

DISTRICT COURT, LARIMER COUNTY Larimer County Justice Center 201 Laporte Avenue, Suite 100 Fort Collins, Colorado 80521-2761 (970) 494-3500	DATE FILED: December 15, 2023 4:10 PM CASE NUMBER: 2023CV31015
Plaintiff: CUPOLA INFRASTRUCTURE INCOME FUND, LLLP, a Colorado limited liability limited partnership, v. Defendants: LIGHTNING eMOTORS, INC., a Delaware corporation; LIGHTNING SYSTEMS, INC., a Delaware corporation.	<p style="text-align: center;">Δ COURT USE ONLY Δ</p>
	Case No.: Division:
ORDER GRANTING APPOINTMENT OF RECEIVER	

The Court, having considered the Verified Complaint and Verified Motion for Appointment of Receiver (together, the “Verified Complaint and Motion”)¹ filed by Plaintiff Cupola Infrastructure Income Fund, LLLP (“Plaintiff”), and being fully advised in the premises, and for other good cause having been shown,

HEREBY FINDS THAT:

A. The Court has jurisdiction, and venue is proper pursuant to C.R.C.P. Rule 98(c). The Court has jurisdiction over this matter and the Defendants, Lightning eMotors, Inc. (“Lighting”) and Lightning Systems, Inc. (“Systems,” and together with Lightning, “Defendants”). The property that is subject of the Verified Complaint and Motion is located in Larimer County, the State of Colorado.

¹ Capitalized terms used but not otherwise defined herein have the meanings given to them in the Verified Complaint and Motion.

B. The allegations set forth in the Verified Complaint and Motion establish a right to the relief requested.

C. Defendants are in material default of the loan documents with Plaintiff described in the Verified Complaint and Motion (the “Plaintiff Loan Documents”).

D. Plaintiff is a creditor of the Defendants and Defendants have admitted in written correspondence that (i) Defendants are unable to pay its bills and debts including the debt owed to Plaintiff and (ii) the Defendants are insolvent.

E. Defendants have not repaid these funds to Plaintiff pursuant to the Plaintiff Loan Documents and has thereby defaulted under the Plaintiff Loan Documents.

F. The personal property that is the subject of this case (collectively, the “Property”) as described in the Verified Complaint and Motion, is located in Larimer County, Colorado.

G. The Property, its rents, revenues, income, issues and profits, are in danger of being materially injured, impaired, reduced in value, or lost, and the appointment of a receiver for the Property is reasonable and necessary for the protection of the Property, Defendants’ assets and the rights of the parties in this case.

H. Defendants consent to the appointment of a receiver in regard to the Property, subject to the terms and conditions set forth in this Order. Based on the standards set forth in and C.R.S. §§ 38-38-601 and 38-38-602, C.R.C.P. Rules 65 and 66, the facts set forth in the Verified Complaint and Motion, and the equitable powers of this Court, Plaintiff is entitled to entry of this order. The appointment of a receiver will not disserve the public interest and the equities favor the appointment of a receiver. The appointment of a receiver will preserve the Property and maximize value for the benefit of all creditors, including the Plaintiff.

I. Cordes & Company, LLP (“Receiver”), whose business address is 5299 DTC Blvd, Suite 600, Greenwood Village, CO 80111, has sufficient experience, is qualified and is a suitable party to be appointed as receiver and custodian for the Property and Defendants.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

A. Appointment of Receiver and Custodian; Notice of Receivership

1. This Order shall be effective immediately and shall continue in effect until terminated or modified by further order of this Court.

2. Pursuant to C.R.S. §§ 7-114-303(1)-(5), Cordes & Company, LLP is hereby appointed as receiver and custodian over Defendants and the Receivership Property (as defined below) *in custodial legis* and any income derived therefrom subject to the supervision and exclusive control of this Court, wherever situated, for a period commencing on the date of this order and ending upon termination of such appointment by further order of this Court.

3. Plaintiff and the Receiver shall provide notice of this order and other matters as required by C.R.C.P. 66(d)(3).

4. A surety bond in the amount of \$[25,000] shall be submitted by the Receiver and filed with this Court within seven (7) days of the date of this order, the costs of which shall be an expense of the receivership estate (“Receivership Estate”). Within seven (7) days of the date of this order, the Receiver shall execute and file an Oath of Receiver with this Court accepting the appointment and agreeing to fully and faithfully exercise all powers and discharges under this order, any subsequent directives of this Court, and applicable law.

B. The Receivership Property, Receiver’s Powers and Duties, and Cooperation

5. The “Receivership Property” shall consist of Defendants and their ongoing business, Property, and all other assets of Defendants. The Receiver shall take and have complete and exclusive control, possession, and custody of the Receivership Property.

6. The appointment of the Receiver shall not be deemed a “change in control” or “change in ownership” of Defendants, under any contracts, leases, franchise agreements, licenses, permits, intellectual property, or other matters relating to the operations of Defendants’ business or an assignment of any such contracts, leases, franchise agreements, licenses, permits, or intellectual property.

7. The Receiver is hereby directed and empowered to take from Defendants, their current or former officers, directors, managers, agents, attorneys, accountants, representatives and employees (and all persons in active concert and participation with such persons), immediate possession of the Receivership Property and all things relating thereto, including without limitation, income, rents, revenues, issues, payments, and profits, and any and all personal property used or associated therewith, regardless of where such property is located, including, but not limited to, accounts, accounts receivable, chattel paper, deposit accounts, documents, electronic records, equipment, general intangibles, goods, instruments, inventory, investment property, permits, licenses, rental payments, lease payments, insurance payments, condemnation awards, bank accounts, security deposits, records, customer lists, files, reports, studies, options, contracts, leases, occupancy agreements, agreements, checks, drafts, notes, fixtures, furniture, furnishings, software, computers, computer servers, websites, financial documents, appliances, supplies, construction materials, and other things and articles of any and all types and kinds used or associated with the Receivership Property.

8. The Receiver is further empowered to exclude Defendants, their current or present officers, directors, managers, agents, attorneys, accountants, and employees from such possession and all such persons are ordered to deliver over to the Receiver all of the Receivership Property. The Receiver shall operate the Receivership Property at the level that the Receiver reasonably deems appropriate, which may be at a limited service level or may include suspension of operations, and collect the rents, revenues, income, profits, sales proceeds, and other benefits from the operation management, or sale of the Receivership Property, all of which shall be held and disbursed pursuant to this order.

9. The Receiver shall have all of the authority, powers, and duties of a general receiver under Colorado law and reasonably necessary to operate the Receivership Property, including, but not limited to, the following without further order of this Court:

a. to collect, control, manage, conserve, and protect the Receivership Property;

b. to incur and pay expenses incidental to the Receiver's exercise of the powers or otherwise in the performance of the Receiver's duties, including but not limited to expenses for agents, managers, attorneys, and/or consultants;

c. to assert rights, claims, causes of action, or defenses that relate to Receivership Property. For avoidance of doubt, the Receiver shall not substitute as a party on behalf of Defendants herein and Defendants are solely responsible on its own for responding to any pleadings, motions, and/or discovery requests herein;

d. to collect any information as to the assets, liabilities, equity in, business of, and intellectual property of Defendants;

e. to operate and conduct Defendants' business and any business constituting Receivership Property in the ordinary course of business, including using, selling, or leasing property of Defendants or otherwise constituting Receivership Property, incurring and paying expenses of Defendants' business or other Receivership Property, and hiring employees and appointing officers to act on behalf of Defendants;

f. to use, improve, sell, or lease any Receivership Property other than in the ordinary course of business;

g. to continue, modify, or enter into any and all agreements that affect or are otherwise necessary or advantageous to the Receivership Property and/or Defendants' business;

h. to enter into or modify agreements with Defendants' creditors to resolve debts previously incurred by Defendants;

i. to enforce or cause Defendants to enforce payment obligations owed to Defendants, including, but not limited to, promissory notes, mortgages, contracts and accounts, and the Receiver may in its own name or in the name of the Receivership Estate initiate any legal proceedings viewed necessary to enforce such payment obligations, including, but not limited to, seeking of equitable relief;

j. Subject to the Plaintiff's and other secured parties' rights to credit bid their claims, to market, sell, lease, transfer or otherwise dispose of any or all of the Receivership Property as a going concern or through a liquidation or other sale process, free and clear of all liens, claims, interests, and encumbrances, (including free and clear of any right(s) of redemption by any party) pursuant to Colorado law;

k. to apply Defendants' indorsement to any instrument received by Receiver in the course of its management of the Receivership Property and execute in the name of Defendants or any of them any and all reports and other documents required to be executed in connection with the performance of the Receiver's obligations pursuant to this order and under applicable law;

l. to terminate, employ, or continue the employment of any or all of Defendants' employees, directors, officers, board members, agents, representatives, counsel, and consultants who the Receiver deems reasonably necessary to assist in the operation, liquidation or sale of the Receivership Property under such terms and conditions as the Receiver deems advisable, and in doing so the Receiver shall not be bound by Defendants' current employment contracts or employment practices, policies or benefits;

m. to hire agents, managers, attorneys and/or consultants as the Receiver believes are reasonably necessary to perform its duties as receiver, including, without limitation, counsel to aid the Receiver and provide him counsel in connection with its duties as Receiver, and intellectual property counsel to aid the Receiver to apply for, prosecute, defend, obtain, maintain and/or renew any and all Defendants' intellectual property, patents, trademarks, licenses, permits and entitlements issued in connection with the Property or required for the preservation or operation of the Receivership Estate and Defendants' business;

n. to hire a broker or brokers for the Receivership Property, including but not limited to an intellectual property broker, as the Receiver deems appropriate to assist with listing and marketing any Receivership Property for sale;

o. to pay Receiver's counsel at the customary hourly rates on a monthly basis for the legal services rendered in connection therewith, and to pay Receiver's other professionals under their respective customary terms;

p. to operate, or cease operations of, any and all of the business affairs of Defendants' with respect to the Receivership Property, either directly or indirectly through the employees and agents hired by the Receiver and acting under the Receiver's direction and control, as the Receiver deems prudent;

q. to investigate, pursue, prosecute to judgment, compromise and settle any and all claims that Defendants have in connection with the Receivership Property, or the Receiver in its capacity as Receiver over the Receivership Property, may have against any third party, including but not limited to Defendants' current or former insiders, directors, officers and owners, and including fraudulent transfer claim, unjust enrichment claim, and illegal distribution claim, or other similar improper transactions, and to institute or commence any such legal actions as the Receiver deems necessary to: (i) collect accounts and debts, and enforce other agreements relating to the Receivership Property, (ii) recover possession of the Receivership Property and deposits from persons who may now or in the future be wrongfully occupying the Receivership Property or any part thereof, and (iii) enforce all rights of action and claims for recovery arising out of or related to the Receivership Property or its operations, including, without limitation, seeking substitution as the real party in interest in pending causes of action;

r. to compel any person or entity, including, without limitation, Defendants, by subpoena pursuant to the Colorado Rules of Civil Procedure, to give testimony or to

produce and permit inspection and copying of designated books, documents, electronically stored information, or tangible things with respect to Receivership Property or any other matter that may affect the administration of the Receivership Estate;

s. to open new bank accounts in the name of the Receivership Estate for use by the Receiver or its designee, and/or use existing deposit and checking accounts that Defendants currently maintain and rename such accounts to reflect the interest of the Receivership Property;

t. to receive and open all mail for and behalf of Defendants and access and obtain keys for all post office boxes for Defendants;

u. to obtain and/or maintain appropriate insurance coverages for the Receivership Property, Receivership Estate and for itself as Receiver;

v. to issue Receiver's Certificates for the purpose of preserving and maintaining the Receivership Property and payment of insurance, without further approval of this Court, in exchange for funds advanced by third parties, during the term of the receivership, which Receiver's Certificates shall bear interest and which Receiver's Certificates shall be a lien and security interest and a priority claim upon the Receivership Property;

w. to collect any revenue and income from the Receivership Property;

x. to generally do such other lawful acts as the Receiver reasonably deems necessary for the effective operation and management of the Receivership Property and to perform such other functions and duties as may from time to time be required and authorized by this Court, by the laws of the State of Colorado or by the laws of the United States of America; and

y. to take any other actions that are customarily taken by receivers or custodians.

10. The Receiver shall have no responsibility to administer any pension, profit sharing, 401(k), retirement, health insurance, dental insurance, flexible spending account, or other employee benefit plan.

11. Notwithstanding anything to the contrary contained in this order, the Receiver shall not take any action with regard to ownership, operation, control, storage, generation, or disposal of (a) any substance deemed a "hazardous substance," "pollutant," "contaminant," or similar substance under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675, the Conservation and Recovery Act of 1976, the Solid Waste Amendments of 1984, the Superfund Amendments and Reauthorization Act of 1986, and any other amendments; or (b) any other chemical, toxin, pollutant or substance defined as hazardous or dangerous to human health under any other federal, state or local law, regulation, rule or ordinance, including, without limitation thereto, petroleum, crude oil, or any fraction

thereof (collectively, “Hazardous Substances”), without first applying for and obtaining an order of this Court specifically setting forth the action or actions proposed to be taken by Receiver. Without first applying for and obtaining such an order of this Court, the Receiver shall have no ownership, control, authority, or power (and the Receiver shall not have any obligation to exercise ownership, control, authority or power) over the operation, storage, generation, or disposal of any Hazardous Substances. All decisions relating to the ownership, operation, control, storage, generation, and disposal of any Hazardous Substances shall be resolved by this Court.

12. The Receiver has the authority to access, obtain, and utilize all electronic login and password information for Defendants and from any third party (including, without limitation, financial accounting systems, electronic payment platforms, email systems, utility providers, banking institutions, and payroll processing services). This order may be presented to any person, entity, or governmental agency as evidence of the Receiver’s authority under this section, and any and all third parties shall comply with any request of the Receiver and/or its designee to provide physical and electronic access to Defendants’ mail and/or accounts.

13. All rents, issues, profits, revenues, income, and other payments that are now or hereafter become due with respect to all or any portion of the Receivership Property, whether pursuant to oral or written agreements, shall be remitted directly to the Receiver. The Receiver is authorized and directed to demand, collect, and receive all proceeds from the operation of the Receivership Property, including, without limitation, all receivables, accounts, profits, rents, charges, or fees now due and unpaid or hereafter to become due.

14. Upon request of the Receiver, Defendants are ordered to direct any person or entity liable for any payments to be paid to Defendants to direct said payment to the Receiver. Such direction shall be in writing and approved by the Receiver. Upon receipt of a copy of this order, any and all third parties who are obligated to pay Defendants any amounts are hereby directed to make such payment directly the Receiver. Notwithstanding the foregoing, should any third party obligated to make payments to Defendants direct those payments to Defendants rather than the Receiver, such payments shall be deemed to have been made payable to Receiver, and such payments shall be immediately turned over to the Receiver’s custody and control by any person or party receiving the same on behalf of Receiver.

15. In order to exercise the authority conferred upon it under this order, the Receiver is hereby vested with the standing and all power and authority (but without the liability of or associated with, or obligation to act) that would or could be wielded by the directors, officers, or managers of Defendants, including without limitation the power and authority to (i) execute documents, instruments, and resolutions in connection with any sale or finance transaction; (ii) have and obtain access to employee records, reports, financial and accounting systems, communications, and other work product; and (iii) commence a case under title 11 of the United States Code (the “Bankruptcy Code”), including without limitation, the authority to sign a petition on behalf of Defendants or their officers as appropriate for filing.

16. Subject to either Plaintiff’s consent or the escrowing of funds sufficient to satisfy the obligations under the Loan Agreement in full, the Receiver shall disburse funds received in relation to the Receivership Property in the following order of priority:

- a. first, to the payment of fees, costs, and expenses of the Receivership Estate, including compensation of the Receiver and its legal counsel at their normal hourly rates, and compensation for any other Receiver retained professional;
- b. second, to the costs and expenses of operating, managing, and maintaining the Receivership Property;
- c. third, to the repayment of advances of funds made under Receiver's Certificates by any party, if any, to meet the expenses of the Receivership Estate;
- d. fourth, to the Plaintiff for the full amount due and owing under the Loan Documents, including, but not limited to, interest and fees owed under the Loan Documents;
- e. fifth, to non-Plaintiff creditors of the Debtors in order of priority as determined by the Court and pursuant to a plan of distribution to be approved by this Court; and
- f. sixth, to a fund to be held by the Receiver in a federally insured, interest-bearing account, to be distributed as directed by further order of this Court.

17. Notwithstanding the priority scheme set forth in paragraph [16] herein, in the event the Receiver believes, in its reasonable judgment, that sufficient Receivership Property is available to administer the estate and pay the Plaintiff in full, then Receiver may pay the Plaintiff the full amount owed to it under the Loan Documents, including, but not limited to, interest and fees owed under the Loan Documents.

18. If the Receiver determines there is a reasonable likelihood that funds will be available for distribution to creditors and a claims process would assist the Receiver in disbursing funds as set forth in paragraph 17 of this order, the Receiver shall file and serve a proposed claims procedure to all persons entitled to receive service in the action and any other creditor whose claim or claims would be affected by any such procedure (the "Proposed Claims Procedures"). If no objection is filed or otherwise received within ten (10) days after the filing of the Proposed Claims Procedure, the Court may enter an order approving the Proposed Claims Procedure

19. In the event that there are insufficient funds to repay any Receivership expenses as contemplated above, the Receiver shall have a lien encumbering the Receivership Property having a priority immediately senior to that of any other lien on or security interest in the Receivership Property and equal to those of any Receiver's Certificates issued pursuant to this Order. The Receiver is hereby authorized to execute and record in the Clerk and Recorder's Office for any county in which real property of Defendants is located Certificates of Lien and file UCC financing statements with the Colorado Secretary of State putting third parties on notice of such liens. Any such lien may be released of record by a (i) Certificate of Release of Lien executed by the Receiver and recorded in the county where such Certificate of Lien was previously recorded, or (ii) UCC termination statement filed with the Colorado Secretary of State, as appropriate. The Receiver shall be entitled to all costs and expenses associated with enforcing such lien and such amount shall be secured by such lien.

20. Defendants and all person in active concert and participation with Defendants, including their current and former officers, directors, managers, employees, agents, accountants, and banks, shall be and are hereby ordered:

a. to deliver immediately to the Receiver or its agents all Receivership Property, including without limitation, any and all income, rents, revenues, issues, payments and profits, and any and all personal property used or associated with the Receivership Property, including but not limited to all keys and key cards, all usernames, passwords and/or combinations for, among other equipment, all safes, all computers and electronic systems, all intellectual property, all software used and/or maintained by Defendants, and all online accounts owned, used and/or maintained by Defendants, regardless of where such property is located, including, without limitation, accounts, accounts receivable, chattel paper, deposit accounts, documents, equipment, general intangibles, goods, instruments, inventory, investment property, permits, licenses, rental payments, lease payments, insurance payments, condemnation awards, bank accounts, security deposits, records, customer lists, files, reports, studies, options, contracts, leases, occupancy agreements, agreements, checks, drafts, notes, fixtures, furniture, furnishings, software, computers, computer servers, websites, financial documents, appliances, supplies, construction materials, patents, patent applications, and other things and articles of any and all types and kinds used or associated with the Receivership Property;

b. to continue to deliver immediately to the Receiver all collections on accounts receivable and credit card receivables, security deposits, lease payments, rental payments, other collections, books, rent rolls and other records relating to the operation, maintenance, and management of the Receivership Property, and to permit the Receiver to carry out its duties hereunder without interference;

c. when necessary or when requested, to explain the operation, maintenance and management of the Receivership Collateral and/or Defendants' business to the Receiver or its agents; and

d. to safeguard and preserve against destruction all business records and documents relating to the Receivership Property and Defendants' business in whatever form, including without limitation all electronic records, e-mails, and hard-copy documents until delivered to the Receiver.

21. The Receiver is immediately vested with (and Defendants shall immediately deliver) the books and records with respect to the operation of the Receivership Property, including, without limitation, any and all information related to: a) amounts paid by obligations of Defendants; b) liens, encumbrances, and other interests against or affecting the Receivership Property and/or other property; c) property taxes owed by Defendants; d) all types of insurance affecting the Receivership Property and/or other property; e) plans, specifications, surveys, and drawings, if any, relating to the Receivership Property; f) keys and/or access codes to the Receivership Property and any units therein; g) all computers, computer systems, software necessary to review, understand, print and deal with computerized records, and all access codes/passwords associated therewith; h) all operating statements of Defendants; i) all maintenance manuals for any equipment located at the Receivership Property; j) all repair and maintenance records for the Receivership Property; k) all patents, patent applications, intellectual

property, software code, and work product associated with Receivership Property; and l) all other aspects of the Receivership Property, including operating agreements and amendments thereto, and other property and the operation and management thereof (collectively, the “Books and Records”). The Receiver is authorized to recover, without further order of this Court, Books and Records in the possession of third parties, including, without limitation, internet and cloud hosting services, website/domain hosting services.

22. Except as may be expressly authorized by this Court hereafter upon notice and a hearing, Defendants, their officers, directors, managers, agents, employees, representatives, or anyone claiming under, by, or through them are enjoined from:

a. other than under the supervision of the Receiver, collecting any rents, revenues, accounts, issues, and profits from the Receivership Property or withdrawing funds from any bank or other depository account relating to the Receivership Property and/or Defendants’ business;

b. terminating or causing to be terminated any license, permit, lease, contract, or agreement relating to or comprising the Receivership Property or the operation of Defendants’ business; and/or

c. otherwise interfering with the operation of the Receivership Property, Defendants’ business, or the Receiver’s discharge of its duties hereunder.

23. Any creditors of the Defendants that are in possession of, or have taken any action to, seize any books, records, or other assets constituting Receivership Property and all persons in active participation with such creditors, including, without limitation, such creditors’ officers, managers, members, employees, agents, representatives, attorneys, accountants, banks, contractors, subcontractors, and all who claim under, by, or through them (the “Creditors’ Representatives”) are, upon written notice by the Receiver of this order, hereby ordered to deliver immediately to the Receiver all of the Receivership Property in such creditors’ or Creditors’ Representatives’ possession, and to cooperate fully with the Receiver in connection with such turnover. Any claims against Defendants shall not be used as a defense to turning over Receivership Property as set forth in this paragraph. The Receiver may request supplemental authority from this Court upon proper motion, if necessary, to obtain the cooperation of such creditors or Creditors’ Representatives or any other foregoing persons acting on behalf of or for such creditors to comply fully and completely with this order.

24. This Order shall be and remain enforceable by the contempt power of the Court. If the Receiver determines, after reasonable inquiry that a person or entity is in violation of the turnover provisions set forth in this order, the Receiver is instructed to give written notice thereof to the person or entity violating such provisions, with a copy of this order attached, demanding turnover of such Receivership Property. If the person or entity in possession fails or refuses to turnover the Receivership Property after receiving notice, the Receiver shall file a request for an order to show cause with this Court.

25. The Receiver may utilize the tax identification numbers associated with Defendants during the receivership to the extent permitted by law, or the Receiver may obtain

new tax identification numbers. Defendants shall provide the Receiver with all the tax identification numbers utilized in connection with the operation of the Receivership Property.

26. Should it become necessary for the Receiver or any party to petition this Court for a clarification of the provisions of this order, or to request other powers as the circumstances may then dictate are necessary, it is ordered that receipt of notice seven (7) days in advance of such a petition shall be sufficient notice. Any notice required hereunder shall be deemed served on the date it is received via overnight mail to counsel of record for any party, or directly to any party not represented by counsel.

C. Receiver's Compensation

27. In compensation of its duties hereunder, the Receiver shall be paid an hourly fee based on the Receiver's normal hourly rates.

D. Reporting

28. The Receiver shall file with the Court and serve on parties of record, within sixty (60) days of entry of this order, and on a quarterly basis thereafter, within twenty-five (25) days after the end of each quarter, full and complete reports, under oath, detailing receipts, disbursements and transactions concerning the Receivership Property, and the payment of the Receiver's and its legal counsel's compensation earned during that quarter and reimbursement of expenses made during that quarter. Upon review and approval of such quarterly reports by this Court, such payments of compensation and reimbursement of expenses paid to the Receiver and its counsel shall be deemed reasonable and without future challenge as to reasonableness.

E. Miscellaneous

29. The Receiver shall take any and all actions the Receiver deems reasonable and appropriate to prevent waste and to preserve, secure, manage, maintain and safeguard the Receivership Property and all other forms of property to which the Receiver is entitled to take possession and control under this order.

30. The Sheriff's Office or other law enforcement officers in the county where Receivership Property may be found are authorized and empowered to enforce the terms of this order in the form of peace-keeping duties.

31. This Order is not intended to create a taxable entity.

32. Other than the claims already asserted by Plaintiff in this action, no person or entity shall file suit against the Receiver in its capacity as Receiver, against Defendants, or against the Receivership Property, unless leave is expressly authorized in advance by this Court.

33. The Receiver shall serve herein, and discharge all of its duties under this order, as an officer of this Court, solely in a representative capacity, and not in an individual capacity, and does not, in being appointed as the Receiver or by acting as the Receiver hereunder, thereby become personally liable to any person or governmental entity under any law, statute, rule, regulation or other doctrine of law or equity. All persons dealing with the Receiver shall look only

to the Receivership Property, and not the Receiver or its employees or agents for the satisfaction of all claims against and obligations and liabilities of the Receiver or the Receivership Property. The Receivership Estate of Defendants shall indemnify and hold harmless Receiver, and the Receiver's agents, attorneys, contractors, employees, and representatives from any claims made by persons not a party to this order, which claims arise out of the operation of this Receivership, except in a case where the Receiver has acted outside the scope of its authority, or committed fraud or intentionally misrepresented the Receiver's authority as Receiver. In the event a suit is filed against the Receiver, Receiver's counsel, or a related entity of the Receiver, over an issue arising out of this action, except as conditioned above, it shall be incumbent upon the Receivership Estate of Defendants to reimburse the Receiver for the fees and costs of defending such action, including any appeal thereof, to final resolution and award of judgment.

34. The Receiver may undertake all actions specifically set forth in any order of the Court, as well as to exercise the usual and customary powers accorded to a receiver under Colorado law (except as otherwise limited by the order of the Court or any subsequent order of the Court).

35. The Receiver may resign and request with notice to Plaintiff and Defendants entry of an order approving the Receiver's resignation, discharging the Receiver, and releasing the Receiver's bond; *provided, however*, that no such resignation may take effect unless and until a substitute Receiver recommended by Plaintiff is duly appointed for the Receivership Property.

36. Except as otherwise expressly set forth in this Order, nothing contained in this Order shall be construed as obligating the Receiver to advance its own funds in order to pay the costs and expenses of the Receivership that have been approved by the Court.

37. The Receiver may from time-to-time request that the Court enter additional orders to supplement, clarify, or amend this order.

38. The Receiver may apply at any time to the Court, with notice to all other parties in this case, for further instruction and for further power necessary to enable the Receiver to fulfill its duties.

39. Court approval of any motion or requests for authorization filed by the Receiver shall be given as a matter of course, unless any party objects in writing to the request for Court approval within seven (7) days after the service by the Receiver of written notice of such request upon anyone entering an appearance in this action. Service of motions by electronic transmission is acceptable.

40. Any time "approval" shall be required with respect to any action authorized in this order, such action shall be authorized only if and when the Receiver obtains entry of a further Court order.

41. Notwithstanding anything set forth herein which may state or imply to the contrary, the Receiver shall not be obligated to advance any monies to make improvements to, or to rehabilitate the Receivership Property, or incur or pay any other expenses or bills in connection with its role as Receiver, except to the extent that monies for such matters are available either from operating revenues generated by the Receivership Property or sale of any the Receivership

Property and/or funds advanced by Plaintiff or another party as provided in this Order. Nothing contained in this Order shall be construed as obligating the Receiver to advance its own funds in order to pay the costs and expenses of the receivership that have been approved by the Court.

42. In the event that a bankruptcy case is commenced by Defendants during the pendency of this Receivership, Plaintiff shall give notice of such bankruptcy case to this Court, to all parties having appeared in this action, and to the Receiver no later than 72 hours after Plaintiff receives actual written notice of the bankruptcy case. Upon receiving knowledge of any such case, the Receiver shall comply with its obligations under 11 U.S.C. § 543, unless Plaintiff simultaneously gives this Court and the Receiver notice of its intention to seek excuse of turnover in the bankruptcy case and provides evidence that it has acted expeditiously in seeking excuse of turnover. If Plaintiff acts expeditiously to seek relief from the Receiver's obligation to turn over property, then the Receiver is authorized to remain in possession and preserve the Receivership Property pending the outcome of such motion; *provided* that the Receiver's authority to preserve the Receivership Property under such circumstances is limited as follows: the Receiver may continue to collect the Receivership Property and the proceeds thereof; the Receiver may make disbursements necessary to preserve and protect the Receivership Property; the Receiver shall not execute any new leases, sales contracts, or other long-term contracts; and the Receiver shall do nothing that would affect a material change in the Receivership Property. In addition to authority to retain counsel for other reasons as appropriate, the Receiver is authorized to retain legal counsel to assist the Receiver with any bankruptcy case of Defendants.

43. If Plaintiff assigns its interests in the Loan Documents and its entitlement to the Receivership Property or its proceeds to a third party, then such third party shall be the successor and assign of Plaintiff in connection with all obligations imposed upon, and all rights of, Plaintiff under this Order.

44. Unless otherwise provided in this Order, any computation of time for purposes of this Order shall be governed by C.R.C.P. 6.

45. The Receiver shall continue in possession of the Receivership Property until discharged by the Court. Upon the winding up of the Receivership Estate in the Receiver's discretion, the Receiver shall file its final report and accounting. If no objection to the final report and motion for discharge have been delivered to the Court, the Receiver, and other parties having entered their appearance in this action by first class mail to such address as is reflected in the Court records within seven (7) days after the final report and motion for discharge are filed with the Court, the final report shall be accepted and adopted as a final order of the Court, and the Court shall enter an order terminating the receivership and discharging the Receiver and the Receiver's bond.

46. All persons having notice of this Order, including those persons having oral or written agreements with the Defendant, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, banking services, payroll services, insurance, utility or other services to the Receivership Property, are hereby restrained until further order of this Court from interfering with the Receiver's possession of the Receivership Property, or from taking actions which adversely affect the ability of the Receiver from performing the obligations imposed on it pursuant to this Order,

including from discontinuing, altering, interfering with or terminating the supply of goods or services as may be required by the Receiver.

47. This Court shall have exclusive jurisdiction over Defendants and the Receivership Property and the Receiver appointed hereunder. All actions by any creditor, claimant, party in interest, governmental agencies, and all other persons, firms, corporations or entities seeking relief against the Receiver, the Receivership Property or the Receivership Estate are stayed and may not be pursued or continued without first seeking and obtain leave from this Court. Any such action must be brought in this Court.

48. The Receiver shall give notice of its appointment within ten (10) business days after entry of this Order to any creditors whose liens appear of public record as of the date of this Order or whose names and addresses have been provided to the Receiver in writing as of the date of this Order.

Dated this 15 day of December, 2023.



District Court Judge