

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM682187

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	COURT ORDER		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Wolff Shoe Company		12/14/2020	Corporation: MISSOURI
RECEIVING PARTY DATA			
Name:	HG, Inc.		
Street Address:	934 Singlepath Lane		
City:	St. Louis		
State/Country:	MISSOURI		
Postal Code:	63122		
Entity Type:	Corporation: MISSOURI		
PROPERTY NUMBERS Total: 27			
Property Type	Number	Word Mark	
Registration Number:	4263858	BAREFOOT ORIGINALS	
Registration Number:	4257811	VANELI EAST	
Registration Number:	4730617	DITTO BY VANELI	
Registration Number:	6027504	PURPLE COLLECTION	
Registration Number:	0760996	VAN ELI	
Registration Number:	2809238	VERO VE	
Registration Number:	5041925	L'ARTE DELLA VITA	
Registration Number:	4990507	L'ARTE DELLA VITA	
Registration Number:	5060355	MARMI DESIGNER SHOE RACK	
Registration Number:	3640026	VANELI COMFORT	
Registration Number:	3877178	VANELI SPORT	
Registration Number:	0855135	BAREFOOT ORIGINALS	
Registration Number:	3647978	CUSHINO	
Registration Number:	5849279	LINKS TO LEISURE	
Registration Number:	1427563	MARMI	
Registration Number:	1427477	MARMI	
Registration Number:	1768977	MARMI	
Registration Number:	1729522	MEZZO	
Registration Number:	1534421	NECESSAIRE	

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Property Type	Number	Word Mark
Registration Number:	2759580	SESTINO
Registration Number:	3767782	SESTO GOLF
Registration Number:	0846733	VANELI
Registration Number:	3349043	VANELI DI NOTTE
Registration Number:	3596964	WOLFF SHOE COMPANY
Registration Number:	0934008	WOLFFIES
Registration Number:	1648547	WOLFFTRAP
Registration Number:	1560919	SESTO MEUCCI

CORRESPONDENCE DATA

Fax Number: 3147267501

Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.

Phone: 314-726-7500

Email: jwgrp@hdp.com

Correspondent Name: Joseph E. Walsh, Jr.

Address Line 1: 7700 Bonhomme, Suite 400

Address Line 4: St. Louis, MISSOURI 63105

NAME OF SUBMITTER:	Joseph E. Walsh, Jr.
SIGNATURE:	/Joseph E. Walsh, Jr./
DATE SIGNED:	10/19/2021

Total Attachments: 23

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IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY
TWENTY FIRST JUDICIAL CIRCUIT
STATE OF MISSOURI

GARY WOLFF, AS TRUSTEE OF THE
WILLIAM WOLFF REVOCABLE
LIVING TRUST AGREEMENT DATED
AUGUST 1, 1990,

Plaintiff,

v.

WOLFF SHOE COMPANY,

Defendant.

Case No. 20SL-CC05685

Division 4

FIRST AMENDED

CONSENT ORDER GRANTING MOTION FOR APPOINTMENT OF RECEIVER

The Motion for Appointment of Receiver (the “**Motion**”) filed by Gary Wolff as Trustee of the William Wolff Revocable Living Trust Agreement dated August 1, 1990 (“**Plaintiff**”), under Mo. Rev. Stat. §§ 515.500 et seq., (the “**Missouri Commercial Receivership Act**” or “**MCRA**”) and Mo. R. Civ. P. 68.02, came before the Court on the 24TH day of November 2020. The Court, having considered the verified statements of Plaintiff, having considered the arguments of counsel, and having taken judicial notice of the file, is fully advised in the premises, and finds as follows:

- A. Wolff Shoe Company (“**Borrower**”) is in the business of manufacturing and selling shoes, though both wholesale and retail operations. Borrower has approximately 20 retail locations throughout the United States, along with two showrooms and two warehouses, all of which are leased properties. Its primary assets consist of its

- inventory, accounts, office equipment and furniture and related property (collectively, the “**Property**”).
- B. On or about June 8, 2020, Borrower executed that certain Secured Revolving Line of Credit Note in favor of Samuel Todd Wolff, as Trustee of the William Wolff Revocable Living Trust Agreement dated August 1, 1990 (the “**Plaintiff**”), in the amount of \$7,500,000.00 (the “**Note**” or “**Loan**”). A true and correct copy of the Note is attached to Plaintiff’s Verified Petition in this case as **Exhibit “1”** and incorporated herein by this reference.
- C. On or about June 8, 2020, Borrower, in consideration of the Loan, entered into a Security Agreement with Plaintiff (as amended, modified or restated from time to time, the “**Security Agreement**,” together with the Note and other related ancillary documents, the “**Loan Documents**”), under the terms of which Borrower pledged, among other things, all of its assets as security for repayment of the amount borrowed. A true and correct copy of the Security Agreement is attached to the Verified Petition as **Exhibit “2”** and incorporated herein by this reference.
- D. All collateral pledged as security under the Loan Documents, including without limitation, under the Security Agreement may be collectively referred to as the “**Collateral**.”
- E. Plaintiff perfected its security interest in the Collateral by filing a UCC financing statement with the Missouri Secretary of State on June 8, 2020. A true and correct copy of the filed UCC financing statement is attached to the Verified Petition as **Exhibit “3”** and is incorporated herein by this reference.
- F. Plaintiff advanced amounts under the Note to Borrower from time to time.

- G. Plaintiff has the right to enforce the Loan Documents.
- H. The Court has reviewed Plaintiff's Verified Petition and the accompanying motions and exhibits as well as all responses to those pleadings.
- I. Plaintiff's proposed receivership is a general receivership over Borrower and the Collateral and is for the purpose of maintaining the uninterrupted operation of Borrower's operations and preserving and protecting the Collateral.
- J. The proposed receiver is HG, Inc., ("HG"), whose principal is Richard Harmon ("**Harmon**"). Mr. Harmon has nearly forty (40) years of executive, entrepreneurial and consulting experience. He has served as COO, CFO, and CEO, for a variety of companies involved in a financial turnaround and profit enhancement. Harmon has designed and conducted turnaround plans, cash management and control programs, insolvency analysis, creditors and parties-of-interest negotiations, due diligence, corporate financings and real estate workouts. He has developed an expertise in corporate analysis and expert valuation testimony, and over the past several years he has performed numerous valuations for corporate clients for, among other things, corporate reorganizations, litigation matters, and mergers and acquisitions. Mr. Harmon has agreed to the compensation set forth in Section **Error! Reference source not found.**
- K. In light of the foregoing, the Court finds the Motion for Appointment of General Receiver to be to be well-taken, that the appointment of a receiver it necessary to preserve and protect the Property, and that the Proposed receiver is qualified to accept the appointment.

L. Therefore, under Mo. Rev. Stat. § 515.510 and Mo. Sup. Ct. R. 68.02, and the terms and conditions of the Loan Documents and other loan documents between Plaintiff and Borrower, the Court orders as follows:

1. Appointment of Receiver and Receivership Property.

1.1. HG (the “**Receiver**”) whose business address is 934 Singlepath Lane, St. Louis, Missouri, 63122, is hereby appointed as a general Receiver under Mo. Rev. Stat. § 515.515, of Borrower and the Receivership Property (as defined below), effective upon entry of this Order (the “**Effective Date**”). Receiver’s duty to act as Receiver is subject to the terms of this Order.

1.2. As of the Effective Date, Receiver is authorized to direct and take immediate possession and full control of Receivership Property and to take such other actions as Receiver deems reasonable and appropriate to take such possession of, to exercise control over, to prevent waste with respect to, and to preserve, manage, secure, and safeguard, Receivership Property.

1.3. Within ten business days of the execution of this Order, Receiver must give notice of his appointment to all parties in interest, under Mo. Rev. Stat. § 515.520.

1.4. Receiver will take possession of and receive from all depositories, banks, brokerages and otherwise (collectively the “**Financial Institutions**”), any money on deposit in all such Financial Institutions belonging to or arising from the operation of Receivership Property, regardless of whether such funds are in accounts titled in the name of Borrower (but excluding any monies paid to or held by Plaintiff). All Financial Institutions are directed to deliver such deposits to Receiver and such records as Receiver may reasonably request with respect to such accounts. Receiver may indemnify the Financial Institution upon whom such demand is made, and Receiver is empowered to open or close any such accounts. Receiver may deposit monies and funds collected and received in connection with Receivership Property at a federally insured banking

institution or savings association. Receiver may continue to use any existing banking account of Borrower, and Receiver may be added as an authorized signatory on any such account.

1.5. Borrower and its agents, affiliates and employees are ordered to cooperate with Plaintiff and Receiver in the transition of the management of Receivership Property to Receiver and, on the Effective Date, must turn over to Receiver all of the following pertaining to Receivership Property:

- (a) All keys;
- (b) All records pertaining to occupancy including by way of illustration but not limitation, all leases, rent ledgers, security deposit records; cash receipts journals;
- (c) The petty cash fund, if any;
- (d) A current aged account receivables or delinquency report;
- (e) An aged listing of all trade payables and other payables;
- (f) A copy of any records relating to operating expenses for the Borrower's business;
- (g) A list of utilities and utility accounts;
- (h) All on-site employee payroll records and employee files and applications;
- (i) An inventory of all equipment, furniture, vehicles and related titles, and supplies for the Borrower's business operations;
- (j) All existing service contracts;
- (k) All signage agreements, including all amendments;
- (l) All pending bids for work;
- (m) All insurance policies on the Receivership Property and their terms;
- (n) All vendor insurance certificates;
- (o) Documents identifying and summarizing all pending litigation (excluding this action);

- (p) All deposit accounts, books and records, service marks, service mark applications, common law rights to names, trade names, brands, trade dress, logos, designs, private labels, domain names, copyrights, know-how, trade secrets and licenses, data, plans, manuals, computer software, computer tapes, computer systems, computer disks, computer programs, source codes, and all object codes containing any information necessary to preserve the Receivership Property;
- (q) All documents, books, records and computer files, computer equipment, software, management files, equipment, furniture, supplies and all passwords needed to access such software and computer files, email accounts maintained by Borrower (and all off-site financial records) including, but not limited to, all records concerning the Income, and the operation and management of Borrower's business; and
- (r) Such other records pertaining to the management of Receivership Property as may be reasonably requested by Receiver.

1.6. Borrower must fully cooperate with Receiver in adding Receiver and Plaintiff as additional insureds and Plaintiff as the loss payee on all insurance relating to the operation and management of Receivership Property — including, but not limited to, fire, extended coverage, property damage, liability, fidelity, errors and omissions, and workers' compensation — and modifying the policies if deemed appropriate by Receiver. Borrower and its property managers, employees, and agents may not cancel, reduce, or modify any insurance coverage in existence with respect to Receivership Property without Receiver's permission.

1.7. As provided in Section 515.575 of the Missouri Revised Statutes, the appointment of the Receiver under this Order acts as a stay, applicable to all persons, with respect to the acts described in Section 515.575, including without limitation, a stay of (i) the commencement or continuation, including the issuance, employment, or service of process, of a judicial, administrative, or other action or proceeding against Borrower that was or could have been commenced before the entry of this order of appointment, or to recover a claim against Borrower that arose before the entry of this Order; (ii) any act to obtain possession of Receivership Property from Receiver, or to interfere with, or exercise control over, the Receivership Property; (iii) any

act to create, perfect, or enforce any lien or claim against Receivership Property except by exercise of a right of setoff, to the extent that the lien secures a claim against Borrower that arose before the entry of this Order; or (iv) any act to collect, assess, or recover a claim against Borrower that arose before the entry of this Order.

2. Receiver's Duties and Authority.

2.1. Receiver is vested with and will discharge the following authority, powers and duties to the extent funds are immediately available from the Receivership Property, or Plaintiff otherwise advances funds to Receiver for Receiver to perform his duties under this Order:

- (a) To maintain, secure, manage, operate, repair and preserve Receivership Property.
- (b) To change any and all locks to Receivership Property and, if appropriate, limit access to some or all of Receivership Property.
- (c) To assume control over Receivership Property and to collect and receive all income, refunds or other monies which are Collateral.
- (d) To prepare and maintain complete books, records, and financial reports of Receivership Property, including, but not limited to, operating statements, income statements, balance statements, and all other statements prepared for Receivership Property in a form acceptable to Plaintiff.
- (e) To allow Plaintiff, its counsel, and appraisers or other independent third-party consultants engaged by Plaintiff or its counsel access to Receivership Property at all reasonable times to inspect Receivership Property and all books and records, and to cooperate with Plaintiff, its counsel, appraisers and other independent third-party consultants to evaluate the Collateral.
- (f) To retain, hire, or discharge on-site employees (none of whom are or will be deemed to be employees of Plaintiff) and without any liability to Receiver.
- (g) To establish pay rates for any on-site employees.
- (h) To review existing workers' compensation, disability, general liability, and "all risks" hazard insurance and to retain, modify, cancel, or purchase such insurance, and name Plaintiff and Receiver as additional insureds, as Receiver deems appropriate for Receivership Property's preservation and protection, but subject to Approval.

- (i) To maintain an account with a federally insured banking institution or a savings association with offices in the State of Missouri in Receiver's own name, as Receiver, from which Receiver will disburse all authorized payments as provided in this Order.
- (j) To receive and endorse checks pertaining to Receivership Property either in Receiver's name or in Borrower's name.
- (k) To pay all appropriate real estate taxes, personal property taxes, any other taxes or assessments against Receivership Property.
- (l) To prepare and file any tax returns stemming from Receivership Property and the operation of Receivership Property as may be required by law. Receiver will not be responsible for the preparation and filing of any tax returns for Borrower (including income, personal property, commercial activity, gross receipts, sales and use or other tax returns) other than to provide Borrower with information in Receiver's possession that may be necessary for Borrower to prepare and file its tax returns. Borrower must provide to Receiver any information needed to file any tax returns for Receivership Property.
- (m) To operate Receivership Property under any existing name or trade name (or new name, if Receiver deems appropriate to do so).
- (n) To open and review mail directed to Borrower and its representatives pertaining to Receivership Property.
- (o) To seek assistance of law enforcement officials as necessary to preserve the peace and protect Receivership Property.
- (p) Receiver is authorized to continue, manage, operate, lease, market and enter into a sale agreement with respect to the Receivership Property, and to sell the Receivership Property (any such sale being subject to Approval), including advertising and soliciting offers for the Receivership Property or any part of the Receivership Property, and negotiate the terms and conditions of any such sale as Receiver in his discretion may deem appropriate (any such terms and conditions being subject to Approval).
- (q) Receiver is authorized to make payments and disbursements, in the ordinary course of business, as may be needed and proper for the preservation of the Receivership Property.
- (r) Receiver is authorized to maintain appropriate insurance, authorized to continue any current policies in place, cancel such policies and authorized to purchase further insurance as Receiver deems appropriate, subject to Approval, as defined below.
- (s) Receiver is authorized to:

- (i) enter into agreements and do all things necessary to continue operations of Borrower's business;
 - (ii) modify existing contracts and leases in the ordinary course of the business of the Receivership Property;
 - (iii) pay all utilities, expenses and other obligations secured by, or which may give rise to, liens, and all other outstanding obligations to suppliers and servicers in the ordinary course of business, including, with Approval, obligations incurred prior to the commencement of this receivership so long as Receiver has determined that it is prudent to do so to maintain business relationships that are beneficial to the conduct of this receivership;
 - (iv) make repairs necessary to the maintenance of the Receivership Property to preserve the Receivership Property in the ordinary course of business, but Receiver will not make any improvements, repairs, and/or remediations costing \$20,000.00 or more without first obtaining Approval; and
 - (v) take all steps necessary to comply with all requirements, regulations, and laws applicable to the Receivership Property, and to deal with all regulatory authorities in connection with the same.
- (t) Receiver is authorized to, in his discretion, institute, prosecute, defend, compromise, and/or intervene in or become a party to such actions or proceedings in state or federal courts which may in Receiver's opinion be necessary for the protection, maintenance, and preservation of the Receivership Property, for the carrying out of the terms of any order of the Court affecting the Receivership Property, including without limitation, the exclusive right to file a petition for relief in bankruptcy under title 11 of the United States Code for Borrower; to collect accounts and other amounts now or hereafter becoming due; and/or to defend against any action brought against Receiver acting in such capacity, and, with Approval, to utilize counsel for Plaintiff and/or retain other counsel in connection with the foregoing.
- (u) Notwithstanding the foregoing, Receiver and the receivership estate will not be liable for the payment of taxes of any kind, assessments, goods or services provided to Borrower or utility charges prior to the date of this Order. Any individual or entity receiving a copy of this Order is hereby enjoined and restrained from discontinuing service to Receiver or Borrower's business based upon the non-payment of such taxes, assessments, goods or services or utilities prior to the date of this Order and from attempting to collect taxes, assessments, invoices and utility charges from Receiver pre-dating the date of this Order. Each utility company or entity providing service to the Real Property must transfer any deposits

which it holds to the exclusive control of Receiver and is prohibited from demanding that Receiver deposit additional funds in advance to maintain or secure such service.

- (v) Receiver has no obligation to pay any debt of Borrower incurred prior to the Effective Date, but Receiver may do so upon Approval.

2.2. Receiver has the duty to notify all federal and state taxing and applicable regulatory agencies of Receiver's appointment in accordance with any applicable laws imposing this duty, including but not limited to, 26 U.S.C. Section 6036;

2.3. Receiver has the duty to record a notice of lis pendens as provided in section Mo. Rev. Stat. 527.260 as soon as practicable within the land records in any county in which such real property may be situated, together with a certified copy of this Order and a legal description of the applicable real property.

2.4. Receiver has the duty to comply with Missouri law, including other duties that are specifically required by statute, court rule, this Order, or by the Court.

2.5. In no event will Receiver be expected or required to expend any of its own funds towards the performance of its duties under this Order, or for the benefit of Plaintiff, Borrower, or the Receivership Property.

2.6. Receiver may serve with a bond of \$50,000.

3. Receiver's Authority Subject to Approval.

3.1. In carrying out the duties contained in this Order, Receiver is authorized, but not required to, and only upon Approval, to:

- (a) Enforce, amend, or terminate any existing contracts or leases affecting the Receivership Property.
- (b) Reject any unexpired contracts and leases entered into by Borrower that are burdensome on Receivership Property.
- (c) Execute, cancel, modify, renegotiate, or abrogate all service, maintenance, or other contracts and leases relating to the operations of Receivership

Property, but subject to Approval for contracts in excess of \$20,000.00. All such contracts and leases are to be terminated upon a sale or disposition of Receivership Property or termination of the receivership, except as otherwise provided in any Order of this Court.

- (d) Assume and assign any unexpired leases and contracts of Borrower, as provided in the MCRA.
- (e) Employ attorneys, accountants, agents, and other professionals (“**Professionals**”) as Receiver may from time to time deem appropriate on such terms and conditions as Receiver deems appropriate.
- (f) Borrow funds for purposes relating to the operations of Receivership Property. Receiver will not borrow funds without first providing Plaintiff, by advance notice, a reasonable opportunity to elect to advance funds required by Receiver.
- (g) Contest, protest, or appeal any ad valorem tax or assessment, real estate tax, personal property tax or other tax or assessment pertaining to Receivership Property. Any refund or reimbursement of taxes whether paid by Receiver or Borrower will be deemed Income to be applied as provided below.
- (h) Defend actions against Borrower related to the Receivership Property and may incur expenses to defend such actions to the extent that Receiver believes, in its sole discretion, that it will protect and preserve Receivership Property.
- (i) Prepare procedures, if Receiver deems appropriate, for a competitive bidding process and/or auction of all or any part of the Receivership Property.
- (j) Sell all or any part of the Receivership Property.

4. Extent of Receiver’s Authority.

4.1. Although Receiver will have possession and control of Receivership Property, Receiver will not take title to Receivership Property. Title to the Receivership Property will remain in the name of Borrower or its assigns, unless foreclosed upon by Plaintiff, in which case title to the applicable Receivership Property will remain in the name of Borrower until the delivery of a Trustee’s Deed, Sheriff’s Deed or Bill of Sale.

4.2. Without limiting or expanding the foregoing, Receiver is authorized to exercise all powers generally available and will be subject to all the duties of a Receiver under the laws of the State of Missouri that may be incidental to the management of Receivership Property, as described in this Order. Receiver will have any additional powers that are provided by law and that the Court may from time to time direct or confirm.

4.3. Receiver will not take any action that impedes or interferes with the foreclosure or foreclosure-sale process in carrying out the duties contained in this Order.

4.4. Receiver will, during the pendency of this action, have the right to apply to this Court for further instructions or directions.

4.5. The authority granted to Receiver is self-executing, unless the action requires Approval. Receiver is authorized to act on behalf of, and in Borrower's name (or Receiver's name), as Receiver deems appropriate without further order of this Court and without personal recourse against Receiver (subject to the general provisions below).

4.6. All advances to Receiver by Plaintiff for the benefit of Receivership Property — including any advances for working capital or improvements and any other costs and expenses incurred by Receiver under this Order — will be deemed expenses secured by the Collateral under the Loan Documents. Any such expenses will be fully secured by Plaintiff's liens and security interests against the Collateral. Any and all funds advanced by Plaintiff to Receiver under this Order will: (a) be deemed made under contract; (b) be added to the amount of the indebtedness owed by Borrower to Plaintiff; (c) be deemed secured by the liens and security interests in favor of Plaintiff under the Loan Documents on Receivership Property to the same extent and with the same priority as other indebtedness secured by all existing liens and security interests under the Loan Documents in favor of Plaintiff; and (d) accrue interest at the interest rate provided under the

Loan Documents in favor of Plaintiff. All such funds advanced, including interest on advances, will be deemed a prior lien before the repayment of any and all other claims against the Collateral (except for taxes and assessments having first priority as a matter of law) or proceeds of either of them.

4.7. Receiver is hereby given the power and authority usually held by receivers and reasonably necessary to accomplish the purposes of this receivership including, without limitation, the specific power to take possession of all licenses, permits or other government issued documents necessary for the continued operation of the Receivership Property. If the issuing agency requires that Receiver apply for a new license, permit, or other document, Receiver will be allowed to continue to operate under the current permit until the new one is issued to ensure no disruption of service occurs.

5. Receivership Property and Income.

5.1. “**Receivership Property**” means and includes:

- (a) The Collateral.
- (b) All tangible and intangible property usable in connection with the operations of the Collateral.
- (c) All Income.
- (d) All fixtures, trade fixtures, or tenant improvements of every kind or nature located in or upon or attached to or used or intended to be used in connection with the operation of the Real Property and any buildings, structures or improvements located on the Real Property (to the full extent of Borrower’s interest in same).
- (e) All permits, licenses, and other contracts and other intangible property pertaining to the Collateral and the operations of the Collateral and Borrower’s business.
- (f) All trade names and trademarks owned or used by Borrower.
- (g) All books, records, accounts, or documents that in any way relate to the Collateral, Borrower’s business, and Income.

- (h) All other property, estate, right, title and interest as described in the Loan Documents.
- (i) All deposit accounts, books and records, service marks, service mark applications, common law rights to names, trade names, brands, trade dress, logos, designs, private labels, domain names, copyrights, know-how, trade secrets and licenses, data, plans, manuals, computer software, computer tapes, computer systems, computer disks, computer programs, source codes, and all object codes.

5.2. The term “**Income**” means, collectively all cash, cash on hand, checks, cash equivalents, credit card receipts, demand deposit accounts, bank accounts, cash management or other financial accounts, bank or other deposits, and all other cash collateral (all whether now existing or later arising); current and past due earnings, revenues, rents, issues and profits, accounts or accounts receivable (all whether unpaid, accrued or to become due); all claims to rent, issues, profits, income, cash collateral, and all other gross income derived with respect to Borrower’s business operations regardless of whether earned before or after entry of this Order. “Income” includes all Income received after the first uncured event of default under the Loan Documents that was not either (a) paid to Plaintiff or (b) used for ordinary and necessary business expense regardless of whether the Income was received on or after the filing of the Petition.

5.3. Income will be applied as follows (but subject to lien rights granted to Plaintiff):

- (a) To Receiver’s approved fees and expenses;
- (b) To the current post-receivership operating expenses, including any on-site employee payroll expenses, any real estate taxes and any other taxes stemming from the operations of the Borrower’s business and use in normal business operations incurred during receivership. Receiver will not make disbursements except for:
 - (i) life-threatening or other health or safety issues;
 - (ii) upon Court approval; or
 - (iii) upon Plaintiff’s Approval;
- (c) To the loan balance due Plaintiff until paid in full; and

(d) Any surplus to be held pending further order of the Court.

6. Receiver's Compensation, Reports, and Accounting

- (a) Receiver's compensation will be \$475.00 per hour for Richard Harmon, \$275.00 an hour for Edward Page, \$175.00 per hour for senior associates, and \$125.00 per hour for junior associates.
- (b) Receiver's general office administration, accounting, and overhead will not be charged against the Income or Receivership Property; however, Receiver may be reimbursed for its approved out-of-pocket expenses relating to Borrower's business.

6.2. Receiver's compensation will be paid (i) first from the Income from Receivership Property and (2) next by Plaintiff, but only to the extent that the Income is insufficient to pay Receiver's compensation.

6.3. Nothing in this Order will require Receiver to advance funds other than from Income without a bond or security for payment satisfactory to Receiver.

6.4. Within thirty (30) days after obtaining possession of Receivership Property, Receiver will submit to the Court a list of all the personal property, whether tangible or intangible, of which it has taken possession.

6.5. Within thirty (30) days of the end of each quarter during this receivership, Receiver will prepare, a financial report (including, without limitation, an income and expense statement, balance sheet, and a cash flow analysis) on a quarterly basis pertaining to the operations of Receivership Property during the immediately preceding month (the "**Receiver's Reports**").

6.6. Receiver will file with the Clerk of Court such interim reports as may be required by the Court after due notice and opportunity for hearing.

6.7. Receiver will furnish to the parties' counsel any additional information regarding Receivership Property as required by law and as may be reasonably requested by them. But Receiver is authorized to request instructions from this Court should any party request information

on documents that is unduly burdensome or expensive to produce, is requested to annoy or harass, or is for any other improper purpose.

6.8. Receiver will furnish Receiver's Report to the following: Plaintiff, Plaintiff's counsel, Borrower, and Borrower's counsel.

7. Compensation of Professionals

7.1. Professionals may seek monthly compensation in accordance with the following procedures:

- i. Approximately every thirty (30) days after the Effective Date, Receiver and each Professional seeking compensation will serve a monthly statement for payment for services rendered and reimbursement of expenses incurred during the immediately preceding month (a "**Monthly Fee Statement**") on: (a) Receiver, (b) Plaintiff, and (c) Borrower (collectively, the "**Notice Parties**"). Monthly Fee Statements are not required to be filed with the Court nor are courtesy copies required to be sent to the presiding judge's chambers.
- ii. Any Notice Party receiving a Monthly Fee Statement may object to the payment of the fees or the reimbursement of costs set forth in the Monthly Fee Statement by serving a written notice of objection (a "**Notice of Objection to Fee Statement**") (which will not be filed with the Court) upon the other Notice Parties within ten (10) business days of receiving the Monthly Fee Statement (the "**Objection Deadline**"). The Notice of Objection to Fee Statement must state the nature of the objection and identify the amount of the fees or costs to which the objection is made. Thereafter, the objecting party and Receiver or Professional whose Monthly Fee Statement is objected to will attempt to reach an agreement regarding the correct payment to be made.

- iii. In the absence of any timely objection, the Receiver is authorized to pay one hundred percent (100%) of the fees and one hundred percent (100%) of the expenses identified in each Monthly Fee Statement.
- iv. If Receiver receives a Notice of Objection to Fee Statement, Receiver will withhold payment of that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in section 7.1(iii) above. Any fees incurred in connection with such fee disputes will not be paid under a Monthly Fee Statement but may only be sought and paid upon (x) the objecting party withdrawing, in writing to the Notice Parties, its Notice of Objection to Fee Statement, or (y) an order of the Court.
- v. Upon the termination of the receivership, Receiver and each of the Professionals will file with the Court, and serve on the Notice Parties, an application (a “**Fee Application**”) for Court approval and allowance of the compensation and reimbursement of expenses sought by the Receiver and such Professional in its Monthly Fee Statements, including any holdbacks.
- vi. The Court will schedule and conduct a hearing to determine all Fee Applications pending before it. If no objections have been filed or all objections have been withdrawn, the Court may approve all uncontested Fee Applications without a hearing.
- vii. The objection to a Monthly Fee Statement will not disqualify Receiver or any Professional from the future payment of compensation or reimbursement of expenses as set forth above. Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement of expenses under the procedures outlined

above will bind this Court with respect to the final allowance of applications for compensation and reimbursement of Receiver or any Professionals.

8. Confidentiality.

8.1. “**Confidential Information**” means any non-public information.

8.2. The parties to this action, their counsel and all those in active concert or participation with them, who receive actual notice of this Order, or otherwise, will keep all confidential information provided by Receiver confidential, and all such persons are prohibited from disclosing any confidential information to anyone other than the parties to this action and their counsel without specific order of this Court; except, Plaintiff and its attorneys and agents may provide potential purchasers, consultants, or other appropriate persons with information useful for the marketing, leasing, selling, or management of Receivership Property.

9. Approval.

9.1. Whenever this Order uses the term “subject to Approval” or “Approval,” the Approval will not be deemed given except either (1) by Plaintiff’s written consent either directly by Plaintiff or by its counsel, or (2) by a specific order of approval from this Court.

10. Term and Final Accounting.

10.1. This receivership will continue until further order of the Court.

10.2. Receiver can be removed upon a motion for cause in the Court’s equitable discretion. If Receiver is removed, a successor receiver can be appointed by a stipulated order on behalf of Plaintiff and Borrower. If Plaintiff and Borrower cannot agree on a successor receiver, the Court will name a successor receiver by further order after a motion is filed by Plaintiff or Borrower requesting the appointment of a successor receiver.

10.3. Immediately upon termination of this receivership, Receiver will turn over to Plaintiff or its designee (including any property manager), all Receivership Property unless otherwise ordered by the Court.

10.4. Receiver will submit a final accounting (with copies to the recipients of Receiver's Reports as identified above) for approval by the Court within thirty (30) days after the termination of receivership or Receiver's removal.

10.5. Only after the Court approves Receiver's final accounting will Receiver be discharged.

10.6. Nothing in this Order attempts to affect or alter the provisions relating to replacing Receiver under Mo. Rev. Stat. § 515.525 or § 515.655.

11. General Provisions.

11.1. No person or entity may file suit against Receiver, or take other action against Receiver, without an order of this Court permitting a suit or action, but no party to a prior Court order is required to file a motion in this action to enforce the provisions of this Order or any other order of this Court in this action.

11.2. Receiver and its employees, agents, and attorneys will have no personal liability in connection with any liabilities, obligations, liens, or amounts owed to any of Borrower's creditors because of his duties as Receiver. Nothing in this Order will grant any rights to trade creditors or general unsecured creditors, whose rights will be solely determined in accordance with Missouri law.

11.3. Receiver and his employees, agents, and attorneys will have no personal liability, and they will have no claim asserted against them relating to Receiver's duties under this Order, except for claims due to their gross negligence, gross or willful misconduct, malicious acts, and/or the failure to comply with this Court's orders.

11.4. Borrower, all property managers, and all those in active participation or concert with them who receive notice of this Order, and all those having claims against Receivership Property, who receive notice of this Order, are enjoined from and will not, without permission from Receiver:

- (a) **Commit Waste.** Commit or permit any waste on all or any part of Receivership Property, or suffer, commit or permit any act on all or any part of Receivership Property in violation law, or remove, transfer, encumber or otherwise dispose of any of Receivership Property.
- (b) **Collect Income.** Demand, collect, receive, discount, or in any other way divert or use any of the Income.
- (c) **Terminate Any Utility Service.** Terminate or withhold any electric, gas, water, sewer, telephone or other utility service supplying Receivership Property, require any utility deposit or otherwise interfere with the continued operations of Receivership Property.
- (d) **Interfere with Receiver.** Directly or indirectly interfere in any manner with the discharge of Receiver's duties under this Order or Receiver's possession of and operation or management of Receivership Property.
- (e) **Transfer or Encumber Receivership Property.** Expend, disburse, transfer, assign, sell, convey, devise, pledge, grant a deed of trust on, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of, the whole or any part of Receivership Property including, but not limited to, the Income, without prior court order.
- (f) **Impair the Preservation of Receivership Property.** Take any action that will, or that will tend to, impair, defeat, divert, prevent or prejudice the preservation of Receivership Property, including the Income, or the preservation of Plaintiff's interest in Receivership Property and the Income.

11.5. Receiver will faithfully perform and discharge Receiver's duties and obey the Court orders.

11.6. Receiver is subject to personal jurisdiction of the Court.

11.7. Receiver's duty to act as Receiver is subject to Receiver's written acceptance and approval of the terms of this Order. Upon acceptance, Receiver will be bound by each and every term contained in this Order and each and every obligation of Receiver imposed by this Order.

11.8. If Receiver receives notice that a petition for relief under the Bankruptcy Code, title 11, United States Code, has been filed, and part of the bankruptcy estate includes property that is the subject of this order (for purposes of this paragraph, the “**Bankruptcy Estate Property**”), Receiver will have the following duties:

- (a) Turn over Bankruptcy Estate Property if no relief from stay is sought. Receiver will immediately contact Plaintiff and determine whether Plaintiff intends to move in the bankruptcy court for an order for (1) relief from the automatic stay, and (2) relief from Receiver’s obligation to turn over the Bankruptcy Estate Property (11 U.S.C. § 543). If Plaintiff has no intention to make such a motion, Receiver will immediately turn over the Bankruptcy Estate Property to the appropriate entity, either to the bankruptcy trustee, if one has been appointed, or, if not, to the debtor in possession, and otherwise comply with 11 U.S.C. § 543.
- (b) Remain in possession pending resolution. If Plaintiff intends to seek relief immediately from both the automatic stay and Receiver’s obligation to turn over the Bankruptcy Estate Property, Receiver may remain in possession and preserve the Bankruptcy Estate Property pending the ruling on those motions (11 U.S.C. § 543(a)). Receiver’s authority to preserve the Bankruptcy Estate Property will be limited as follows:
 - (i) Receiver may continue to collect rents and other income;
 - (ii) Receiver may make only those disbursements necessary to preserve and protect the Bankruptcy Estate Property;
 - (iii) Receiver will not execute any new leases or other long-term contracts; and
 - (iv) Receiver will do nothing that would effect a material change in the circumstances of the Bankruptcy Estate Property.
- (c) Turn over property if no motion for relief is filed within ten (10) days after notice of the bankruptcy. If (i) Plaintiff fails to file a motion within ten (10) court days after its receipt of notice of the bankruptcy filing, (ii) the applicable bankruptcy court enters an order of turnover regarding Bankruptcy Estate Property, or (iii) Receiver reasonably believes he is so required to turn over Bankruptcy Estate Property, Receiver will immediately turn over the Bankruptcy Estate Property to the appropriate entity, either to the bankruptcy trustee, if one has been appointed, or, if not, to the debtor in possession, and otherwise comply with 11 U.S.C. § 543.

12. Amendment of Order.

12.1. This Order may be amended for cause after a motion or hearing. This Order may also be amended by agreed order by Plaintiff, Borrower, and Receiver.

13. No Prejudice to Foreclosure/Final Order.

13.1. This Order will not prejudice or preclude Plaintiff's foreclosure of any of the Loan Documents, or an action by Plaintiff under any security agreement or the Missouri Uniform Commercial Code with respect to the Receivership Property, or any of Plaintiff's other claims as set forth in the Petition or any amendments thereto.

SO ORDERED:

Judge



December 14, 2020

Division 4

AGREED TO AND APPROVED BY:

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