage and Richardson lien, the only remaining issue concerns whether the
9 sale to Buyer or an overbidder is appropriate under the facts and circumstances of
10 this receivership. The proposed overbid procedures are designed to (a) induce the
11 Buyer to remain in place as the initial, or "stalking horse" bidder; (b) allow qualified
12 bidders to overbid; and (c) generate the highest and best price for the California
13 Properties. The proposed Purchase Price is sufficient to make the net proceeds to
14 the estate approximately \$6,283,054, subject to adjudication of the MCC and
15 Richardson disputed liens.⁶ Seaman Decl. ¶ 14. The subsequent bid increments of
16 \$400,000 and then \$50,000 for each subsequent overbid is sufficient to ensure an
17 orderly and efficient auction at the hearing. The Receiver submits these amounts are
18 reasonable and fair to all interested parties.

19 The Receiver believes, as discussed herein, given the issues impacting the
20 California Properties and the property value, that the Purchase Price and terms of the
21 proposed sale to Buyer, negotiated at arm's length and secured through the
22 commercially reasonable manner, reflects the fair market value of the California
23 Properties. Seaman Decl. ¶¶ 14-16. While the Receiver believes the sale price of
24 \$8,400,000 exceeds the estimated fair market value of the California Properties sold
25 separately, this assumption will be tested through an auction process after notice and
26

27 _____
28 ⁶ If the Receiver was required by the Court to pay the disputed claims of
Richardson and MCC, the sale of the property would generate \$483,054 in net
proceeds for the receivership estate. Id. at ¶¶ 14-15.

1 an opportunity for third parties to consider the California Properties. Accordingly,
2 the Receiver believes, in his reasonable business judgment, that the proposed sale to
3 Buyer, subject to overbid, is fair and reasonable, in the best interests of the
4 receivership estate, and will generate the highest and best value for the California
5 Properties. (Seaman Decl., ¶ 16.)

6 Again, to ensure the highest and best price is obtained from sale of the
7 California Properties, the proposed sale to Buyer is subject to overbid, by potential
8 purchasers that qualify themselves as Qualified Bidders. The Receiver, with the
9 assistance of a Broker, will market the California Properties with the goal of
10 promoting active overbidding in accordance with the proposed overbid procedures
11 described herein.

12 **B. Additional Relief**

13 The Receiver also requests authority to pay a total commission reflecting 6%
14 of the final sale price paid to a successful overbidder. As explained above, Broker's
15 commission is fair and reasonable given the facts and circumstances of this case and
16 the California Properties. (Seaman Decl., ¶ 21.)

17 **VII. CONCLUSION**

18 For the reasons set forth herein, the Receiver respectfully requests entry of an
19 order approving and authorizing: (1) sale of the California Properties to Buyer or the
20 highest and best bidder free and clear of the MCC Mortgage and Richardson lien;
21 (2) the proposed overbid procedures; and, if necessary, (3) payment of the proposed
22 commission to Broker from the sale proceeds.

23
24 Dated: January 16, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP

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By: /s/ David R. Zaro

DAVID R. ZARO
Attorneys for Receiver
THOMAS A. SEAMAN

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

v.

EMILIO FRANCISCO; PDC CAPITAL
GROUP, LLC; CAFFE PRIMO
INTERNATIONAL, INC.; SAL
ASSISTED LIVING, LP; SAL
CARMICHAEL, LP; SAL CITRUS
HEIGHTS, LP; SAL KERN CANYON,
LP; SAL PHOENIX, LP; SAL
WESTGATE, LP; SUMMERPLACE AT
SARASOTA, LP; SUMMERPLACE AT
CLEARWATER, LP; SUMMERPLACE
AT CORRELL PALMS, LP; TRC
TUCSON, LP; CLEAR CURRENTS
WEST, LP; CAFFE PRIMO
MANAGEMENT, LP; CAFFE PRIMO
MANAGEMENT 102, LP; et al.,

Defendants.

Case No. 8:16-cv-02257-CJC-DFM

**[PROPOSED] ORDER APPROVING:
(1) SALE OF CITRUS HEIGHTS
PROPERTY, SACRAMENTO
PROPERTY, LINCOLN RED ROCK
PROPERTY, AND CARMICHAEL
PROPERTY; (2) OVERBID
PROCEDURES**

Date: February 26, 2018
Time: 1:30 p.m.
Ctmm: 9B, 9th Floor
Judge: Hon. Cormac J. Carney

The Court has reviewed and considered the motion of Thomas A. Seaman ("Receiver") for an order approving: (1) the proposed sale of the real properties and improvements commonly known as the Sacramento Property, the Citrus Heights Property, the Lincoln Red Rock Property, and the Carmichael Property, as described in the motion and the Receiver's supporting declaration (collectively, the "Properties"); (2) the proposed overbid procedures to be used in connection with the

1 sale of the Properties; and (3) the payment of the broker's commission of
2 \$_____, reflecting 6% of the purchase price (the "Motion"). In considering the
3 Motion, the Court has also reviewed the Receiver's concurrently submitted
4 declaration, as well as the Purchase and Sale Agreement and Joint Escrow
5 Instructions dated October 25, 2017, as amended by the First Amendment to
6 Purchase and Sale Agreement and Joint Escrow Instructions dated December 15,
7 2017 ("PSA") , by and between the Receiver and Carefield SH Management, LLC, a
8 Delaware limited liability company ("Buyer"). The Receiver is the court-appointed
9 federal equity receiver for SAL Westgate, LLC, a Delaware limited liability
10 company, SAL Citrus Heights, LLC, a Delaware limited liability company,
11 SLALMC, LLC, a California limited liability company, d/b/a Summerplace at
12 Lincoln, LLC, and SAL Carmichael, LLC, a Delaware limited liability company,
13 which are the 100% owners of the Properties.

14 The Court finds that the Receiver has the authority to sell the Properties and
15 provided adequate notice to all interested parties pursuant to 28 U.S.C. § 2002,
16 including, but not limited to, all those persons with an interest in the Properties.

17 Having considered the Motion, the Receiver's declaration, the PSA, the
18 oppositions to the Motion, the arguments of counsel at the hearing, and good cause
19 appearing therefor, the Court orders as follows:

- 20 1. The Receiver's Motion is granted, in its entirety.
- 21 2. The Receiver is authorized to sell the Properties.
- 22 3. The Receiver's proposed sale of the Properties, including the PSA, the
23 Receiver's proposed overbid procedures, and the payment of all commissions due to
24 the Receiver's broker as described in the Motion, are approved and authorized.
- 25 4. The Receiver is authorized to sell the Properties to Buyer for the sum of
26 \$8,400,000 [or the overbid amount], pursuant to the terms of the PSA.
- 27 5. In accordance with the terms of the PSA and without limiting its terms,
28 Buyer shall purchase the Properties on an "as-is, where-is" basis, without any

1 representations or warranties whatsoever by the Receiver, his agents and/or
2 attorneys including, without limitation, any representations or warranties as to the
3 condition of the Properties, except as expressly set forth in the PSA. Buyer shall be
4 deemed to be solely responsible for its own due diligence, including, but not limited
5 to, inspection of the condition of and title to the Properties, and shall be deemed not
6 to have relied upon any representation or warranty of the Receiver, except as
7 expressly set forth in the PSA.

8 6. In the performance of his obligations pursuant to this Order, the
9 Receiver's liability in connection with the PSA and the sale of the Properties shall be
10 limited to the assets of the receivership estate established in the above-entitled
11 action. Neither the Receiver nor his agents and/or attorneys shall have any personal
12 liability for claims arising out of or relating to the performance of any actions
13 necessary to complete the sale of the Properties as provided herein.

14 7. Provided he obtains the written consent of Buyer, the Receiver is
15 authorized to amend or otherwise modify the terms of the Buyer PSA and any other
16 agreements or instruments reasonably necessary to effectuate the sale of the
17 Properties as provided herein, in the event the Receiver determines, in his sole
18 discretion and reasonable business judgment, that such amendment or modification
19 is reasonable and necessary, will benefit the receivership estate, avoid the
20 imposition of liability upon the receivership estate, or is required pursuant to the
21 terms of the PSA or any other amendment or modification thereto, provided that
22 such amendment or modification does not change the material terms of the contract,
23 including the identity of Buyer (unless Buyer elects to permit its designee to
24 purchase) or the purchase price paid for the Properties.

25 8. The Receiver is hereby authorized to take all actions and execute all
26 documents necessary to consummate and otherwise effectuate the sale and transfer
27 of the Properties to Buyer, including, but not limited to, the PSA itself, any other
28 documents required to be executed pursuant to the PSA, and any related

1 documentation, escrow instructions, or conveyance documents consistent with
2 selling and conveying title to the Properties to Buyer in accordance with the PSA.

3 9. The Receiver is hereby authorized to execute and acknowledge a
4 receiver's deed conveying title to the Properties to Buyer ("Receiver's Deed"),
5 substantially in the form of Exhibit B to the PSA, to effectuate the conveyance and
6 cause the Receiver's Deed to be recorded on the date on which close of escrow
7 occurs pursuant to the terms of the PSA, or as otherwise approved by the Receiver
8 and Buyer.

9 10. The Receiver is authorized to pay a real estate broker's commission of
10 \$_____.

11 11. The Receiver is hereby authorized to pay from the proceeds of the sale
12 of the Properties, at the Close of Escrow: (a) all unpaid property taxes per the pro-
13 rations, if any, in the PSA; (b) all other closing costs and commissions that are the
14 responsibility of the Seller as set forth in the PSA and/or related final closing
15 statement; (c) any out-of-pocket expenses the Receiver incurs in connection with the
16 sale of the Properties; (d) the undisputed loans or portions thereof, encumbering the
17 Citrus Heights Property and the Carmichael Property; and (d) any other undisputed
18 claims and expenses set forth in or associated with the PSA that are the
19 responsibility of the Receiver as Seller thereunder (excluding the claims of
20 Richardson and MCC.) Based upon the sales price of \$8,400,000, the Receiver
21 estimates that the net sale proceeds at the closing will be \$_____.

22 12. This Court retains jurisdiction over any dispute involving the Receiver
23 in connection with the sale of the Properties.

24 13. A certified copy of this Sale Order may be recorded concurrently with
25 the Receiver's Deed or at any time before the Close of Escrow, provided, however,
26 that failure to record this Sale Order shall not affect the enforceability of this Sale
27 Order, the enforceability and viability of the PSA, or the validity of the Receiver's
28 Deed.

1 14. The Deed of Trust, Assignment of Leases and Rents, Security
2 Agreement and Fixture Filing dated as of December 2, 2016, in favor of
3 MCC US, Inc. ("MCC Deed of Trust"), recorded in the Official Records of Placer
4 County as Document No. 2016-0106587-00, and all associated liens, lis pendens,
5 and encumbrances, if any, shall be released from the Lincoln Property and attach
6 solely to the sale proceeds from the sale of the Properties in the same validity and
7 priority that they had with respect to the Lincoln Property.

8 15 The Deed of Trust with Assignment of Rents in favor of Richardson
9 Family Trust dated as of July 17, 2015, recorded in the Official Records of Yolo
10 County as Document No. 2015-0020123-00; ("Richardson Deed of Trust"), and all
11 associated liens, lis pendens, and encumbrances, if any, shall be released from the
12 Sacramento Property and attach solely to the sale proceeds from the sale of the
13 Properties in the same validity and priority that they had with respect to the
14 Sacramento Property

15 16 The Receiver will establish a separate bank account and hold and
16 account for approximately \$_____, reflecting the estimated net sale proceeds
17 from the sale of the Properties, pending further order of this Court.

18 17. The Receiver is authorized to execute such documents as may be
19 required to effect this Sale Order and the PSA and, in particular, such documents as
20 may be required to remove the MCC Deed of Trust from the Lincoln Property and
21 the Richardson Deed of Trust from the Sacramento Property.

22
23 Dated: _____

Hon. Cormac J. Carney
Judge, United States District Court

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