

1 _____
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3 Attorney for Plaintiff

4
5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
6 **IN AND FOR THE COUNTY OF MARICOPA**

7 _____)
8 Plaintiff,) **ORDER APPOINTING A RECEIVER**
9 vs.)
10 _____)
11 Defendant.)
_____)

12 This matter having this day come before the Court, pursuant to Plaintiff's
13 Complaint and Plaintiff's Application for Appointment of Receiver (**Without Notice**) and Motion
14 for Issuance of Order to Show Cause, and upon all of the files, records and proceedings
15 herein, without further order of this court the Receiver, _____ whose
16 business address is _____, is hereby appointed Receiver and is
17 empowered without further action by this Court to do the following in furtherance of the
18 purposes for which this Receivership is created:

- 19 1. Possession. Take immediate and exclusive possession, actual or
20 constructive, of the real property located at (street address, city, county, state) consisting of
21 (describe property) the legal description of which is contained in Exhibit "A" attached hereto,
22 whether such premises be managed by the named Defendant or his agents, together with all
23 personal property found thereon, including, without limitation, all cash, checks, checkbooks,
24 deposits, deposit slips, inventory, equipment, fixtures, furnishings, and business records.
- 25 2. Maintenance. Operate and safeguard the property making such repairs

1 as may be needed to keep or put the property in good and rentable condition, in the case of an
2 income property, and to pay the cost of such repairs from funds of the Receivership estate but
3 not any bills of the owner or prior operator unless the payment of such sums is essential to the
4 continued operation of the property.

5 3. Receiver's Agents. Hire such agents, independent contractors, and
6 employees as may be needed to assist the Receiver in managing the receivership property,
7 including a property management company. _____, an Arizona licensed
8 real estate brokerage owned by Receiver may be hired provided any fees paid to
9 _____ are comparable to those that would ordinarily be paid to any property
10 management company.

11 4. Receiver's Counsel. Hire independent legal counsel if needed by the
12 Receiver, and to pay such person for their services at rates the Receiver deems appropriate
13 for the services provided.

14 5. Reimbursement of Receiver. Reimburse the Receiver for out-of-pocket
15 expenditures made by him on behalf of the Receivership estate in instances where there is not
16 sufficient Receivership funding on hand to pay such items. Receiver shall be entitled to add a
17 five percent (5.0%) service fee to such payments before submitting them for reimbursement.

18 6. Bank Accounts. Receiver shall be empowered issue demands upon
19 financial institutions for the freezing and subsequent turnover of funds on deposit, which
20 institution the Receiver has reason to believe is in possession of funds belonging to or arising
21 from the operation of the Receivership estate, whether such account(s) be titled in the name of
22 the Defendant(s) herein or not. Receiver shall also be empowered by this Order to assume
23 sole control and operation of such accounts in lieu of closing accounts. Receiver may open
24 new accounts at any federally insured financial institution in his name, as the Receiver for the
25 Defendant entity, such account to be used for the deposit of funds and payment of expenses

1 of the Receivership estate. Receiver may add additional persons named by him to be signers
2 on any account so opened by the Receiver. Any financial institution that acts at the behest of
3 the Receiver in these matters shall have no liability to the owner of such account(s) for turning
4 over funds and following any other directives of the Receiver named in this Order.

5 7. Utility Services and Deposits. Issue demands upon public utilities that
6 provide services to the subject property. Utility providers shall transfer such services together
7 with any deposits held by the utility into the name of the Receiver, without offset. Future bills
8 shall be sent to the Receiver's address of record provided in the Court Order, a copy of which
9 the Receiver shall provide to each utility. Receiver may, if he elects, pay any past due bills for
10 prior utility services upon a showing satisfactory to Receiver that such bills are owed.

11 8. Post Office Box. Issue demands in the name of the Receivership upon
12 the U.S. Postal service to gain exclusive possession and control of such postal boxes as may
13 have been used by named Defendant(s) for the receipt or rent and other mail.

14 9. Sources of Revenue. Identify all revenue sources, be they rent, fees,
15 royalties, or otherwise described, and make demand upon all payees, lessees, and tenants to
16 make remittances of future sums and past due balances solely to Receiver.

17 10. Demand for Deposits. From available leases and other records,
18 compute the amount of deposits collected by Defendant from tenants for security, cleaning,
19 pets, or other purposes, and demand the immediate surrender to the Receiver of such
20 deposits by Defendant(s) and or his agent(s) who collected them, and to take appropriate
21 action to enforce the turnover of such funds by the owner or his agents.

22 11. Pre-Receivership Bills. Pay only current operating expenses of the
23 property incurred by Receiver subsequent to his appointment including, without limitation, fees
24 and administrative expenses of the Receiver. Receiver may not use funds of the Receivership
25 estate to pay any bills for goods or services contracted for or provided to the property or to

1 Defendant or his agents prior to the date of this Order, unless such payment is necessary to
2 enable the Receiver to continue to operate the property.

3 12. Insurance. Determine whether adequate hazard and liability insurance
4 is in place, and if not, to attempt to obtain and pay for such insurance from available funds.

5 13. Right to Lease. Enter into leases for the subject property for up to one
6 year upon terms and conditions which are comparable to the terms and conditions upon which
7 similar properties are offered for rent in the marketplace.

8 14. Tenant Improvements. For partially completed properties, expend sums
9 from the Receivership estate which, in the opinion of the Receiver, are required to make the
10 property rentable, including the construction of "tenant improvements" in needed.

11 15. Receiver's Right to Borrow. Receiver may borrow from Plaintiff or third
12 parties for the purpose of funding operation of the Receivership estate in the case where the
13 revenues are not sufficient for the Receiver to perform all of the tasks and duties set forth in
14 this Order and pay all of the ongoing obligations. Prior to borrowing from third parties Receiver
15 shall obtain Court approval for the issuance of Receiver's Certificates evidencing the debt and
16 granting the lender thereof priority of repayment ahead of all existing consensual liens. Prior
17 Court approval to assure priority shall not be required if Plaintiff's existing Deed of Trust has in
18 it a provision for protective advances to be treated as an addition to principal and not a
19 separate loan. Plaintiff may add the amount of such advance(s) made at the request of
20 Receiver to Plaintiff's loan and such advance shall be entitled to earn interest on such
21 advances at the rate provided for in Plaintiff's note, interest to be collected with and in addition
22 to all other sums due Plaintiff for periodic interest, penalty interest, scheduled principal
23 reductions, all Receiver's fees and expenses, attorney's fees and court costs as may be
24 expended by the Plaintiff by reason of Defendant's default, and any other cost or fee incurred
25 by Plaintiff by reason of default.

1 16. Request Police Assistance. Request assistance of law enforcement
2 officials when taking physical possession, or at any time during the term of the Receivership, if
3 in the opinion of Receiver, such assistance is necessary to preserve the peace.

4 17. Operating Budget. If appropriate to do so, Receiver shall prepare a
5 projected annualized operating budget for the Receivership property, based upon operating
6 data obtained from Defendant and other sources.

7 18. Distribution of Funds. If the Receiver determines that he possesses
8 funds in excess of that needed to pay all operating costs of the Receivership, including
9 property taxes, and if there are no other outstanding bills or other obligations, and no senior
10 lienholders requiring payment, then Receiver may, at his discretion, make distributions to the
11 Plaintiff in such amounts as Receiver deems appropriate, or as otherwise determined by this
12 Court. Such distributions shall not impact on or delay the underlying foreclosure action or
13 modify the dates for performance in any way.

14 19. Monthly Reporting. Provide the litigants and other parties in interest that
15 requests it, a monthly summary of revenues and disbursements on a "cash reporting basis" as
16 that term is commonly understood within the accounting profession, and upon conclusion of
17 the Receivership the Receiver shall file with the Court a final summary accounting for the full
18 term of the Receivership.

19 20. Payment of Receiver. The Receiver is empowered by this Order to pay,
20 from Receivership funds in his possession, whether earned or borrowed, all fees earned by
21 Receiver at the rate of _____. Receiver shall not charge for more time than is
22 reasonable and necessary to accomplish the purposes and tasks set forth in this order, which
23 time shall be accounted for in periodic computerized reports detailing the amount paid to date.
24 Receiver shall also be entitled to receive reimbursement for actual out-of-pocket expenses
25 incurred on behalf of the Receivership estate, plus a services fee for such, Receiver's

1 standard costs for mileage, faxes, copies, and similar Receiver provided benefits. Any
2 unreimbursed costs and fees owing to the Receiver upon termination of the Receivership,
3 whether such termination is by judicial action or foreclosure, shall have priority in payment
4 ahead of prior recorded liens.

5 21. Defendant Cooperation. Defendant herein is directed to cooperate with
6 the Receiver and to disclose all information relevant to the property and its operation, including
7 names of all vendors and suppliers, provide originals leases, copies of bills, service contracts,
8 bank accounts, and to turn over to the Receiver any other material relevant and necessary in
9 the opinion of the Receiver to the fulfillment of the tasks and objectives set forth in this Order.
10 Defendant shall also turn over all keys, door openers, lock combinations and entry codes for
11 alarm systems. Defendant shall turn over all tenant deposits and pre-paid rents. Defendant's
12 failure or refusal to comply with this provision of the Order shall be sufficient cause for
13 Receiver to ask the Court to find Defendant in contempt and impose appropriate sanctions.

14 22. Tenant Cooperation. Tenants of the subject property are ordered to pay
15 their rent to the Receiver, or his lawful designee, and not to the owner. Tenants who claim to
16 have paid rent for the current period shall provide Receiver with a receipt showing payment.

17 23. Vendor Cooperation. Any persons owing sums to the Defendant which
18 would otherwise be payable to Defendant are required to pay such sums to the Receiver,
19 including any portion thereof which represents payment for past due rents or services.

20 24. Hold Harmless. The Receivership estate shall indemnify and hold
21 harmless _____ individually, his community estate, and his related companies
22 including, but not limited to, _____, from any claims made by
23 persons not a party to this Receivership Order, which claims arise out of the operation of this
24 Receivership, except in a case where the Receiver has acted outside the scope of his
25 authority, or committed fraud or intentionally misrepresented his ministerial authority as

1 Receiver. In the event a suit is filed against the Receiver, or a related entity of Receiver, over
2 an issue arising out of this action, except as conditioned above, it shall be incumbent upon the
3 Receivership estate to reimburse Receiver for the fees and costs of defending such action,
4 including any appeals thereof to final resolution and award of judgments.

5 25. Notice to Parties. Should it become necessary for Receiver to petition
6 the Court for a clarification of the provisions of this Order, or to request other powers as the
7 circumstances may then dictate are necessary, three (3) business days notice including the
8 day of delivery of such notice by Receiver shall be sufficient notice to Plaintiff and Defendant.

9 26. Defendant Conduct. Defendant, his agents and employees, may not
10 interfere with or impede the Receiver in any way, or have any contact with any of the tenants
11 of the receivership estate, be it real property or an operating business, nor shall Defendant or
12 any agent of Defendant enter upon Receivership property except with the prior consent
13 Receiver.

14 27. Computer Access Codes. Defendant shall provide Receiver with all
15 "user names" and passwords needed to access records and files maintained on any computer
16 located on the receivership property, or any other computers on which such information is
17 stored, together with passwords needed to access Defendant's business e-mail account(s).

18 28. Non-interference Provision. It is further ordered that lessors, lessees,
19 customers, principals, investors, suppliers or creditors seeking to enforce any claim, right, or
20 claimed interest against Defendant, are barred by this Order from using any "self-help" or
21 doing anything whatsoever to interfere in any way with the Receiver in the conduct of the
22 receivership estate.

23 29. Termination of Receivership. Upon reinstatement of Defendant's Deed of
24 Trust, the foreclosure of the subject property, or the dismissal of the action upon which this
25 Receivership is based, Plaintiff shall petition the Court to Discharge the Receiver and

1 Exonerate Receiver's Bond provided Receiver shall have first submitted his final report and
2 accounting and Plaintiff shall have first approved of same. Upon approval of Receiver's Final
3 Accounting and Termination by the Court all lessors, lessees, customers, principals, investors,
4 suppliers, and or creditors who are not a named party to the action shall be barred from
5 seeking to enforce any claim, right, or interest against the Receiver and the indemnification of
6 the Receiver by the Receivership estate shall survive the termination of this Receivership.

7 30. Operation of the Business. Where the Receivership estate consists of an
8 operating business wherein specialized knowledge and or experience may be required for the
9 operation of the business, Receiver shall have the discretion to retain the present operator,
10 whether that operator be the Defendant or not, and to permit such operator to operate the
11 business, subject to Receiver oversight and directives, provided that operator shall be required
12 to deposit all revenues of the business into an impound account controlled by the Receiver,
13 and thereafter operator shall apply to the Receiver for payment of all expenses of the business
14 by providing documentation sufficient for the Receiver to determine that the expenditure is
15 appropriate, necessary and of correct amount as supported by invoices and bills of lading. Any
16 city, state or federal licenses needed to operate the business, including any regulated licenses
17 such as liquor licenses, shall be under the exclusive possession and control of the Receiver.

18 31. General Powers of the Receiver. The Receiver, in addition to explicit powers and
19 authorities set forth herein, shall at all times have the right to exercise discretion over matters
20 affecting the operation of the Receivership estate when he deems actions not contemplated by
21 this Order are both necessary and prudent for the protection and preservation of assets of the
22 Receivership Estate, subject at all times to the rights of the parties hereto to appeal any such
23 decision or action to the Court which issued this Order of Appointment.

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DONE IN OPEN COURT this date: _____.

Judge/Commissioner