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11 Attorneys for Court-Appointed Receiver
12 KRISTA L. FREITAG

13 UNITED STATES DISTRICT COURT
14 CENTRAL DISTRICT OF CALIFORNIA

15
16 SECURITIES AND EXCHANGE
COMMISSION,

17 Plaintiff,

18 vs.

19 INTEGRATED NATIONAL
20 RESOURCES, INC. dba
WEEDGENICS, ROLF MAX
21 HIRSCHMANN aka "MAX
BERGMANN," PATRICK EARL
22 WILLIAMS,

23 Defendants, and

24 WEST COAST DEVELOPMENT LLC,
25 INR CONSULTING LLC (WYOMING
ENTITY), OCEANS 19 INC.,
26 AUTOBAHN PERFORMANCE LLC,
ONE CLICK GENERAL MEDIA INC.,
27 OPUS COLLECTIVE, JOHN ERIC
FRANCOM, INR-CA INVESTMENT
28 HOLDINGS, LLC, MICHAEL
DELGADO, TOTAL SOLUTION
CONSTRUCTION LLC. BAGPIPE

Case No. 8:23-cv-00855-JWH-KES

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
RECEIVER'S MOTION FOR (A)
APPROVAL OF SALE OF REAL
PROPERTY LOCATED AT 865 E.
RIVERPARK LANE, BOISE, ID;
(B) AUTHORITY TO PAY
BROKER'S COMMISSION**

Date: August 16, 2024
Time: 9:00 a.m.
Ctrm: 9D
Judge: Hon. John W. Holcomb

1 HOLDINGS LLC, BAGPIPE
2 MULTIMEDIA LLC, TYLER
3 CAMPBELL, INR CONSULTING LLC
4 (CALIFORNIA ENTITY), HIDDEN
5 SPRINGS HOLDINGS GROUP LLC,
6 and ALEXANDRIA PORTER BOVEE
7 aka "AIA MONTGOMERY",

8 Relief Defendants.

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1 Krista L. Freitag (“Receiver”), the Court-appointed permanent receiver for
2 Defendant Integrated National Resources, Inc., dba Weedgenics, and Relief
3 Defendants West Coast Development LLC, INR Consulting LLC (Wyoming
4 Entity), Oceans 19 Inc., Autobahn Performance LLC, One Click General Media
5 Inc., Opus Collective, INR-CA Investment Holdings, LLC, Total Solution
6 Construction LLC, Bagpipe Holdings LLC, Bagpipe Multimedia LLC, INR
7 Consulting LLC (California Entity), and Hidden Springs Holdings Group LLC, and
8 their subsidiaries and affiliates (collectively the “Receivership Entities”), submits
9 this Memorandum of Points and Authorities in Support of her concurrently-filed
10 Motion for (A) Approval of Sale of Real Property Located at 865 E. Riverpark
11 Lane, Boise, ID; and (B) Authority to Pay Broker’s Commission (“Motion”).

12 **I. BACKGROUND FACTS**

13 As reflected on Exhibit A to the Receiver’s Fifth Interim Report and
14 Recommendations (Dkt. 233), the receivership estate includes six real properties.
15 The properties include a condominium located at 865 E. Riverpark Lane, Boise,
16 Idaho (“Riverpark Property”). The Riverpark Property was formerly a two-
17 bedroom, two full bath home, but, after it was purchased by Receivership Entity
18 Autobahn Performance LLC (“Autobahn”), it was transitioned into a two bedroom
19 with one full bath and one half bath. The Riverpark Property was purchased in
20 January 2022 by Autobahn for \$630,000. Freitag Decl., ¶ 2.

21 Upon her appointment, the Receiver and her staff performed an analysis of
22 the value of the Riverpark Property, including a review of automated valuation
23 scores for the property, a review of the funds spent to improve (or over-improve) the
24 property and commissioned an appraisal of the property. The Receiver and her staff
25 also consulted with multiple licensed brokers about the value of the property and
26 terms of a potential listing agreement. It is helpful to note that all brokers suggested
27 that the Boise residential real estate market has experienced a reduction in value of
28 about 5% to 10% over the last few years. Ultimately, the Receiver selected eXp

1 Realty, LLC (“Broker”) and had the Riverpark Property listed for sale at \$649,900
2 on May 3, 2024. Freitag Decl., ¶ 3.

3 The Riverpark Property was listed on the local MLS, which syndicates
4 information on all major real estate platforms including Zillow, Redfin, and
5 Realtor.com. In the week following the listing, there were two (2) offers were
6 received. One for \$650,000 and the other for \$661,000. However, the \$650,000
7 offer contained a clause that would increase the offer to be \$5,000 over our highest
8 offer, with a maximum price of \$670,000. The Receiver, through Broker, sent a
9 counteroffer to the highest and best offer to clarify receivership specific terms,
10 including the as-is nature of the sale, and the overbid/auction process. The Receiver
11 ultimately finalized an offer from Edward W. Bird and Alwyn M. Bird (“Buyer”) in
12 the amount of \$666,000. Through Broker, the prospective purchasers whose offers
13 were not selected have been invited to participate in the overbid/auction process
14 discussed below. Freitag Decl., ¶ 4.

15 II. PROPOSED SALE

16 The key terms of the proposed RE-21 Real Estate Purchase and Sale
17 Agreement, including Addendum thereto (“Agreement”), a copy of which is
18 attached to the Freitag Declaration as Exhibit A, are summarized as follows:

19 **Overbid and Court Approval.** The sale is subject to qualified overbids
20 pursuant to the public sale process laid out below.

21 **Purchase Price.** The purchase price is \$666,000, which is being financed by
22 Buyer.

23 **Deposit.** Buyer has deposited \$6,500 into escrow.

24 **Closing Date.** Closing shall occur within 10 days of entry of the Court order
25 approving the sale.

26 **Broker’s Commission.** Pursuant to the listing agreement, Broker is to be
27 paid a commission of 4% of the gross sales price, which is to be split evenly with
28 Buyer’s broker. In the proposed sale, the total commission would be \$26,640.

1 **III. LEGAL STANDARD**

2 “The power of a district court to impose a receivership or grant other forms of
3 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 Ninth
15 Circuit explained:

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

22 *Id.* (citations omitted); *see also CFTC. v. Topworth Int’l, Ltd.*, 205 F.3d 1107, 1115
23 (9th Cir. 1999) (“This court affords ‘broad deference’ to the court’s supervisory
24 role, and ‘we generally uphold reasonable procedures instituted by the district court
25 that serve th[e] purpose’ of orderly and efficient administration of the receivership
26 for the benefit of creditors.”). Accordingly, the Court has broad discretion in the
27 administration of the receivership estate and the disposition of receivership assets.
28

1 **A. The Court’s Authority to Approve Sale**

2 It is widely accepted 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., SEC v.*
4 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers
5 and wide discretion to determine relief in an equity receivership). “The power of
6 sale necessarily follows the power to take possession and control of and to preserve
7 property.” *See SEC v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144 (9th Cir.
8 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds) (*citing*
9 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed. 1992)
10 (*citing First Nat’l Bank v. Shedd*, 121 U.S. 74, 87 (1887)). “When a court of equity
11 orders property in its custody to be sold, the court itself as vendor confirms the title
12 in the purchaser.” 2 Ralph Ewing Clark, Treatise on Law & Practice of
13 Receivers § 487 (3d ed. 1992).

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 (3d ed. 1992). To that end, a
18 federal court is not limited or deprived of any of its equity powers by state statute.
19 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)
20 (state statute allowing time to redeem property after a foreclosure sale not applicable
21 in a 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 (3d ed. 1992). “In authorizing the sale of property by receivers, courts of equity are

1 vested with broad discretion as to price and terms.” *Gockstetter v. Williams*, 9 F.2d
2 354, 357 (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 specific requirements for private sales of real
6 property under subsection (b). Although both involve significant cost and delay, the
7 cost and delay of a public sale are significantly less than those for a private sale.
8 *SEC v. Goldfarb*, 2013 U.S. Dist. LEXIS 118942, at *5 (N.D. Cal. 2013)
9 (“Section 2001 sets out two possible courses of action: (1) property may be sold in
10 public sale; or (2) property may be sold in a private sale, provided that three separate
11 appraisals have been conducted, the terms are published in a circulated newspaper
12 ten days prior to sale, and the sale price is no less than two-thirds of the valued
13 price.”). Therefore, by proceeding under Section 2001(a), the receivership estate
14 can avoid the significant costs and delay of (a) the Court having to appoint three
15 disinterested appraisers, and (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,
23 judgment or decree of any court of the United States shall
24 not be made without notice published once a week for at
25 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.

26 If such realty is situated in more than one county, state,
27 district or circuit, such notice shall be published in one or
28 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

1 approves. The court may direct that the publication be
2 made in other newspapers.

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

6 The notice of sale is sufficient if it describes the property and the time, place,
7 and terms of sale. *Breeding Motor Freight Lines, Inc. v. Reconstruction Finance*
8 *Corp.*, 172 F.2d 416, 422 (10th Cir. 1949). The Court may limit the auction to
9 qualified bidders, who “(i) submit to the Receiver . . . in writing a bona fide and
10 binding offer to purchase the [property]; and (ii) demonstrate . . . , to the satisfaction
11 of the Receiver, that it has the current ability to consummate the purchase of the
12 [property] per the agreed terms.” *Regions Bank v. Egyptian Concrete Co.*,
13 2009 U.S. Dist. LEXIS 111381, at *8 (E.D. Mo. 2009).

14 **IV. DISCUSSION**

15 The Receiver believes the proposed sale to Buyer pursuant to the Agreement
16 is in the best interests of the estate. The Riverpark Property was listed on the MLS
17 with a licensed broker and shown to all interested parties. The property was on the
18 market for seven days, offers were received, terms negotiated, and the Agreement
19 signed. The Receiver has found no evidence that the proposed sale is anything other
20 than an ordinary arm’s length transaction. The purchase price is fair and reasonable,
21 it exceeds the automated values, broker opinions of value and the appraisal
22 commissioned and exceeds what the property was purchased for in 2022 by
23 \$36,000. Freitag Decl., ¶ 5.

24 Moreover, the proposed sale is subject to overbid to further ensure the highest
25 and best price is obtained. The Receiver proposes to conduct a public auction
26 consistent with the requirements of Section 2001(a). Specifically, the Receiver will
27 publish the following notice of the sale once a week for four weeks in the Idaho
28 Statesman, a newspaper of general circulation in Boise County:

1 In the action pending in U.S. District Court for the Central
2 District of California, Case No. 23-CV-00855-JWH
(KES), *Securities and Exchange Commission v. Integrated*
3 *National Resources, Inc. dba Weedgenics, et al.*, notice is
4 hereby given that the court-appointed receiver will
conduct a public auction for the real property located at
5 865 E. Riverpark Lane in Boise County, Idaho. Sale is
subject to Court confirmation after the auction is held.
6 Minimum bid price is at least \$676,000. The auction will
take place on August 9, 2024, at 1:30 p.m. To be allowed
7 to participate in the auction, prospective purchasers must
meet certain bid qualification requirements, including
8 submitting a signed purchase and sale agreement, an
earnest money deposit of \$7,500, and proof of funds. All
9 bidders must be qualified by 5:00 p.m. CT on August 5,
2024, by submitting the required materials to the receiver
10 at 501 West Broadway, Suite 290, San Diego, California,
92101. If interested in qualifying as a bidder, please
11 contact Geno Rodriguez at (619) 567-7223 ext. 102 or
grodriguez@ethreadvisors.com.

12 In order to conduct an orderly auction and provide sufficient time for the
13 publication of notices discussed above, the Receiver will require bidders to complete
14 the above steps by August 5, 2024 (“Bid Qualification Deadline”), and conduct the
15 live public auction on August 9, 2024.

16 The Receiver, through Broker, will inform all interested persons of the
17 opportunity to overbid at the public auction, provided they qualify themselves to bid
18 by the Bid Qualification Deadline by (a) signing a purchase and sale agreement for
19 the properties on the same terms and conditions as Buyer, but with a purchase price
20 of at least \$676,000, (b) providing the Receiver with an earnest money deposit of
21 \$7,500, and (c) providing proof of funds necessary to close the sale transaction in
22 the form of a current bank statement, cashier’s check delivered to the Receiver, or
23 other evidence deemed sufficient by the Receiver.

24 In the event one or more prospective purchasers qualify themselves to bid, the
25 auction will be conducted by the Receiver as noted above and bids will be allowed
26 in increments of at least \$5,000. The Receiver will then file a notice advising the
27 Court of the result of the auction (*i.e.*, the highest bid) and seek entry of an order
28 confirming the sale. Earnest money deposits provided by bidders who are not the

1 highest or second highest bidder will be promptly returned to them. In the event no
2 prospective purchasers qualify themselves to bid by the Bid Qualification Deadline,
3 the Receiver will notify the Court and seek entry of an order approving the sale to
4 Buyer.

5 With respect to Broker’s commission, Broker appears to have broadly
6 marketed the Riverpark Property for sale, to include its posting on the MLS and its
7 own website. The listing agreement is standard for the local area and the
8 commission offered is consistent with the lower range of industry standards for
9 commissions paid to brokers for sales of residential properties. In negotiating the
10 commission rate, the Receiver considered a recently announced settlement that the
11 National Association of Realtors entered with the Department of Justice to resolve
12 ongoing litigation. This agreement is not expected to go into effect until August
13 2024; however, the settlement helped the Receiver negotiate a commission on the
14 lower range of industry standards. Accordingly, the Receiver requests authorization
15 to pay Broker the commission amount in accordance with the listing agreement.
16 Freitag Decl., ¶ 6.

17 **V. CONCLUSION**

18 For the reasons discussed above, the Receiver requests (a) approval of the sale
19 of the Riverpark Property to Buyer pursuant to the Agreement attached to the
20 Freitag Declaration as Exhibit A, and (b) authority to take all steps necessary to
21 close the sale, and (c) authority to pay Broker’s commission as described above.

22
23 Dated: July 12, 2024

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By: /s/Edward G. Fates

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Attorneys for Court-Appointed
Receiver, KRISTA L. FREITAG

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