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8 UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA

CASE NO. 2:12-cv-00705-TLN-DAD

12 Plaintiff,

13 v.

- 1. **ORDER APPOINTING RECEIVER;  
AND**
- 2. **PRELIMINARY INJUNCTION IN  
AID OF RECEIVER**

14 REAL PROPERTY LOCATED AT 149  
 15 G STREET, LINCOLN, CALIFORNIA,  
 16 PLACER COUNTY, APN: 008-266-  
 015-000, INCLUDING ALL  
 17 APPURTENANCES AND  
 IMPROVEMENTS THERETO, ETC,  
 ET AL.

18 Defendants.

21 The Court, having reviewed that certain Stipulation for Order Appointing Receiver;  
 22 and Preliminary Injunction in Aid of Receiver executed by the United States of America, ,  
 23 Mechanics Bank and Volen 9 Properties LLC and good cause appearing therefor:

24 IT IS HEREBY ORDERED THAT John Connolly IV is hereby appointed as  
 25 receiver (in such capacity, the "Receiver") over the Property (including the real property commonly  
 26 known as 10293 Rockingham Drive, Rancho Cordova, California, Sacramento County, including all

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1 appurtenances and improvements thereto) and Rents<sup>1</sup> subject to the condition, that before entering  
2 upon his duties as Receiver, he shall take the oath and file a bond with a surety thereon approved by  
3 this Court in the sum of \$15,000.00 to secure the faithful performance of his duties as such receiver.

4 IT IS FURTHER ORDERED that the Receiver shall have the following powers and  
5 responsibilities:

6 1. To enter, gain access to and take possession of the Property and the Rents, to  
7 exclude and evict Volen Properties 9, LLC (the "Borrower"), or anyone claiming under or through  
8 Borrower therefrom who are not under valid leases or rental agreements to use, operate, manage and  
9 control the Property, to receive the Rents, issues, income, profits, revenues, royalties, lease  
10 payments, security deposits and profits therefrom; to care for, preserve, protect, secure and maintain  
11 the Property, and the Rents and incur the expenses necessary for such care, preservation and  
12 maintenance; and to do all things and to incur the risks and obligations ordinarily incurred by the  
13 Borrower, managers and operators of similar businesses and properties, as such Receiver, and no  
14 risks or obligations so incurred shall be at the personal risk or obligation of the Receiver, but shall  
15 be a risk or obligation of the receivership estate;

16 2. To demand, collect and receive the Rents, issues, income, profits, revenues,  
17 prepaid rent, percentage rent based on gross annual sales or the like, tenant improvement deposits,  
18 royalties, lease payments and security deposits in the possession of Borrower, or now due and  
19 hereafter coming due from the tenants or lessees of any portion of the Property;

20 3. To let, rent or lease from time to time any part of Property and to keep the  
21 buildings thereon insured and in good repair;

22 4. To take possession of and receive from any and all banks, savings and loan  
23 associations and/or any financial institutions any monies and funds on deposit in said banks, savings  
24 and loan associations and/or any financial institutions in the name of the Borrower, to the extent that  
25 said accounts contain the Rents, issues, income, profits, revenues, storage unit rentals, royalties,

26 \_\_\_\_\_  
27 <sup>1</sup> All capitalized terms not otherwise defined in this Order shall have the meanings ascribed  
28 to them in that certain Stipulation for order Appointing Receiver Ex Parte; and Preliminary  
Injunction in Aid of Receiver filed in the above-entitled action.

1 lease payments or security deposits generated by or arising out of the Property, and the Receiver's  
2 receipt of said monies and funds shall discharge said banks, savings and loan associations and/or  
3 any financial institutions from further responsibility for accounting to said account holder for  
4 monies and funds for which the Receiver shall give his receipt;

5           5. To take possession of all the books and records pertaining to the Property  
6 including, without limitation, permits, licenses, blueprints, leases, lease amendments, budgets,  
7 financial statements, balance sheets, profit loss statements, general ledgers, check registers, and any  
8 Property financial information, architectural documents, plans, and specifications and any hard  
9 drives, disc drives, zip drives, and discs containing any of the foregoing information from the  
10 Borrower, wherever located, as the Receiver deems necessary for the proper administration,  
11 management and/or control of the estate, but said books and records shall be made available to said  
12 Borrower as is reasonably necessary;

13           6. To execute and prepare all documents and to perform all acts, either in the  
14 name of the Borrower or in the Receiver's own name, which are necessary or incidental to  
15 preserving, protecting, managing and/or controlling the Property and the receivership estate;

16           7. To employ agents, servants, employees, guards, clerks, accountants, on-site  
17 managers and management consultants to administer the receivership estate and to collect said  
18 Rents, issues, income, profits, revenues, storage unit rentals, royalties, lease payments and security  
19 deposits and profits therefrom, manage the Property, and keep the same insured and in good repair,  
20 if the Receiver shall deem the same necessary, and to pay the reasonable value of said services out  
21 of the Rents received;

22           8. To require the Borrower to notify the Receiver upon the Receiver's taking  
23 possession of the Property whether or not there is sufficient insurance coverage on the Property, to  
24 provide the Receiver with the identity of the Borrower's insurance company, insurance agent's name  
25 and contact information and to provide the Receiver with copies of all its insurance policies relating  
26 to the Property. If sufficient insurance coverage does exist, the Borrower shall be responsible for  
27 naming, and is hereby ordered to name, the Receiver as an additional insured on the insurance  
28 policy(ies) for the period that the Receiver shall be in possession of the Property. If there is

1 insufficient insurance coverage, it is hereby ordered that the Receiver shall have thirty (30) working  
2 days to procure said insurance on the Property, provided that the Receiver has funds available to do  
3 so. If the Receiver does not have sufficient funds to do so, the Receiver shall seek instructions for  
4 the Court with regard to whether insurance shall be obtained and how it is paid for;

5 9. To hold the monies coming into possession of the Receiver pursuant to his  
6 operation of the business thereto, and not expended for any of the purposes herein authorized, shall  
7 be held by said Receiver for the payment of the Borrower's obligations to Mechanics Bank sued  
8 upon in the Complaint;

9 10. To establish bank accounts for the deposit of monies and funds collected and  
10 received in connection with the Receiver's administration of the receivership estate, at any financial  
11 institution the Receiver deems appropriate, provided that any funds on deposit at said financial  
12 institution are fully insured by an agency of the United States government;

13 11. To institute ancillary proceedings in this state or other states and countries as  
14 are necessary to preserve and protect the receivership estate, and the Receiver may engage the  
15 services of legal counsel, if necessary, upon prior approval of the above-entitled Court. The  
16 Receiver may pay for such services from the funds of the receivership estate;

17 12. To the extent feasible, the Receiver shall, within thirty (30) days of his  
18 qualification hereunder, file in this action an inventory of the Property which he shall have taken  
19 possession pursuant to this order per California Rule of Court ("CRC") 3.11381 and shall file  
20 supplemental inventories as needed;

21 13. To prepare periodic interim statements reflecting the Receiver's fees and  
22 administrative costs and expenses incurred for said period in the operation and administration of the  
23 Receivership estate. The Receiver shall serve upon the parties a monthly report with details as  
24 required by CRC Rule 3.1182. Upon completion of an interim statement, and the mailing of such  
25 statement to the parties' respective attorneys of record, or any other designated person or agent, and  
26 if no objection is received within 10 calendar days after the mailing of the interim statement, the  
27 Receiver shall pay from the estate funds, if any, the amount of said statement based upon the fee  
28 schedule set forth in the Declaration of John Connolly IV filed in support of Stipulation for Order

1 Appointing Receiver Ex Parte; and Preliminary Injunction in Aid of Receiver previously filed in the  
2 above-entitled action. Despite the periodic statement of Receiver's fees and administrative  
3 expenses, such fees and expenses shall be submitted to the Court for its approval and confirmation,  
4 in the form of a stipulation among the parties, or the Receiver's Final Accounting and Report;

5 14. To take possession of all the books and records of Borrower wherever  
6 located, as the Receiver deems necessary for the proper administration, management and/or control  
7 of the receivership estate;

8 15. If there are insufficient funds in the receivership estate to pay expenses of the  
9 receivership, the expenses of the receivership estate (i) shall initially be paid by the Mechanics  
10 Bank by way of Mechanics Bank's issuance of a Receiver Certificate in the amount of \$25,000.00,  
11 and (ii) thereafter, may be paid from time to time by way of Mechanics Bank's issuance of  
12 additional Receiver Certificates in a total amount not to exceed \$100,000.00, all in the form  
13 attached hereto as Exhibit A and incorporated herein by this reference as though set forth in full, all  
14 subject to the right of the Receiver or Mechanics Bank, in their discretion, to seek further orders of  
15 this Court with respect thereto. Any such Receiver Certificates issued by the Receiver to  
16 Mechanics Bank shall not be the personal obligation of the Receiver but the obligation of the  
17 receivership estate;

18 16. The Receiver shall not be responsible for payment of any real property taxes,  
19 utility bills, unpaid payroll expenses or other unpaid invoices for services or utilities incurred by the  
20 Borrower, or for the benefit of, the Property prior to the Receiver's taking possession of the  
21 Property. No utility or other vendor may terminate service or the provision of other goods or  
22 services to the Property as a result of the non-payment of pre-receivership obligations, without prior  
23 order of this Court;

24 17. The Borrower, its agents, servants, employees or representatives, or all  
25 persons or entities acting under or in concert with the Borrower, on receipt of a copy of this Order  
26 shall provide the Receiver with the Tax Identification number utilized by the Borrower for the  
27 operation of the Property. The Receiver shall be entitled to utilize the aforementioned Tax  
28 Identification number during his operation of the Property;

1           18.     The Receiver shall be authorized to open all mail addressed to the Borrower,  
2 its agents, servants, employees or representatives, or all persons or entities acting under or in  
3 concert with the Borrower at the Property. The Receiver is authorized to make copies of this mail,  
4 and then forward this mail to the addressed to the Borrower, their agents, servants, employees or  
5 representatives, or all persons or entities acting under or in concert with the Borrower at the address  
6 provided by the Borrower;

7           19.     The Receiver and the parties to this case may, at any time, apply to this Court  
8 for further or other instructions or orders and for further powers necessary to enable the Receiver to  
9 perform the Receiver's duties properly;

10          20.     The Receiver is authorized to endorse checks payable to the Borrower, to  
11 send notice to accounts receivable debtors of the Borrower directing the same to make payments  
12 due to the Borrower which are part of the Property or the proceeds thereof to the Receiver, to  
13 undertake whatever actions are reasonable or necessary to collect the accounts receivable of the  
14 Borrower, and to compromise the amounts owing from account debtors of the Borrower if in the  
15 Receiver's reasonable business judgment it is appropriate to do so;

16          21.     The Receiver is authorized to institute ancillary proceedings in this or in  
17 other states as are reasonable or necessary to preserve and protect the Property and receivership  
18 estate, to collect upon accounts receivable which are part of the Property to obtain possession and  
19 collect any other part of the Property, and to defend himself from the action of others;

20          22.     The Receiver shall have no responsibility for filing federal and state income  
21 tax returns or federal or state payroll tax returns and shall not be responsible for paying any unpaid  
22 federal and state payroll taxes and expenses of the Borrower. The responsibility for such filings and  
23 payments lie exclusively with the Borrower and their agents, servants, employees and  
24 representatives;

25          23.     The Receiver shall not be obligated to upgrade the Property or make any  
26 improvements thereto, unless and until ordered to do so by the above entitled Court;

27          24.     The Receiver shall not be obligated to contribute personal funds in the  
28 performance of his duties hereunder;

1           25. Any security or other deposits which tenants have paid to the Borrower or its  
2 agents and which are not paid to the Receiver and over which the Receiver has no control, shall be  
3 obligations of the Borrower and may not be refunded by the Receiver without an order of the above  
4 entitled Court. Any other security or other deposits which tenants have paid or may pay to the  
5 Receiver, if otherwise refundable under the terms of their leases or agreements with the Receiver,  
6 shall be refundable by the Receiver in accordance with such leases or agreements;

7           26. The Receiver shall be forthwith authorized to list the Property for sale;

8           27. Any actions taken by the Receiver to sell the Property shall not constitute or  
9 create a representation or warranty by the Receiver as to any aspect of the sale thereof and any such  
10 sale shall be "as is," "where is,, "with all faults" and with no representations and/or warranties and  
11 shall be without risk or liability to the Receiver and/or the receivership estate;

12           28. The Receiver shall be authorized to negotiate for a sale of the Property and  
13 shall be authorized to prepare and negotiate a purchase and sale agreement ("PSA"), with respect to  
14 the sale of the Property. Any PSA executed by the Receiver in connection with the sale of Property  
15 shall provide, inter alia, that the sale of the Property is subject to the approval of the above-entitled  
16 Court. Any PSA shall be prepared, negotiated and ultimately agreed upon in a commercially  
17 reasonable manner;

18           29. The Receiver shall have the right, in his sole discretion, to accept, reject  
19 and/or make any counteroffers with respect to any offers made to purchase the Property prior to the  
20 negotiation and execution of the PSA;

21           30. The Receiver shall have the right to perform such acts as reasonably may be  
22 required to sell the Property and to execute all documents and instruments reasonably necessary  
23 related thereto to close any escrow established for the sale of the Property, and to transfer title to the  
24 Property to a buyer, as provided for in any PSA approved of by the above-entitled Court;

25           31. The Receiver shall file a motion to approve of the PSA negotiated for a  
26 purchase of the Property or, alternatively, any of the parties may file an application for instructions  
27 with the above-entitled Court seeking an order from the Court to approve of the Receiver entering  
28 into the PSA. The motion or application for instruction shall be served on counsel of record for the

1 parties in the above-entitled action. Any of the parties may object to any motion filed by the  
2 Receiver or any application for instructions filed by any of the parties seeking the approval of the  
3 above-entitled Court for any PSA negotiated by the Receiver, and the Court's powers to review the  
4 motion and any objections thereto include, but are not limited to, the PSA's commercial  
5 reasonableness and any payments from escrow;

6 32. The Receiver may proceed to close a sale of the Property pursuant to any  
7 PSA approved of by the above-entitled Court subject to the terms and conditions set forth in the  
8 PSA;

9 33. Any sale of the Property authorized by the PSA shall be free and clear of all  
10 monetary liens, encumbrances and interest, with any unsatisfied and unreleased liens to attach to the  
11 proceeds of sale;

12 34. The Receiver is authorized to pay out the proceeds of any sale of the Property  
13 authorized by the above-entitled Court pursuant to the PSA any unpaid real estate taxes and  
14 assessments, recordation fees, transfer taxes, closing costs and reimbursement of any costs of sale  
15 incurred in connection with the sale thereof and other expenses set forth in the PSA, and is further  
16 authorized to pay out of the sales proceeds at the close of escrow the outstanding obligations then  
17 due and owing by the Borrower to Mechanics Bank secured by the Property;

18 35. The net proceeds remaining from the sale of the Property after payments of  
19 the amounts set forth in section 34 above shall be held by the Receiver in a segregated interest-  
20 bearing account until further order of this Court; and

21 36. By closing escrow and taking title to the Property, the purchaser identified in  
22 the PSA acknowledges that: (i) the purchaser has no recourse against the Receiver (or his agents)  
23 for any claim or cause of action; and (ii) the purchaser's sole and only recourse is against  
24 purchaser's title insurance policy, if applicable, except as expressly permitted by any PSA approved  
25 of by the above-entitled Court. The above-entitled Court retains jurisdiction over any dispute that  
26 may arise involving Receiver with the sale of the Property pursuant to the terms of any PSA  
27 approved of by the above-entitled Court.

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IT IS FURTHER ORDERED that:

1. All Rents, security deposits, issues, income, profits, revenues, royalties, and lease payments of the Property which are received, or have been received, by the Borrower shall be turned over to the Receiver within five (5) days, and the Borrower shall simultaneously, upon said turnover, deliver to the Receiver written verification of the source of all said monies being turned over;

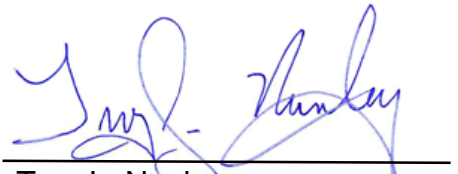
2. The Borrower, its agents, servants, employees or representatives, or any persons or entities acting under or in concert with Borrower, shall immediately turn over to the Receiver possession of all records, books of account, ledgers, and all documents and papers pertaining to the operation of the Property and the Rents or lease payments due therefor; and

3. Mechanics Bank and its officers, employees and agents shall have immediate access to the Property to enable them to view and inspect the Property for the purposes of appraisal.

IT IS FURTHER ORDERED that the Receiver is not authorized to take possession of any monies of the Borrower except for those which are the security deposits, Rents, issues, income, profits, revenues, royalties, storage unit rentals or lease payments of the Property described in the Deed of Trust.

IT IS FURTHER ORDERED that the requirement Mechanics Bank shall file an undertaking pursuant to Federal Rule of Civil Procedure 65 is hereby waived.

Dated: September 11, 2015

  
Troy L. Nunley  
United States District Judge