

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (the "Agreement") is made as of this 12<sup>th</sup> day of March 2018 by and between Thomas A. Seaman in his capacity as the court-appointed federal equity receiver (the "Receiver") and MCC US, Inc. ("MCC"). The Receiver and MCC may be referred to hereinafter collectively as the "Parties" or individually as a "Party".

**RECITALS**

A. In accordance with that certain order entered by the Court of the United States District Court Central District of California, Southern Division (the "District Court") in the action styled *Securities Exchange Commission v. Emilio Francisco et al.*, case number SAVC 16-022570-CJC, (the "SEC Action"), the Receiver was appointed the permanent receiver for PDC Capital Group and its subsidiaries and affiliates including, but not limited to, SAL Assisted Living LP ("SAL"), a Delaware limited partnership, SLALMC, LLC ("SLALMC"), a limited liability corporation, PDC Capital Group, LLC ("PDC") and Summerplace at Sarasota LLC ("Summerplace") (collectively, the "Receivership Entities") and enjoys exclusive authority and control over the Receivership Entities and their estate (the "Receivership Estate").

B. Among the assets placed into the Receiver's control are the real and personal property associated with and commonly known as 850 Red Rock Road, Lincoln, California (the "Lincoln Property") and the real property and improvements located at and commonly known as 5710 Draw Lane, Sarasota, Florida (the "Sarasota Property") (sometimes collectively referred to herein as the "Properties").

C. On December 2, 2016, MPoint Land and Development, Inc. ("MPoint") borrowed \$5 million from MCC (the "Loan"). As security for the Loan, MPoint granted MCC a security interest in the Lincoln Property and the Sarasota Property. In the case of the Lincoln Property, SLALMC executed a Deed of Trust Assignment of Rents and Security Agreement dated as of December 2, 2016 and recorded on December 6, 2016 as instrument number 2016 – 010587 (the "MCC Deed of Trust"). As a further security for the Loan, MPoint caused Summerplace to execute a mortgage secured by the Sarasota Property, which Mortgage, Assignment of Leases and Rents Security Agreement and Fixture Filing was dated as of December 2, 2016 and recorded December 6, 2016 as instrument number 201-615-0091 (the "MCC Mortgage"). The MCC Mortgage was released from the Sarasota Property and attached to the proceeds from the sale of the Sarasota Property pursuant to the order of the United States District Court entered on December 5, 2017.

D. The Receiver has filed a Motion For Authority to Pursue Claims Against MCC US, Inc. [Docket 190] and, in particular, to file a complaint against MCC for, among other things, fraudulent conveyance, declaratory relief, and equitable subordination, and reserves the right, pending further investigation and analysis, to pursue additional claims against MCC as may be appropriate.

E. MCC has unequivocally denied the Receiver's allegations and asserts the validity of the Loan, Deed of Trust, Mortgage and the associated loan agreements. MCC further unequivocally denies that any of the transfers of property interests to MCC were fraudulent transfers. MCC claims that it is presently owed in excess of \$6,100,000 on account of the MCC Loan.

F. The Parties have negotiated and now desire to resolve all disputes and disagreements between them arising out of or related to the Loan, the receivership, the Receivership Entities, and the SEC action.

### **AGREEMENT**

Now, therefore, for good and valuable consideration, including the mutual promises herein, it is stipulated, consented and agreed to by and between the Parties as follows:

1. Each Party to this Agreement represents and acknowledges that the above Recitals A – F are true and correct to the best of their respective present knowledge and the above Recitals are incorporated herein by this reference.
2. This Agreement is conditioned upon the entry of an order by the District Court in the SEC Action approving this Agreement ("Approval Order"), and shall have no final force or effect unless and until the Approval Order is entered. Notwithstanding any term of this Agreement, the Receiver shall be entitled to retain the below-described Earnest Money Deposit should MCC fail to close the transaction following entry of the Approval Order and provided that no timely appeal thereof has been filed.
3. The Parties agree to the following terms of settlement:
  - a. By 5:00 p.m. on Monday, March 12 2018, the Parties shall have fully executed this Agreement, the Parties shall have delivered PDF copies of the signature pages by email to one another, and MCC shall have made (or is in the process of making) a wire transfer to the Receiver in the total amount of \$200,000 (the "Earnest Money Deposit"), which Earnest Money Deposit shall be placed in the Receiver's trust, pending the District Court's entry of the

Approval Order. (The Receiver holds a \$200,000 cashier's check which will be returned to MCC upon receipt of the wire.) Within two (2) business days of the District Court's entry of the Approval Order, MCC shall make a second wire transfer to the Receiver in the total amount of \$500,000, which amount shall be added to the Earnest Money Deposit, for a then total Earnest Money Deposit of \$700,000. The Earnest Money Deposit shall be non-refundable to MCC except in the event: (i) the Receiver defaults under this Agreement and/or the Purchase and Sale Agreement and Joint Escrow Instructions, attached hereto as Exhibit A and incorporated herein by this reference ("Purchase Agreement") as set forth herein; or (ii) the Court fails to enter the Approval Order following the Receiver's filing of the Motion For Approval of Settlements Agreement and Sale of Lincoln Property ("Sale Motion"); or (iii) an appeal of the Approval Order is filed within 30 days of the District Court's entry thereof.

b. MCC agrees to purchase from the Receiver, and the Receiver agrees to sell to MCC, the Lincoln Property for a total purchase price of \$8,700,000 ("Purchase Price") pursuant to and in accordance with the Purchase Agreement concurrently executed with this Agreement.

c. Pursuant to and in accordance with the Purchase Agreement, MCC agrees to pay to the Receiver \$2,600,000 at the Closing of the sale of the Lincoln Property. At the Closing of the sale of the Lincoln Property, the Receiver will apply the \$700,000 Earnest Money Deposit, and MCC will pay to the Receiver an additional \$1,900,000, reflecting a total cash payment to the Receiver of \$2,600,000. The balance of the Purchase Price will be paid via a credit bid by MCC of \$6,100,000. Notwithstanding any term of this Agreement, but subject to the terms in the Purchase Agreement, the Receiver shall be entitled to retain the above-described

Earnest Money Deposit should MCC fail to close the transaction following the District Court's entry of the Approval Order and provided that no timely appeal thereof has been filed.

d. The close of the sale and the payment of the Purchase Price to the Receiver shall occur no later than 35 days following the District Court's entry of the Approval Order. If a timely appeal of the Approval Order is filed by a third party with standing to file an appeal (and not a Party or an affiliate of a Party to this Agreement), either Party may terminate this Agreement and the Purchase Agreement with five (5) days' notice to the other Party, in which event, the Receiver shall return the Earnest Money Deposit to MCC.

e. In addition, at the Closing, MCC will also deliver a release of all UCC financing statements other liens on receivership property and/or against the Receiver including, but not limited to, the lien on the net proceeds from the sale of the Sarasota Property and all other personal property liens upon the interests of PDC, SAL and SLALMC.

4. Except for the obligations set forth in this Agreement and subject to the District Court's entry of the Approval Order (and provided no appeal thereof is timely filed by a third party as noted in 3(d) above) and upon the Closing of the sale of the Lincoln Property pursuant to the PSA, , the Parties, and each of them on its own behalf and on behalf of any representatives, brokers, predecessors, successors, direct or indirect parent companies, direct or indirect subsidiary companies, companies under their common control, affiliates, assigns, and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents, employees or representatives and all other persons acting by and through and under or in concert with them, including, specifically the Receivership Entities and the Receiver, hereby fully release and discharge each other and all of their predecessors, successors, direct and

indirect parent companies, direct and indirect subsidiary companies, companies under common control, affiliates and assigns and their past, present, and future officers, directors, shareholders, interest holders, members, partners, attorneys, agents or employees and all persons acting by, through, under or in concert with them from all claims, complaints, liabilities, obligations, promises, lawsuits, losses, expenses, including attorneys' fees and costs, and damages of any nature whatsoever whether known or unknown, liquidated or contingent or which may hereafter arise out of and relating in any way to the Receivership Entities, the Receiver, MCC, the SEC Action, the Loan, and/or the Lincoln Property.

5. The Parties fully understand and hereby relinquish and waive any and all rights conferred upon them by the provision of Section 1542 of the Civil Code of the State of California which reads as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

6. The Parties shall promptly execute and deliver any and all agreements, instruments, and documents, and take such further actions as may be necessary to fully effectuate and implement the terms of this Agreement.

7. It is understood and agreed by the Parties to this Agreement that this settlement does not constitute and shall not be construed as an admission of liability by any Party and that the Parties expressly deny any liability wrongdoing. It is further acknowledged and agreed that this Agreement reflects a compromise of disputed claims and that the Agreement is entered into solely for the benefit of the Parties.

8. This Agreement, including all Recitals, constitutes a single integrated contract expressing the entire agreement between the Parties. It supersedes any and all prior understandings and agreements among the Parties.

9. This Agreement shall be construed and enforced in accordance with the laws of the State of California without regard to its choice of law principles. Any action to enforce this Agreement shall be brought in the District Court which shall be the exclusive venue for such action.

10. Subject to entry of the Approval Order, each Party represents and warrants that it has the legal capacity to be bound by and to sign this Agreement. The execution and consummation of this Agreement by each Party is a free and voluntary act, without misapprehension as to the effect thereof and without any coercion, duress, overreaching or any other misconduct by the other Party.

11. Each Party has had the benefit of legal counsel to inform and advise such Party throughout the negotiations of this Agreement.

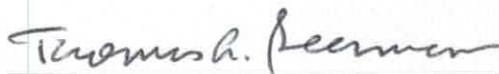
12. The prevailing Party in any action brought between or among the Parties shall be entitled to payment of all attorneys' fees and costs and any other expenses from the nonprevailing Parties, including on appeal or in any insolvency proceeding.

13. This Agreement may be executed in multiple counterparts, one or more of which may be combined together and shall constitute a single enforceable Agreement. For purposes of this paragraph, any Party may rely upon a signature page with signature provided by facsimile or by PDF via e-mail.

14. Time is of the essence as to each and every term of this Agreement.

In witness hereof, the Parties to this Agreement affix their names hereto as of the effective date first above written.

Dated: March 12, 2018



Thomas A. Seaman,  
Receiver

Dated: March \_\_\_\_, 2018

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MCC US, Inc.

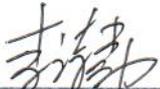
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Dated: March \_\_\_\_, 2018

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Thomas A. Seaman,  
Receiver

Dated: March 12, 2018

  
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MCC US, Inc.