

1 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
2 DAVID R. ZARO (BAR NO. 124334)
PETER A. GRIFFIN (BAR NO. 306201)
3 865 South Figueroa Street, Suite 2800
Los Angeles, California 90017-2543
4 Phone: (213) 622-5555
Fax: (213) 620-8816
5 E-Mail: dzaro@allenmatkins.com
pgriffin@allenmatkins.com

6 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
7 EDWARD G. FATES (BAR NO. 227809)
8 One America Plaza
600 West Broadway, 27th Floor
9 San Diego, California 92101-0903
Phone: (619) 233-1155
10 Fax: (619) 233-1158
E-Mail: tfates@allenmatkins.com

11 Attorneys for Receiver
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
SUMMERFIELD, 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
SUMMERFIELD PROPERTY;
(2) REAL ESTATE COMMISSION;
AND (3) OVERBID PROCEDURES;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: September 10, 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 September 10, 2018, at 1:30 p.m. in
3 Courtroom 9B of the above-entitled Court, located at 411 W. Fourth Street,
4 Santa Ana, California 92701, Thomas A. Seaman ("Receiver"), the Court-
5 appointed receiver for the Receivership Entities,¹ will and hereby does move the
6 Court for an order approving the sale of the Summerfield Property, overbid
7 procedures, and a real estate broker's commission ("Sale Motion"). Pursuant to the
8 sale and overbid procedures that were previously approved by the Court pursuant
9 to the Order Granting Receiver's Motion for Order Authorizing the Receiver to
10 Market Receivership Assets for Sale, Establish Sale Procedures, and Engage
11 Brokers, ("Sale Procedures Order") (Dkt. No. 102), the Receiver requests the
12 Court approve the sale of the Summerfield Property to Boyd Contracts, LLC free
13 and clear of liens and encumbrances or to the highest bidder at the conclusion of
14 the auction if qualified overbids are received pursuant to the purchase and sale
15 agreement. The Receiver also requests the Court approve a real estate broker's
16 commission.

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

21 **Procedural Requirements:** If you oppose this Sale Motion, you are
22 required to file your written opposition with the Office of the Clerk, United States
23

24 _____
25 ¹ As used herein, "Receivership Entities" refers to the following specifically named entities:
26 PDC Capital Group, LLC; Caffe Primo International, Inc.; SAL Assisted Living, LP; SAL
27 Carmichael, LP; SAL Citrus Heights, LP; SAL Kern Canyon, LP; SAL Phoenix, LP; SAL
28 Westgate, LP; Summerplace at Sarasota, LP; Summerplace at Summerfield, LP;
Summerplace at Correll Palms, LP; TRC Tucson, LP; Clear Currents West, LP; Caffe Primo
Management, LP; Caffe Primo Management 102, LP through Caffe Primo
Management 108, LP and their subsidiaries and affiliates (collectively, "**Receivership
Entities**").

TABLE OF AUTHORITIES

	<u>Page(s)</u>
1	
2	
3 I. INTRODUCTION	1
4 II. RELEVANT FACTS	2
5 A. The Receiver's Appointment And Authority To Sell	
6 Summerfield Property	2
7 B. The Summerfield Property	3
8 C. The Proposed Sale.....	4
9 D. The Architect's Disputed Lien	4
10 E. Purchase and Sale Agreement.....	5
11 III. PROPOSED OVERBID PROCEDURES.....	6
12 IV. BROKER’S COMMISSION.....	7
13 V. NOTICE OF THE PROPOSED SALE.....	8
14 VI. ARGUMENT	8
15 A. The Court's Authority to Approve Sale	9
16 B. 28 U.S.C. § 2001	10
17 VII. DISCUSSION.....	11
18 VIII. CONCLUSION	14
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>Cases</u>	
1 <i>Beet Growers Sugar Co. v. Columbia Trust Co.</i> , 2 3 F.2d 755 (9th Cir. 1925).....	10
3 <i>Blakely Airport Joint Venture II v. Federal Sav. and Loan Ins. Corp.</i> , 4 678 F. Supp. 154 (N.D. Tex. 1988).....	10
5 <i>Breeding Motor Freight Lines, Inc. v. Reconstruction Finance Corp.</i> , 6 172 F.2d 416 (10th Cir. 1949).....	11
7 <i>CFTC. v. Topworth Int'l, Ltd.</i> , 8 205 F.3d 1107 (9th Cir. 1999).....	9
9 <i>First Nat'l Bank v. Shedd</i> , 10 121 U.S. 74 (1887)	9
11 <i>Gockstetter v. Williams</i> , 12 9 F.2d 354 (9th Cir. 1925).....	10
13 <i>Miners' Bank of Wilkes-Barre v. Acker</i> , 14 66 F.2d 850 (2d Cir. 1933).....	9
15 <i>Regions Bank v. Egyptian Concrete Co.</i> , 16 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009)	11
17 <i>SEC v. American Capital Invest., Inc.</i> , 18 98 F.3d 1133 (9th Cir. 1996).....	9
19 <i>SEC v. Capital Consultants, LLC</i> , 20 397 F.3d 733 (9th Cir. 2005).....	8, 9
21 <i>SEC v. Capital Cove Bancorp LLC</i> , 22 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015).....	11
23 <i>SEC v. Elliot</i> , 24 953 F.2d 1560 (11th Cir. 1992).....	8
25 <i>SEC v. Elliott</i> , 26 953 F.2d 1560 (11th Cir. 1992).....	9
27 <i>SEC v. Goldfarb</i> , 28 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013).....	10
<i>SEC v. Hardy</i> , 803 F.2d 1034 (9th Cir 1986).....	8
<i>SEC v. Kirkland</i> , 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007)	11
<i>SEC v. Wencke</i> , 622 F.2d 1363 (9th Cir. 1980).....	8

	<u>Page(s)</u>
1	
2 <u>Statutes</u>	
3 28 U.S.C. § 2001.....	10
4 28 U.S.C. § 2001(a).....	10, 11, 12
5 28 U.S.C. § 2001(b).....	10
6 28 U.S.C. § 2002.....	6, 11
7 28 U.S.C. § 754.....	4
8 <u>Treatises</u>	
9 2 Ralph Ewing Clark, <i>Treatise on Law & Practice of Receivers</i> (3d ed. 10 1992).....	9, 10
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 In accordance with the Sale Procedures Order, the Receiver moves this
4 Court for an order authorizing him to sell the real property located at and
5 commonly known as 14000 Del Webb Boulevard, Summerfield, Marion County,
6 Florida ("Summerfield Property") on the terms generally described below and
7 more specifically set forth in the Purchase and Sale Agreement and Joint Escrow
8 Instructions, dated May 22, 2018 ("PSA"). A true and correct copy of the PSA is
9 attached as Exhibit A to the concurrently filed Declaration of Thomas A. Seaman
10 ("Seaman Declaration" or "Seaman Decl.").

11 The Summerfield Property is raw land which was to be developed as an
12 assisted living facility. The Receiver has worked diligently to locate a buyer for
13 the Summerfield Property through commercially reasonable and customary
14 channels, including, but not limited to, engaging a broker and specifically targeting
15 buyers reasonably believed to be interested or specializing in the purchase of real
16 properties like the Summerfield Property. During the sale process, 770 parties
17 viewed the MLS listing. 59 parties expressed an interest and the brokers call 175
18 prospects. The Receiver entertained one offer at \$550,000. Ultimately, the
19 Receiver accepted the offer from Boyd Contracts, LLC ("Buyer") to purchase the
20 Property for \$650,000 ("Purchase Price"), on an "as-is, where-is" basis, subject to
21 the PSA.

22 Based upon the present facts and circumstances, including the current value
23 of the Summerfield Property, and absent an overbid, the Receiver believes the
24 Purchase Price is the best price attainable for the property and respectfully requests
25 the Court grant this Sale Motion and approve: (1) the sale of the Summerfield
26 Property free and clear of liens and claims (either to Buyer or a successful
27 overbidder) pursuant to the terms of the PSA; (2) the proposed overbid procedures
28 described herein; and (3) payment of Broker's commission.

1 **II. RELEVANT FACTS**

2 **A. The Receiver's Appointment And Authority To Sell Summerfield**
3 **Property**

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

13 Pursuant to the terms of the PI Order, the Receiver was appointed as the
14 permanent receiver of the Receivership Entities, "with full powers of an equity
15 receiver, including, but not limited to, full power over all funds, assets,
16 collateral, . . . and other property belonging to, being managed by or in possession
17 of or control of the [Receivership Entities] . . ." *Id.* The PI Order authorized the
18 Receiver to take immediate possession of all real and personal property of the
19 Receivership Entities, wherever located, and to take such action as is necessary to
20 preserve the assets of the Receivership Entities. *Id.*

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

25

26

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 **B. The Summerfield Property**

2 The Summerfield Property was purchased in November, 2015 by Meridian
3 at Orlando-Summerfield LLC, a Florida limited liability company, f/k/a
4 Summerplace at Orlando-Summerfield, LLC ("Seller" or "Owner") for \$925,000
5 from Spruce Creek Commercial Properties, LLC ("Spruce Creek"). Spruce Creek
6 is an affiliate of the Buyer. As part of the transaction, Spruce Creek accepted a
7 Mortgage Note and Mortgage in the amount of \$400,000 as partial payment. At
8 present, there is approximately \$234,600 due on the note as of September 10,
9 2018. The stated rate of the one year Mortgage note was 8% and the Mortgage
10 was in default at the time of the TRO. Seaman Decl. ¶ 3.

11 After his appointment, the Receiver evaluated the viability of development
12 and disposition options for the Summerfield Property. The Summerfield Property
13 is raw land. Prior to the Receiver's appointment, the Owner retained an architect
14 who performed services related to a myriad of projects, including the Summerfield
15 Property. However, no steps were taken toward the development of the project
16 and no value can be ascribed to architect's work. Seaman Decl. ¶ 4.

17 Given the current circumstances and the Receiver's role as a federal equity
18 receiver, the Receiver does not believe it would be cost effective, appropriate, or
19 feasible for him to attempt to develop the Summerfield Property. It is unlikely that
20 the Receiver can raise new equity in the market, and it is equally unlikely the
21 amount of funds needed to complete construction of the Summerfield Property can
22 be borrowed based on the lack of available capital or equity for such a venture.
23 Even if such funding could be secured, the development of the Summerfield
24 Property represents a far greater risk and only speculative returns to the
25 receivership estate. In light of the foregoing, the Receiver believes the sale of the
26 Summerfield Property, on an "as-is, where is" basis, will return the highest value
27 for the receivership estate. Seaman Decl. ¶ 5.

28

1 **C. The Proposed Sale**

2 The Receiver's 2017 appraisal estimated the value to be \$575,000. Seaman
3 Decl. ¶ 4. Based upon his investigation and analysis, the Receiver determined the
4 sale of the Summerfield Property is in the best interest of the receivership.
5 Accordingly, the Receiver retained real estate broker Marcus Millichap ("Broker")
6 to market the property for sale. Seaman Decl. ¶ 6.

7 Broker listed the Summerfield Property on September 28, 2017 and has
8 actively marketed the property since that time. Broker received 1 offer and 59
9 expressions of interest. Seaman Decl. ¶ 6. Ultimately, Buyer made an initial offer
10 of \$550,000. After considering the market and other expressions of interest, and
11 the prior history of disposition efforts, the Receiver agreed to proceed at a price of
12 \$650,000. Seaman Decl. ¶ 7. The Receiver was also able to negotiate a payoff
13 with Spruce Creek, which will result in savings to the receivership estate of
14 approximately \$44,700 in interest. The approximately \$234,600 owed on the note
15 will be paid off from escrow prior to closing and the Mortgage will be released.
16 Seaman Decl. ¶ 7.

17 **D. The Architect's Disputed Lien.**

18 On April 13, 2017, WMB-ROI, Inc. f/k/a Wallis Murphey Boyington
19 Architects, Inc. f/d/b/a WMB Architecture ("WMB"), recorded a Claim of Lien
20 against the Summerfield Property in the amount of \$168,404.60. Seaman Decl.,
21 ¶ 8. The recording of the WMB Claim of Lien against the Summerfield Property
22 was in violation of the PI Order and WMB had actual and constructive notice of
23 the PI Order. Id.

24 It should be noted that the Receiver had previously recorded the PI Order in
25 Marion County on February 10, 2017 and the PI Order had been filed in the USDC
26 Middle District of Florida, Summerfield, Florida pursuant to 28 U.S.C. § 754 on
27 January 13, 2017. Seaman Decl. ¶ 9. As such, the Receiver has requested WMB
28 to release their lien and WMB has failed to do so.

1 Moreover, the Receiver disputes WMB's underlying claim. Seaman Decl.
2 ¶ 10. WMB was paid over \$1.2 million in fees by the Receivership entities,
3 including the payment of \$238,000 on December 5, 2016, one month prior to the
4 TRO. Id. It appears that WMB was overpaid by \$32,596. Id. In addition, WMB
5 has also refused to provide the Receiver any architectural drawings or any other
6 intellectual property, which could have been useful to brokers marketing the
7 Florida properties. Id.

8 There is no evidence that WMB is owed the additional sums reflected in the
9 Claim of Lien and the Receiver is investigating whether certain funds paid to
10 WMB should be returned to the Receivership Entities. Id. at 11. The Receiver
11 intends to object the Claim of Lien in connection with the claims process. In the
12 meantime, the Receiver proposes to set aside \$168,000 in net sales proceeds
13 pending resolution of the WMB claim.

14 **E. Purchase and Sale Agreement**

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

17 **Court Approval.** All aspects of the PSA and the sale are subject to Court
18 approval.

19 **Purchase Price.** \$650,000. The estimated net proceeds to the receivership
20 estate after payment of the outstanding balance on the mortgage, Broker's
21 commission, and deducting estimated escrow, tax, proration and other costs, will
22 be approximately \$365,000.

23 **Closing Date.** Escrow to close within 40 days after Court approval of the
24 sale.

25
26
27 ³ The terms of the PSA are summarized herein for convenience only. In the
28 event of any conflict between the PSA and the summary provided herein or any
ambiguity as to the language used herein, the PSA shall govern and control.

1 **Deposit.** Buyer has deposited \$75,000 ("Deposit") into escrow. This
2 reflects a non-refundable Deposit to be applied to the Purchase Price, subject to the
3 overbid procedures and other terms set forth in the PSA.

4 **As Is/Where Is Purchase.** Buyer agrees to purchase the Summerfield
5 Property on an "as-is, where is" basis, with no representations or warranties made
6 by the Receiver, his professionals, or the Receivership Entities.

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

9 **Overbid Procedures.** The sale is subject to the proposed overbid
10 procedures detailed in the PSA and Section III below. Pursuant to these
11 procedures, if Buyer is not the highest qualified bidder at the auction, its Deposit
12 will be returned. If Boyd Contracts, LLC is not ultimately the successfully
13 overbidder, then in addition to the return of their Deposit, they shall receive a
14 \$25,000 Break-Up Fee per the PSA.

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

17 **III. PROPOSED OVERBID PROCEDURES**

18 The Receiver requests the following overbid procedures be approved:

19 (a) **Qualified Bidders.** All those appearing to bid at the auction must be
20 Qualified Bidders as described herein. A Qualified Bidder is a prospective
21 purchaser who not later than 10 days prior to the hearing/auction date: (i) provides
22 a fully executed purchase and sale agreement for the Property in a form
23 substantially similar to the PSA; (ii) provides evidence in a form acceptable to the
24 Receiver that the Qualified Bidder has the present ability to pay at least the
25 minimum overbid amount; and (iii) provides an earnest money deposit by wire
26 transfer or cashier's check in the amount of \$75,000, which amount shall be
27 non-refundable to the Qualified Bidder with the highest and best bid at the auction
28 if for any reason (a) the highest and best bidder fails to timely close the sale or

1 (b) the highest and best bidder fails to provide the balance of the Purchase Price to
2 the Receiver one day prior to the Closing Date. Buyer is a Qualified Bidder.

3 (b) **The Auction Process.** Qualified Bidders shall appear at the
4 hearing/auction in person, through a duly authorized representative. At that
5 hearing, the Court, or at the Court's request, the Receiver, will conduct an auction
6 of the Summerfield Property among any Qualified Bidders. The highest and best
7 bidder's deposit shall be applied to the Purchase Price, if the sale is approved by
8 the Court. The initial overbid shall be no less than \$50,000.00 over the Purchase
9 Price, or at least \$700,000.00 ("Initial Overbid"). Subsequent overbids shall be in
10 increments of at least \$5,000.00. If no Qualified Bidder submits a bid in the
11 amount of the Initial Overbid or higher, the PSA will be submitted to the Court for
12 approval in its current form. The Court may reject any and all bids following
13 conclusion of the auction.

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

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

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

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

25 **IV. BROKER'S COMMISSION**

26 By separate agreement, the Receiver has agreed, subject to Court approval,
27 to pay Broker a commission of 6% of the amount of the final Purchase Price.

28 Seaman Decl. ¶ 12.

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

2 Prior to filing this Sale Motion, the Receiver has transmitted the PSA to
3 counsel for the Securities and Exchange Commission. The Receiver's counsel is
4 serving this Sale Motion by mail on all parties to the action who do not already
5 receive electronic service, and by electronic means on all known parties with
6 potential interest in purchasing the Summerfield Property. The Receiver is also
7 posting a copy of this Sale Motion on the receivership website. Seaman Decl.
8 ¶ 13, 15.

9 **VI. ARGUMENT**

10 "The power of a district court to impose a receivership or grant other forms
11 of ancillary relief does not in the first instance depend on a statutory grant of
12 power from the securities laws. Rather, the authority derives from the inherent
13 power of a court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d
14 1363, 1369 (9th Cir. 1980). The "primary purpose of equity receiverships is to
15 promote orderly and efficient administration of the estate by the district court for
16 the benefit of creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As
17 the appointment of a receiver is authorized by the broad equitable powers of the
18 court, any distribution of assets must also be done equitably and fairly. *See SEC v.*
19 *Elliot*, 953 F.2d 1560, 1569 (11th Cir. 1992).

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

24
25
26
27
28

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

12 *Id.* (citations omitted); *see also CFTC. v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
13 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory
14 role, and 'we generally uphold reasonable procedures instituted by the district court
15 that serve th[e] purpose' of orderly and efficient administration of the receivership
16 for the benefit of creditors."). Accordingly, the Court has broad discretion in the
17 administration of the receivership estate and the disposition of receivership assets.

18 **A. The Court's Authority to Approve Sale**

19 It is widely accepted that a court of equity having custody and control of
20 property has power to order a sale of the same in its discretion. *See, e.g., SEC v.*
21 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
22 and wide discretion to determine relief in an equity receivership). "The power of
23 sale necessarily follows the power to take possession and control of and to
24 preserve property." *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
25 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
26 (*citing* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d
27 ed. 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a
28 court of equity orders property in its custody to be sold, the court itself as vendor
confirms the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law &
Practice of Receivers § 487 (3d ed. 1992)).

"A court of equity, under proper circumstances, has the power to order a
receiver to sell property free and clear of all encumbrances." *Miners' Bank of*
Wilkes-Barre v. Acker, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing

1 Clark, Treatise on Law & Practice of Receivers § 500 (3d ed. 1992)). To that end,
2 a federal court is not limited or deprived of any of its equity powers by state
3 statute. *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir.
4 1925) (state statute allowing time to redeem property after a foreclosure sale not
5 applicable in a receivership sale).

6 Generally, when a court-appointed receiver is involved, the receiver, as
7 agent for the court, should conduct the sale of the receivership property. *Blakely*
8 *Airport Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154,
9 156 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced
10 by an injunction against the owner and against parties to the suit. *See* 2 Ralph
11 Ewing Clark, Treatise on Law & Practice of Receivers §§ 342, 344, 482(a),
12 487), 489), 491) (3d ed. 1992). "In authorizing the sale of property by receivers,
13 courts of equity are vested with broad discretion as to price and terms."
14 *Gockstetter v. Williams*, 9 F.2d 354, 357 (9th Cir. 1925).

15 **B. 28 U.S.C. § 2001**

16 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
17 real property under subsection (a) and specific requirements for private sales of
18 real property under subsection (b). The cost and delay of a public sale are
19 significantly less than those for a private sale. *SEC v. Goldfarb*, 2013 U.S. Dist.
20 LEXIS 118942, at *5 (N.D. Cal. 2013) ("Section 2001 sets out two possible
21 courses of action: (1) property may be sold in public sale; or (2) property may be
22 sold in a private sale, provided that three separate appraisals have been conducted,
23 the terms are published in a circulated newspaper ten days prior to sale, and the
24 sale price is no less than two-thirds of the valued price."). Therefore, by
25 proceeding under Section 2001(a), the receivership estate can avoid the significant
26 costs and delay of (a) the Court having to appoint three disinterested appraisers,
27 and (b) obtaining three appraisals from such appraisers.

28

1 The requirements of a public sale under Section 2001(a) are that notice of
2 the sale be published as proscribed by Section 2002 and a public auction be held at
3 the courthouse "as the court directs." 28 U.S.C. § 2001(a); *SEC v. Capital Cove*
4 *Bancorp LLC*, 2015 U.S. Dist. LEXIS 174856, at *13 (C.D. Cal. 2015); *SEC v.*
5 *Kirkland*, 2007 U.S. Dist. LEXIS 45353, at *5 (M.D. Fla. 2007). In terms of
6 publication of notice, Section 2002 provides:

7 A public sale of realty or interest therein under any order,
8 judgment or decree of any court of the United States shall
9 not be made without notice published once a week for at
10 least four weeks prior to the sale in at least one newspaper
regularly issued and of general circulation in the county,
state, or judicial district of the United States wherein the
realty is situated.

11 If such realty is situated in more than one county, state,
12 district or circuit, such notice shall be published in one or
13 more of the counties, states, or districts wherein it is
14 situated, as the court directs. The notice shall be
15 substantially in such form and contain such description of
the property by reference or otherwise as the court
approves. The court may direct that the publication be
made in other newspapers.

16 This section shall not apply to sales and proceedings under
17 Title 11 or by receivers or conservators of banks appointed
by the Comptroller of the Currency.

18 The notice of sale is sufficient if it describes the property and the time,
19 place, and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction*
20 *Finance Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the
21 auction to qualified bidders, who "(i) submit to the Receiver . . . in writing a bona
22 fide and binding offer to purchase the [property]; and (ii) demonstrate . . ., to the
23 satisfaction of the Receiver, that it has the current ability to consummate the
24 purchase of the [property] per the agreed terms." *Regions Bank v. Egyptian*
25 *Concrete Co.*, 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

26 VII. DISCUSSION

27 The proposed sale to Buyer pursuant to the PSA is in the best interests of the
28 estate. The Summerfield Property has been fully and properly exposed to the

1 market over the last 11 months and the proposed sale price reflects the highest and
2 best offer received. Seaman Decl. ¶ 9.

3 The proposed sale is subject to overbid to further ensure the highest and best
4 price is obtained. The Receiver proposes to conduct a public auction consistent
5 with the requirements of Section 2001(a). Specifically, the Receiver will publish
6 the following notice of the sale once a week for four weeks in the Ocala Star
7 Banner, a newspaper of general circulation in Summerfield, Florida:

8 **NOTICE OF SALE OF REAL ESTATE AND**
9 **REQUEST FOR OVERBIDS**

10 In the action pending in U.S. District Court for the Central
11 District of California, Case No. SACV 16-02257-CJC
12 (DFMx), Securities and Exchange Commission v. Emilio
13 Francisco, PDC Capital Group, LLC, et al., notice is
14 hereby given that the court-appointed receiver for
15 Meridian at Orlando-Summerfield, LLC, will seek
16 confirmation of the sale of that parcel of vacant land
17 described as 14000 Del Webb Boulevard, Summerfield,
18 Marion County, Florida for \$650,000, subject to an
19 overbid auction. The initial overbid price at the auction
20 will be \$700,000, with subsequent incremental bids of
21 \$5,000. The hearing to confirm the sale and the auction
22 will take place on September 10, 2018, at 1:30 p.m. Pacific
23 time in the courtroom of the Honorable Cormac J. Carney
24 located at 411 W. Fourth St., Santa Ana, CA, 92701,
25 Courtroom 9B, 9th Floor (or at such time and place as the
26 Court directs). To qualify as bidder at the auction,
27 prospective buyers must: 1) execute a non-contingent
28 purchase and sale agreement, a copy of which may be
obtained from Receiver or Receiver's broker Krone
Weidler of Weidler Integrated Healthcare Investment
Properties (affiliated with Marcus Millichap) at (813) 387-
4700; 2) make a non-refundable earnest money deposit of
\$75,000, which is applicable to the sale price and
refundable immediately to unsuccessful overbidders; and
3) provide proof of liquid funds sufficient to conclude the
sale as soon as practicable following Court approval. All
bidders must be qualified by 4:00 p.m. Pacific time on
August 31, 2018, by submitting the foregoing to Thomas
Seaman Company at 3 Park Plaza, Suite 550, Irvine,
California, 92614. Seaman Decl. ¶ 10.

25 In order to conduct an orderly auction and provide sufficient time for the
26 publication of notices discussed above, the Receiver will require bidders to
27 complete the above steps by August 31, 2018 ("Bid Qualification Deadline"), and
28

1 conduct the live public auction at the hearing on September 10, 2018. Seaman
2 Decl. ¶ 11.

3 The Receiver will inform all interested persons of the opportunity to overbid
4 at the public auction, provided they qualify themselves to bid by the Bid
5 Qualification Deadline by (a) signing a purchase and sale agreement for the
6 properties on the same terms and conditions as Buyer, but with a purchase price of
7 at least \$700,000, (b) providing the Receiver with a non-refundable earnest money
8 deposit of \$75,000, and (c) providing proof of funds necessary to close the sale
9 transaction in the form of a current bank statement or cashier's check delivered to
10 the Receiver, or other evidence deemed sufficient by the Receiver.

11 In the event one or more prospective purchasers qualify themselves to bid,
12 the auction will be conducted by the Receiver as noted above and bids will be
13 allowed in increments of \$5,000. The Receiver will then file a notice advising the
14 Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
15 confirming the sale. Earnest money deposits provided by bidders who are
16 unsuccessful will be promptly returned to them. In the event no prospective
17 purchasers qualify themselves to bid by the Bid Qualification Deadline, the
18 Receiver will notify the Court and seek entry of an order approving the sale to
19 Buyer.

20 The sale of the Summerfield Property shall be free and clear of liens
21 including but not limited to the Claim of Lien recorded by WMB discussed above.
22 While the Receiver disputes the WMB claim, the Receiver proposes the Claim of
23 Lien shall be attached to the net proceeds from the sale equal to the face amount of
24 the Claim of Lien at the closing of the sale concurrently with the release of the
25 WMB Claim of Lien from the Summerfield Property.

26 With respect to Broker's commission, Broker has worked diligently to
27 broadly advertise the Summerfield Property for sale and market the property to
28 prospective purchasers, including to potential overbidders after the PSA was

