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10 Attorneys for Receiver
11 Thomas A. Seaman

12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**
14 **WESTERN DIVISION**

15 SECURITIES AND EXCHANGE
COMMISSION,

16 Plaintiff,

17 v.

18 STEVE CHEN, USFIA, INC.,
19 ALLIANCE FINANCIAL
GROUP, INC., AMAUCTION, INC.,
20 ABORELL MGMT I, LLC, ABORELL
21 ADVISORS I, LLC, ABORELL
REIT II, LLC, AHOME REAL
22 ESTATE, LLC, ALLIANCE
23 NGN, INC., APOLLO REIT I, INC.,
APOLLO REIT II, LLC, AMKEY, INC.,
24 US CHINA CONSULTATION
ASSOCIATION, and QUAIL RANCH
25 GOLF COURSE, LLC,

26 Defendants.

Case No. 2:15-cv-07425 RGK PLA

**NOTICE OF MOTION AND
MOTION FOR (A) APPROVAL OF
SALE OF COMMERCIAL
PROPERTY (HILLS GARDEN
HOTEL) AND (B) AUTHORITY TO
PAY BROKER'S COMMISSION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: May 1, 2017
Time: 9:00 a.m.
Ctrm.: 850
Judge: Hon. R. Gary Klausner

1 **TO ALL INTERESTED PARTIES:**

2 **PLEASE TAKE NOTICE** that on May 1, 2017, at 9:00 a.m. in
3 Courtroom 850 of the above-entitled Court, located at 255 East Temple Street,
4 Los Angeles, California 90012-3332, the Court will consider the motion of
5 Thomas A. Seaman ("Receiver"), the Court-appointed permanent receiver for
6 Defendants USFIA, Inc., Alliance Financial Group, Inc., Amauction, Inc., Aborell
7 Mgmt I, LLC, Aborell Advisors I, LLC, Aborell REIT II, LLC, Ahome Real
8 Estate, LLC, Alliance NGN, Inc., Apollo REIT I, Inc., Apollo REIT II, LLC,
9 Amkey, Inc., US China Consultation Association, Quail Ranch Golf Course, LLC,
10 and their subsidiaries and affiliates (collectively, "Receivership Entities"), for
11 (A) approval of the sale of commercial property (Hills Garden Hotel) and
12 (B) authority to pay the broker's commission ("Motion").

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

17 **Procedural Requirements:** If you oppose this Motion, you are required to
18 file your written opposition with the Office of the Clerk, United States District Court,
19 255 East Temple Street, Los Angeles, California 90012-3332, and serve the same on
20 the undersigned not later than 21 days prior to the hearing.

21 **IF YOU FAIL TO FILE AND SERVE A WRITTEN OPPOSITION** by the
22 above date, the Court may grant the requested relief without further notice. This
23 Motion is made following the conference of counsel pursuant to L.R. 7 3.

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1 Dated: March 31, 2017
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By: /s/ Tim C. Hsu

TIM C. HSU
Attorneys for Receiver
Thomas A. Seaman

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Receiver was appointed by this Court with full powers of an equity receiver, and ordered, among other things, to take possession of and assume authority and control over the receivership estate, including that certain commercial property located at 2000 Ostrems Way, San Bernardino, California and commonly known as the Hills Garden Hotel ("Property"). Declaration of Thomas A. Seaman filed herewith ("Seaman Decl."), ¶ 3.

The Property was acquired by Ahome Real Estate, LLC in July 2015 for \$5.75 million. Shortly after his appointment, the Receiver took possession of the Property. The 112-unit hotel was formerly a Days Inn, but lost its flag shortly before the Receiver's appointment. It appears the Property was going to be used by Defendants to conduct fundraising activities. Several rooms were converted to meeting rooms, jewelry show rooms, and offices. As a result, the Property had been operating at a loss. *Id.* at ¶ 4.

Although the Receiver has increased revenue and reduced costs, the Property is now only marginally profitable. Given that maintaining the Property entails significant carrying costs to the receivership estate, including costs for management, insurance, and property taxes, and the asset has no business purpose for the benefit of the Receivership Entities, the Receiver listed the Property for sale through a licensed broker, Atlas Hospitality Group ("Broker"). *Id.* at ¶ 5.

The Property was listed starting on November 8, 2016, for \$4,000,000. Prior to the end of February 2017, more than 50 interested parties had signed non-disclosure agreements. The Receiver established a deadline for bids and solicited best and final offers from qualified bidders with acceptable initial offers. A total of 14 offers were received. After careful review and negotiations, the Receiver accepted an all cash offer of \$4,100,000, subject to overbid and Court approval,

1 from Oceanic Companies ("Buyer"). Buyer is willing to close quickly and there are
2 no contingencies to the sale other than Court approval. *Id.* at ¶ 6.

3 In accordance with the Receiver's acceptance, the Receiver and Buyer
4 entered into a Purchase and Sale Agreement and Joint Escrow Instructions
5 ("Agreement"). Among other things, the Agreement specifies that the sale is
6 subject to Court approval, is on an "AS IS" basis, will be made with all cash, and is
7 subject to overbids. The Agreement is attached as Exhibit A to the Seaman
8 Declaration filed herewith. *Id.* at ¶ 7.

9 In his reasonable business judgment, the Receiver believes the Agreement,
10 obtained through the commercially reasonable and customary method of listing the
11 property with a licensed broker and after arm's length negotiations with Buyer,
12 reflects the fair market value of the Property. Moreover, the sale is subject to
13 overbid as discussed below to ensure that the highest and best price is obtained. *Id.*
14 at ¶ 8. Accordingly, the Receiver respectfully requests this Court grant this Motion
15 and (1) approve the sale of the Hills Garden Hotel and (2) authorize payment of the
16 Broker's commission.

17 **II. PROCEDURAL BACKGROUND**

18 On September 28, 2015, the Court appointed the Receiver on a temporary
19 basis as part of its Temporary Restraining Order and Orders (1) Freezing Assets;
20 (2) Appointing a Receiver, (3) Prohibiting the Destruction of Documents;
21 (4) Granting Expedited Discovery; and (5) Requiring Accountings; and Order to
22 Show Cause Why a Preliminary Injunction Should Not Be Granted ("TRO"). Dkt.
23 No. 8. On October 6, 2015, the Court entered a Preliminary Injunction and Orders:
24 (1) Freezing Assets; (2) Appointing a Receiver; (3) Prohibiting the Destruction of
25 Documents; and (4) Requiring Accountings ("PI Order"), which included
26 appointment of the Receiver on a permanent basis. Dkt. No. 13. Hereinafter, the
27 TRO and PI Order are collectively referred to as the "Appointment Orders."
28

1 **III. TERMS OF THE AGREEMENT**

2 A copy of the Agreement is attached as Exhibit A to the Seaman Declaration.
3 Its terms are summarized as follows:¹

4 **Court approval.** All aspects of the Agreement and the sale are subject to
5 approval by the Court.

6 **Purchase Price.** \$4,100,000.

7 **Closing Date.** Escrow to close within 30 days of Court approval.

8 **Deposit.** Buyer has deposited \$300,000 into escrow, refundable only if the
9 Court does not approve the sale to Buyer.

10 **As Is Purchase.** Buyer agrees to purchase the Property on an "AS IS" basis.

11 **Overbid Procedures.** The sale is subject to overbid and a public auction if
12 one or more qualified overbids are received. To qualify as an overbidder,
13 prospective purchasers must (a) submit a fully executed Purchase and Sale
14 Agreement and Joint Escrow Instructions in substantially the same form as the
15 Agreement, but with a purchase price of at least \$300,000 over the amount of the
16 Purchase Price, (b) provide proof of funds sufficient to close the sale, and
17 (c) provide an earnest money deposit equal to 10% of the purchase price. All of the
18 above, must be provided to the Receiver no later than seven days prior to the
19 hearing date.

20 **Broker's Commission.** By separate agreement, the Receiver has agreed,
21 subject to Court approval, to pay Broker a commission of 5% of the final purchase
22 price. Broker has invested substantial time into preparing the Property for sale,
23 locating potential purchasers, marketing the property to them, negotiating terms,
24 and preparing sale documents. Broker has continued to market the property to
25 potential overbidders since the Agreement was executed.

26
27 ¹ The terms of the Agreement are summarized herein for convenience only. In
28 the event of any conflict between the Agreement and the summary provided
herein, the Agreement governs and controls.

1 **IV. ARGUMENT**

2 "The power of a district court to impose a receivership or grant other forms
3 of ancillary relief does not in the first instance depend on a statutory grant of power
4 from the securities laws. Rather, the authority derives from the inherent power of a
5 court of equity to fashion effective relief." *SEC v. Wencke*, 622 F.2d 1363, 1369
6 (9th Cir. 1980). The "primary purpose of equity receiverships is to promote orderly
7 and efficient administration of the estate by the district court for the benefit of
8 creditors." *SEC v. Hardy*, 803 F.2d 1034, 1038 (9th Cir 1986). As the appointment
9 of a receiver is authorized by the broad equitable powers of the court, any
10 distribution of assets must also be done equitably and fairly. *See SEC v. Elliot*,
11 953 F.2d 1560, 1569 (11th Cir. 1992).

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

16 A district court's power to supervise an equity receivership and to
17 determine the appropriate action to be taken in the administration of
18 the receivership is extremely broad. The district court has broad
19 powers and wide discretion to determine the appropriate relief in an
20 equity receivership. The basis for this broad deference to the district
21 court's supervisory role in equity receiverships arises out of the fact
22 that most receiverships involve multiple parties and complex
23 transactions. A district court's decision concerning the supervision
24 of an equitable receivership is reviewed for abuse of discretion.

25 *Id.* (citations omitted); *see also CFTC v. Topworth Int'l, Ltd.*, 205 F.3d 1107, 1115
26 (9th Cir. 1999) ("This court affords 'broad deference' to the court's supervisory role,
27 and 'we generally uphold reasonable procedures instituted by the district court that
28 serve th[e] purpose' of orderly and efficient administration of the receivership for
the benefit of creditors.").

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

1 **A. The Proposed Sale**

2 It is generally conceded that a court of equity having custody and control of
 3 property has power to order a sale of the same in its discretion. *See, e.g., Elliott,*
 4 *supra*, 953 F.2d at 1566 (finding that the District Court has broad powers and wide
 5 discretion to determine relief in an equity receivership). "The power of sale
 6 necessarily follows the power to take possession and control of and to preserve
 7 property." *See also SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144
 8 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)
 9 (*citing* 2 Ralph Ewing Clark, *Treatise on Law & Practice of Receivers* § 482 (3d
 10 ed. 1992) (*citing First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court
 11 of equity orders property in its custody to be sold, the court itself as vendor
 12 confirms the title in the purchaser." 2 Ralph Ewing Clark, *Treatise on Law &*
 13 *Practice of Receivers* § 487).

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

22 Generally, when a court-appointed receiver is involved, the receiver, as agent
 23 for the court, should conduct the sale of the receivership property. *Blakely Airport*
 24 *Joint Venture II v. Federal Sav. and Loan Ins. Corp.*, 678 F. Supp. 154, 156
 25 (N.D. Tex. 1988). The receiver's sale conveys "good" equitable title enforced by an
 26 injunction against the owner and against parties to the suit. *See* 2 Ralph Ewing
 27 Clark, *Treatise on Law & Practice of Receivers* §§ 342, 344, 482(a), 487, 489, 491.
 28 "In authorizing the sale of property by receivers, courts of equity are vested with

1 broad discretion as to price and terms." *Gockstetter v. Williams*, 9 F.2d 354, 357
 2 (9th Cir. 1925).

3 **B. 28 U.S.C. § 2001**

4 Specific requirements are imposed by 28 U.S.C. § 2001 for public sales of
 5 real property under subsection (a) and for private sales of real property under
 6 subsection (b). Although both involve cost and delay, the cost and delay of a
 7 public sale are significantly less than those for a private sale. *SEC v. Goldfarb*,
 8 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013) ("Section 2001 sets out two
 9 possible courses of action: (1) property may be sold in public sale; or (2) property
 10 may be sold in a private sale, provided that three separate appraisals have been
 11 conducted, the terms are published in a circulated newspaper ten days prior to sale,
 12 and the sale price is no less than two-thirds of the valued price."). Therefore, by
 13 proceeding under Section 2001(a), the receivership estate can avoid the significant
 14 costs and delay of (a) the Court having to appoint three disinterested appraisers, and
 15 (b) obtaining three appraisals from such appraisers.

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

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

28 If such realty is situated in more than one county, state, district or
 circuit, such notice shall be published in one or more of the counties,
 states, or districts wherein it is situated, as the court directs. The
 notice shall be 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.

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

4 The notice of sale is sufficient if it describes the property and the time, place,
5 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
6 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
7 qualified bidders, who "(i) submit to the Receiver . . . in writing a bona fide and
8 binding offer to purchase the [property]; and (ii) demonstrate . . ., to the satisfaction
9 of the Receiver, that it has the current ability to consummate the purchase of the
10 [property] per the agreed terms." *Regions Bank v. Egyptian Concrete Co.*,
11 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

12 V. DISCUSSION

13 Here, the proposed sale to Buyer should be approved. First, the Receiver
14 believes the Receivership Entities substantially overpaid for the Property. After
15 consulting with Broker, the Receiver believes that a hotel of this kind in the area
16 would normally sell for a multiple of approximately 3.5 times the annual room
17 revenue, or in this case, approximately \$4,000,000. Defendants paid \$5,750,000, or
18 approximately 5.5 times the room revenue, which is more in line with a hotel in a
19 coastal area like Laguna Niguel or La Jolla. Defendants gave up the flag in order to
20 avoid scrutiny (the hotel was previously a Days Inn) and operated it primarily as
21 meeting place and showroom for potential investors. Seaman Decl., ¶ 9.

22 Moreover, the Property is not necessary for any ongoing operations of the
23 Receivership Entities and holding the property requires the payment of property
24 taxes, insurance, and maintenance costs, which the revenue from the Property
25 barely covers. Seaman Decl., ¶ 10.

26 The Property has been fully exposed to the market by Broker through the
27 customary means of listing the property, advertising, and showing the property to
28 interested parties. In response, the Receiver received and evaluated multiple offers,

1 including that submitted by Buyer. The Receiver further negotiated the terms of
2 the sale, including countering the offer from Buyer at a higher price. *Id.* at ¶ 11.

3 Through this process, the Receiver obtained Buyer's final offer and
4 agreement to purchase the Property at the price of \$4,100,000. Therefore, the
5 Receiver believes the proposed sale represents the fair market value and will
6 generate the highest and best recovery from the property. *Id.* at ¶ 12.

7 Moreover, the proposed sale is subject to overbid and public auction. The
8 Receiver proposes to conduct a public auction consistent with the requirements of
9 Section 2001(a). *Id.* at ¶ 13. Specifically, the Receiver will publish the following
10 notice of the sale once a week for four weeks in the San Bernardino County Sun, a
11 newspaper of regular circulation in San Bernardino County:

12 In the action pending in U.S. District Court for the Central District
13 of California, Case No. 16-CV-07425-RGK-PLA, Securities and
14 Exchange Commission v. Steve Chen et al., notice is hereby given
15 that the court-appointed receiver will conduct a public auction for
16 the commercial real property located at 2000 Ostrems Way, San
17 Bernardino, California. Sale is subject to Court confirmation after
18 the auction is held. Minimum bid price is \$4,400,000. The auction
19 will take place on May 1, 2017, at 9:00 a.m. in Courtroom 850 to the
20 United States Courthouse, 255 East Temple Street, Los Angeles,
21 California. To be allowed to participate in the auction, prospective
22 purchasers must meet certain bid qualification requirements,
23 including submitting a signed purchase and sale agreement, an
24 earnest money deposit of 10% of the purchase price, and proof of
25 funds. All bidders must be qualified by 5:00 p.m. PST on April 24,
26 by submitting the required materials to the Thomas Seaman at 3
27 Park Place, Suite 550, Irvine California, 92614. If interested in
28 qualifying as a bidder, please contact Thomas Seaman at (949) 265-
8403 or tom@thomasseaman.com or darren@thomasseaman.com.

21 In order to conduct an orderly auction and provide sufficient time for the
22 publication of notices discussed above, the Receiver will require bidders to
23 complete the above steps by April 24, 2017 ("Bid Qualification Deadline"), and
24 conduct the live public auction at the hearing on May 1, 2017. *Id.* at ¶ 14.

25 The Receiver will inform all interested persons of the opportunity to overbid,
26 provided they qualify themselves to bid by the Bid Qualification Deadline by
27 (a) signing a purchase and sale agreement for the properties on the same terms and
28

1 conditions as Buyer, but with a purchase price of at least \$4,400,000, (b) providing
2 the Receiver with an earnest money deposit of 10% of the purchase price, and
3 (c) providing proof of funds necessary to close the sale transaction in the form of a
4 current bank statement, cashier's check delivered to the Receiver, or other evidence
5 deemed sufficient by the Receiver. *Id.* at ¶ 15.

6 In the event one or more prospective purchasers qualify themselves to bid, an
7 auction will be conducted at the hearing and bids will be allowed in increments of
8 \$25,000. The Receiver will then file an amended proposed order confirming the
9 sale to the highest bidder. Earnest money deposits provided by bidders who are
10 unsuccessful will be promptly returned to them. In the event no prospective
11 purchasers qualify themselves to bid by the Bid Qualification Deadline, the
12 Receiver will notify the Court and seek entry of an order approving the sale to
13 Buyer. *Id.* at ¶ 16.

14 **A. Additional Relief**

15 Pursuant to its broad equitable powers with respect to the administration of
16 receivership assets, the Receiver requests the Court authorize payment from the
17 proceeds of the sale of the Property, the valid liens,² taxes, and any other claims on
18 the Property, subject to any objections to such liens, taxes, or claims by the
19 Receiver.

20 Finally, the Receiver requests authority to pay Broker a commission in the
21 amount of 5% of the final purchase price. Based on his experience in real estate
22 transactions and consultation with Broker and counsel, the Receiver believes
23 Broker's commission of 5% is commercially reasonable and consistent with
24 industry standards. *Id.* at ¶ 17.

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28 ² The Receiver is not aware of any valid liens on the Property, which was
purchased with all cash.

