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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

11 SECURITIES AND EXCHANGE
COMMISSION,
12
Plaintiff,
13
v.
14 SILICONSAGE BUILDERS, LLC aka
15 SILICON SAGE BUILDERS and
SANJEEV ACHARYA,
16
Defendants.

Case No. 3:20-cv-09247-SI

**NOTICE OF MOTION AND MOTION OF
RECEIVER, DAVID STAPLETON, FOR
ORDER APPROVING SALE OF REAL
PROPERTY OWNED BY 138 BALBACH,
LLC FREE AND CLEAR OF LIENS**

**[Memorandum of Points and
Authorities and Supporting
Declarations Filed Concurrently]**

Date: August 20, 2021
Time: 10:00 a.m.
Crtrm.: 1 – 17th Floor (hearing via Zoom)
Judge: Susan Illston

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20 **TO THE HONORABLE SUSAN ILLSTON, SENIOR DISTRICT JUDGE, AND ALL**
21 **PARTIES IN INTEREST:**

22 **PLEASE TAKE NOTICE** that on August 20, 2021, at 10:00 a.m., the Court is
23 scheduled to hold a hearing on the motion (the "Motion") of David Stapleton, the Court-
24 appointed receiver (the "Receiver"), for an order in aid of the receivership authorizing him
25 to sell the real property owned by 138 Balbach, LLC, free and clear of liens. The Court
26 will be conducting the hearing by Zoom, and instructions for appearing at the hearing will
27 be posted approximately two days prior to the hearing. **Pursuant to Local Rule 7-3(a),**
28 **any written opposition to the relief sought in the Motion must be filed with the**

1 **Court and served on counsel for the moving party by no later than fourteen (14)**
2 **days after the filing of this Motion, which is occurring on July 16, 2021.**

3 Concurrently with this Motion, the Receiver is filing his Memorandum of Points and
4 Authorities in support of the Motion and the supporting declarations of Scott Bales and
5 David Stapleton (together, the "Memorandum"). The Motion and the Memorandum are
6 being served by mail on all secured creditors as reflected in the preliminary title report for
7 the real property. Pursuant to the order limiting notice in this case, both the Motion and
8 the Memorandum are being made available on the website for this receivership, which is
9 www.siliconsagereceivership.com, or by contacting proposed counsel for the Receiver at
10 kandrassy@swelawfirm.com. The following describes the relief sought in this Motion.

11
12 **I. The Receiver Has Accepted an Offer for the Purchase of the Real Property**
13 **Owned by 138 Balbach, LLC**

14 **A. The Terms of the Proposed Sale**

15 138 Balbach, LLC, owns the Property, which is an apartment building in downtown
16 San Jose with 101 residential units, nearly all of which are rented. Pre-receivership, 138
17 Balbach, LLC, retained JLL to list and market the Property and, after doing research, the
18 Receiver decided to continue JLL's engagement and retained it as his broker to continue
19 to list and market the Property.

20 After several months of aggressive marketing which is described in more detail in
21 the accompanying declaration of Scott Bales, the Receiver has accepted an offer from
22 Carmel Partners Realty VII, LLC, a Delaware limited liability company (the "Buyer"), to
23 purchase the apartment building owned by 138 Balbach, LLC, that is located at 138
24 Balbach St., San Jose, California (the "Property") for \$54.2 million. Pursuant to the
25 Purchase and Sale Agreement that was executed on June 23, 2021 (the "Purchase
26 Agreement"), the Buyer has deposited \$1 million with escrow and has until July 23, 2021,
27 to conduct due diligence. The deposit will become non-refundable if the Buyer does not
28 terminate the Purchase Agreement prior to the deadline to conduct due diligence, unless

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1 the Court does not authorize the Receiver to proceed with this sale. At the closing, the
2 Buyer will assume liability under all of the tenant leases, including the obligation to return
3 any security deposits in accordance with the terms of the tenant leases. In addition, the
4 Buyer has the option to elect to assume any executory contracts or unexpired leases,
5 which would include the property management agreement. If the Buyer assumes any
6 contracts, then the Buyer will assume the liabilities under those contracts. The closing is
7 to occur on or before the later of thirty days after the completion of due diligence and ten
8 days after entry of an order of this Court approving the sale. The sale is "as-is, where-is"
9 and without any representations or warranties.

10 **B. The Senior Secured Lender Has Agreed to Waive All Default Interest**
11 **Pursuant to a Forbearance Agreement**

12 The Property is subject to a number of liens that will be paid from the proceeds of
13 the sale at the closing. PFP Holding Company V, LLC ("PFP") holds the first priority
14 deed of trust against the Property, which secures a loan in the principal amount of
15 \$39,625,000. As long as the sale of the Property closes by October 1, 2021, and it is
16 paid in accordance with the forbearance agreement, PFP has agreed to waive all default
17 interest and instead charge the non-default rate. If the sale of the Property does not
18 close by October 1, 2021, then the Forbearance Agreement is of no further force or effect
19 and the parties are back in their original negotiating position. As of July 14, 2021, and
20 with interest at the non-default rate, PFP is owed \$39,882,922.70, net of reserves of
21 \$256,042.15.

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1 **C. The Equity Analysis**

2 From the sale of the proceeds, and based on the preliminary title report that is
3 attached to the Memorandum as Exhibit "3" (the "Preliminary Title Report"), the Receiver
4 intends to pay the following liens at the closing:

Description of Lien or Item To Be Paid	Estimated Amount To Be Paid ¹
PFP Holding Company V, LLC	\$39,882,922.70 ²
Mechanic's Lien of Alcal Specialty Contracting, Inc.	\$29,071.35
Mechanic's Lien of Detail Construction & Waterproofing	\$90,225.00
Mechanic's Lien of California Fire Systems, Inc.	\$97,830.63
Mechanic's Lien of Pace Supply Co.	\$10,653.92
Mechanic's Lien of D&D Windows	\$81,201.01
Mechanic's Lien of A&D Automotive Gate Company	\$50,337.16
Mechanic's Lien of St. Francis Electric	\$28,209.69
Mechanic's Lien of Express Fence	\$12,736.00
Total	\$40,283,187.46

18
19 The Preliminary Title Report reflects that property taxes have been paid and are
20 current, but if any are due, the Receiver will pay those at the closing. Although the
21 Receiver does not anticipate any additional mechanic's liens, if any arise that must be
22 paid through escrow in order to convey title free and clear of liens, then the Receiver
23 requests authority to pay those liens. Any such mechanic's liens, together with the liens
24 listed in the chart above, are hereinafter referred to as the "Liens." For avoidance of
25 doubt, the Liens are comprised of items 13 through 23 of the Preliminary Title Report.

26 _____
27 ¹ These amounts are estimates only and are subject to change.

28 ² This amount is as of July 14, 2021.

1 These items are not presently disputed but if a dispute arises after the filing of the Motion,
2 the Receiver will give the claimant notice that its Lien is disputed and that the disputed
3 portion of the Lien will attach to the proceeds of the sale pending further Court order.

4 In addition, the Receiver seeks authority to pay the broker, JLL, its commission of
5 \$400,000, plus 2% of every dollar over \$50 million, not to exceed \$200,000. Because the
6 sale price is \$54.2 million, JLL is entitled to 2% of \$4.2 million, which equals \$84,000, for
7 a total commission of \$484,000, which is less than 1% of the sale price. A copy of its
8 listing agreement is attached to the Memorandum as Exhibit "4." Out of an abundance of
9 caution, the Receiver is estimating 2% costs of sale, which total \$805,663. With these
10 deductions, the Receiver expects that the receivership estate will net approximately
11 \$12.6 million from the sale.

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14 DATED: July 16, 2021

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

17 By: /s/ Kyra E. Andrassy
18 KYRA E. ANDRASSY
19 Counsel for David Stapleton, Receiver

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BY U.S. MAIL:

Senior District Judge Susan Illston
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Office of the Clerk
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Balbach Secured Creditor Service List (Served by U.S. Mail)

Claimant	Claimant's Address	Counsel for Claimant	Counsel's Address
Alcal Specialty Contracting, Inc.		Daniel S. Yanagihara, Jr. Pacific Coast Companies, Inc.	10600 White Rock Rd., Suite 100 Rancho Cordova, CA 95670
Detail Construction & Waterproofing Inc.	14451 Esther Dr. San Jose, CA 95124	Salina Morales Easy Law Construction Notices	1777 East Los Angeles Ave. Suite 203 Simi Valley, CA 93065
California Fire Systems, Inc.	12230 Shale Ridge Lane Auburn, CA 95602	Scott McElhern Downey Brand LLP	621 Capitol Mall, 18 th Fl. Sacramento, CA 95814
Pace Supply Corp.	PO Box 6407 Rohnert Park, CA 94927		
D&D Windows	3136 Auburn Blvd. Sacramento, CA 95821		
A&D Automatic Gate Company	PO Box 5040 Redwood City, CA 94063	Colleen Kirk	PO Box 241566 Cleveland, OH 44124
St. Francis Electric	975 Carden St. San Leandro, CA 94577		
Express Fence, LLC	PO Box 294 Santa Clara, CA 95052		
PFP Holding Company V, LLC	Attn: Steve Gerstung 233 North Michigan, Suite 1915 Chicago, IL 60601		