

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

CAPITAL FUNDING, LLC,

Plaintiff,

v.

BATAVIA, LLC, *et al.*

Defendants.

Case No. 1:24-cv-00888

Hon. Thomas Durkin

ORDER APPOINTING RECEIVER

This matter came before the court on the Motion (the “Motion”) of Capital Funding, LLC (“Plaintiff”), by and through its counsel, for Appointment of Receiver over each of the Subject Defendants Batavia, LLC, Timbercreek HCC, LL, Fondulac, LLC Bloomington, LLC, Sunset HCC, LLC, Eastside, LLC, Cisne, LLC, Benton HCC, LLC, and Ozark HCC, LLC (collectively, “Owner Defendants”); Petersen Health Junction, LLC and Petersen Health Operations, LLC (together, “Operator Defendants”), and Petersen MT2, LLC (“Master Tenant Defendant” and collectively with Owner Defendants and Operator Defendants, “Subject Defendants”) and all of the assets and operations of the Subject Defendants, the Court having considered the Motion, the Complaint and any oral argument thereon and any objections thereto,

Now it is ORDERED that:

1. Michael F. Flanagan is hereby appointed receiver (“Receiver”) of and over Subject Defendants and all of their respective assets (the “Receivership Assets”), with all of the powers and obligations set forth herein. The Receivership Assets include, without limitation, (a) the real property and operations located at: (i) 520 Fabyan Parkway, Batavia, Illinois 60510; (ii) 2220 State Street, Pekin, Illinois 61554, (iii) 901 Illini Drive, East Peoria, Illinois 61611, (iv) 1925 South

Main Street, Bloomington, Illinois 61701, (v) 129 South 1st Street Avenue, Canton, Illinois 61520, (vi) 1400 East Washington Street, Pittsfield, Illinois 62363, (vii) 107 North Watkins Street, Cisne, Illinois 62823, (viii) 1409 North Main Street, Benton, Illinois 62812, and (ix) 1083 Ozark Care Drive, Osage Beach, MO 65065 ; (b) all contract rights of Subject Defendants; (c) all legal and equitable claims of Subject Defendants; (d) all accounts of Subject Defendants; (e) all banking, brokerage and depository accounts of Subject Defendants; (f) all electronic currency accounts of Subject Defendants; (g) all Internet payment processor accounts of Subject Defendants; (h) all accounts receivable of Subject Defendants; and (i) all money, income, earnings and revenue of Subject Defendants that have arisen or hereafter arise from operation or disposition of the Receivership Assets.

2. The Receivership Assets remain subject to Plaintiff's liens to the full extent of the amounts due and the appointment of Receiver by no way shall impair Plaintiff's rights or be deemed a waiver of Plaintiff's secured position.

3. Receiver shall take immediate possession and full control of the Receivership Assets and shall take such other actions as Receiver deems reasonable and appropriate to effect this order, to prevent waste, and to preserve, manage, secure, and safeguard the Receivership Assets in accordance with the powers granted herein including, without limitation, hiring FURDS AIR LLC as manager of the Facilities.

4. Receiver shall have and may exercise the following powers, and such additional powers, that are provided by law and the court may from time to time confer:

a. to operate the day to day business of the Subject Defendants and manage the Receivership Assets;

b. to do all things which the Subject Defendants may do in the exercise of ordinary business judgment or in the ordinary course of the operation and use of the Receivership Assets;

c. Receiver shall be vested with, and is authorized and empowered to exercise, all the powers of each Subject Defendant, their officers, directors, shareholders, and general partners or persons who exercise similar powers and perform similar duties, including without limitation the sole authority and power to file a voluntary petition under Title 11 of the United States Code;

d. to assert any rights, claims, or choses in action of the Subject Defendants, if and to the extent that rights, claims or choses in action are themselves Receivership Assets, to maintain in the Receiver's name or in the name of the Subject Defendant(s) any action to enforce any right, claim or chose in action, and to intervene in actions in which the Subject Defendants are a party for the purpose of exercising the powers under this subsection;

e. to intervene in any action in which a Claim is asserted against any Subject Defendant and that impacts the Receivership Assets, for the purpose of prosecuting or defending the claim and requesting transfer of venue of the action to this Court; and

f. to assert rights, claims or choses in action of the Receiver arising out of transactions in which the Receiver is a participant.

5. Subject to the Budget (defined below), Receiver shall have and may exercise the following powers, and such additional powers that are provided by law and that the court may from time to time direct or confer:

a. take and maintain possession of all documents, books, records, papers, and deposit accounts relating to the Receivership Assets;

b. change any locks, passcodes or passwords to the Receivership Assets, as appropriate and exclude Subject Defendants and their respective agents, servants, and employees wholly from the Receivership Assets;

c. execute and deliver, in the name of Subject Defendants or in Receiver's own name, such documents and instruments as are necessary or appropriate to consummate transactions authorized hereunder;

d. manage, operate, preserve and maintain the Receivership Assets as a prudent person would, including, without limitation, the power to enter into, terminate or negotiate contracts and make repairs or alterations to the Receivership Assets that Receiver in its business judgment reasonably believes necessary for the management, operation, preservation and maintenance of the Receivership Assets and to maximize their value;

e. enter into leases, whether of real or personal property, or tenancy agreements, under such terms and conditions as Receiver may deem appropriate or desirable to preserve the Receivership Assets and to maximize their value;

f. retain, hire, or discharge a manager for the Facilities, including, without, limitation, FURDS AIR LLC;

g. employ such consultants, managers, brokers, marketing agents, or other employees, agents, independent contractors, or professionals as Receiver may in its discretion deem appropriate or desirable to implement and effectuate the rights and powers herein granted; provided however that FURDS AIR LLC shall have the exclusive right to enter the Facilities and, pursuant to such agreement with Plaintiff and Receiver, shall have the exclusive right for 120 days after entry of this Order to assess the Facilities and Receivership Assets for potential purchase, negotiate purchase and sale documents, and complete due diligence;

h. engage attorneys or other professionals, as appropriate, in order to advise and assist Receiver in carrying out its duties and appearing in court or other proceedings on its behalf;

i. collect the rents, accounts receivable, insurance claim proceeds, real estate tax refunds, utility deposits, security deposits, proceeds, earnest money deposits and profits from the Receivership Assets, if any, from any time period whether historical, current or prospective, and receive any such assets presently in the possession of Subject Defendants and/or their agents;

j. repossess personal property, as provided by law, for breaches of the conditions of their leases or other agreements;

k. sue for unpaid receivables, income, or proceeds in the name of Subject Defendants;

l. subject to Plaintiff's prior written consent, compromise or give acquittance for receivables, income, or proceeds that may become due;

m. deal with issues and other matters with vendors, municipalities, and other governmental entities, as necessary;

n. open any mail intended for and/or directed to Subject Defendants;

o. hire, fire, select, and retain employees of Subject Defendants as Receiver deems reasonable or necessary to preserve and maintain the value of the Receivership Assets, including as necessary or desirable to provide appropriate quality resident care;

p. upon prior written consent of Plaintiff, enter into an agreement for the operation of the Facilities;

q. with respect to taxes: (i) use all tax identification numbers Subject Defendants and cause to be filed all federal, state, and local income tax returns of Subject

Defendants for the period through termination of this receivership; (ii) communicate with, negotiate with, enter into agreements on behalf of Subject Defendants with and serve as nonexclusive representative of Subject Defendants to all taxing authorities; provided, however, that Receiver shall use reasonable efforts to keep all managers of Subject Defendants apprised of all communications with taxing authorities by notice delivered to the address for such managers provided by Subject Defendants; (iii) use reasonable efforts to issue all tax related forms on behalf of Subject Defendants, including, without limitation, Internal Revenue Service Forms W-2, 1099, and K-1; and (iv) to the extent funds are available and authorized pursuant to the procedures set forth in this Order, pay taxes which may have been or may be levied against the Receivership Assets or which are otherwise due and payable with respect to the Receivership Assets, provided, however, that Receiver is authorized to and may pay taxes which are or become due and payable which relate to Receiver's custody, control or operation of the Receivership Assets for the period from the date of the entry of this Order through the date the receivership is terminated and for which personal liability could be imposed;

r. take all actions necessary to maintain and/or transfer existing licenses, permits and authority from all relevant governmental agencies, managed care contracts, and third-party payor agreements, and to take all actions necessary to enroll or re-enroll the Facilities in any and all available state and federal subsidy and reimbursement programs, including but not limited to Medicare and Medicaid;

s. subject to the prior written consent of Plaintiff, conduct a marketing or leasing program with respect to all or a portion of the Receivership Assets, or employ a marketing or leasing agent or agents to do so, direct the leasing or sale of all or portions of the Receivership Assets under such terms and conditions as Plaintiff may in its sole discretion deem appropriate or

desirable, provided, however, that Receiver shall seek court approval of any sale of the Receivership Assets outside the ordinary course of business;

t. communicate and share information with prospective purchasers and provide Plaintiff with copies of such information;

u. in accordance with Section 18 below, borrow monies from Plaintiff or use Plaintiff's cash collateral, both secured by a senior and paramount lien upon the Receivership Assets for the purposes of performing Receiver's obligations under this or other orders of this Court, and preserving or enhancing the value of the Receivership Assets, on terms and conditions agreed upon by Plaintiff;

v. take possession or control of all existing bank accounts, cash and funds belonging to or for the benefit of Subject Defendants in bank accounts associated with and/or used for the operation of the Receivership Assets (regardless from what time period), whether in the name of Subject Defendants or their agents, and to open, transfer, and change all such bank accounts into the name of Receiver, if appropriate, or otherwise take such actions as necessary to ensure such bank accounts are under the control of Receiver and ensure Subject Defendants do not have access to such accounts without consultation with Receiver, all in compliance with legal requirements;

w. institute, defend, or compromise actions or proceedings in state or federal courts now pending and hereafter instituted, as may in Receiver's discretion be advisable or proper for the protection and administration of the Receivership Assets;

x. retain, hire, or discharge on-site employees, if appropriate, provided, however, no such employee shall be deemed an employee of Plaintiff;

y. subject to the prior written consent of Plaintiff, obtain insurance covering the Receivership Assets if insurance already in place is deemed by Receiver to be inadequate, such insurance expense shall be deemed a normal, ordinary, and necessary operating expense of the Receivership Assets;

z. subject to the prior written consent of Plaintiff, obtain software license for billing and collections to the extent any such existing software license is deemed by Receiver to be inadequate; and

aa. take all such further actions and enter into all such other agreements as Receiver in its professional discretion deems appropriate or desirable to preserve, protect and maximize the value of the Receivership Assets.

6. Subject Defendants shall have neither possession nor control of, nor any right to, the Receivership Assets or money or other proceeds derived from the Receivership Assets unless and until the receivership is terminated and the Receiver is discharged, except to continue in the management of the Receivership Assets as approved and authorized by the Receiver. Subject Defendants shall in all respects comply with this Order, and are hereby enjoined and restrained from impeding or interfering in any manner with the exercise by Receiver of its rights, powers, and duties hereunder.

7. Neither Subject Defendants nor any of their partners, representatives, officers, managers, directors, members, shareholders, affiliates or agents (collectively, “Defendant Agents”) shall enter into any lease, contract, or agreement of any kind or character relating to the Receivership Assets outside the ordinary course of their management duties approved by Receiver, and shall not grant any lien upon or security interest in the Receivership Assets.

8. Except as authorized by Receiver, neither Subject Defendants nor any of Defendant Agents shall enter or be present at any of the Property, communicate in any manner with the employees or residents of the facilities, or modify, terminate or cause to be modified or terminated any license, permit, lease, easement, contract or agreement, if any, relating to the Receivership Assets.

9. Subject Defendants and Defendant Agents are hereby enjoined and restrained from collecting any revenues, receivables, proceeds, or other sums payable with respect to the Receivership Assets outside the ordinary course of their management duties authorized by Receiver. Should Subject Defendants or any Defendant Agents come into possession of any such revenues, receivables, proceeds, or other sums subsequent to the date of entry of this Order, Subject Defendants and Defendant Agents shall promptly remit the same to Receiver in the form received.

10. Neither Subject Defendants, Defendant Agents nor anyone associated therewith or acting under Subject Defendants' authority or control shall: (a) remove or destroy any Receivership Assets from the facilities whether constituting collateral of Plaintiff or otherwise; (b) make any disparaging statement to residents, employees, or third parties regarding Receiver or cause such persons or entities to resign, transfer to another property associated with Subject Defendants or refuse to deal with Receiver; or (c) otherwise interfere with Receiver in carrying out its duties under this order and applicable law.

11. Until further order of this Court, all tenants, bailees, or other persons in possession of the Receivership Assets or any portion thereof shall turn over such Receivership Assets to Receiver, and until further order of this court (a) shall pay over to Receiver, or its duly designated agent, all rents, revenues, receivables, proceeds, or other sums payable with respect to the Receivership Assets which are now due and unpaid or hereafter become due; and (b) they are

hereby enjoined and restrained from paying to Subject Defendants or their agents, officers, directors, employees, or attorneys any such rents, receivables, revenues, proceeds, or other sums, except with the Receiver's consent.

12. Within seven (7) calendar days from the entry of this Order, and thereafter, forthwith upon request of Receiver (but no later than five (5) calendar days following such request), Subject Defendants and their agents and employees shall provide to Receiver, make available to Receiver, or cause their manager or employees to deliver or make available to Receiver the following, to the extent such items and things exist:

a. all Receivership Assets and all funds generated by or from the Receivership Assets, whether such funds are held in a collateral related account or not, including but not limited to: (i) all cash on hand; (ii) all cash equivalents and negotiable instruments (such as checks, notes, drafts or other related documents or instruments); and (iii) all sums held in accounts in any financial institutions, including but not limited to (A) resident security deposits received by Subject Defendants, (B) deposits held in escrow by Subject Defendants for any purpose, such as for payment of real estate taxes and insurance premiums, (C) proceeds of insurance maintained for, or pertaining to, the Receivership Assets, (D) rent or prepaid rent, (E) funds designated or intended for capital improvements, repairs, or renovations to, or in connection with, the Receivership Assets, and (F) all other sums of any kind relating to the use, enjoyment, possession, improvement, or occupancy of all or any portion of the Receivership Assets;

b. copies of any and all service contracts pertaining to the Receivership Assets and/or to which any Subject Defendant is a party;

c. copies of any and all management contracts and/or agreements pertaining to the Receivership Assets and/or to which any Subject Defendant is a party;

d. copies of any and all leases, lease abstracts, purchase agreements and the like pertaining to the Receivership Assets and/or to which any Subject Defendant is a party;

e. resident and other tenant contact names, addresses, telephone numbers and email addresses;

f. all open invoices for services or goods relating to the Receivership Assets and/or to which any Subject Defendant is a party;

g. all records evidencing Subject Defendants' accounts receivable, and any and all agreements, documented and undocumented, with any creditor, respecting any payment plan or agreement, demand, or suit;

h. copies of existing 2020, 2021, 2022 and 2023 year-end and 2024 year-to-date, in both full and summary format, financial statements (and month by month detail) for Subject Defendants, in both hard copy and electronic formats; balance sheets, income statements, accounts receivables (and receivables/arrearages aging), operating statements, current year budgets, sources and uses of cash flows, detailed rent rolls, accounts payable, check registers, security deposit listings, trial balances, general ledgers, contractor statements, lien waivers, sworn owner statements, construction draws, bank reconciliations, and bank statements, including any passwords which may be associated with any financial documents or accounts;

i. a complete set of keys (including all masters) and all security and/or access codes and/or cards to the Facilities and a schedule (including full contact information) identifying each person or entity (including security companies, municipal/governmental agencies and utility companies), who currently has one or more keys and/or access cards to the Facilities or who has knowledge of any access codes thereto;

j. any and all records and information Subject Defendants or their agents, affiliates or employees may have concerning the Receivership Assets, including without limitation all written and/or electronic books, records, correspondence, and other information (including any computer hardware or software login and password information) related to: (i) any agreements to which Subject Defendants and/or the Receivership Assets are or may be subject; (ii) any amounts received from the residents or other tenants of the Facilities, including resident funds, including revenue by payor type for each of the prior two fiscal quarters; (iii) all liens or other encumbrances on the Receivership Assets or against Subject Defendants; (iv) taxes, assessments and related appeals; (v) insurance of all types for Subject Defendants (including, but not limited to, liability, property, excess liability, auto liability, boiler and machinery, business interruption, professional liability, employee dishonesty, builders risk, construction related insurance and worker's compensation) including information regarding insurance which may be issued to Subject Defendants; (vi) all invoices for services at the facilities; (viii) all resident and other tenant files, including leases, lease abstracts, purchase agreements, and sample leases; (ix) all marketing information (in hard copy and electronic format) including but not limited to brochures, photographs (including aerial), maps, and signage; (x) copies of all state and federal tax returns signed and filed by Subject Defendants for calendar years 2022, 2021 and 2020; and (xi) all other records related to the Receivership Assets that are or may be necessary or pertinent to Receiver's management, maintenance, operation and/or sale of the Receivership Assets;

k. any and all insurance loss histories and/or claims related to the Receivership Assets and/or Subject Defendants for the 5-year period prior to the date of this Order;

l. all property and all other things of value associated with use, operation and maintenance of the Receivership Assets;

m. all correspondence with regulators and/or licensing entities regarding the Receivership Assets; and

n. an accounting for any funds belonging to or for the benefit of Subject Defendants that were (i) commingled with funds belonging to facilities other than the facilities operated and/or owned by Subject Defendants and/or (ii) otherwise diverted to or for the benefit of facilities other than the facilities operated and/or owned by Subject Defendants.

13. By this Order, Receiver shall be deemed a business associate of Subject Defendants pursuant to the Health Information Portability and Accountability Act and its implementing regulations.

14. Subject Defendants shall cause, and Receiver shall be authorized on Subject Defendants' behalf to cause, Receiver and its agents to be named as an additional insured on any insurance policies covering the Receivership Assets.

15. Subject Defendants shall at all times after the entry of this Order provide full cooperation to, and shall not in any way interfere with, Receiver in carrying out its duties hereunder, and shall timely respond to all reasonable requests made by Receiver. Subject Defendants' obligations pursuant to this Order shall be continuing. Neither Subject Defendants nor anyone associated therewith or acting under their authority or control shall in any way directly or indirectly impair the value of the Receivership Assets or interfere with Receiver in the exercise of its duties pursuant to this Order.

16. Subject Defendants' deposit accounts (collectively, the "Deposit Accounts") and current cash management system shall remain in place and Receiver shall deposit all proceeds of receivables, all other cash collections and all other proceeds of Receivership Assets into Subject Defendants' operating, payroll or other accounts subject to account control agreements in favor of

Plaintiff. Receiver is authorized to open and maintain appropriate business accounts for the Receivership Assets in institutions approved in writing by Plaintiff and subject to account control agreements in form and substance acceptable to Plaintiff. Receiver is authorized to utilize Subject Defendants' cash management system in accordance with and subject to the terms of this Order. All deposit account agreements, blocked account agreements and similar bank account agreements that were in place prior to the entry of this Order shall remain in effect and are hereby ratified and reaffirmed. Receiver is authorized, and Subject Defendants are directed, to take necessary or desirable actions to effectuate this arrangement. If Receiver obtains his own financing, Receiver is permitted to enter into an agreement, acceptable to Plaintiff for funding the operations of the facilities.

17. Subject to the Budget (as defined in Section 18 below) and the other provisions of this Order, Receiver shall pay, from the proceeds of the Receivership Assets, all such reasonable costs and expenses as shall be incurred by Receiver in the ordinary course of business in connection with the operation, maintenance, management, protection, and preservation of the Receivership Assets, including, without limitation, reasonable expenses required to put the Receivership Assets in a rentable and/or saleable market-ready condition or otherwise necessary to realize the value thereof. Neither Receiver nor Plaintiff shall be liable for any expenses incurred with regard to the Receivership Assets prior to Receiver taking possession of the Receivership Assets, nor shall Receiver or Plaintiff be required to use the Receivership Assets for payment of any expenses incurred with regard to the Receivership Assets prior to the date of this Order. Notwithstanding the foregoing, Receiver may, in Receiver's sole discretion, pay those expenses which were incurred in the normal and ordinary course of business of the Receivership Assets prior to Receiver taking possession of the Receivership Assets if, and only if, (a) Receiver determines that payment

of any such pre-existing expense is necessary and critical to the ongoing operation, maintenance, management, protection, and preservation of the Receivership Assets; and (b) Receiver has received Plaintiff's prior written consent. Except as provided in, and in all events in accordance with the immediately preceding sentence, no pre-existing expenses shall be paid by Receiver. Receiver shall not be required to perform under any contract or lease entered into prior to the date on which he assumes possession of the Receivership Assets. Notwithstanding the foregoing, Receiver may, in Receiver's sole discretion, perform under such contracts or leases.

18. Receiver shall perform its obligations hereunder and make disbursements in accordance with, and subject to, the terms of this Order and the Budgets (as defined in this Section 18). Prior to Receiver and Plaintiff's agreement on the Initial Budget, Receiver shall submit disbursement requests to Plaintiff and disbursements may be made in Plaintiff's sole and absolute discretion. Within twenty (20) calendar days of the entry of this Order, unless Receiver and Plaintiff agree otherwise, Receiver shall deliver to Plaintiff and Subject Defendants a cash flow forecast for Subject Defendants for the upcoming 13-week period (commencing with the calendar week in which the cash flow forecast is delivered to Plaintiff), in form and detail acceptable to Plaintiff (the "Initial Budget"). On Thursday of each calendar week after delivery of the Initial Budget (or the next succeeding business day if Thursday is not a business day), Receiver shall regularly deliver a 13-week cash flow forecast (together with the Initial Budget, the "Budgets" and, individually, a "Budget") to Plaintiff and Subject Defendants. Each Budget shall (a) be prepared on a reasonable basis and in good faith, and based upon assumptions believed by Receiver to be reasonable at the time made and upon the best information then reasonably available to Receiver, and (b) be subject to review and written approval by Plaintiff. To the extent a proposed Budget is not approved, Receiver may submit a revised Budget to Plaintiff and Subject Defendants

for Plaintiff's review and written approval, it being understood and agreed that Receiver may not make any disbursements and Plaintiff shall have no obligation to fund any disbursements pursuant to this Order, the Loan Agreement or otherwise, if a Budget has not been approved for the week in which such expenses are to be disbursed. Receiver shall not make disbursements in excess of those Budgeted Items (as defined in Section 20 below) listed in the Budget; provided that there shall be an allowed 15% negative variance to the cumulative aggregate amount of disbursements scheduled to be made during the period from the Initial Budget through and including the then-current calendar week (*e.g.*, on a cumulative aggregate weekly Budgeted Item basis). Without limiting the foregoing, notwithstanding any relief granted in any other order entered by the Court, Receiver shall not make any expenditures authorized by such orders unless, and to the extent that, such expenditures are encompassed and expressly included in this Order and the Budget. Receiver may submit disbursement requests to Plaintiff for items not covered by an Approved Budget, and such disbursements may be made in Plaintiff's sole and absolute discretion. However, nothing herein shall be construed to be limiting the discretion of Receiver with respect to his compliance with this Order.

19. Receiver, in consultation with Plaintiff, shall use his best efforts to timely provide the reporting required under the Loan Agreement. Subject Defendants are authorized and directed to provide all information reasonably requested by Receiver to fulfill reporting obligations.

20. Receiver shall deliver to Plaintiff and its counsel (with a copy to Defendants) by 5:00 p.m. (Eastern time) on the first Wednesday of the calendar week after seven (7) days have passed after the approval of the first Budget, and on each Wednesday of each calendar week thereafter (in each case, for the immediately preceding calendar week) or at such time as otherwise agreed in writing by Plaintiff, in form and substance satisfactory to Plaintiff, a compliance report

(the “Compliance Reports”) documenting and detailing: (a) all cash receipts of Subject Defendants and their operations; (b) all payments and disbursements made by Receiver; (c) the updated weekly actual performance compared to the Budget on both an aggregate basis and a line-item by line-item basis (each particular line-item set forth on the Budget being referred to herein as a “Budgeted Item”), stating all variances and providing a narrative discussion and analysis by Receiver with respect to any and all negative variances; and (d) such other reports as Plaintiff may reasonably request from time to time.

21. Receiver shall have no obligation to expend funds in excess of the receipts actually collected or received by Receiver. Plaintiff shall have no obligation to provide funds to Receiver. Receiver is authorized to borrow funds from Plaintiff or use Plaintiff’s cash collateral, both at Plaintiff’s sole discretion. Any funds borrowed from Plaintiff by Receiver shall be secured by a first, valid and perfected lien and security interest in the Receivership Assets senior to all other liens and security interests in the Receivership Assets, which lien shall be valid and perfected without the necessity of recordation, filing, or any other act of Plaintiff, and Receiver is authorized, but not required, to issue receivership certificate(s) to evidence and secure any such protective advances by Plaintiff. Receiver shall, from time to time as Receiver deems appropriate after forecasting potential needs, remit to Plaintiff any income generated by the operations of the Receivership Assets subject to Plaintiff’s security interests and liens for application against the amounts which Subject Defendants owe Plaintiff, in accordance with the terms of the Loan Agreement. Loans from Plaintiff to Receiver not paid during the receivership, shall be paid as a first priority payment from the proceeds of the sale of the Receivership Assets and taxed as an administrative expense of the receivership.

22. Except in instances of gross negligence, fraud or willful misconduct, the liability of Receiver and any person engaged by Receiver hereunder is and shall be limited to the Receivership Assets, and neither Receiver nor any person or entity engaged by Receiver hereunder shall be personally liable for any actions taken pursuant to this Order or carrying out Receiver's duties, excepting only claims which arise from the gross negligence, fraud, or willful misconduct of such person as determined by a final order of this or another Court of competent jurisdiction. In carrying out Receiver's duties as set forth herein, Receiver is entitled to act in the exercise of Receiver's own sound business judgment as Receiver deems appropriate within Receiver's sole discretion subject only to the terms of this Order and applicable law. Receiver shall not be liable for any action taken or not taken by Receiver in good faith and shall not be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind unless caused by willful misconduct or gross negligence or fraud. Receiver and all of his employees and agents shall be immune, each as an officer of this Court, for any personal liability of any kind arising from, caused by or in any way connected with exercising any rights or performing any duties in his capacity as Receiver unless caused by willful misconduct, gross negligence, or fraud. Subject Defendants, to the extent of the value of and solely from the Receivership Assets, shall indemnify, hold harmless, and defend Receiver from and against any and all liabilities, costs, and expenses including, but not limited to, the cost of any bond required by this Order and legal and other fees and expenses incurred by Receiver arising from or in any way connected to the performance of the Receiver's duties as Receiver.

23. Subject Defendants shall pay the costs, fees and expenses of Receiver in connection with the performance of his duties described in this Order, including the costs and expenses of those persons who may be engaged or employed by Receiver to assist him in carrying out his duties

and obligations from the proceeds of the Receivership Assets. All applications for costs, fees and expenses for services rendered in connection with the receivership other than routine and necessary business expenses in conducting the receivership, such as salaries, rent and any and all other reasonable operating expenses, shall be made by application to the Court setting forth in reasonable detail the nature of the services, except however, that unless an objection is filed with the Court and served on Plaintiff's counsel and Receiver's counsel and Defendants within ten (10) days of filing the fee application, the application shall be deemed approved by all parties and this Court and Receiver is then authorized to pay such fees contained within the fee application. Receiver shall be compensated a monthly fixed fee of \$5,000.00 per month per Facility, plus reimbursement for all reasonable and necessary out of pocket costs and expenses, plus a one percent (1%) sale disposition fee for any Facility sold by Receiver during the receivership. Receiver's compensation shall be paid (a) in accordance with the Budget or as otherwise agreed upon in writing by Receiver and Plaintiff; (b) first from the Receivership Assets including all monies or other proceeds derived therefrom, and, next; (c) from secured advances, if any, that Plaintiff, in its sole discretion in accordance with this Order, make to Receiver to pay such fees and expenses, but only to the extent that the Receivership Assets are insufficient to pay Receiver's compensation.

24. On or before thirty (30) days from entry of this Order, Receiver shall file, with a copy to Plaintiff and Subject Defendants, an inventory (the "Inventory") of all the property and assets in Receiver's possession, or in the possession of others who hold possession as Receiver's agent, and in a separate schedule an inventory of the property and assets of the estate not reduced to possession by Receiver but claimed and held by others.

25. Receiver shall make an initial report to this Court and to Plaintiff, with a copy to Defendants, on or before four (4) months from filing the Inventory regarding its initial findings.

Receiver shall thereafter submit an updated status report on a quarterly basis or as otherwise ordered by the court. Copies of all such reports shall be served upon all parties appearing in this case by the court's electronic filing system.

26. Receiver may investigate any matters he deems appropriate in connection with discovering additional information as it relates to the management or administration of the Receivership Assets and/or Subject Defendants. In connection with any such investigation, Receiver is authorized to (a) compel, including by subpoena, the appearance and testimony of all persons, including Subject Defendants, and the production of the originals of any records and materials, of any sort whatsoever, within the possession, custody or control of any person, though Receiver's authority under this paragraph shall not be construed to require the waiver by any person of any validly asserted privilege.

27. Receiver may at any time request from the court that it be exonerated, discharged and released from its appointment as Receiver. Receiver shall, during the pendency of this action, have the right to apply to this court for further instructions or directions.

28. As of the date of this Order, all persons and entities, including but not limited to Subject Defendants' creditors and their respective officers, agents, representative and all other persons or entities acting under or in concert with such creditors are hereby placed on notice that all Receivership Assets are in *custodia legis*, and, as such, under the protection of this court, immune from attachment or other legal process, and subject entirely to control by Receiver as this Court's appointee. All persons are hereby enjoined from commencing or continuing to prosecute any action against the Receivership Assets outside of this action.

29. No legal actions, administrative proceedings, self-help remedies, or any other acts or proceedings under any federal, state or municipal statute, regulation or by-law shall be taken or continued against Receiver or the Receivership Assets, or any part thereof, without leave of this Court first having been obtained.

30. No utility or other vendor may terminate service or the provision of goods to the Receivership Assets as a result of the non-payment of pre-receivership obligations. Each utility company or entity providing service to the facilities shall forthwith transfer any deposits which it holds for the benefit of Subject Defendants to the exclusive control of the Receiver and shall be prohibited from demanding that the Receiver deposit additional funds in advance to maintain or secure such service.

31. No insurance company shall be permitted to terminate coverage or refuse coverage for the Receivership Assets based on prior unpaid premiums, claims history or because of the appointment of the Receiver pursuant to this Order. In addition, no insurance company shall be allowed to put in place more stringent payment arrangements during the term of the receivership pursuant to this Order.

32. Subject to Section 14, Subject Defendants shall not cancel any existing insurance policies on the Receivership Assets prior to the expiration of their terms.

33. The authority granted to Receiver herein is self-executing. Receiver is authorized to act in accordance with this Order on behalf of, and in Subject Defendants (or Receiver's) name(s), as Receiver deems appropriate without further order of this court and without personal recourse against Receiver (subject to any recourse described herein).

34. This Order may be modified by order of the court after notice to Receiver, Subject Defendants and Plaintiff or if any party brings a request before the Court for any modification hereto, including without limitation for appointment of an alternate receiver.

35. Nothing in this Order shall impair Plaintiff of its rights and remedies against any guarantor, indemnitors or obligors of the Obligations at issue in this matter.

36. The Court shall retain jurisdiction and supervision of all matters concerning Receiver, the receivership created hereby and the Receivership Assets. Any and all actions which affect Receiver or the Receivership Assets shall be brought in this Court. Receiver may seek instructions and additional authority from this court upon written notice to Plaintiff.

37. Plaintiff does not anticipate the total monies recovered from the operation and sale of the Receivership Assets to exceed the sums due to Plaintiff. Thus, it does not appear there will be any proceeds for other creditors. Accordingly, Receiver shall not perform any claims administration tasks. However, if it should appear to Receiver that he reasonably expects to collect more than the sums due to Plaintiff, Receiver shall provide prompt written notice to the Court and to the parties. In such a circumstance, the Court reserves the right to amend this Order to provide for claims administration.

38. This Order shall be effective immediately upon its entry and for all purposes. Within two (2) days of the entry of this Order, Receiver shall serve a copy of this Order on Subject Defendants and within twenty-one days, upon all known creditors of Subject Defendants. Actual notice may be accomplished by delivery of a copy of this Order by hand, U.S. mail, courier service, facsimile, email, or any other reasonable means of delivery.

39. The terms of this Order shall continue in full force and effect unless and until further order of this Court.

40. **THIS IS A FINAL APPEALABLE ORDER AND THERE IS NO JUST REASON FOR DELAY.**

February 8, 2024

Date



Hon. Thomas M. Durkin
U.S. District Judge