

ORIGINAL

RC-200

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>JEANNINE DEL MONTE KOWAL/BAR #210228</b> <b>HEMAR, ROUSSO &amp; HEALD, LLP</b> 15910 Ventura Boulevard 12th Floor Encino, CA 91436 TELEPHONE NO.: (818) 501-3800 FAX NO. (Optional): (818) 501-2985 E-MAIL ADDRESS (Optional): <b>jdelmonte@hemar-rouosso.com</b> ATTORNEY FOR (Name): <b>Plaintiff</b>	FOR COURT USE ONLY  <b>FILED</b>  <b>SEP 19 2013</b>  FRESNO SUPERIOR COURT By _____ DEPT. 403-DEPUTY
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO</b> STREET ADDRESS: 1130 O Street MAILING ADDRESS: CITY AND ZIP CODE: Fresno, CA 93721 BRANCH NAME: B.F. Sisk Courthouse - Unlimited	
PLAINTIFF: <b>CITIZENS BUSINESS BANK, etc,</b>  DEFENDANT: <b>JOHN PUIG, etc,</b>	
<b>EX PARTE ORDER APPOINTING RECEIVER AND ORDER TO SHOW CAUSE</b> <input checked="" type="checkbox"/> <b>AND TEMPORARY RESTRAINING ORDER—RENTS, ISSUES, AND PROFITS</b>	CASE NUMBER: <b>13 CECG 02861 KCK</b>

**NOTICE OF HEARING**

Date: September 19, 2013	Time: 3:30 p.m.	Dept.: 403	Room:
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The address of the court  is shown above  is (specify):

**ORDER TO SHOW CAUSE**

- To defendant (name each):** JOHN PUIG, individually and as trustee of the JOHN PUIG AND OBDULIA PUIG REVOCABLE TRUST, DATED FEBRUARY 15, 2000; OBDULIA PUIG as trustee of the JOHN PUIG AND OBDULIA PUIG REVOCABLE TRUST, DATED FEBRUARY 15, 2000; LIONEL PUIG, an individual; VIRGINIA HILDAGO aka VIRGINIA PUIG, an individual
- THE COURT ORDERS** the defendants named in item 1 to appear in this court at the date, time, and place shown in the box above to give any legal reason
  - Why a receiver should not be confirmed to
    - take possession and continue in possession of the property described in Attachment 2a (attach a description of the real and personal property subject to the receivership) (the "property"), and
    - manage the property in accordance with this order until further order of this court.
  - Why you should not be prohibited from controlling or receiving any income from the property described in Attachment 2a.

**ORDER APPOINTING RECEIVER**

**THE COURT ORDERS, pending the hearing on the Ex Parte Order to Show Cause, the following:**

- Receiver. (Name):** Robb Evans  
is appointed as receiver to take possession of the property described in Attachment 2a.
- Receiver's oath and bond.** The receiver shall immediately, and before performing any duties:
  - execute and file a receiver's oath, and
  - file the bond required by Code of Civil Procedure section 567(b) in the amount of: \$ 25,000.00
- Receiver's fees.** The receiver may charge for the receiver's services no more than (check all that apply):
  - \$ 425.00  per month  per hour  other (specify): Staff to be billed from \$150.00 to \$335.00 per hour
  - percent of gross monthly rents
  - the greater of a or b
  - \$ as a one-time start-up fee

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6.  **Management company.** The receiver may employ the management company of (name): Robb Evans & Associates, LLC
- a.  The receiver may pay the company not more than
- (1)  \$  per month  per hour  other (specify):
- (2)  percent of gross monthly rents
- (3)  the greater of (1) or (2)
- (4)  \$ as a one-time start-up fee
- b.  Management company fees are included in receiver's fees in item 5.
7. **Disclosure.** The receiver shall immediately disclose to all parties any financial relationship between the receiver and any company hired to assist in the management of the receivership property.
8. **Plaintiff's ex parte bond.** Plaintiff shall immediately file an applicant's bond under Code of Civil Procedure section 566(b) in the amount of: \$
9. **General duties.** After qualifying, the receiver
- a. shall take possession of and manage the property,
- b. shall collect the income from the property,
- c. shall care for the property and may incur the expenses necessary for that care, and
- d. may change the locks on the property.
10. **Prohibited agreements.** The receiver shall not enter into an agreement with any party to this action about the administration of the receivership or about any postreceivership matter.
11. **Inventory.** Within 30 days after qualifying, the receiver shall file an inventory of all property possessed under this order.
12. **Expenditures.** The receiver shall expend money coming into his or her possession to operate and preserve the property and only for the purposes authorized in this order. Unless the court orders otherwise, the receiver shall to the extent practical hold the balance in interest-bearing accounts in accordance with Code of Civil Procedure section 569.
13. **Leases and rentals.** The receiver may without court approval enter into leases for a term not exceeding one year, obtain and evict tenants, and set and modify the amounts and terms of leases.
14. **Security deposits.** Unless the security deposit has been turned over or paid to the receiver, the receiver shall not refund a deposit to a tenant.
15. **Monthly accounting of receiver's income, expenses, and fees.**
- a. The receiver shall each month prepare and serve on the parties, but not file, an accounting of the income and expenses incurred in the administration of the receivership property, including the receiver's fees and expenses.
- b. The receiver may pay the receiver's own fees and expenses only by the following procedures:
- (1) By serving on all parties a notice of intent to pay to which no objection is served on the receiver within 20 days of the date the notice is served.
- (2) By serving and filing a request for interim payment, which the court then approves.
- (3) By obtaining and filing an agreement among all the parties approving the payment, which the court then approves.
- (4) By filing the receiver's final accounting and report, which the court then approves.
- c. The receiver shall not reimburse the receiver for the receiver's general office administration expenses or overhead without court approval. These expenses include, for example, office supplies and employee payroll, benefits, and taxes.
16. **Management.**
- a. The receiver shall operate the property and take possession of all accounts relating to the property.
- b. The receiver may
- (1) employ agents, employees, clerks, accountants, and property managers to administer the receivership property, and
- (2) purchase materials, supplies, and services reasonably necessary to administer the receivership property.
- c. The receiver may do all the things, and incur the risks and obligations, ordinarily done or incurred by owners, managers, and operators of businesses and property similar to that possessed by the receiver, *except* the receiver shall not make any capital improvements to the property without prior court approval.

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17. **Bank accounts.** The receiver
- may establish accounts at any financial institutions insured by an agency of the United States government that are not parties to this proceeding,
  - shall deposit in those accounts funds received in connection with the receivership property, and
  - shall deposit in interest-bearing accounts money not expended for receivership purposes.
18. **Court instructions.** The receiver and the parties may at any time apply to this court for further instructions and orders and for additional powers necessary to enable the receiver to perform the receiver's duties properly.
19. **Insurance.**
- The receiver shall determine upon taking possession of the property whether there is sufficient insurance coverage.
  - The receiver shall notify the insurer that the receiver is to be named as an additional insured on each insurance policy on the property.
  - If the receiver determines that the property does not have sufficient insurance coverage, the receiver shall immediately notify the parties and shall procure sufficient all-risk and liability insurance on the property (excluding earthquake and flood insurance).
  - If the receiver does not have sufficient funds to obtain insurance, the receiver shall seek instructions from the court on whether to obtain insurance and how it is to be paid for.
20. **Employment of attorneys.**
- The receiver may employ unlawful detainer attorneys and eviction services without a court order.
  - The receiver may employ counsel (name):  
at the hourly rate of: \$
  - Except as provided in items 20a and 27d, before employing counsel the receiver shall apply to the court for an order authorizing the receiver to employ counsel.
21. **Taxpayer ID numbers.** The receiver may use any federal taxpayer identification numbers relating to the property for any lawful purpose.
22. **Duty to turn over possession.** Upon receipt of a copy of a recorded trustee's deed upon foreclosure or written notice from plaintiff that defendant has cured the defaults existing under plaintiff's loan documents or that plaintiff has accepted a deed in lieu of foreclosure, the receiver shall, without further order of the court, turn over possession of the property to the successful purchaser or defendant or plaintiff respectively.
23. **Plaintiff's notification of termination.** Plaintiff shall notify the receiver in writing within 48 hours of any event within plaintiff's knowledge that terminates the receivership.
24. **Receiver's final report and account and discharge.**
- Motion required.* Discharge of the receiver shall require a court order upon noticed motion for approval of the receiver's final report and account and exoneration of the receiver's bond.
  - Time.* Not later than 60 days after the receivership terminates, the receiver shall file, serve, and obtain a hearing date on a motion for discharge and approval of the final report and account.
  - Notice.* The receiver shall give notice to all persons of whom the receiver is aware who have potential claims against the receivership property.
  - Contents of motion.* The motion to approve the final report and account and for discharge of the receiver shall contain the following:
    - Declaration or declarations.* A declaration or declarations: (i) stating what was done during the receivership, (ii) certifying the accuracy of the final accounting, (iii) stating the basis for the termination of the receivership (such as foreclosure or reinstatement), and (iv) stating the basis for an order for the distribution of any surplus or payment of any deficit.
    - Accounting summary.* A summary of the receivership accounting, which shall include (i) the total revenues received, (ii) the total expenditures identified and enumerated by major categories, (iii) the net amount of any surplus or deficit, and (iv) evidence of necessary supporting facts.

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25. **Plaintiff's notice to receiver.** Plaintiff shall promptly notify the receiver in writing of the names, addresses, and telephone numbers of all parties who appear in the action and their counsel. The parties shall give notice to the receiver of all events that affect the receivership.
26. **Bankruptcy Plaintiff's duty to give notice.** If a defendant files a bankruptcy case during the receivership, plaintiff shall give notice of the bankruptcy case to the court, to all parties, and to the receiver by the close of the next business day after the day on which plaintiff receives notice of the bankruptcy filing.
27. **Bankruptcy Receiver's duties.** If the receiver receives notice that a bankruptcy has been filed and part of the bankruptcy estate includes property that is the subject of this order, the receiver shall have the following duties:
- Turn over property if no relief from stay will be sought.* The receiver shall immediately contact the party who obtained the appointment of the receiver and determine whether that party intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and (2) relief from the receiver's obligation to turn over the property (11 U.S.C. § 543). If the party has no intention to make such a motion, the receiver shall immediately turn over the property to the appropriate entity either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession - and otherwise comply with 11 United States Code section 543.
  - Remain in possession pending resolution.* If the party who obtained the receivership intends to seek relief immediately from both the automatic stay and the receiver's obligation to turn over the property, the receiver may remain in possession and preserve the property pending the ruling on those motions (11 U.S.C. § 543(a)). The receiver's authority to preserve the property shall be limited as follows:
    - The receiver may continue to collect rents and other income;
    - The receiver may make only those disbursements necessary to preserve and protect the property;
    - The receiver shall not execute any new leases or other long-term contracts; and
    - The receiver shall do nothing that would effect a material change in the circumstances of the property.
  - Turn over property if no motion for relief is filed within 10 days after notice of the bankruptcy.* If the party who obtained the receivership fails to file a motion within 10 court days after his or her receipt of notice of the bankruptcy filing, the receiver shall immediately turn over the property to the appropriate entity either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession and otherwise comply with 11 United States Code section 543.
  - Retain bankruptcy counsel.* The receiver may petition the court to retain legal counsel to assist the receiver with issues arising out of the bankruptcy proceedings that affect the receivership.
28. **Failure to turn over property.** A receiver who fails to turn over the property in accordance with this order shall not be paid for time and expenses after the date on which the receiver should have turned the property over.
29.  **Other orders.** (Additional orders may include authority of the receiver to do any other acts arising from special circumstances.) Other orders  are specified in Attachment 29  are as follows (specify):

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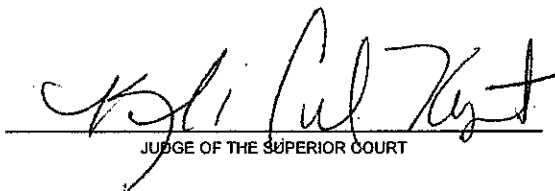
TEMPORARY RESTRAINING ORDER

30. THIS ORDER EXPIRES AT THE DATE AND TIME OF THE HEARING SHOWN IN THE BOX ON PAGE ONE (UNDER "NOTICE OF HEARING") UNLESS EXTENDED BY THE COURT.
31. THE COURT ORDERS DEFENDANT to do the following:
- a. **Turn over property.** Immediately turn over possession of the property described in Attachment 2a to the receiver when the appointment becomes effective, including any security deposits, prepaid rent, other rental or lease payments, and funds in property management bank accounts for the property.
  - b. **Turn over related items.** Immediately turn over to the receiver all keys, books, documents, and records relating to the property and advise the receiver of federal taxpayer identification numbers relating to the property.
  - c. **Insurance.**
    - (1) Immediately advise the receiver about the nature and extent of insurance coverage on the property;
    - (2) Immediately name the receiver as an additional insured on each insurance policy on the property; and
    - (3) DO NOT cancel, reduce, or modify the insurance coverage.
  - d. **Restraints.** Refrain from
    - (1) committing or permitting any waste on the property or any act on the property in violation of law or removing, encumbering, or otherwise disposing of any of the fixtures on the property;
    - (2) demanding, collecting, or in any other way diverting or using any of the rents from the property;
    - (3) interfering in any manner with the discharge of the receiver's duties under this order;
    - (4) selling, transferring, disposing, encumbering, or concealing the property without a prior court order; and
    - (5) doing any act that will impair the preservation of the property or plaintiff's interest in the property.
  - e.  **Other (specify):**
32. THE COURT ORDERS PLAINTIFF to immediately file a temporary restraining order bond under Code of Civil Procedure section 529 in the amount of: \$ 25,000.00
33.  OTHER ORDERS  are specified in Attachment 33  are as follows (specify):

**SERVICE AND BRIEFING SCHEDULE**

34. By (date): 9/23/13 PLAINTIFF IS ORDERED to personally serve on each defendant or counsel and any other appearing parties, and to file proof of service of, the summons and complaint, the memorandum of points and authorities, these orders, and all declarations and supporting papers.
35. By (date): 9/27/13 DEFENDANT IS ORDERED to personally serve on each plaintiff or counsel and any other appearing parties, and to file proof of service of, any opposition to these orders.
36. By (date): 10/1/13 PLAINTIFF IS ORDERED to personally serve on each defendant or counsel, and to file proof of service of, any reply to defendant's opposition to these orders.
37. Number of pages attached: \_\_\_\_\_

Date: 9/19/13

  
 \_\_\_\_\_  
 JUDGE OF THE SUPERIOR COURT

**Attachment 29 to Ex Parte Order Appointing Receiver**

**Citizens Business Bank v. Puig et al.**

*(Fresno County Superior Court - Main Courthouse) – Case No. 13 CE CG 02861 KCK*

**Additional Powers Conferred Upon the Receiver**

- a. The Receiver shall take possession of the operation of the property located at:  
**1320 Sylmar Avenue, Fresno, California (the “Property”) -- and described in Attachment 2a.**
- b. Receiver shall have the power to enter, gain access to and take possession of the Property, referenced in that certain Promissory Note and Deed of Trust dated as of September 4, 2002, between KAWEAH NATIONAL BANK, predecessor to CITIZENS BUSINESS BANK and JOHN PUIG, individually (“Borrower and/or Defendant”), or anyone claiming under or through Borrower or any other Defendant; to receive the rents, issues, income, profits, revenues, royalties, lease payments, security deposits therefrom; to care for, preserve, finish construction of, protect, secure and maintain the Property, including hiring a security guard service, and incur the expenses necessary for such care, preservation and maintenance; and to do all things and to incur the risks and obligations ordinarily incurred by the Defendants, managers and operators of similar businesses and properties, as such Receiver, and no risks or obligations so incurred shall be at the personal risk or obligation of the Receiver, but shall be a risk or obligation of the receivership estate.
- c. Defendants, and all those in custody of the Property shall facilitate entry by the Receiver upon the Property, make available the books and records and other documents relating to the Property (including, but not limited to, information contained on computers and any and all software and websites and telephone or internet systems (including toll free telephone numbers and domain names) relating thereto, as well as all banking records, statements, budgets, rent rolls, personnel records, sales contracts, salesperson leads and contact information, sales department computer data base, real estate tax bills, construction and other bonds, governmental agency permits and approvals) and shall not interfere, impede or disrupt the receiver from performing all duties allowed pursuant to Court order.
- d. All Rents, security deposits, issues, income, profits, revenues, royalties, and lease payments of the Property which are received, or have been received by the Defendants, shall be turned over to the Receiver immediately, and the Defendants, and their agents, servants, employees or representatives, shall simultaneously, upon said turnover, deliver to the Receiver written verification of the source of all said monies being turned over. Receiver shall have the power to demand, collect and receive the rents, issues, income, profits, revenues, prepaid rent, percentage rent based on gross annual sales or the like, tenant improvement deposits, royalties, lease payments, and security deposits in the possession of Defendants, or now due and hereafter coming due from the tenants, customers or lessees of any portion of the Property.
- e. The Receiver shall have the power to immediately begin addressing in any manner deemed reasonable the many serious health and building code violations and to collaborate with code enforcement officials and the Fresno City Attorney to remediate any building and health code violations. Receiver shall also have the power to negotiate and handle any threatened fines levied against the Property as a result of health and building code violations.
- f. The Receiver has the right to negotiate, extend, terminate, modify, ratify or enter into leases, contracts, including, without limitation, franchise agreements, contracts to provide security, janitorial, environmental testing and remediation, equipment auctioneers, leasing, utility or other services including the hiring and

terminating of staff and full time and part time employees to the Property and to pay for those services as an expense to the Property. Receiver shall have the power to let, rent or lease from time to time any part of the Property and Collateral and to keep the buildings thereon insured and in good repair.

- g. Receiver shall have the power to take possession of and receive from any and all banks, savings and loan associations and/or any financial institutions any monies and funds on deposit in said banks, savings and loan associations and/or any financial institutions in the name of the Borrower, to the extent that said accounts contain the rents, issues, income, profits, revenues, royalties, lease payments, room rentals, room rental deposits, meeting space deposits or security deposits generated by or arising out of the Property, and the Receiver's receipt of said monies and funds shall discharge said banks, savings and loan associations and/or any financial institutions from further responsibility for accounting to said account holder for monies and funds for which the Receiver shall give his receipt;
- h. Receiver shall have the power to take possession of all the books and records, ledgers, financial statements, financial reports and all other business records (including, but not limited to, information contained on computers and any and all software and websites and telephone or internet systems (including toll free telephone numbers and domain names) relating thereto, as well as all banking records, statements, budgets, rent rolls, personnel records, sales contracts, salesperson leads and contact information, sales department computer data base, real estate tax bills, construction and other bonds, governmental agency permits and approvals, including without limitation, advertisements and marketing materials, building permits, plans, surveys, architectural, contractor and subcontractor agreements, and architectural and engineering drawings for the buildings and improvements) pertaining to the Property, wherever located, as the Receiver deems necessary for the proper administration, management and/or control of the receivership estate, but said books and records shall be made available to Defendants, their agents, servants, employees or its representatives, and all persons or entities acting under or in concert with Defendants as is reasonably necessary.
- i. Receiver shall have the power to execute and prepare all documents and to perform all acts, either in the name of the Defendants' or in the Receiver's own name, which are necessary or incidental to preserving, protecting, managing and/or controlling the Property and the receivership estate. Receiver shall have the power to negotiate, prepare and execute any types of listing, sale and real estate broker and escrow agreements, either in the name of the Defendants' or anyone else on title on the Property or in the Receiver's own name, relating to the purchase and sale of the Property to third parties. Any purchase and sale of the Property will be subject to prior Court approval. Receiver shall have the authority to execute contracts and to consult with or hire environmental consultants and engineers to conduct testing, surveying and analysis of the Property as necessary, and to prepare any environmental reports as necessary to assist in the management, marketing and sale of the Property, and to perform any environmental remediation and clean-up necessary in the event any contamination or hazardous substances are found.
- j. Defendants are ordered to notify the Receiver upon the Receiver's taking possession of the Property whether or not there is sufficient insurance coverage on the Property, and to provide the Receiver with the identity of the Defendants' insurance company, insurance agent's name and contact information and to provide the Receiver with a certificate evidencing that such insurance policies relating to the Property are in effect. If sufficient coverage exists, Defendants shall be responsible for naming, and is hereby ordered to name, the Receiver and Citizens Business Bank as additional insureds on the insurance policy(ies) for the period that the Receiver shall be in possession of the Property. If there is insufficient insurance coverage, it is hereby ordered that the Receiver shall have thirty (30) working days to procure said insurance on the Property and provided that the Receiver has funds available to do so. If the Receiver does not have sufficient funds to do so, the Receiver shall seek instructions from the Court with regard to whether insurance shall be obtained and how it is paid for. Defendants shall not cancel or terminate any existing insurance on the Property during the pendency of the receivership. Receiver shall have the right to procure different insurance if the result will be a cost savings and/or be in the best interests of the Receivership Estate.

- k. The Receiver shall be allowed to establish bank accounts and to enter into credit card agreements for the acceptance and deposit of monies and funds collected and received in connection with the Receiver's administration of the receivership estate, at any institution the receiver deems appropriate, provided that any funds on deposit shall be held by a federally insured financial institution. Receiver shall be the authorized signatory on the accounts.
- l. Receiver shall have the power to hold the monies coming into possession of the Receiver pursuant to his operation of the business thereto, and not expended for any of the purposes herein authorized, shall be held by said Receiver for the payment of the Borrower's obligations to Plaintiff sued upon in the Complaint.
- m. Receiver shall have the power to negotiate all claims and resolve lawsuits against or relating to the Property, including, but not limited to, construction contracts, construction and other bonds, mechanic's liens and insurance policies (but the Receiver shall obtain Defendants' prior written consent if and to the extent the resolution of any lawsuit(s) involves any payment or other obligation on the part of Defendants), which consent may be withheld in the Defendants' sole and absolute discretion. The Receiver shall be empowered to defend himself from the action of others; and the Receiver may engage the services of legal counsel, if necessary, upon prior approval by the Court. The Receiver may pay for such services from the funds of the receivership estate;
- n. Defendants, their agents, servants, employees or representatives, or any persons or entities acting under or in concert with Defendants, shall immediately turn over to the Receiver possession of all keys, codes, locks, construction contracts, bids, subcontracts, permits, licenses, blueprints, architectural documents, plans, specifications, records, books of account, ledgers, and all documents and papers pertaining to the operation of the Property or lease payments due therefor.
- o. The Receiver shall be authorized to engage a locksmith for the purposes of gaining entry to any property that is the subject of this receivership and through any security system, in order to obtain any property or documents to which the receiver is entitled pursuant to this Order, as well as giving any notices which may be required in performing the receiver's duties. The Receiver may have locks or security codes changed, or have keys created that will work for the existing locks.
- p. The Receiver is authorized to negotiate and set prices, discounts and incentives and may sign any and all documents, and enter into any and all agreements including hiring legal counsel to draft or review agreements for the lease and/or sale of all or any part of the Property and Collateral, and the transfer therewith of any and all governmental approvals, including other permits. The Receiver is entitled to pay for the costs and expenses arising from these activities out of the funds of the Receivership Estate or proceeds of the lease and/or sale; provided, however, upon the closing of any such sale.
- q. The Receiver is authorized to enter into agreements and contracts to complete pending or planned design and construction, to construct interior and exterior improvements, and to refurbish, repair and/or maintain the Property, including the purchase and/or replacement of furniture, fixtures and equipment, and remediation of any environmental hazards, upon terms which are customary for such services, and to pay for those services out of the funds of the receivership estate without further order of this Court.
- r. To the extent feasible, the Receiver shall, within thirty (30) days of his qualification hereunder, file in this action an inventory of the Property, which he shall have taken possession pursuant to this order per CRC Rule 3.1181 and shall file supplemental inventories as needed.
- s. Receiver shall prepare periodic interim statements reflecting the Receiver's fees and administrative costs and expenses incurred for said period in the operation and administration of the Receivership estate. The Receiver



shall serve upon the parties and the attorneys of record for the Parties, a monthly report with details as required by CRC Rule 3.1182. Service of the interim statements can be effectuated by e-mail or other electronic delivery. Upon completion of an interim statement, and the mailing of such statement to the parties' respective attorneys of record, or any other designated person or agent, and if no objection is received within 10 calendar days after the mailing of the interim statement, the Receiver shall pay from the estate funds, if any, the amount of said statement based upon the fee schedule set forth in the Declaration of Robb Evans filed in support of Plaintiff's Ex Parte Motion for Appointment of a Receiver. Despite the periodic statement of Receiver's fees and administrative expenses, such fees and expenses shall be submitted to the Court for its approval and confirmation, in the form of a stipulation among the parties, or the Receiver's Final Accounting and Report.

- t. Receiver shall have the power to take possession of all the books and records of Defendants wherever located, as the Receiver deems necessary for the proper administration, management and/or control of the receivership estate.
- u. If there are insufficient funds in the receivership estate to pay expenses of the receivership, the expenses of the receivership estate may be paid by the Plaintiff or advanced to the Receiver by the Plaintiff, in its sole and absolute discretion, opinion and judgment of the Plaintiff, and the Receiver shall issue receiver's Certificates of Indebtedness to the Plaintiff in the amount of any such payments or advances, all subject to the right of the Receiver or the Plaintiff, in their discretion, to seek further orders of this Court with respect thereto. Any such Certificates of Indebtedness issued by the Receiver to the Plaintiff shall not be the personal obligation of the Receiver but the obligation of the receivership estate.
- v. The Receiver shall safeguard the Property, making such reasonable expenditures and repairs as are needed to keep the Property in good and rentable condition (subject to prior Court approval if required by the terms of this Order), and the costs of such reasonable expenditures and repairs shall be paid from funds of the receivership to the extent there are funds available, but only such costs as arise out of the Receiver's operation of the Property subsequent to the Receiver's appointment and not any bills of any prior or current owners or operators unless the payment of such sums is essential to the continued operation of the Property as determined by the Receiver in his sole discretion. Notwithstanding anything to the contrary, the Receiver shall pay all expenses related to the operation of the Property which, in the Receiver's good faith judgment, constitute reasonable and customary third-party operating expenses and which were incurred up to thirty (30) days prior to the Receiver's appointment.
- w. Any utility company providing services to the Property, including gas, electricity, water, sewer, trash collection, telephone, communications, internet, pay per view television, satellite television, cable or similar services, shall be prohibited from discontinuing service to the Property based upon unpaid bills incurred by Defendants prior to the Receiver being given an opportunity to review and pay such bills. Utility companies are prohibited from discontinuing service while the new Receivership accounts are in process of being established.
- x. The Defendants, their agents, shareholders, servants, employees or representatives, or all persons or entities acting under or in concert with the Defendants, on receipt of a copy of this Order shall provide the Receiver with the Tax Identification number utilized by the Borrower for operation of the Property and Collateral. The Receiver shall be entitled to utilize the aforementioned Tax Identification number during his operation and ownership of the Property.
- y. The Receiver shall be authorized to open all mail addressed to the Borrower, his agents, servants, shareholders, employees or representatives, or all persons or entities acting under or in concert with the Defendants at the Property. The Receiver is authorized to make copies of this mail, and then forward this mail to the Defendants, their agents, servants, employees or representatives, or all persons or entities acting under

or in concert with the Defendants at the address provided by Defendants.

- z. The Receiver may apply for, obtain and pay for any lawful license, permit, variance or other governmental approval or fee that the Receiver reasonably believes to be necessary for the operation, leasing, sale, maintenance and preservation of the Property; to confirm the existence of, and, to the extent permitted by law, exercise the privileges of any existing license, permit, variance or governmental approval relating to the Property, and to do all things necessary to protect and maintain those licenses, permits, variances and approvals, or obtain new licenses, permits, variances and approvals, including, but not limited to, City permits and approvals, and the Receiver is allowed to collect and pay any property taxes as necessary and to negotiate with taxing authorities for the resolution of any disputes involving unpaid taxes.
- aa. The Receiver and the parties to this case may, at any time, apply to this Court for further or other instructions or orders and for further powers necessary to enable the Receiver to perform the Receiver's duties properly.
- bb. The Receiver is authorized to endorse checks payable to the Borrower, to send notice to accounts receivable debtors of the Borrower directing the same to make payments due to the Borrower which are part of the Property or the proceeds thereof to the Receiver, to undertake whatever actions are reasonable or necessary to collect the accounts receivable of the Borrower, and to compromise the amounts owing from account debtors of the Borrower if in the Receiver's reasonable business judgment it is appropriate to do so.
- cc. The Receiver shall bear no personal liability for any actions or omissions in conformity with the provisions of this Order and any future orders pertaining to this receivership.
- dd. The Receiver shall not be obligated to contribute personal funds in the performance of his duties hereunder.
- ee. Upon receipt by the Receiver of a copy of a recorded Trustee's Deed Upon Foreclosure, or notice from Plaintiff that Borrower has cured the defaults existing under Plaintiff's loan documents, or that Plaintiff has accepted a deed in lieu of foreclosure, the Receiver shall turn over possession, custody and control of the Property to either Plaintiff, Defendant(s), or to the successful purchaser (whichever is appropriate) without further order of this Court. The Receiver shall then be divested of possession, custody and control of the Property and, if consistent with existing law, the Receiver shall have no further liability as to the Property. Discharge of the Receiver shall require a court order after a properly noticed motion approving the Receiver's Final Report and Account and any exoneration of the Receiver's bond. Notwithstanding anything contained herein to the contrary in the event that one of the events described in this paragraph has not occurred on or before the day which is twenty-four (24) months after the date of this Order, then this receivership shall be terminated and Plaintiff or a third party at Plaintiff's direction shall accept from Borrower a grant deed in-lieu of foreclosure. To the extent Defendants receives a renewal of any existing permit or approval, Defendants shall deliver same to the Receiver; provided, however, the Receiver shall be solely responsible for obtaining renewals of existing permits and approvals, and, if necessary, new permits and approvals necessary in connection with the operation of the Property.
- ff. If a Defendant files or is the subject of a bankruptcy case during the receivership, Plaintiff shall give notice of the bankruptcy case to the Court, to all parties, and to the Receiver by the close of the next business day after the day on which Plaintiff receives notice of the bankruptcy filing. If the Receiver receives notice that a bankruptcy has been filed and part of the bankruptcy estate includes property that is the subject of this order, the Receiver shall have the following duties:
  - 1. The Receiver shall immediately contact the party who obtained the appointment of the Receiver and determine whether that party intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and (2) relief from the Receiver's obligation to turn over the property (11 U.S.C. § 543). If the party has no intention to make such a motion,

the Receiver shall immediately turn over the Property to the appropriate entity either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession and otherwise comply with 11 United States Code § 543.

2. If the party who obtained the receivership intends to seek relief immediately from both the automatic stay and the Receiver's obligation to turn over the Property the Receiver may remain in possession and preserve the Property pending the ruling on those motions (11 U.S.C. § 543(a)). The Receiver's authority to preserve the Property shall be limited as follows:
  - A. The Receiver may continue to collect revenues, rents and other income;
  - B. The Receiver may make only those disbursements necessary to preserve and protect the Property;
  - C. The Receiver shall not execute any new leases or other long-term contracts; and
  - D. The Receiver shall do nothing that would effect a material change in the circumstances of the Property.
3. If the party who obtained the receivership fails to file a motion within 10 court days after his or her receipt of notice of the bankruptcy filing, the Receiver shall immediately turn over the Property to the appropriate entity either to the trustee in bankruptcy if one has been appointed or, if not, to the debtor in possession and otherwise comply with 11 United States Code § 543.
4. The Receiver may petition the Court to retain legal counsel to assist the Receiver with issues arising out of the bankruptcy proceedings that affect the receivership.

gg. The Receiver shall have no responsibility for filing federal and state income tax returns or federal or state payroll tax returns and shall not be responsible for paying any unpaid federal and state payroll taxes and expenses of the Borrower. The responsibility for such filings and payments lie exclusively with the Defendants and their agents, servants, shareholders, employees and representatives.