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13 Attorneys for Receiver Thomas A. Seaman

14 UNITED STATES DISTRICT COURT  
15 CENTRAL DISTRICT OF CALIFORNIA  
16 SOUTHERN DIVISION

17 SECURITIES AND EXCHANGE  
COMMISSION,

18 Plaintiff,

19 v.

20 MEDICAL CAPITAL HOLDINGS,  
21 INC.; MEDICAL CAPITAL  
CORPORATION; MEDICAL  
22 PROVIDER FUNDING  
CORPORATION VI; SIDNEY M.  
23 FIELD; and JOSEPH J.  
LAMPARIELLO,

24 Defendants.  
25  
26  
27  
28

Case No. 8:09-cv-0818-DOC (RNBx)

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR ORDER  
(A) APPROVING SALE OF CASTLE  
HILL PROPERTY FREE AND  
CLEAR OF LIENS,  
(B) AUTHORIZING THE RECEIVER  
TO PAY CERTAIN LIENS AND  
CLAIMS FROM THE SALE  
PROCEEDS, AND (C) APPROVING  
THE REAL ESTATE BROKER'S  
COMMISSION**

Date: October 26, 2009  
Time: 8:30 a.m.  
Ctrm: 9D  
Judge: Hon. David O. Carter

1 Thomas A. Seaman ("Receiver"), Court-appointed permanent receiver for  
2 Medical Capital Holdings, Inc. ("MCH"), Medical Capital Corporation ("MCC"),  
3 Medical Provider Funding Corporation VI ("MP VI"), and their subsidiaries and  
4 affiliates (collectively, the "Receivership Entities"), submits this Memorandum of  
5 Points and Authorities in Support of his Motion for Order (a) Approving Sale of the  
6 Castle Hill Property Free and Clear of Liens, (b) Authorizing the Receiver to Pay  
7 Certain Liens and Claims from the Sale Proceeds, and (c) Approving the Real Estate  
8 Broker's Commission ("Motion").

### 9 I. INTRODUCTION

10 At the time the Receiver was appointed, the Receivership Entities had  
11 marketed the property located at 3575 North Moorpark Road, Thousand Oaks,  
12 California, known as the Castle Hill Retirement Village (the "Property") for sale  
13 with the assistance of real estate broker, Lee & Associates, Inc. ("Broker"). The  
14 Receivership Entities had executed a Purchase and Sale Agreement with proposed  
15 buyer WSL Castle Hill Retirement, LLC ("Buyer"), with a purchase price of  
16 \$14,400,000. Buyer had deposited \$500,000 into escrow.

17 The Receiver reviewed the Purchase and Sale Agreement, appraisals and  
18 other documents relating to the Property, and determined that the proposed  
19 transaction is in the best interests of the receivership estate. Therefore, subject to  
20 Court approval, the Receiver and Buyer entered into an Amended and Restated  
21 Purchase and Sale Agreement ("Agreement").<sup>1</sup> The terms of the transaction are  
22 largely the same (including the \$14,400,000 purchase price), but the sale is now  
23 subject to Court approval. The sale is also subject to the overbid procedures laid out  
24 in Article 15 of the Agreement and summarized in the concurrently filed Ex Parte  
25 Application for Order (a) Authorizing Receiver to Sell Castle Hill Property, and  
26

27 \_\_\_\_\_  
28 <sup>1</sup> The Agreement is attached to the Declaration of Thomas Seaman in support of  
the Motion ("Seaman Declaration"). The terms of the Agreement are  
summarized below.

1 (b) Approving Overbid Procedures ("Ex Parte Application"). The Ex Parte  
2 Application seeks approval of the Receiver's proposed overbid procedures, which he  
3 contemplates using in connection with an auction of the Property to be held at the  
4 hearing on this Motion.

5 Any sale of the Property, whether to the Buyer or the highest overbidder, is  
6 on an "AS IS," "WHERE IS," and "WITH ALL FAULTS" basis, and the Receiver  
7 makes no representations or warranties regarding the condition of the Property. The  
8 Receiver requests that the sale of the Property be free and clear of all liens, claims  
9 and encumbrances, with such liens, claims and encumbrances attaching to the sale  
10 proceeds. Further, the Receiver requests authority to pay from the proceeds of sale  
11 the valid liens, taxes and any other claims on the Property, subject to any objections  
12 to such liens, taxes or claims by the Receiver.

13 The Receiver believes that the Agreement, obtained through the commercially  
14 reasonable and customary method of listing the Property with a broker and  
15 conducting arm's length negotiations with Buyer, reflects the fair market value for  
16 the Property. However, to ensure that the highest and best price is obtained, the sale  
17 to Buyer is subject to overbid by potential purchasers that qualify themselves as  
18 bidders. The overbid procedures are discussed in further detail in the Ex Parte  
19 Application. The Receiver, with the assistance of the Broker, has continued to  
20 market the Property with the goal of promoting active overbidding at the auction.

21 Finally, the Receiver requests authority to pay the Broker a commission in the  
22 amount of 2.5% of the final purchase price. Based on his extensive experience in  
23 real estate transactions, the Receiver believes that such commission is commercially  
24 reasonable and in line with real estate industry standards.

## 25 **II. PROCEDURAL BACKGROUND**

26 On July 16, 2009, the Commission commenced an enforcement action against  
27 MCH, MCC, MP VI, Sidney M. Field and Joseph J. Lampariello ("Defendants"),  
28 alleging various violations of securities laws. On the same day, the Commission

1 filed an Ex Parte Application for Temporary Restraining Order and Orders:  
2 (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting the  
3 Destruction of Documents; (4) Granting Expedited Discovery, and (5) Requiring  
4 Accountings; and Order to Show Cause Re: Preliminary Injunction and  
5 Appointment of a Permanent Receiver.

6 On August 3, 2009, the Court entered the Temporary Restraining Order and  
7 Orders: (1) Freezing Assets; (2) Appointing a Temporary Receiver; (3) Prohibiting  
8 the Destruction of Documents; and (4) Requiring Accountings; and Order to Show  
9 Cause Re: Preliminary Injunction and Appointment of a Permanent Receiver  
10 ("TRO"). The TRO appointed Thomas A. Seaman as temporary receiver for the  
11 Receivership Entities. The Receiver filed his 10-Day Report to the Court on  
12 August 12, 2009. On August 18, 2009, the Court entered a Preliminary Injunction  
13 and Order Appointing A Permanent Receiver, extending the provisions of the TRO  
14 and making the Receiver's appointment permanent.

15 On September 8, 2009, the Receiver filed his Second Report to the Court. At  
16 a hearing held the same day, the Court denied the motion of Defendants Field and  
17 Lampariello to remove the Receiver, appoint a management committee and put the  
18 Receivership Entities into bankruptcy. The Court instructed the Receiver to file  
19 monthly reports. The Receiver will file his report for the month of September on  
20 October 9, 2009.

### 21 III. THE CASTLE HILL PROPERTY

22 In September 2005, MCC, as administrator for Medical Provider Funding  
23 Corporation II ("MP II"), issued loans in the amount of approximately \$21 million  
24 to SMB King Properties, Inc. for the acquisition of the Property. After SMB King  
25 defaulted on the loan, MCC accepted a deed in lieu of foreclosure and created a  
26 special purpose entity, Castle Hill Investors, Inc., ("CHII") to hold title to the  
27 Property. CHII entered into a lease and a management agreement with Autumn  
28 Senior Living, Inc. ("ASLI"), under which ASLI operates the Castle Hill retirement

1 facility. The lease and the management agreement with ASLI each expire according  
2 to their respective terms on October 31, 2009.

3 Buyer intends to continue operation of the Property as a retirement  
4 community with minimal interruption of services to its existing residents and clients.  
5 It is critical, therefore, that the sale close on or before November 1, 2009, such that  
6 Buyer can take possession and continue operations immediately upon termination of  
7 the existing lease and management agreements with ASLI.

#### 8 IV. THE SALE

9 The Agreement is attached to the Seaman Declaration. Its terms are  
10 summarized as follows:<sup>2</sup>

11 **Court approval.** All aspects of the Agreement and the sale are subject to  
12 approval by the Court.

13 **Purchase Price.** \$14,400,000.

14 **Closing Date.** The later of October 29, 2009, or three (3) business days  
15 following entry of an order confirming the sale.

16 **Deposit.** Buyer has deposited \$500,000 into escrow.

17 **As Is Purchase.** Buyer purchases the Property on an "AS IS," "WHERE IS,"  
18 and "WITH ALL FAULTS" basis, and the Receiver makes no representations or  
19 warranties regarding the condition of the Property.

20 **Overbid Procedures.** The sale is subject to the overbid procedures laid out  
21 in Article 15 of the Agreement and summarized in the concurrently filed Ex Parte  
22 Application. Pursuant to those procedures, if Buyer is not the highest qualified  
23 bidder at the auction, Buyer's deposit will be returned to it and Buyer shall be paid a  
24 \$100,000 break-up fee.

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<sup>2</sup> The terms of the Agreement are summarized herein for convenience only. In the event of any conflict between the Agreement and the summary provided herein, the Agreement governs and controls.

1 **Broker's Commission.** By separate agreement, the Receiver has agreed to  
2 pay Broker a commission of 2.5% of the final purchase price. Broker has invested  
3 substantial time into locating potential purchasers for the Property. Since the  
4 Agreement with Buyer was signed, Broker has provided other potential purchasers  
5 with due diligence materials and notice of the opportunity to overbid in an effort to  
6 promote active overbidding at the auction.

7 **V. ARGUMENT**

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

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

22 A district court's power to supervise an equity receivership  
23 and to determine the appropriate action to be taken in the  
24 administration of the receivership is extremely broad. The  
25 district court has broad powers and wide discretion to  
26 determine the appropriate relief in an equity receivership.  
27 The basis for this broad deference to the district court's  
28 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.

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

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

9 **A. The Sale Subject to Overbid**

10 It is generally conceded that a court of equity having custody and control of  
11 property has power to order a sale of the same in its discretion. *See, e.g., S.E.C. v.*  
12 *Elliott*, 953 F.2d 1560, 1566 (11th Cir. 1992) (the District Court has broad powers  
13 and wide discretion to determine relief in an equity receivership). "The power of  
14 sale necessarily follows the power to take possession and control of and to preserve  
15 property." *See also S.E.C. v. American Capital Invest., Inc.*, 98 F.3d 1133, 1144  
16 (9th Cir. 1996), *cert. denied* 520 U.S. 1185 (decision abrogated on other grounds)  
17 (*citing* 2 Ralph Ewing Clark, Treatise on Law & Practice of Receivers § 482 (3d ed.  
18 1992) (*citing* *First Nat'l Bank v. Shedd*, 121 U.S. 74, 87 (1887))). "When a court of  
19 equity orders property in its custody to be sold, the court itself as vendor confirms  
20 the title in the purchaser." 2 Ralph Ewing Clark, Treatise on Law and Practice of  
21 Receivers § 487).

22 "A court of equity, under proper circumstances, has the power to order a  
23 receiver to sell property free and clear of all encumbrances." *Miners' Bank of*  
24 *Wilkes-Barre v. Acker*, 66 F.2d 850, 853 (2d Cir. 1933). *See also*, 2 Ralph Ewing  
25 Clark, Treatise on Law & Practice of Receivers § 500 (3rd ed. 1992). To that end, a  
26 federal court is not limited or deprived of any of its equity powers by state statute.  
27 *Beet Growers Sugar Co. v. Columbia Trust Co.*, 3 F.2d 755, 757 (9th Cir. 1925)

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1 (state statute allowing time to redeem property after a foreclosure sale not applicable  
2 in a receivership sale).

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

12 The Receiver has reviewed documents and financial statements relating to the  
13 Property and the Castle Hill retirement community. He has reviewed the efforts by  
14 the Receivership Entities, with the assistance of the Broker, to market and sell the  
15 Property, and the offers that were received. He has consulted with the Broker and  
16 continued to market the Property to potential purchasers to promote active  
17 overbidding. As noted above, the Receiver has also advertised the sale and the  
18 opportunity to overbid on three (3) separate days in the Los Angeles Times.

19 Based on this investigation and analysis, the Receiver believes that the  
20 proposed sale to Buyer, subject to overbids at the auction, will generate the highest  
21 and best recovery for the receivership estate from the Property. Accordingly, the  
22 Receiver requests approval of the Agreement, or a sale on the same terms (other  
23 than purchase price) to the high bidder at the auction.

24 **B. Additional Relief**

25 Pursuant to its broad equitable powers with respect to the administration of  
26 receivership assets, the Receiver requests that the Court authorize him to pay from  
27 the proceeds of sale of the Property, the valid liens, taxes, and any other claims on  
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1 the Property, subject to any objections to such liens, taxes, or claims by the  
2 Receiver.

3 Finally, the Receiver requests authority to pay the Broker a commission in the  
4 amount of 2.5% of the final purchase price. Based on his extensive experience in  
5 real estate transactions, the Receiver believes that such commission is commercially  
6 reasonable and consistent with real estate industry standards.

7 **VI. CONCLUSION**

8 WHEREFORE, the Receiver requests entry of an order (a) approving the sale  
9 of the Property to Buyer or the highest bidder free and clear of liens, claims and  
10 encumbrances, with such liens, claims and encumbrances attaching the sale  
11 proceeds in the sale validity and priority that they had with respect to the Property;  
12 (b) authorizing the Receiver to pay from the proceeds of sale of the Property, the  
13 valid liens, taxes, and any other claims on the Property, subject to any objections to  
14 such liens, taxes, or claims by the Receiver; and (c) authorizing the Receiver to pay  
15 commission of 2.5% of the final purchase price to the Broker.

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17 Dated: October 2, 2009

ALLEN MATKINS LECK GAMBLE  
MALLORY & NATSIS LLP

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By: /s/ Ted Fates

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TED FATES  
Attorneys for Receiver  
Thomas A. Seaman

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