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7 Counsel for David Stapleton, Receiver

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

10  
11 SECURITIES AND EXCHANGE  
COMMISSION,

12 Plaintiff,

13 v.

14 SILICONSAGE BUILDERS, LLC aka  
15 SILICON SAGE BUILDERS and  
SANJEEV ACHARYA,

16 Defendants.  
17

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

**NOTICE OF MOTION AND MOTION OF  
RECEIVER, DAVID STAPLETON, FOR  
ORDER:**

**(1) APPROVING CONSTRUCTION  
FUNDING AGREEMENT WITH ACRES  
CAPITAL;**

**(2) AUTHORIZING EMPLOYMENT OF  
SPECIAL REAL ESTATE COUNSEL;  
AND**

**(3) APPROVING THE FORM OF THE  
CONDOMINIUM PURCHASE  
AGREEMENTS AND AUTHORIZING  
THE SALE OF THOSE UNITS FREE  
AND CLEAR OF LIENS**

**[Memorandum of Points and  
Authorities and Appendix of Exhibits  
Filed Concurrently]**

Date: December 3, 2021  
Time: 10:00 a.m.  
Crtrm.: 1 – 17<sup>th</sup> Floor (hearing via Zoom)  
Judge: Susan Illston

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1 TO THE HONORABLE SUSAN ILLSTON, SENIOR DISTRICT JUDGE, ALL  
2 LIENHOLDERS OF OSGOOD, LLC, AND 1821 ALMADEN, LLC, AND PARTIES IN  
3 INTEREST:

4 PLEASE TAKE NOTICE that on December 3, 2021, at 10:00 a.m., the Court is  
5 scheduled to hold a hearing on the motion (the "Motion") of David Stapleton, the Court-  
6 appointed receiver, for an order in aid of receivership (1) approving a construction  
7 funding agreement with Acres Capital related to the condominium projects owned by  
8 Osgood, LLC ("Osgood") and 1821 Almaden, LLC ("Almaden"), (2) authorizing the  
9 employment of special real estate counsel, and (3) approving the form of the residential  
10 purchase agreements and the sale of the condominium units free and clear of all liens.

11 Unless the Court issues an order in advance of the hearing, the Court will be  
12 conducting the hearing by Zoom, and instructions for appearing at the hearing will be  
13 posted approximately two days prior to the hearing. **Pursuant to Local Rule 7-3(a), any**  
14 **written opposition to the relief sought in the Motion must be filed with the Court**  
15 **and served on counsel for the moving party by no later than fourteen (14) days**  
16 **after the filing of this Motion, which is occurring on October 29, 2021.**

17 Concurrently with this Motion, the Receiver is filing his Memorandum of Points and  
18 Authorities in support of the Motion and the supporting declaration of David Stapleton  
19 with accompanying exhibits (together, the "Memorandum"). The Motion and the  
20 Memorandum are being served by mail on all lienholders and individual noteholders of  
21 Osgood or Almaden. Pursuant to the order limiting notice in this case, both the Motion  
22 and the Memorandum are being made available on the website for this receivership,  
23 which is [www.siliconsagereceivership.com](http://www.siliconsagereceivership.com), or by contacting proposed counsel for the  
24 Receiver at [kandrassy@swelawfirm.com](mailto:kandrassy@swelawfirm.com). The following describes the relief sought in this  
25 Motion:  
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1 **I. BACKGROUND FACTS**

2 Osgood is one of the Receivership Entities and owns a condominium project that  
3 is still under construction. The project consists of a five-story building with ninety-three  
4 condominiums ranging from one to three bedrooms and with twenty-two floor plan  
5 variations (the "Osgood Project"). Almaden owns a condominium project that consists of  
6 a five-story building with ninety-six condominiums ranging from one to three bedrooms  
7 and twenty-four different floor plans (the "Almaden Project" and, together with the  
8 Osgood Project, the "Projects"). In 2018, Acres Loan Origination, LLC, as administrative  
9 agent for itself and other lenders, agreed to loan Osgood \$45,000,000 to fund  
10 construction costs for Osgood and separately agreed to loan Almaden \$41,875,000 to  
11 fund construction costs. Copies of these loan agreements are included as Exhibits 1 and  
12 2. The loans were secured by deeds of trust in first priority against each property and  
13 bore interest at the LIBOR rate, plus 8.5% per annum, which ran approximately 11% per  
14 annum at the non-default rate. SiliconSage Construction, LLC, was the general  
15 contractor on the Projects, and SiliconSage Builders and other entities provided  
16 construction and design services for the Projects.

17 In connection with the filing of this action, the SEC sought the appointment of a  
18 receiver, setting the hearing on regular notice for January 29, 2021. After the Court  
19 appointed the Receiver by order entered on February 10, 2021 (the "Receivership  
20 Order"), the Receiver was granted sole authority over all of the entities in receivership,  
21 including Almaden and Osgood, and was required to obtain control over their operations.

22 Much of the Receiver's focus in the early stages on this case were about whether  
23 and how to complete construction on the Projects. Initially, the Receiver was in  
24 negotiations with the preferred equity holder of Osgood and Almaden, TriGate, and with  
25 Acres, the construction lender. However, as the Receiver learned that both Osgood and  
26 Almaden had investors with liens and investors with unsecured notes, he reevaluated the  
27 negotiations and, after exploring other options, determined that proceeding with funding  
28 from the existing construction lender made the most sense.

1 The Receiver continued to use Suffolk Construction, which was selected by  
2 TriGate in late 2020, as the construction manager for the Projects, but soon learned that  
3 the budgets that everyone had been relying on were replete with incomplete and bad  
4 information and, for the most part, were not based on field inspections and bids from  
5 subcontractors but were instead based on unreliable information from SiliconSage.  
6 Because it had not been done by TriGate, the Receiver immediately engaged contractors  
7 to complete forensic reviews of the work that had been done to that point so that he could  
8 understand the amount of work that remained outstanding and then get bids for that  
9 work, ensuring that all work would be up to local and state code requirements. This is  
10 necessary because contractors will not bid work that is in mid-construction unless they  
11 first understand the scope of the work remaining to be performed. This was the focus of  
12 the efforts in the period from April through June. Once the Receiver identified the specific  
13 work that remained, he was able to obtain bids for various jobs and secure  
14 subcontractors to perform the work. The Receiver is now in the very tail end of the  
15 process of retaining or reengaging subcontractors, with work having resumed on both  
16 Projects. This work has been funded by Acres through protective advances. With the  
17 construction budgets in near final form so that the risks and benefits can be determined  
18 and addressed with more precision, the Receiver and Acres turned to finalizing their  
19 negotiations and that agreement is the subject of the Motion.

20 To date, Acres has funded \$8,547,674 in protective advances to Almaden and  
21 \$6,896,985 in protective advances to Osgood. The Receiver estimates that the total cost  
22 to complete construction at Osgood, including the protective advances already made, is  
23 \$16,226,483, and that the total cost to complete construction at Almaden, including the  
24 protective advances already made, is \$26,958,962. Acres' figures are slightly different.

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1 Under the agreement with Acres that is provided as Exhibit 5 (the "Acres  
2 Agreement"),<sup>1</sup> Acres will continue to fund the Projects to completion by continuing to  
3 make protective advances that will be considered part of and added to the existing  
4 construction loans. Although Acres will have relief from the Receivership Order to  
5 exercise its state law remedies, it has agreed to forbear on exercising those remedies  
6 while construction continues, except as set forth in the Acres Agreement and explained  
7 below.

8 Commencing on the date that the Receiver was appointed, Acres has agreed to  
9 reduce the interest charged on the outstanding amount of the loan as of that date to an  
10 annual interest rate of 4% and will charge 8% annual interest on the protective advances  
11 made post-receivership and pursuant to the Acres Agreement. Acres has agreed that  
12 from proceeds from the sale of the condominiums that would otherwise be paid to it on  
13 account of its liens, it will give \$200,000 from each project to the receivership estate, for a  
14 total of \$400,000. Subject to the approval of the Court, the fees and costs of the  
15 receivership estate incurred in connection with the management of construction on these  
16 Projects will be paid as part of the protective advances being made by Acres, not  
17 because the Receiver has concluded that Osgood and Almaden are not part of a unitary  
18 enterprise but because it minimizes the risk to the receivership estate. With Acres  
19 funding them from its protective advances, it ensures that the carveouts agreed to by  
20 Acres are preserved for the receivership estate and will not be depleted by the fees and  
21 costs of the Receiver incurred in connection with the day to day management of the  
22 projects. Essentially, it shifts risk from the receivership estate to Acres. Although the  
23 Receiver's fees and costs in connection with construction management will be paid  
24 through the protective advances, the fees and costs of counsel that have been incurred  
25 since the case's inception will not, with two exceptions.

26  
27 <sup>1</sup> The Acres Agreement is in substantially final form but remains subject to final approval and further  
28 revision. The executed agreement will be filed with the Court prior to the hearing together with a redline in  
the event that there are any changes.

1 The first exception relates to the purchase agreements that the Receiver believes  
2 are better characterized as disguised loans. Under the Acres Agreement, the Receiver  
3 has agreed to seek orders from this Court recharacterizing these agreements as  
4 disguised loans and not true purchase agreements. If the Receiver is unsuccessful in  
5 recharacterizing the agreements on Almaden or Osgood and the net economic impact of  
6 any loss is \$1 million or more, then Acres' obligation to forbear from exercising state law  
7 remedies will terminate as to that project and Acres will have the right to foreclose  
8 against the impacted project. In the event of a foreclosure of either or both of the  
9 Projects, the receivership estate will still receive \$200,000 from each project. Acres is  
10 being granted this relief because a foreclosure sale will eliminate any junior interests in  
11 the property being foreclosed against, including these purchase agreements. Because  
12 these efforts are expected to likely inure solely for Acres' benefit given the construction  
13 budgets, Acres has agreed to pay the allowed fees and costs that counsel for the  
14 Receiver incurs in connection with these efforts, regardless of the outcome.

15 The second exception relates to the law firm of FCM Law, Inc. Fred Moore of  
16 FCM Law has been retained on a limited basis to assist Osgood and Almaden with real  
17 estate issues resulting from the delays and the receivership, including (1) the revision of  
18 the condominium purchase agreements so that they provide for sales to be as is, and  
19 where is, with only the warranties required under California law, and (2) the amendment  
20 of the public reports on file with the California Department of Real Estate, including  
21 updated budgets and CC&Rs. These are specialized issues that require counsel with an  
22 expertise in real estate transactions and condominium developments. FCM Law has this  
23 expertise and charges an hourly rate of \$450 to perform this work. The Receiver  
24 interviewed the counsel who had previously performed this work to inquire how much he  
25 would charge per hour to complete it, and his hourly rate was \$675. FCM Law was  
26 equally qualified to do the work. As of October 4, 2021, FCM Law had incurred fees of  
27 \$8,185.00. If the DRE does not identify any deficiencies, then FCM Law estimates that  
28 its additional fees will be about \$5,000.00. If the DRE does identify deficiencies, then

1 that amount will increase. Given the limited scope of the work being performed, the  
 2 Receiver seeks authority to retain FCM Law as special real estate counsel and to pay it  
 3 up to \$50,000.00 in the ordinary course without the necessity of a further Court order. If  
 4 the fees exceed \$50,000.00, then a fee application will be filed with the Court. Because  
 5 FCM Law's services are critical to moving the Projects forward, Acres has agreed that  
 6 FCM Law's fees and costs may be paid as part of the protective advances it is making.

7 The Motion seek approval of the Acres Agreement, authorization to employ FCM  
 8 Law as special real estate counsel, approval of the form of the residential purchase  
 9 agreements and escrow instructions, and authorization to sell the condominium units free  
 10 and clear of all liens. Acres will receive the net proceeds from each sale after payment of  
 11 commissions, property taxes, the carveout agreed to in the Agreement, and closing costs  
 12 until it is paid in full. Once Acres is paid in full, any remaining net sale proceeds will be  
 13 paid to the junior lienholder(s). So that the junior lienholders do not have to execute  
 14 partial releases in connection with the closing of each condominium unit, the Receiver  
 15 proposes that the junior lenders be excused from this requirement and that the order  
 16 state that the sale of each of the units is free and clear of their liens until Acres is paid in  
 17 full, at which time the net proceeds of the units, if any, will be paid to the junior  
 18 lienholders in satisfaction of their liens and in the priority in which they were recorded.  
 19 This procedure will make the closings more efficient and still ensure that they retain their  
 20 rights as junior lienholders.

21  
 22 **II. RELIEF REQUESTED**

23 Based on the foregoing, the Receiver requests that the Court enter an order:

24 (1) Granting the Motion;

25 (2) Authorizing the Receiver to enter into the Acres Agreement and

26 (a) approving the provisions of the Acres Agreement, including the  
 27 provision that gives Acres relief from the Receivership Order to exercise its state law  
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1 remedies effective upon entry of the order, subject to its agreement to forbear as set forth  
2 in the Acres Agreement;

3 (b) providing that in the event that Acres exercised its remedy to  
4 foreclose as permitted by the Acres Agreement, the stay contained in the Receivership  
5 Order remains in effect as to all other parties and actions;

6 (3) Authorizing the Receiver to retain FCM Law and to pay FCM Law in the  
7 ordinary course through the protective advances being made by Acres and waiving the  
8 requirement that FCM Law file an application for allowance and payment of its fees  
9 unless the fees exceed \$50,000.00;

10 (4) Authorizing the Receiver to execute Residential Purchase Agreements  
11 substantially in the form submitted as Exhibits 10 and 11 to the Memorandum on behalf  
12 of Osgood and Almaden;

13 (5) Providing that the sale of each unit of the Osgood Project, the legal  
14 descriptions for which are included in the preliminary title report provided as Exhibit 3,  
15 shall be free and clear of all liens, including the liens listed below, with the lien of Acres to  
16 be paid in the manner required by the loan agreements as modified by the Acres  
17 Agreement until its debt is paid in full:

18 (a) The lien of Yeong-Sae Kim et al., recorded as Document No.  
19 22555587 on March 26, 2014, which lien is disputed;

20 (b) The lien of Acres Loan Origination, LLC, recorded as Document No.  
21 2018193964 on October 5, 2018;

22 (c) The lien of Sathappan Venkatachalam recorded as Document No.  
23 2020363594 on December 24, 2020;

24 (d) A claim of lien of Sound-Crete Contractors, Inc. recorded as  
25 Document No. 2020371744 on December 31, 2020;

26 (e) A claim of lien of Whirlpool Corporation recorded as Document No.  
27 2021015395 on January 13, 2021;

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1 (f) A claim of lien by SiliconSage Construction, Inc., recorded as  
2 Document No. 2021022672 on January 20, 2021;

3 (g) A claim of lien by The Scaffold Works, Inc., recorded as Document  
4 No. 2021055604 on February 8, 2021; and

5 (h) A claim of lien by Blackwell General Engineering, Inc., recorded as  
6 Document No. 2021056792 recorded on February 8, 2021

7 The sales of the individual units of the Osgood Project are free and clear of the  
8 liens referenced at 5(a) and 5(c) through (h) above without the necessity of the execution  
9 of a release or reconveyance by the lienholder, with the recording of this Order sufficient  
10 to remove the liens as an encumbrance of record;

11 (6) Providing that the sale of each unit of the Almaden Project, the legal  
12 descriptions for which are attached to the preliminary title report submitted as Exhibit 4,  
13 shall be free and clear of all liens, including the liens listed below, with the lien of Acres to  
14 be paid in the manner required by the loan agreements as modified by the Acres  
15 Agreement until its debt is paid in full:

16 (a) The lien of Acres Loan Origination, LLC, recorded as Document No.  
17 24051016 on October 29, 2018;

18 (b) The lien of The Entrust Group Inc. FBO Abhinav Gupta  
19 IRA#7230007777 recorded as Document No. 24603787 on September 4, 2020;

20 (c) The lien of The Entrust Group Inc. FBO Neha Gupta  
21 IRA#7230007788 recorded as Document No. 24603788 on September 4, 2020;

22 (d) The lien of The Entrust Group Inc. FBO Abhinav Gupta  
23 IRA#7230007777 recorded as Document No. 24603789 on September 4, 2020

24 (e) The lien of The Entrust Group Inc. FBO Neha Gupta  
25 IRA#7230007788 recorded as Document No. 24603790 on September 4, 2020;

26 (f) The lien in favor of Abhinav Gupta recorded as Document No.  
27 24603791 on September 4, 2020;

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1 (g) The lien in favor of Abhinav Gupta recorded as Document No.  
2 24603792 on September 4, 2020; and

3 (h) A claim of lien by SiliconSage Construction, Inc., recorded as  
4 Document No. 24823902 on February 9, 2021.

5 The sales of the individual units of the Almaden Project are free and clear of the  
6 liens referenced at 6(b) through (g) above without the necessity of the execution of a  
7 release or reconveyance by the lienholder, with the recording of this Order sufficient to  
8 remove the liens as an encumbrance of record;

9 (7) Providing that any licensed title insurer and the Buyer are authorized to rely  
10 on this Order as authorizing the Receiver to transfer legal title to the condominium units  
11 free and clear of all liens;

12 (8) Authorizing the Receiver to take any and all actions reasonably necessary  
13 to consummate the sale of the condominium units; and

14 (9) Granting such other and further relief as the Court may deem just and  
15 proper.

16  
17 DATED: October 29, 2021

Respectfully submitted,

SMILEY WANG-EKVALL, LLP

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20 By:           /s/ Kyra E. Andrassy            
21 KYRA E. ANDRASSY  
22 Counsel for David Stapleton, Receiver  
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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, DISTRICT COURT, NORTHERN DISTRICT**

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 3200 Park Center Drive, Suite 250, Costa Mesa, CA 92626.

On **10/29/2021**, I served true copies of the following document(s) described as **NOTICE OF MOTION AND MOTION OF RECEIVER, DAVID STAPLETON, FOR ORDER: (1) APPROVING CONSTRUCTION FUNDING AGREEMENT WITH ACRES CAPITAL; (2) AUTHORIZING EMPLOYMENT OF SPECIAL REAL ESTATE COUNSEL; AND (3) APPROVING THE FORM OF THE CONDOMINIUM PURCHASE AGREEMENTS AND AUTHORIZING THE SALE OF THOSE UNITS FREE AND CLEAR OF LIENS** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**(X) (BY COURT VIA NOTICE OF ELECTRONIC FILING (“NEF”)** – Pursuant to United States District Court, Central District of California, Local Civil Rule 5-3, the foregoing document will be served by the court via NEF and hyperlinked to the document. On **10/29/2021**, I checked the CM/ECF docket for this case and determined that the aforementioned person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated.

**(X) (BY U.S. MAIL)**. I enclosed the document(s) in a sealed envelope or package and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Smiley Wang-Ekvall, LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with USPS in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at Costa Mesa, California.

**( ) (BY E-MAIL)**. By scanning the document(s) and then e-mailing the resultant pdf to the e-mail address indicated above per agreement. Attached to this declaration is a copy of the e-mail transmission.

**( ) (BY FACSIMILE)**. I caused the above-referenced documents to be transmitted to the noted addressee(s) at the fax number as stated. Attached to this declaration is a "TX Confirmation Report" confirming the status of transmission. Executed on \_\_\_\_\_, at Costa Mesa, California.

**( ) STATE** I declare under the penalty of perjury under the laws of the State of California that the above is true and correct.

**(X) FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on October 29, 2021, at Costa Mesa, California.

*/s/ Lynnette Garrett*  
\_\_\_\_\_  
Lynnette Garrett

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**Via United States Mail:**

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SiliconSage Construction Inc. c/o Mail Center 9450 SW Gemini Dr. #7790 Beaverton, OR 97008-7105	DC Law, APC 2005 De La Cruz Blvd., Suite 215 Santa Clara, CA 95050	Crosby & Crosby, a Professional Law Corporation 1570 The Alameda, Suite 200 San Jose, CA 95126
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Hassan Naboulsi 44 Winding Way San Carlos, CA 94070	Isha Dhesi 2209 Rockwell Dr. Davis, CA 95618	Kishore J. Thota 727 Overdell Dr. Sugarland, TX 77479
Marwan Naboulsi 44 Winding Way San Carlos, CA 94070	The Entrust Group Inc. FBO Neha Gupta 1930 Village Center Circle, Suite 3-5669 Las Vegas, NV 89134	Ravinder P. Singh 1586 Vireo Ave. Sunnyvale, CA 94087
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Mahis Invesco LLC 902 Azure St. Sunnyvale, CA 94087	Pavan Nayak 3686 Slopeview Dr San Jose, CA 95148	Ravi Thota 7610 Balmoral Way San Ramon, CA 94582
Sathappan Family Living Trust dated October 19, 2016 5544 Perugia Circle San Jose, CA 95138	Shailendra Reddy 1623 Whitfield St. Sugarland, TX 77479	Suketu Patel 1611 Monroe Way Rocklin, CA 95765
Sushil Warriar 1831 Shaddy Terrace Fremont, CA 94539	Vachana Shigehalli 5366 Shattuck Ave. Fremont, CA 94555	Vishwas Sripad Hegde 3130 Aran Way Dublin, CA 94568
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