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 STEPHEN J. DONELL

8 UNITED STATES DISTRICT COURT
 9 CENTRAL DISTRICT OF CALIFORNIA

10
 11 SECURITIES AND EXCHANGE
 12 COMMISSION,
 13 Plaintiff,
 14 v.
 15 ROBERT YANG, et al.,
 16 Defendants,
 17 YANROB'S MEDICAL, INC., et al.,
 18 Relief Defendants.

Case No. 5:15-CV-02387-SVW (KKx)
 NOTICE OF MOTION AND MOTION
 OF RECEIVER, STEPHEN J. DONELL,
 FOR ORDER APPROVING: (1) SALE
 OF OPAL PROPERTY; (2) OVERBID
 PROCEDURES; AND (3) REAL
 ESTATE BROKER'S COMMISSION;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT
 THEREOF
 [Declaration of Stephen J. Donell; and
 [Proposed] Order submitted concurrently
 herewith]
 Date: June 11, 2018
 Time: 1:30 p.m.
 Ctrm: 10A
 Judge Hon. Stephen V. Wilson

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on June 11, 2018, at 1:30 p.m. in
3 Courtroom 10A of the above-entitled Court, located at 350 West 1st Street, Los
4 Angeles, California 90012, Stephen J. Donell (the “Receiver”), the Court-appointed
5 permanent receiver for Defendants Suncor Lynwood, LLC, Suncor Fontana, LLC,
6 Suncor Hesperia, LLC, Suncor Care Lynwood, LLC, and their respective
7 subsidiaries and affiliates (collectively, “Receivership Entities”), will and hereby
8 does move the Court for an Order Approving: (1) Sale of the Opal Property (as
9 defined below); (2) Overbid Procedures; and (3) Real Estate Broker’s Commission.
10 Pursuant to the overbid procedures addressed herein, should an auction for the
11 Receivership Entity asset commonly known as the "Opal Property" occur at the
12 hearing on this Motion, the Receiver will further request the Court to approve the
13 sale of the Opal Property to the highest bidder at the conclusion of the auction.

14 This Motion is based on this Notice of Motion and Motion, the attached
15 Memorandum of Points and Authorities, the supporting Declaration of Stephen J.
16 Donell, the documents and pleadings already on file in this action, and upon such
17 further oral and documentary evidence as may be presented at the time of the
18 hearing.

19 **This Motion is made following the conference of counsel pursuant to**
20 **L.R. 7-3, which was initiated on April 16, 2018.**

21 Dated: May 4, 2018

ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
DAVID R. ZARO
JOSHUA A. DEL CASTILLO

24 By: /s/ Joshua A. del Castillo
25 JOSHUA A. DEL CASTILLO
26 Attorneys for Court-appointed
Receiver STEPHEN J. DONELL

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Pursuant to this Court's December 11, 2015 Preliminary Injunction, Order
4 Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief (the
5 "Appointment Order"), the Receiver has taken possession of and assumed authority
6 and control over all assets of the Receivership Entities, including the real property
7 located at 11202 Opal Avenue, in the City of Redlands, County of San Bernardino,
8 State of California (APN: 0299-111-08) (the "Opal Property"). The Receiver moves
9 this Court for an order authorizing him to sell the Opal Property, on the terms
10 generally described below and more specifically in that Purchase and Sale
11 Agreement and Joint Escrow Instructions, dated February 21, 2018 (the "PSA"). A
12 true and correct copy of the PSA is attached as **Exhibit 1** to the concurrently filed
13 Declaration of Stephen J. Donell ("Donell Declaration" or "Donell Decl.").

14 As permitted by the Appointment Order, the Receiver engaged Land Advisors
15 Organization (the "Broker") as his real property broker for the purposes of
16 marketing and selling the Opal Property. Since engaging the Broker, the Receiver
17 and Broker have worked diligently to market the Opal Property through
18 commercially reasonable and customary channels, including, but not limited to,
19 specifically targeting buyers reasonably believed to be interested or specializing in
20 the purchase of real properties like the Opal Property. As a result of extensive
21 marketing efforts, the Receiver has secured a ready, willing and able buyer, Brian
22 Bouye (the "Buyer"), and accepted an offer from Buyer to purchase the Property for
23 Nine Hundred Thousand and No/100 Dollars (\$900,000.00) (the "Purchase Price"),
24 on an "AS IS, WHERE IS" basis, subject to the PSA and Court approval. The
25 Buyer's offer is the highest and best qualified offer received at the conclusion of
26 widespread and focused marketing efforts, and after providing prospective
27 purchasers with initial summaries of the Opal Property, opportunities to tour the
28

1 Opal Property, and other information relevant to their diligence and purchase
2 decisions.

3 Based upon the present facts and circumstances, and absent a potential
4 overbid, the Receiver believes the Purchase Price is the best price attainable for the
5 Opal Property and respectfully requests the Court grant this Motion and approve:
6 (1) the sale of the Opal Property (either to the Buyer or the successful overbidder)
7 pursuant to the terms of the PSA; (2) the proposed overbid procedures described
8 herein; and (3) payment of Broker's commission.

9 **II. RELEVANT FACTS.**

10 **A. Background of Property.**

11 Suncor Care, Inc., an affiliate of the Receivership Entities and, accordingly, a
12 Receivership Entity itself¹, purchased the Property with funds raised from investors.
13 (See Donell Decl. ¶3.) The Opal Property consists of 16.17 acres of vacant land and
14 consists of one assessor parcel (APN: 0299-111-08). (Donnell Decl. ¶ 4.)

15 As of the date of this Motion, the Broker has received a total of four arms-
16 length offers to purchase the Opal Property. Buyer's offer reflects the highest and
17 best qualified offer received to date and is expected to net approximately
18 \$805,000.00 for the estate of the Receivership Entities, after the payment of
19 outstanding property taxes, commission, and other fees. (Id. at ¶ 8.)

20 **B. The Receiver's Marketing Efforts.**

21 The Receiver, his staff, and the Broker have diligently marketed the Opal
22 Property through commercially reasonable and customary channels and successfully
23

24 ¹ Pursuant to this Court's December 11, 2015 Preliminary Injunction, Order
25 Appointing Receiver, Freezing Assets, and Providing for Other Ancillary Relief,
26 the Receivership Entities are defined as "Defendants Suncor Fontana, LLC,
27 Suncor Hesperia, LLC, and Suncor Care Lynwood, LLC, and their respective
28 subsidiaries and affiliates." (See Dkt. No. 18 at 3:15-17. As reflected in the
Receiver's prior submissions to the Court, the Receiver has confirmed that
Suncor Care, Inc. is a direct affiliate of the Defendants, subject to common
control, and funded directly from funds from investors. As such, Suncor Care,
Inc. is a Receivership Entity subject to the Receiver's exclusive authority and
control.

1 generated a significant amount of interest in the Property through their efforts.
2 Specifically, since the Broker was engaged, he has developed and undertaken a
3 marketing campaign for the Property that, while widespread, was also focused on
4 ensuring that the Opal Property was offered to prospective buyers in the specific
5 markets where the Opal Property would likely be most valued. To that end, the
6 Receiver and the Broker:

- 7 • Prepared and uploaded marketing materials to the Land Advisors
8 Organization's website;
- 9 • Presented the Opal Property for sale to appropriate real estate agents;
- 10 • Developed a unique database of potential buyers, developers (including
11 citrus farmers), and real property investors with a demonstrated interest
12 in assets similar to the Opal Property;
- 13 • Delivered targeted marketing materials to all interested brokers and
14 principals;
- 15 • Uploaded marketing materials developed specifically for the Opal
16 Property to a number of third party websites regularly used to advertise
17 similar properties, including "Loopnet" and "Costar."

18 (Donell Decl. ¶ 9.)

19 In addition to the above, the Receiver assembled relevant materials and
20 populated a virtual "data room" containing all of those records he has recovered that
21 he believed would be relevant to prospective purchasers of the Opal Property for
22 due diligence purposes², and offered to provide access to all comers after securing
23 customary non-disclosure agreements. (Id. at ¶ 10.)

24 As noted above, and as a result the above-described marketing and sale
25 efforts, the Receiver received four offers to purchase the Opal Property. After due
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27 ² Even though this is an "As Is-Where Is" sale, the Receiver populated the virtual
28 data room with a significant amount of due diligence materials relating to the
Opal Property in order to permit prospective buyers as comprehensive an
understanding of the Opal Property as possible. (Donell Decl. ¶ 10.)

1 diligence and negotiations among the offerors, several parties each submitted their
2 highest and best offers. (Donell Decl. ¶ 8.) Buyer's offer was the highest and best
3 qualified offer received, and the Receiver accepted its offer and executed the PSA.
4 (Id., Ex. 1.)

5 **III. PURCHASE AND SALE AGREEMENT**

6 A copy of the PSA for the sale to Buyer is attached as **Exhibit 1** to the Donell
7 Declaration. Its terms are summarized as follows:³

8 **Court Approval.** All aspects of the Purchase and Sale Agreement and the
9 sale are subject to approval by the Court.

10 **Purchase Price.** \$900,000.00. The estimated net proceeds to the
11 receivership estate after payment of the proposed total broker commission of 6% (to
12 be split equally with Buyer's broker) of the Purchase Price, plus escrow, delinquent
13 tax payments, liens and other fees and costs, will be approximately \$805,000.00.

14 **Closing Date.** The closing of the sale of the Property shall occur thirty (30)
15 days after the Court approves the Sale Motion.

16 **Deposit.** Buyer has deposited \$50,000.00 (the "Deposit") into Escrow. This
17 reflects a non-refundable deposit to be applied to the Purchase Price, subject to the
18 overbid procedures and other terms set forth in the PSA.

19 **As Is/Where Is Purchase.** Buyer agrees to purchase the Property on an "AS-
20 IS, WHERE-IS" basis, with no representations or warranties made by the Receiver,
21 his professionals, or the Receivership Entities.

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

24
25
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27 ³ The terms of the Purchase and Sale Agreement are summarized herein for
28 convenience only. In the event of any conflict between the Purchase and Sale
Agreement and the summary provided herein or any ambiguity as to the language
used herein, the Purchase and Agreement shall govern and control.

1 **Overbid Procedures.** The sale is subject to the proposed overbid procedures
2 detailed in the PSA and Section IV below. Pursuant to these procedures, if Buyer is
3 not the highest qualified bidder at the auction, Buyer's Deposit will be returned.

4 **IV. PROPOSED OVERBID PROCEDURES**

5 The Receiver requests that the following overbid procedures be approved:

6 **(a) Qualified Bidders.** All those appearing to bid at the auction must be
7 Qualified Bidders as described herein. A Qualified Bidder is a prospective
8 purchaser who: (i) provides a fully executed purchase and sale agreement for the
9 Property in a form substantially similar to the Purchase and Sale Agreement; and
10 (ii) provides an earnest money deposit by wire transfer or cashier's check in the
11 amount of 10% of the Purchase Price payable to the Receiver, which amount shall
12 be non-refundable to the Qualified Bidder with the highest and best bid at the
13 auction if for any reason (a) the highest and best bidder fails to timely close the sale
14 or (b) the highest and best bidder fails to provide the balance of the purchase price to
15 the Receiver one day prior to the Closing Date. Buyer is a Qualified Bidder. Each
16 Qualified Bidder must provide the above-described executed PSA and earnest
17 money deposit to the Receiver no later than seven business days before the hearing
18 date on the instant motion.

19 **(b) The Auction Process.** Qualified Bidders shall appear at the
20 hearing/auction in person, or through a duly authorized representative. At that
21 hearing, the Court, or at the Court's request, the Receiver, will conduct an auction of
22 the Property among any Qualified Bidders. The highest and best bidder's deposit
23 shall be applied to the purchase price, if the sale is approved by the Court. The
24 initial overbid shall be no less than one hundred and one percent (101%) of the
25 Purchase Price, or at least \$909,000.00 ("Initial Overbid"). Subsequent overbids
26 shall be in increments of at least \$10,000.00. If no Qualified Bidder submits a bid in
27 the amount of the Initial Overbid or higher, the PSA will be submitted to the Court
28

1 for approval in its current form. The Court may reject any and all bids following
2 conclusion of the auction.

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

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

8 (e) **As Is/Where Is Purchase.** The sale to any Qualified Bidder shall be on
9 an "AS-IS, WHERE-IS" basis as described in the Purchase and Sale Agreement.

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

13 **Please note that, after the Receiver entered into the PSA with Buyer and**
14 **after the Receiver sought to meet and confer with the parties to this action in**
15 **advance of filing the instant Motion, the Receiver received a letter of intent**
16 **from a third party, offering to purchase the Property at a price in excess of the**
17 **PSA purchase price. This third party has not yet qualified as an overbidder.**
18 **That said, given the possibility that this party may satisfy the requirements to**
19 **become a Qualified Bidder, the Receiver respectfully requests that, even if no**
20 **objections to the instant Motion are filed, the Court hold a hearing on the**
21 **Motion to permit an auction to proceed, if necessary.**

22 **V. BROKER'S COMMISSION**

23 By separate agreement, the Receiver has agreed, subject to Court approval, to
24 pay Broker a total commission of 6% of the final purchase price, which is to be split
25 equally with Buyer's broker. (Donell Decl. ¶ 11.) Based on the Receiver's extensive
26 experience in real estate transactions, the amount of the commission is commercially
27 reasonable, and was fully negotiated by the Receiver after reviewing proposals from
28 other qualified brokers. (Id.)

1 As explained above, since its engagement, the Broker has invested, and
2 continues to invest, substantial time in assisting the Receiver with the preparation of
3 marketing materials for the Opal Property, locating potential purchasers, marketing
4 the Opal Property to them, and negotiating terms. In addition, since the PSA with
5 Buyer was signed, the Broker has continued to market the Opal Property and
6 provide notice of the opportunity to overbid in an effort to promote active
7 overbidding at the auction.

8 These additional efforts have resulted in Receiver receiving a last-minute,
9 tentative offer to purchase the Property from a potential Qualified Bidder. The
10 Receiver is currently in the process of qualifying this new potential buyer as a
11 Qualified Bidder. (Donell Decl., ¶ 13.) As of the date of this Motion, however, it is
12 unclear whether this new potential buyer will ultimately qualify as a Qualified
13 Bidder. It has not done so as of the date of the submission of this Motion.

14 Based on the Receiver's extensive experience in real estate transactions, and
15 in light of the challenges presented, the amount of the commission to the Broker
16 represents commercially reasonable compensation for the work required in order to
17 secure a serious buyer and prospective overbidders for the Opal Property.

18 **VI. NOTICE OF THE PROPOSED SALE**

19 The Receiver's counsel is concurrently serving this Motion by mail on all
20 parties to the action who do not already receive electronic service, and by electronic
21 means on all known parties with potential interest in purchasing the Opal Property.
22 The Receiver is also posting a copy of this Motion on the receivership website,
23 www.fedreceiver.com, accompanied by the following notice of the proposed sale
24 and the opportunity to overbid at the hearing:

25 In the action pending in U.S. District Court for the Central
26 District of California, Case No. CV-02387-SVW(KKx),
27 SEC v. Robert Yang, et al., notice is hereby given that the
28 court-appointed Receiver has contracted to sell the real
property located at 11202 Opal Avenue, in the City of
Redlands, County of San Bernardino, State of California

1 (APN: 0299-111-08) for the amount of \$900,000.00. Sale
2 is subject to overbid and Court confirmation. The hearing
3 is set for June 11, 2018, at 1:30 p.m., courtroom of the
4 Honorable Stephen V. Wilson (courtroom 10A), United
5 States Courthouse, 350 W. 1st Street, Los Angeles,
6 California 90012. The minimum initial overbid is
7 \$909,000.00. Subsequent overbids shall be in increments
8 of at least \$10,000.00. A fully executed purchase and sale
9 agreement in a form acceptable to the Receiver and an
10 earnest money deposit in an amount equal to ten percent
11 (10%) of the purchase price must be received by 5:00 p.m.
12 Pacific Standard Time, at least seven (7) business days
13 before the scheduled hearing, by the Receiver at
14 FedReceiver, Inc., c/o Stephen J. Donell, CCIM, CPM,
15 12121 Wilshire Blvd., Suite 1120, Los Angeles, CA
16 90025, in order to be considered. In addition, to be
considered a qualified bidder, a prospective purchaser
must abide by the overbid procedures as set forth in the
sale motion, a copy of which is available on this website.
If interested in submitting an overbid, please contact the
Broker, Doug Jorritsma, Land Advisors, at 949-656-8004
or at DJorritsma@landadvisors.com for the form of
Purchase and Sale Agreement and other information.

17 **VII. 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).

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

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

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

24 **A. The Sale Subject to Overbid Should Be Approved**

25 It is generally conceded that a court of equity having custody and control of
26 property has power to order a sale of the same in its discretion. See, e.g., Elliott,
27 953 F.2d at 1566 (11th Cir. 1992) (finding that the District Court has broad powers
28 and wide discretion to determine relief in an equity receivership). "The power of
29 sale necessarily follows the power to take possession and control of and to preserve
30 property." See also SEC v. Am. Capital Invest., Inc., 98 F.3d 1133, 1144 (9th Cir.
31 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (citing
32 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
33 (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 Here, the proposed sale to the Buyer for \$900,000.00, subject to the proposed
22 overbid procedures, should be approved. In particular, the proposed overbid
23 procedures are designed to (a) induce Buyer to remain in place as the initial, or
24 "stalking horse" bidder; (b) allow qualified bidders to overbid; and (c) generate the
25 highest and best price for the Opal Property. The proposed Purchase Price is
26 sufficient to make the net proceeds to the estate (after payment of the Broker's
27 commission, payment of delinquent taxes and liens, estimated escrow, closing and
28 repair costs) approximately \$805,000.00. The subsequent bid increments of

1 \$10,000.00 for each subsequent overbid is sufficient to ensure an orderly and
2 efficient auction at the hearing. The Receiver submits that these amounts are
3 reasonable and fair to all interested parties.

4 The Receiver believes, as discussed herein, given (a) the issues impacting the
5 Opal Property and (b) the relevant and current comparable sales, that the Purchase
6 Price and terms of the proposed sale to Buyer, negotiated at arm's length and
7 secured through the commercially reasonable and customary channels of marketing
8 the Opal Property with an experienced broker, reflect the fair market value of the
9 Opal Property.

10 In addition, and as explained above, the Receiver and the Broker have
11 diligently marketed the Opal Property for sale through commercially reasonable and
12 customary channels, resulting in four prospective purchasers which ultimately
13 resulted in the highest and best offer submitted by Buyer in the amount of
14 \$900,000.00. (Donell Decl., ¶ 12.)

15 Moreover, since the PSA with Buyer was signed, the Receiver and the Broker
16 have continued to market the Opal Property and provide notice of the opportunity to
17 overbid in an effort to promote active overbidding at the auction. These additional
18 efforts have resulted in the Receiver receiving a tentative offer to purchase the
19 Property from a potential Qualified Bidder. (Donell Decl., at ¶ 13.) The Receiver is
20 currently in the process of qualifying this party as a Qualified Bidder. (Id. at ¶ 13.)

21 Accordingly, the Receiver believes, in his reasonable business judgment, that
22 the proposed sale to Buyer, subject to overbid, is fair and reasonable, in the best
23 interests of the receivership estate, and will generate the highest and best value for
24 the Property. (Id. at ¶ 12.)

25 To ensure the highest and best price is obtained from sale of the Opal
26 Property, the proposed sale to Buyer is subject to overbid, by potential purchasers
27 that qualify themselves as Qualified Bidders. The Receiver, with the assistance of
28

1 Broker, will continue to market the Opal Property with the goal of promoting active
2 overbidding in accordance with the proposed overbid procedures described herein.

3 **B. Further Notices/Appraisals Should Be Waived**

4 Sales of real property out of federal receivership are governed by 28 U.S.C.
5 § 2001, which provides that notice shall be given "by publication or otherwise as the
6 court directs" 28 U.S.C. § 2001(b). Thus, "[t]he statute on its face vests the
7 court with discretion in directing the terms and conditions of the public sale."
8 Keybank Nat'l Ass'n v. Perkins Rowe Assocs., LLC, 2012 U.S. Dist. LEXIS
9 157828, *4 (M.D. La. 2012); see also U.S. v. Little, 2008 U.S. Dist. LEXIS 93467,
10 *4-5 (E.D. Cal. 2008) (finding that "[t]he Court has broad discretion in setting the
11 terms and conditions of a sale pursuant to 28 U.S.C. § 2001."); U.S. v. Heasley, 283
12 F.2d 422 (8th Cir. 1960) (finding that in the context of 28 U.S.C. § 2001(b), "the
13 matter of confirming a judicial sale rests in the sound judicial discretion of the trial
14 court ..."); U.S. v. Peters, 777 F.2d 1294 (7th Cir. 1985) (noting that 28 U.S.C.
15 § 2001(a) authorizes a court to direct the terms and conditions of the sale).

16 Here, the proposed notices of sale provided by mail and publication on the
17 Receiver's website are reasonable given the extensive marketing efforts undertaken
18 by the Receiver and the Broker, which efforts included extensive advertisement of
19 the Opal Property in commercially reasonable and customary channels, and the
20 Receiver and the Broker's continuing efforts to market and publicize the sale of the
21 Property and the opportunity to overbid. The Receiver submits that further mailing
22 or publication of notice and obtaining independent appraisals would impose
23 significant costs on the receivership estate with little or no corresponding benefit.
24 Accordingly, to the extent 28 U.S.C. §§ 2001, 2002 and Local Rule 66-7 require
25 further mailing or publication of notice, appraisals, or other procedures, such
26 provisions should be waived.

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1 **C. Additional Relief**

2 Pursuant to its broad equitable powers with respect to the administration of
3 receivership assets, the Receiver requests that the Court authorize payment from the
4 proceeds of sale of the Property for any valid liens, taxes, and any other claims on
5 the Property, subject to any objections to such liens, taxes, or claims by the
6 Receiver. The Receiver also requests authority to pay a total commission in the
7 amount of 6% of the final purchase price, which is to be split equally with Buyer's
8 broker.

9 As explained above, Broker’s commission is the lowest offered by competing,
10 comparable brokerage companies, and is fair and reasonable given that the sale of
11 the Opal Property required considerable time and effort on the part of Broker.
12 Based on his extensive experience in real estate transactions, the Receiver believes
13 that such commission is commercially reasonable and consistent with the real estate
14 industry standard for sales of similar commercial property, and should be approved
15 by this Court. (Donell Decl. ¶ 11.)

16 **VIII. CONCLUSION**

17 For the reasons set forth herein, the Receiver respectfully requests entry of an
18 Order approving and authorizing: (1) the Receiver's proposed sale of the Property to
19 Buyer or the highest and best bidder; (2) the Receiver's proposed overbid
20 procedures; and (3) the payment of the proposed commission to Broker from the
21 sale proceeds.

22 Dated: May 4, 2018

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