

1 DAVID R. ZARO (BAR NO. 124334)  
 TED FATES (BAR NO. 227809)  
 2 KIM A. BUI (BAR NO. 274113)  
 ALLEN MATKINS LECK GAMBLE  
 3 MALLORY & NATSIS LLP  
 515 South Figueroa Street, Ninth Floor  
 4 Los Angeles, California 90071-3309  
 Phone: (213) 622-5555  
 5 Fax: (213) 620-8816  
 E-Mail: dzaro@allenmatkins.com  
 6 tfates@allenmatkins.com  
 kbui@allenmatkins.com

7 Attorneys for Thomas A. Seaman, Receiver

8 **UNITED STATES DISTRICT COURT**  
 9 **NORTHERN DISTRICT OF CALIFORNIA**  
 10 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE  
12 COMMISSION,

13 Plaintiff,

14 vs.

15 SMALL BUSINESS CAPITAL CORP.;  
 MARK FEATHERS; INVESTORS PRIME  
 16 FUND, LLC; and SBC PORTFOLIOS, LLC,

17 Defendants.

Case No. CV12-03237

**DECLARATION OF THOMAS A. SEAMAN  
 IN SUPPORT OF MOTION FOR  
 (A) APPROVAL OF SALES PROCEDURES  
 FOR LOAN PORTFOLIOS AND 7(a)  
 LICENSE AND (B) AUTHORITY TO  
 ENGAGE VOIT REAL ESTATE  
 SERVICES LP AS BROKER**

Date: April 25, 2014  
 Time: 9:00 a.m.  
 Ctrm: 4 - 5th Floor  
 Judge: Hon. Edward J. Davila

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 I, Thomas A. Seaman, declare:

2 1. I am the court-appointed receiver for Small Business Capital Corp. ("SB Capital"),  
3 Investors Prime Fund, LLC ("IPF"), and SBC Portfolio Fund, LLC ("SPF"), and their subsidiaries  
4 and affiliates ("Receivership Entities"). I have personal knowledge of the facts stated herein, and  
5 if called upon to do so, I could and would personally and competently testify to them. This  
6 declaration is prepared in support of the Motion for Approval of Sales Procedures for Loan  
7 Portfolios and 7(a) License and Authority to Engage Voit Real Estate Services LP ("Voit") as  
8 Broker ("Motion").

9 2. Based upon my final accounting and the order granting the Securities and  
10 Exchange Commission's ("Commission") Motion for Summary Judgment, I proposed a  
11 Distribution Plan calling for distributions to be made to investors from a single fund and that  
12 investors in different funds be treated equally whether or not their investment was ostensibly made  
13 in one Receivership Entity versus another. This Court approved the Distribution Plan at the  
14 hearing on February 14, 2014 and subsequently entered an Order on February 25, 2014 (Dkt.  
15 No. 713).

16 3. Since the inception of this receivership, I have continuously operated the  
17 Receivership Entities and serviced the approximately 56 loans that are the primary asset of this  
18 receivership estate. While servicing these loans, I have pared expenses and carefully serviced  
19 each of the loans in order to maximize the return to investors. As reflected in my reports to this  
20 Court, I have successfully reduced the expenses of the servicing process and enforced the rights of  
21 the lender in a prompt and efficient manner. All of this has increased revenues and maximized the  
22 returns from the loan portfolio.

23 4. Based upon the status of the case, the condition of the loan portfolio, and the  
24 general economy, this is a good time to market and sell the loan portfolio. To that end, over the  
25 past six months, I have consulted with the U.S. Small Business Administration ("SBA"), which  
26 controls the issuance of the 7(a) license and acts as a guarantor of the portfolio loans. The SBA  
27 has made it clear they have a strong desire for the subject 7(a) Loans and the 7(a) license to be  
28

1 placed with a qualified, well-capitalized entity capable of continuing to service the loans and  
2 backstop the SBA guaranty in the event the loans go into default.

3           5.       I have studied the costs and benefits of continuing to service the loans and the risks  
4 attendant to such servicing, especially in light of the small size of this portfolio and the indemnity  
5 obligations associated with the Receivership Entities' contracts with the SBA. Over the past  
6 twelve months, I have also explored the marketplace to ascertain whether there is a market for the  
7 loan portfolio, servicing rights and 7(a) license (collectively, "Assets"), owned by the  
8 Receivership Entities. To date, I have received numerous inquiries from parties interested in  
9 purchasing these Assets. While difficult to ascertain the seriousness or qualifications of such  
10 potential purchasers, the level of interest has been significant. In addition, I have consulted with  
11 the SBA, Voit Real Estate Services, LP ("Voit"), and others concerning potential purchasers for  
12 the Assets. I have been advised the prospects are good and these Assets may be sold at close to  
13 their par value or more. Based on this investigation and analysis, I believe the Assets have  
14 significant value in today's marketplace.

15           6.       Investors, many of whom invested substantial portions of their savings with the  
16 Receivership Entities, have been waiting almost two years to recover their investments. The  
17 proposed sale process offers the best prospect for the investors to receive the maximum return on  
18 their claims in the shortest period of time.

19           7.       The SBA submitted a claim for over \$24 million. This claim is contingent upon the  
20 SBA proving their contention that certain of the loans in the portfolio did not conform to the loan  
21 program rules and that they have suffered damages as a result of the loan program deficiencies. I  
22 strongly object to the SBA claim. Based on my discussions with the SBA, it has become clear that  
23 one way to satisfy the SBA's claim may be through the sale of the loan portfolios to third parties  
24 who assume the liability associated with the loans. I expect that any sale of the Assets would  
25 likely be conditioned upon a resolution of the SBA claim.

26           8.       Based upon the foregoing analysis and my good faith business judgment, I  
27 recommend proceeding with the prompt sale of the Assets pursuant to the procedures outlined in  
28 the Motion. While it is possible for me to continue servicing the Assets, it appears a sale will

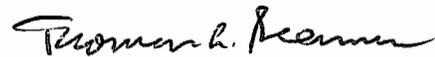
1 return at least as high a return to investors in a much shorter period of time than would otherwise  
2 be possible. In addition, I believe there is less risk associated with a sale of Assets than with me  
3 or another entity holding and servicing the Loan Portfolio until the loans mature or are otherwise  
4 paid off.

5 9. In anticipation of the sale of the Assets, I discussed the approach and process to  
6 market and sell the loans with several brokers and consultants as well as the SBA. I believe  
7 retention of a qualified broker will significantly enhance the sale process and improve the  
8 prospects for generating the maximum sale price for these Assets. Among other things,  
9 establishing a virtual due diligence platform that can be used to market and then facilitate bidding  
10 is a critical element of the sale process. In addition, exposing the Assets to the largest possible  
11 pool of potential purchasers can only be efficiently accomplished by taking advantage of a  
12 qualified broker's database and contacts.

13 10. After reviewing proposals and qualifications of various brokers, I recommend and  
14 request authorization to retain Voit pursuant to that contract attached hereto as Exhibit A and  
15 incorporated herein by reference. In my good faith business judgment, Voit's extensive database  
16 of potential purchasers, experience and marketing plan will likely yield a better price for the  
17 Assets than proceeding without their assistance. Moreover, part of their cost would necessarily be  
18 incurred by the receivership estate because I would need to create the virtual due diligence  
19 platform at substantial cost to the receivership estate to facilitate any sale of the Assets.

20 I declare under penalty of perjury under the laws of the United States that the foregoing is  
21 true and correct.

22 Executed this 7<sup>th</sup> day of March 2014, at Irvine, California.

23  
24 

25 THOMAS A. SEAMAN  
26  
27  
28

# **EXHIBIT A**

## **EXCLUSIVE AUTHORIZATION TO MARKET NOTES, LICENSE & SERVICING RIGHTS**

**January 10, 2014**

**THOMAS A. SEAMAN, in his capacity as receiver for Small Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their subsidiaries and affiliates ("Receiver"), appointed by the United States District Court for the Northern District of California ("Court") hereby grants to VOIT REAL ESTATE SERVICES, LP ("Broker") the exclusive right to market the notes, SBLC license and loan servicing rights described below (the "Notes") to prospective buyers for a period commencing upon a Court order approving this Authorization ("Authorization Approval") and ending at the Court approval of the Notes to a buyer, unless earlier terminated pursuant to the terms of this Authorization.**

**The Notes:**

- The percentage owned by Small Business Capital, LLC of 39 SBA 7A notes
- The percentage owned by Investors Prime Fund, LLC, SBC Portfolio Fund, LLC and SBC Senior Commercial Mortgage Fund, LLC of 16 SBA 504 First notes
- 3 non-SBA loans owned by Investors Prime Fund, LLC and SBC Portfolio Fund, LLC
- Authority to be a Small Business Lending Company under the Small Business Act
- All servicing rights and rights to servicing income for the loans owned by Small Business Capital, LLC, Investors Prime Fund, LLC, SBC Portfolio Fund, LLC and SBC Senior Commercial Mortgage Fund, LLC

Broker shall market the Notes without a listing price.

In consideration of this Authorization and Broker's agreement to diligently pursue the procurement of buyers and, if applicable, over bidders for the Notes, Receiver agrees to pay Broker a Brokerage Fee or Consulting Fee, as applicable, as set forth in the attached Schedule of Fees. Receiver shall pay said Brokerage Fee or Consulting Fee to Broker if Receiver concludes a sale of the Notes and the Brokerage Fee or Consulting Fee is approved by the Court. Receiver agrees to first seek Court approval of this Authorization (including permission to pay the Consulting Fee if no sale is concluded and the Authorization is terminated for no cause) and, in connection with seeking Court approval of a sale of the Notes, recommend payment of the Brokerage Fee.

Receiver agrees to cooperate with Broker in marketing the Notes to buyers and to immediately refer to Broker all inquiries of any party interested in purchasing the Notes. All negotiations with buyers are to be through Broker. Sale of the Notes is subject to Court approval in accordance with applicable law and orders issued by the Court.

It is understood that it is illegal for either Receiver or Broker to refuse to present or sell to any person because of race, color, religion, national origin, sex, marital status or physical disability.

Receiver warrants that he has been appointed pursuant to the Preliminary Injunction and Order Appointing Permanent Receiver entered by the Court on July 10, 2012 in the matter known as Securities and Exchange Commission vs. Small Business Capital Corp., Mark Feathers, Investors Prime Fund, LLC and SBC Portfolio Fund, LLC, case number No. 5:12-cv-03237-EJD (the "Order"). Receiver agrees to hold Broker harmless from any liability or damages arising from any incorrect information supplied by Receiver.

Receiver acknowledges that it has been advised by Broker to consult and retain experts to advise and represent it concerning the legal and tax effects of this Authorization and consummation of a sale of the Notes, as well as the condition and/or legality of the Notes. Broker shall have no obligation to investigate any such matters unless expressly otherwise agreed to in writing by Receiver and Broker. Receiver further acknowledges that in determining the financial soundness of any prospective buyer or over bidder, Receiver will rely solely upon Receiver's own investigation.

## **EXCLUSIVE AUTHORIZATION TO MARKET NOTES, LICENSE & SERVICING RIGHTS**

In this proposed transaction, Broker will be the agent for and only represent Receiver and does not intend to share its fee with any other agent, nor will Broker take any fees from any buyer or other broker.

This Authorization is entered into by Receiver solely in his capacity as receiver acting in accordance with the Order and not in his personal capacity.

This Authorization is entered into in accordance with the Order and subject to further additional orders that the Court may make directing the actions of the Receiver and disposition of the Notes.

Relative to the term of this Authorization, this Authorization shall automatically terminate if the Court does not issue the Authorization Approval.

This Authorization is not binding on the Receiver's successors, heirs, and assigns.

No portion of any of Brokerage Fee to Broker as set forth in Schedule of Fees attached to this Authorization shall be paid as finder's fee to any insider in the receivership action. Any other "finder's fees" paid shall be disclosed to the Receiver.

Any disputes relating to this Authorization shall be subject to the exclusive jurisdiction of the Court.

Receiver reserves the right to cancel this Authorization with 30 days written notice for no cause and with 5 days written notice for cause.

This Authorization may only be amended, supplemented or otherwise altered with the express written consent of all parties hereto. This Authorization and the attached Schedule of Fees embodies the entire understanding of the parties with regard to the subject matter hereof.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

**EXCLUSIVE AUTHORIZATION TO MARKET NOTES, LICENSE & SERVICING RIGHTS**

Acknowledged and agreed to by:

**RECEIVER:**

By:

Thomas A. Seaman

Name Printed: THOMAS A. SEAMAN, in his capacity as receiver for Small Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their subsidiaries and affiliates

Address: 3 Park Plaza, Suite 550  
Irvine, CA 92614

Telephone: (949) 222-0551

Date: January 16, 2014

**BROKER:**

VOIT REAL ESTATE SERVICES, LP

By:

Mark Read

Name Printed:

Mark Read

Title:

Executive Managing Director

License ID#:

01333376

Address:

2020 Main St ste 100  
Irvine CA 92614

Telephone:

949 263 5311

Date:

January 16, 2014

### SCHEDULE OF FEES

This Schedule of Fees is made a part of the Exclusive Authorization to Market Notes, License & Servicing Rights by and between THOMAS A. SEAMAN, Receiver in his capacity as receiver for Small Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their subsidiaries and affiliates, appointed by the United States District Court for the Northern District of California ("Receiver") and VOIT REAL ESTATE SERVICES, LP ("Broker") dated January 10, 2014 (the "Authorization"). All capitalized, defined terms as used herein shall have the same meaning and scope as they are used and defined in the Authorization.

#### A. FEES

1. If a sale of the Notes is concluded to a buyer and the Brokerage Fee is approved by the Court, Receiver will pay Broker a brokerage fee equal to 1% of the gross purchase price for the Notes, which brokerage fee shall not exceed \$200,000 (the "Brokerage Fee").

2. If no sale of the Notes is concluded and Receiver terminates the Authorization after the Authorization Approval without cause, Receiver will pay a consulting fee to Broker in the amount of \$15,000 as reimbursement of Broker's marketing costs (the "Consulting Fee"), subject to approval by the Court.

#### B. PAYMENT OF EARNED FEES

- 1. a) The Brokerage Fee shall be paid through escrow upon closing of the sale of the Notes to a buyer.
- b) The Consulting Fee shall be paid within 30 days after termination of the Authorization for no cause.

#### C. MISCELLANEOUS

1. This Schedule of Fees may only be amended, supplemented, or otherwise altered with the express written consent of all parties hereto. The Authorization and this Schedule of Fees embodies the entire understanding of the parties with regard to the subject matter hereof.

Acknowledged and agreed to by:

**RECEIVER:**

By: Thomas A. Seaman

Name Printed: THOMAS A. SEAMAN, in his capacity as receiver for Small Business Capital Corp., Investors Prime Fund, LLC, SBC Portfolio Fund, LLC, and their subsidiaries and affiliates

Address: 3 Park Plaza, Suite 550

Irvine, CA 92614

Telephone: (949) 222-0551

Date: January 16, 2014

**BROKER:**

VOIT REAL ESTATE SERVICES, LP

By: Mark Read

Name Printed: Mark Read  
Title: Executive Managing Director

License ID#: 01333376

Address: 2020 Main St Ste 100  
Irvine CA 92614

Telephone: 949 263 5311