

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
(Shelby Division)**

IN RE:

JOSH AND ANDREA FARMER,

Debtors.

CHAPTER 11

CASE NO: 10-40270

**MOTION TO EXCUSE EASLAN MANAGEMENT COMPANY, INC.'S COMPLIANCE
WITH SECTION 543(a)-(c) OF THE BANKRUPTCY CODE OR
IN THE ALTERNATIVE FOR THE APPOINTMENT OF A TRUSTEE OR EXAMINER
AND FOR AN EXPEDITED HEARING**

NOW COMES, 1230 Overbrook Drive Holdings, LLC (“Note A Holder”) and CBA-Mezzanine Capital Finance, LLC (“Note B Holder”, which collectively with Note A Holder may hereinafter be collectively referred to as “Noteholders”), by and through its undersigned counsel, hereby moves the Court for an order pursuant to Section 543(d)(1) of the Bankruptcy Code excusing Easlan Management Company, Inc. (“Easlan”) from compliance with Section 543(a)-(c) of the Bankruptcy Code and for an order converting the State Court receivership into a Bankruptcy custodianship for certain assets of the Debtor; or in the alternative for the appointment of a Trustee or Examiner pursuant to Section 1104 of the Bankruptcy Code. In support of said Motion, Noteholders show to the Court as follows:

I. Statement of Facts

1. Noteholders are secured lenders in this proceeding, which own certain debt which is collectively secured by a first lien mortgage on two (2) apartment complexes in Gaffney, South Carolina, which can be generally described as Creekside at Wellington Apartments, located at 1230 Overbrook Drive, Gaffney, Cherokee County, South Carolina and Magnolia

Ridge Apartments located at 266 Goldmine Springs Road, Gaffney, Cherokee County, South Carolina (“Properties”).

2. On September 25, 2006 a loan (“Loan”) was made to Gaffney Apartments, LLC (“Borrower”) by Keybank National Association, a national banking association (“Original Lender”) with an indebtedness in the original principal amount of Five Million Three Hundred Thirty Thousand and no/100 Dollars (\$5,330,000.00), which loan is evidenced by a Promissory Note A, dated September 25, 2006 (the “Note A”). Note A Holder is the current owner and holder of Note A. Also on September 25, 2006 a loan (“Loan”) was made to Debtor by Original Lender with an indebtedness in the original principal amount of Three Hundred Fifty Thousand and no/100 Dollars (\$350,000.00), which loan is evidenced by a Promissory Note B, dated September 25, 2006 (the “Note B”; Note A and Note B may hereinafter be collectively referred to as the “Notes”). Note B Holder is the current owner and holder of Note B. The Notes are secured by, among other things, a Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing, dated as of September 25, 2006, executed by Debtor originally in favor of Original Lender, and recorded on September 26, 2006, in Book 1239 at Page 92 with the Cherokee County, South Carolina real property records (hereinafter the “Mortgage”). The Mortgage constitutes a lien, with first lien priority on the property specifically identified in the Mortgage, and which can be generally described as the Properties.

3. To further secure the Note, the Borrower also executed an Assignment of Leases and Rents, dated as of September 25, 2006 and recorded on September 26, 2006, in Book 1239 at Page 170 with the Cherokee County, South Carolina real property records (the “Assignment”). Pursuant to the Assignment, the Borrower irrevocably, absolutely and unconditionally transferred, assigned and conveyed to the Noteholders, as successor to Original Lender, all of

Borrower's rights, titles and interests in and to all leases, rental agreements, or occupancy agreements including all rents, issues, and profits therefrom, whether existing or thereafter affecting the Properties.

4. The Borrower defaulted under the terms of the Notes and Mortgage for failure to pay or cause to be paid all sums required pursuant to the terms of the Notes.

5. On June 18, 2009, an Order Appointing Receiver ("Order Appointing Receiver") was entered by the Cherokee County, South Carolina Circuit Court in a lawsuit styled, "1230 Overbrook Drive Holdings, LLC vs. Gaffney Apartments, LLC"; Case No. 2009-CP-110562 (the "Foreclosure Lawsuit"). Pursuant to the terms of the Order Appointing Receiver, Easlan was appointed as the "Receiver" to to manage and operate the Properties.

6. Pursuant to the Order Appointing Receiver, a bond in the amount of \$100,000.00 was posted with the Clerk of Cherokee County, South Carolina Circuit Court ("Bond"). After the entry of the Order Appointing Receiver and the posting of the Bond, Easlan immediately commenced its duties and took possession, management and operation of the Properties. Easlan has been operating the Properties continuously since that time.

7. A Special Referee's Order and Judgment of Foreclosure and Sale was entered in the Foreclosure Action ordering the foreclosure sale of the Properties. The foreclosure sale was scheduled for April 5, 2010.

8. A Quitclaim Title to Real Estate was made and delivered on March 30, 2010 and recorded on April 1, 2010, in DR Volume 34 at Page 2912 with the Cherokee County, South Carolina real property records, purporting to convey the Properties to Joshua B. Farmer and Raymond B. Farmer ("Grantees").

9. On April 5, 2010, Joshua B. Farmer and Andrea Farmer (“Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court. Raymond B. Farmer and Diane Farmer also filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in this Court, Case No. 40269. The purported conveyance of the Properties to the Grantees and their subsequent filing of the voluntary petitions stayed the foreclosure sale of the Properties.

II. Relief Requested

10. The Debtor’s estate would be better served by permitting Easlan to manage and operate the Properties. Submitted in support of this Motion is an Affidavit of Michael D. Holmes, President of Receiver (“Receiver’s Affidavit”), which affidavit attests as to Receiver’s qualifications and disinterestedness, a copy of which is attached hereto as *Exhibit “A”* and incorporated herein by reference. A copy of the Affidavit of Michael D. Holmes, was tendered to the Cherokee County, South Carolina Circuit Court in connection with the Foreclosure Lawsuit. A copy of the Order Appointing Receiver is attached hereto as *Exhibit “B”* and incorporated herein by reference. The Noteholder’s seek an order from this Court pursuant to Section 543(d)(1) of the Bankruptcy Code excusing Easlan from compliance with Section 543(a)-(c) of the Bankruptcy Code and for an order converting the State Court receivership into a Bankruptcy custodianship so that Easlan can continue to manage and operate the Properties.

III. Basis For Requested Relief

11. The Court has discretion to excuse turnover pursuant to Section 543(d) of the Bankruptcy Code, which states:

“After notice of hearing, the bankruptcy court – (1) may excuse compliance with subsection (a), (b), or (c) of this section if the interests of creditors and, if the debtor is insolvent, of equity security holders would be better served by permitting a custodian to continue in possession, custody, or control of such property...”

12. Courts have identified a general policy that a debtor remains in possession. *KCC-Fund V Ltd.* 96 B.R. 237, 239-40 (Bankr. W.D. Mo. 1989). Section 543(d), when properly invoked, is an express statutory limit on that policy. The test for abstention in Section 543(d)(1) “does not require an analysis of the interest of the debtor.” 5 COLLIER ON BANKRUPTCY ¶ 543.05 at 543-13 (Lawrence P. King ed. 15th ed. rev. 2009). While the invocation of Section 543(d) is committed to the sound discretion of this Court, courts have identified several factors to guide the Court in the exercise of its discretion to use Section 543(d). Noteholder respectfully submits that each of those factors militates in favor of granting the relief requested herein. According to *In re Constable Plaza Associates, L.P.*, 125 B.R. 98 (Bankr. S.D.N.Y. 1991), the factors include the following: (1) whether there will be sufficient income to fund a successful reorganization; (2) whether the debtor will use the property in question for the benefit of creditors; (3) whether there has been mismanagement by the debtor; (4) whether or not there are avoidance issues raised with respect to the property; and (5) the fact that the automatic stay had deactivated the state court receivership action are considerations under section 543(d) warranting excusing the Receiver from turnover of the Property. Not all of the above factors have to be present for the Court to excuse a receiver from turnover provisions. *In re Dill*, 163 B.R. 221, 225 (E.D.N.Y. 1994). In the current case, the Properties and the amount of rents and profits generated thereby is insufficient to satisfy the amounts due to the Noteholders. The fact that the amount of rents and profits generated by the Properties is insufficient to satisfy the amounts due to Noteholders suggest that reorganization with the Debtors in control of the Properties is highly unlikely (at least as it relates to the Properties). Pursuant to the Mortgage (Section 8.1) the Borrower was prohibited from transferring the Properties without the consent of the Noteholders. Such consent was not requested nor provided. The Borrower conveyed the Properties on the eve

of the foreclosure sale to the Grantees in an effort to stop the sale. There will be no surplus income from the Properties to pay any other creditors. The continued management is in the best interest of the creditors because Easlan is a professional property management firm that has increased occupancy and revenue generated by the Properties since displacing the management undertaken by the Grantee's affiliated management company.

14. In the alternative, in the event the Court elects not to excuse the Receiver's compliance with Section 543(a)-(c) of the Bankruptcy Code and authorize the Receiver to continue in management and control of the Property pursuant to Section 543(d) of the Bankruptcy Code, then this Court must appoint a trustee or examiner pursuant to Section 1104 of the Bankruptcy Code with sufficient authority to undertake the decisions with respect to the management and operation of the Property. Noteholder submits that Easlan is the appropriate to perform such function in this case. Finally, the Court may appoint a "responsible person" to manage and operate the Property pursuant to the Court's broad authority provided by Section 105 of the Bankruptcy Code.

WHEREFORE, Noteholder respectfully prays the Court that Easlan be excused from compliance with Section 543(a)-(c) of the Bankruptcy Code and authorize Easlan to continue in management and control of the Properties pursuant to Section 543(d) of the Bankruptcy Code, or alternatively the Court appoint a trustee of examiner pursuant to Section 1104 of the Bankruptcy Code or a "responsible person" to manage and operate the Property pursuant to Section 105 of the Bankruptcy Code, and the Court conduct an expedited hearing on this Motion, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

KILPATRICK STOCKTON, LLP



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NC Bar No. 16797
214 North Tryon Street, Suite 2500
Telephone: 704.338.5288
Facsimile: 704.371.8311
Email: jpulliam@kilpatrickstockton.com

COUNSEL FOR NOTEHOLDERS

EXHIBIT A

AFFIDAVIT OF MICHAEL D. HOLMES

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
1230 OVERBROOK DRIVE HOLDINGS,
LLC,

Plaintiff,

vs.

GAFFNEY APARTMENTS, LLC,
Defendant.

IN THE CIRCUIT COURT

Case No. 2009-

009CP-110562

RECEIVER'S AFFIDAVIT

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2009 JUN 11 P 4:45
BRADY W. NOBEE

STATE OF South Carolina
COUNTY OF Greenville)

Personally appeared before me, the undersigned attesting officer duly authorized to administer oaths, Michael D. Holmes, who, after being duly sworn, stated under oath as follows:

1. My name is Michael D. Holmes. I am over 21 years of age and am competent to give testimony. The facts stated herein are based upon my personal knowledge.
2. I am the President of Easlan Management Co., Inc., a South Carolina corporation, headquartered in Greenville, South Carolina ("Easlan").
3. Easlan is a full service commercial real estate management company for multi-family properties. Easlan offers complete real estate services including leasing and management. Easlan has substantial experience in the management of multi-family properties. Easlan presently manages 6 multi-family properties in South Carolina and 14 multi-family properties in the southeast United States, with a total of approximately 3,000 apartment units. Easlan has previously served as a receiver, by court appointment, for five multi-family properties. Easlan has significant experience marketing, selling, managing, leasing and operating investment properties located throughout the southeastern United States, including properties that are similar to the multi-family

properties commonly known as Creekside at Wellington Apartments, located at 1230 Overbrook Drive, Gaffney, SC and Magnolia Ridge Apartments, located at 266 Goldmine Springs Road, Gaffney, SC.

4. As the President of Easlan, I have had and have direct responsibility for the management and operation of multi-family properties similar to Creekside at Wellington Apartments and Magnolia Ridge Apartments. I currently serve on the Board of Directors of the National Apartment Association and am a licensed real estate broker in 3 states. I have worked in property management at Easlan for 22 years. If Easlan is appointed as receiver in this proceeding, I would be involved in the management and oversight of the properties which are the subject matter of this proceeding.

5. Easlan has no involvement or affiliation with the properties which are the subject of this matter or with the defendants in this matter, which would interfere with Easlan's ability to act as a receiver in this matter. Easlan has no interest, which is in any way adverse to the defendants, which would prevent it from effectively performing as receiver in this proceeding. Easlan is qualified to act as a receiver in this matter. I have no knowledge of any of matter, which would prevent Easlan from successfully and effectively performing its duties as receiver in this matter.

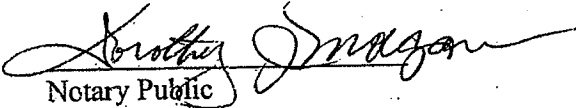
FURTHER AFFIANT SAYETH NOT.

Executed this 31 day of May, 2009.



MICHAEL D. HOLMES
President
Easlan Management Co., Inc.

Sworn to and subscribed before me
this 31st day of May, 2009.



Notary Public

Print Name: DOROTHY J.

MORAN

My commission expires: 10/13/15

EXHIBIT B

ORDER APPOINTING RECEIVER

STATE OF SOUTH CAROLINA
 COUNTY OF CHEROKEE
 1230 OVERBROOK DRIVE HOLDINGS,
 LLC,
 Plaintiff,
 vs.
 GAFFNEY APARTMENTS, LLC
 Defendant.

IN THE COURT COMMON PLEAS

Case No. 2009-CP-110562;

ORDER APPOINTING RECEIVER

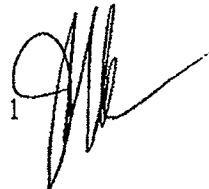
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 CLERK OF COURT
 1000 W. BROAD ST.
 RICHMOND, VA 23219

This matter came before the Court for a hearing upon the Motion of the Plaintiff for Appointment of Receiver to manage the property of the Defendant, Gaffney Apartments, LLC ("Borrower"). Plaintiff filed an action for foreclosure and appointment of receiver and has also filed a Motion for the Appointment of Receiver for the subject property, which is two apartment complexes being operated as Creekside at Wellington Apartments, located at 1230 Overbrook Drive, Gaffney, SC and Magnolia Ridge Apartments, located at 266 Goldmine Springs Road, Gaffney, SC.

Upon reviewing the pleadings and the applicable law and hearing statements and representations of counsel for the Plaintiff and counsel for Defendant, Borrower, I find that the motion is proper and that a receiver should be appointed.

FINDINGS OF FACT

1. Borrower is the owner of that certain real and personal property which is the subject of this action, generally described as Creekside at Wellington Apartments and Magnolia Ridge Apartments, located in Cherokee County, South Carolina, and more particularly described in the Complaint filed in this action.



2. Plaintiff is the holder, by assignment, of that certain Promissory Note (the "Note"), dated September 25, 2006 and originally payable to the order of KeyBank National Association, a national banking association ("Original Lender") in the original principal sum of Five Million Three Hundred Thirty Thousand and No/100 Dollars (\$5,330,000.00). A copy of the Note has been attached to the Complaint in this action and marked as Exhibit "A" thereto.

3. To secure the obligation of Borrower as represented by the Note, Borrower executed and delivered to Original Lender a certain Mortgage, Assignment of Leases and Rents, Security Agreement, and Fixture Filing (the "Mortgage"), dated September 25, 2006, and recorded with the Cherokee County, South Carolina real property records on September 26, 2006, in Book 1239 at Page 92, wherein and whereby Defendant mortgaged certain real property specifically described in the Mortgage ("Properties"). A copy of the Mortgage is attached to the Complaint in this action and marked as Exhibit "B" thereto. On September 25, 2006, to further secure the indebtedness evidenced by the Note and Mortgage, Defendant executed an Assignment of Leases and Rents which was filed and recorded on September 26, 2006 with the Cherokee County real property records in Book 1239 at Page 170 (the "Assignment of Leases") in which it conveyed to Original Lender all of its right, title and interest in and to the following:

- (a) All existing and future written and oral leases, subleases, tenancies, subtenancies, licenses, contracts, contract rights, and occupancy and all other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Properties, now or hereafter made, whether before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. § 101 *et seq.*, as the same may be amended from time to time (the "Bankruptcy Code"), together with any extension, renewal or replacement of the same



(collectively the "Leases"); this Assignment of all such present and future leases and present and future agreements being effective without further or supplemental assignment.

(b) All rents, additional rents, revenues, payments (including payments in connection with the exercise of any purchase option or termination rights), income, issues and profits (including all oil and gas or other mineral royalties and bonuses), deposits, accounts and other benefits arising from the Leases or otherwise from the use, enjoyment and occupancy of the Properties and any cash or security deposited in connection therewith, whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively the "Rents").

A copy of the Assignment of Leases is attached to the Complaint in this action and marked as Exhibit "C" thereto.

4. The Note, together with the Mortgage were transferred and assigned to Bank of America, National Association, as successor by merger to LaSalle Bank National Association, as Trustee for the Registered Holders of LB-UBS Commercial Mortgage Trust 2006-C7, Commercial Mortgage Pass-Through Certificates, Series 2006-C7 (the "Trust") by Original Lender, as evidenced by a certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of December 5, 2006 and recorded on September 24, 2007 in Volume 12 at Page 117 of the Cherokee County, South Carolina real property records, which is attached to the Complaint in this action and marked as Exhibit "D" thereto.

5. The Note, together with the Mortgage were transferred and assigned to Plaintiff by the Trust, as evidenced by a certain Assignment of Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of May 28, 2009, which is attached to the Complaint in this action and marked as Exhibit "F" thereto.

6. The Note, Mortgage and Assignment of Leases are currently in default under the terms thereof for Borrower's failure to pay the installments of principal and interest which have become due thereunder. Such failure to make payments by the Borrower is a breach of the terms and conditions of the Note, the Mortgage, and the Assignment of Leases. The default automatically revokes Borrower's license to collect the Rents and revenues generated by the Properties and entitles the Plaintiff to seek the appointment of a receiver to manage and operate the Properties. Plaintiff is entitled to have its interests in the Properties protected through the appointment of an appropriate receiver to manage the Properties and collect the Rents.

7. Easlan Management Company, Inc. ("Easlan") is experienced in managing and operating multifamily rental property and handling the revenues received therefrom in a fiduciary capacity, and is a fit and proper company to act as receiver herein. Easlan holds no interest which would interfere with the proper performance of its fiduciary duties as a receiver in this case and is willing to so serve.

CONCLUSIONS OF LAW

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. The Court concludes that the Plaintiff is entitled to the appointment of a receiver and that the appointment of a receiver for the Properties during the pendency of this action is appropriate under the circumstances of this case.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS THEREFORE ORDERED that:

A. Easlan be and is hereby appointed receiver (hereinafter "Receiver") of the Properties, subject to the continuing jurisdiction of this Court.

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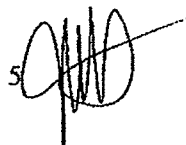
B. Receiver is hereby authorized and directed to collect all Rents and profits derived from operations of the Properties, for the benefit of the Plaintiff and Defendant.

C. Receiver shall further have the full authority to take possession of the Properties, and Borrower and any of its agents, management and management companies, shall immediately upon request of Receiver deliver possession to the Properties, and all improvements made on the Properties or with respect thereto, and all Leases, Rents, books, records, service contracts, bank accounts, check books, check registers, passbooks, funds, revenues, and all other personal property related to the management of the Properties.

D. Receiver shall have and may exercise all rights of Borrower in and to the Properties under any Lease, rental agreement, operating agreement or other agreement affecting or relating to any portion of the Properties. Receiver may file suit in its own name or in the name of Borrower, or both in connection with the operation of the Properties.

E. From and after the date of this Order and until the receivership estate is dissolved in accordance with the terms hereof or by further order of this Court, Borrower is hereby restrained from disposing of, transferring, conveying, or otherwise encumbering all or any portion of the Properties; or any other property, including, but not limited to, books, files, records, statements, accounts, cash, funds, bank accounts, check books, check registers, passbooks and any other relevant written material evidencing or arising from the banking, borrowing or investment relations between Borrower and any other person or entity. Borrower shall have reasonable access to the books and records of the Properties and those kept and maintained by the Receiver related to the Properties.

F. Borrower is hereby further ordered and directed to immediately convey and deliver to Receiver all cash, funds, bank accounts and assets of any kind which have arisen by

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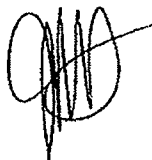
virtue of Rents, revenues or other receipts from the Properties which are in the possession of the Borrower or its servants, agents or employees or affiliates, including, without limitation, any Rents previously received by Borrower and not forwarded to the Plaintiff.

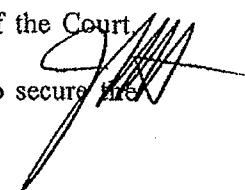
G. Borrower is ordered to cooperate with Receiver and to sign such legal documents as may be legally necessary and to furnish such records and other items or articles as set forth herein or as Receiver may otherwise require which relate to the Properties and which are in Borrower's possession, custody, or control.

H. To the extent funds are available, Receiver is authorized and directed to pay all customary and necessary expenses incurred in the ordinary course of business and incurred in the responsibility of Borrower in connection with the Properties in the exercise of its business discretion.

I. Receiver shall remit all excess proceeds of collected Rents and other operating revenues to the Plaintiff monthly for credit against the outstanding balance of the indebtedness owed under the Note, accompanied by an accounting of all such rents, profits and operating revenues collected and disbursements made therefrom. Any funds received by the Plaintiff from Receiver pursuant to this paragraph shall be applied by the Plaintiff as is authorized by the Note, Mortgage or Assignment of Leases.

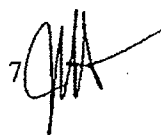
J. Receiver is further ordered and directed, on behalf of the receivership estate, to procure or maintain, at the expense of the receivership estate, public liability insurance, worker's compensation insurance and fire and extended coverage insurance or any other appropriate insurance for the protection of Receiver, the owner of the Properties, the Plaintiff and any other mortgage creditors who are parties defendant in the within action, as their respective interests may appear.

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K. Receiver shall be entitled to compensation for its receivership and property management services rendered pursuant to and in accordance with this Order in the amount of the greater of \$2,000.00 per month or 5% of the gross monthly collections generated by the Properties or such other amounts as the Court may determine by further order of the Court. Receiver shall file with this Court a bond in the amount of \$ 100,000 to secure  performance under this Order.

L. Receiver may apply to this Court for further and other instructions and for such further power as may be necessary to enable the Receiver to properly carry out the terms of this Order and fulfill its duties as Receiver. Receiver shall have the power to institute, prosecute, or defend suits or actions of law or in equity relating to the Properties under said receivership and is authorized, empowered, and directed to employ such employees, assistants, servants, agents, attorneys, accountants, other professionals, managing agents, leasing agents and any other persons, firms or corporations as it deems necessary and proper to assist it in diligently executing the duties imposed on it by this Order, relative to renting, managing, operating, insuring, maintaining, preserving, protecting and developing the Properties in its possession or under its care and control as such Receiver, on such terms and conditions as it deems just and beneficial to the performance of the trust of its office; Receiver is further authorized to pay the reasonable value of the services rendered by such persons from the funds hereinafter received by it and in its possession as such Receiver.

M. Receiver is further ordered and authorized to operate and manage the Properties and to otherwise protect the Properties effectively in accordance with the terms hereof. Additionally, where necessary Receiver is hereby authorized to accept cash advances made by the Plaintiff or to borrow funds from any source Receiver deems appropriate for its use in



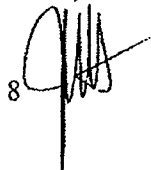
operating and preserving the Properties. Any advances made by the Plaintiff pursuant to this paragraph shall be secured by the Mortgage pursuant to the terms thereof. Nothing herein should be construed to compel the Plaintiff to make any advances.

N. Receiver shall prepare and file with the Court, and forward to counsel for the parties, within forty-five (45) days after the date of this Order (which date may be extended by the Court upon good cause shown), a full and detailed report (the "First Accounting") regarding the Properties identified herein, including values and income generated therefrom from and after the date the Receiver comes into possession of the Properties.

O. Thereafter, Receiver shall file with the Court, and forward to counsel for the parties, every thirty (30) days an accounting of collections and disbursements and compensation received by it ("Periodic Accounting"). These Periodic Accounting(s) shall be filed until further order of the Court and a final accounting shall be prepared and filed with the Court at such time as the Court directs, in connection with the sale of the Properties, or at such other time as the Court deems appropriate, and prior to obtaining a discharge as receiver. The initial Periodic Accounting required pursuant to this paragraph shall be due thirty (30) days from the due date of the First Accounting.

P. At the conclusion of this action, Receiver shall file with the Clerk of Court and forward to counsel for the parties, an accounting, certified to be accurate, reflecting all receipts and all disbursements made during the accounting period.

Q. Upon request by Plaintiff and upon such listing terms as are acceptable to Plaintiff, the Receiver is authorized to list or otherwise advertise for sale and to solicit offers to purchase either or both of the Properties and to provide promptly to Plaintiff and Defendant copies of all such offers. Plaintiff shall be permitted, from time to time, to contact any party or

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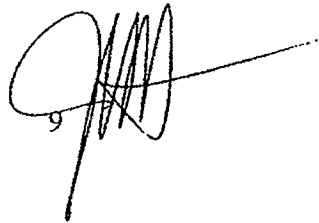
parties which may have an interest in purchasing the Properties or which have made any proposal to purchase the Properties and to discuss and negotiate the terms of such offer provided that Plaintiff shall report the nature and content of such discussions and negotiations to the Receiver periodically, and no such contact, discussion or negotiation with such party or parties shall render or cause or shall be deemed to render or cause Plaintiff to be a mortgagee in possession of the Properties or otherwise subject Plaintiff to any liability. The Receiver is hereby authorized and directed, and without further order of this Court, to enter into a contract for the sale of either or both of the Properties, on such terms as are acceptable and approved in writing prior to such sale by Plaintiff, by way of public or private sale. However, any such contract for the sale of either of the Properties shall contain a provision that provides that the sale shall be subject to Court approval. Prior to the sale of either or both of the Properties the terms of the sale shall be brought before the Court by motion with notice to all parties to this action and subject to Court approval.

The provisions of this paragraph shall lapse in six (6) months from the date of this order, subject to further order of the Court extending such time period.

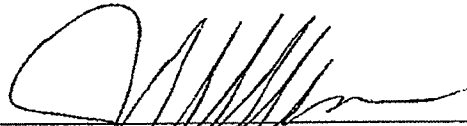


R. The powers herein granted to Receiver shall be in addition to, and not in lieu of, all powers vested in Receiver by applicable law or rule of the Court. Receiver will be responsible only to the Court for the performance of its duties as Receiver, and neither Plaintiff nor Defendant shall delay, hinder or obstruct Receiver in the performance of his duties.

S. Jurisdiction over Receiver and the Properties shall remain with the Court for the issuance of such further orders and further proceedings as are deemed just and proper and in the best interest of the parties and the management, maintenance and protection of the Properties at issue.



AND IT IS SO ORDERED.



Honorable J. Mark Hayes II
Circuit Court Judge

Cherokee County, South Carolina

This the 17 day of June, 2009.