

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)**

PNC BANK, NATIONAL ASSOCIATION,	:	CASE NO. 3:12-cv-369
	:	
	:	
Plaintiff,	:	(Judge Walter Herbert Rice)
	:	(Magistrate Judge Michael R. Merz)
vs.	:	
	:	SUPPLEMENTAL ORDER
GATOR PIQUA PARTNERS, LLLP, <i>et al.</i>,	:	<u>APPOINTING RECEIVER</u>
	:	
	:	
Defendants.	:	

This matter is before the Court on the Motion of PNC Bank, National Association, successor to National City Bank (the “Plaintiff”), to Appoint Receiver (Doc #12) (the “Motion”) and the Decision and Entry Sustaining Plaintiff’s Motion to Appoint Receiver (Doc #12); Receiver Appointed For Specified Duties (Doc #14) (the “Order”). The Court finds that the receivership is sought for the preservation and/or sale of the real and personal property located at Piqua Plaza, 1923-1947 Covington Avenue, Piqua, Miami County, Ohio 45356 and more fully described in Exhibit A to this Order (the “Property”), and which is currently owned by Gator Piqua Partners, LLLP (the “Borrower”). The Court, having found upon good cause shown that the appointment of a receiver is necessary for the preservation and protection of the Property and the rights of the Plaintiff and all concerned, enters this Supplemental Order to further set forth the rights and responsibilities of the Receiver.

Therefore, the Court hereby ORDERS as follows:

1. CBRE, Inc., by and through Sue Walkenhorst (the “Receiver”) is hereby appointed as the Receiver for the Property including, but not limited to, fixtures attached thereto, books, records, accounting records, proceeds from any insurance, personal property, all choses in action related to the Property, and all causes of action related to the Property.

2. The Receiver shall file with the Clerk of this Court a bond in the amount of \$4,000.00, on the Receiver's pledge that she will discharge the duties of Receiver in this action and obey the orders of this Court. The bond shall be maintained in full force and effect during the course of the Receivership.

3. The appointment of the Receiver is authorized by Plaintiff's loan documents attached to the Complaint and federal law generally.

4. The Receiver shall have the authority to manage, maintain, preserve, and sell the Property until further order of the Court with full authority to take the actions described in Exhibit B to this Order.

5. The Receiver shall have the authority to collect all profits and revenues generated from the Property, and to pay all necessary expenses relating to the Property. The Receiver is entitled to borrow from the Plaintiff and the Plaintiff may lend to the Receiver (but the Receiver is not required to borrow and the Plaintiff is not required to lend) such amounts as Receiver may deem necessary and appropriate to manage and maintain the Property. The amounts lent by the Plaintiff shall be lent at the same interest rate and subject to the same terms that Plaintiff was lending to Borrower such that amounts lent by the Plaintiff to the Receiver shall be considered as if they were advances under the mortgage(s) held by the Plaintiff on the Property. Any amounts lent by the Plaintiff to the Receiver shall have the first and best priority (except for court costs and accruing real estate taxes "Costs/Taxes") over any and all liens, encumbrances and claims, whether of record or not, and same shall be repaid first, after Costs/Taxes, out of the sale proceeds from the sale of the Property pursuant to this Order.

6. The Receiver shall have the authority to preserve and care for and to sell the Property and to utilize the Property to preserve and maximize the value of the Property. The Receiver is authorized to retain Receiver's own brokerage division to list the Property for sale at a usual and customary rate.

7. The Receiver shall have the authority to maintain or purchase insurance from any agent or carrier, of any type reasonably necessary, on the Property, subject to maintaining adequate coverage

appropriately assigned to secured creditors and name them a loss payee thereof, or the Receiver may determine that insurance currently in place is sufficient.

8. The Receiver shall establish and maintain a bank account at the Plaintiff in the Receiver's name for its operations as Receiver in this matter. The Receiver shall keep a true and accurate account of any and all receipts and disbursements which he shall receive or make as Receiver with respect to the Property.

9. The Receiver is authorized to retain such contractors or other professionals, including retaining Receiver's own property management division to manage the property, at the usual and customary rate charged by same to maintain and/or preserve the Property.

10. The Receiver is authorized, but not required, to initiate, prosecute, defend, compromise, adjust, intervene in, or become party to such actions or proceedings in state or federal court as may in his opinion be necessary or proper for the protection, maintenance and preservation of the Property or carrying out the terms of this Order. The Receiver shall be held harmless (by virtue of the value of the Property) for any failure on the Receiver's part to initiate, prosecute, defend, compromise, adjust, intervene in, or become party to any such actions or proceedings. In carrying out his duties as set forth herein, the Receiver is entitled to act in the exercise of its own sound business judgment as it deems appropriate within its sole discretion. The Receiver shall not be liable for any action taken or not taken by it 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. The Borrower, through the value of the Property, shall indemnify, hold harmless, and defend the 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 him arising from or in any way connected to the performance of its duties as Receiver. No person or entity shall file suit against the Receiver, or take other action against the Receiver, without an order of this Court permitting the suit or action; provided,

however, that no prior court order is required to file a motion in this action to enforce the provisions of this Order or any other order of this Court in this action. The Receiver and its employees, agents, and attorneys shall have no personal liability in connection with any liabilities, obligations, liens, or amounts owed to any of Borrower's creditors because of its duties as Receiver. Nothing in this Order shall grant any rights to trade creditors or general unsecured creditors, whose rights shall be solely determined in accordance with this state's laws.

11. The Receiver is authorized to perform pursuant to the terms of any existing contracts executed by the Borrower and/or any guarantor of Borrower's obligations to the Plaintiff (collectively "Guarantor") in connection with the Property where the Receiver determines that such performance will preserve and maximize the value of the Property. To the extent that the Receiver uses equipment secured by any secured creditor, the Receiver may make adequate protection payments to such creditor to compensate such creditor for such use with respect to the Property.

12. The Receiver may take any other action available to him under federal law generally.

13. The Receiver shall be entitled to reasonable compensation to be paid from the Property for services rendered and reimbursement for expenses incurred which are related to the Receiver's duties, rights, obligations under this Order, future orders of the Court and applicable law, the administration, management, protection or liquidation of the Property, or the defense or prosecution of any claim or suit brought by or against the Receiver or by the Receiver against any person or entity.

14. The Receiver is authorized to employ (subject to the cost reimbursement procedures herein) such attorneys, managers, agents, employees, and servants in its judgment are advisable or necessary in the management, maintenance, control, or custody of the affairs of the Property. Receiver is authorized to retain independent legal counsel to represent the Receiver generally in the Receivership including, without limitation, in dealing with tenants, in reporting to and appearing before this court, and as necessary in dealing with the parties to the action. Legal fees and costs incurred by the Receiver in performance of its duties shall be as expense of the Property.

15. If the Receiver determines, after having given Plaintiff the prior written opportunity to provide comment, that an offer to purchase the Property should be accepted, Receiver shall file a motion with this Court for approval of the proposed offer and shall give written notice to Plaintiff and all parties. All parties shall have the opportunity to respond to Receiver's motion in accordance with the Local Rules of Practice for the U.S. District Court for the Southern District of Ohio. Any party that fails to timely respond to a sale motion shall be deemed to consent to the sale on the terms set forth in the motion. The Receiver, in consultation with the Plaintiff, may hire one or more realtors or auctioneers to sell the Property and may sell the Property at one or more public or private sales on notice to the parties to this action and such other notice as the Receiver deems appropriate.

16. The Receiver shall file with the Court and serve on all parties a receiver report within ninety days after his appointment and a report every ninety days thereafter summarizing its expenses and revenues specifically itemizing all of its fee charges and the fee charges of its counsel. Unless an objection is filed within twenty one (21) days of the report's filing, the report shall be deemed approved by all parties and this Court and the Receiver is then authorized to pay its counsel.

17. The Borrower and Guarantor, and their respective agents, employees, representatives, and creditors are hereby prohibited from taking any act interfering in any way with the acts of the Receiver, and from in any way, manner, or means, wasting, disposing of, transferring, selling, assigning, or pledging the Property; and, upon request of the Receiver or his agents, the foregoing persons and entities shall make available to the Receiver or his agents, all of the books, records, computer hardware and software (including computer programs, data bases, disks and all other mediums), keys (included master keys), security and access codes, and personal property related to or necessary for the operation of the Property, shall disclose the nature, amount, and location of any and all assets, books, computer hardware and software (including computer programs, data bases, disks and all other mediums), records, keys, security and access codes, and personal property that are in any way, as determined by the Receiver in the

exercise of his reasonable discretion, connected with Property, and shall turn over all of such property, computer hardware and software (including computer programs, data bases, disks and all other mediums), keys, security and access codes, and personal property to the Receiver forthwith. Nothing in this paragraph shall be deemed to require waiver of any attorney-client or attorney work product privilege.

18. The Borrower and Guarantor, and their respective agents, employees, representatives, shall deliver to the Receiver the following: operating reports (including income statements, balance sheets, and cash flow reports) for the years 2010, 2011 and year-to-date 2012; current accounts payable and accounts receiver aging reports; a history of insurance claims for the past three years; on-site payroll records; all existing contracts, and all leases.

19. The Borrower and all officers, agents, employees, and attorneys thereof, and all other persons in active concert with any of them, shall at all times act in good faith with respect to the Receiver and the receivership established by this Order, and to that end the Borrower and all officers, agents, employees, and attorneys thereof, and all other persons in active concert with any of them are prohibited from engaging in any act that interrupts, interferes with or disturbs the Receiver's operation and maintenance of the Property.

20. The Receiver shall allow, at such times as are advisable and upon notice he deems acceptable, the Plaintiff and its employees, to inspect and review the operations of the Receiver and the Property.

21. By submitting this Order, the Plaintiff does not waive any rights it has to file and prosecute any claim in this action against any other party herein. The Plaintiff retains the right to hereafter request the Court remove the Receiver, appoint a different Receiver, or modify the terms of the Receivership.

22. The terms of this Order shall continue in full force and effect unless and until there is a further order of this Court.

23. The Receiver shall not expend more than \$5,000.00 on any one item without the written consent of the Plaintiff first obtained.

24. In the event the Receivership operates at a surplus, the Receiver may disburse funds to Plaintiff on the obligations due it from Borrower and/or Guarantor.

25. This Order and its terms shall be considered compliant with the Local Rules of Practice for the U.S. District Court for the Southern District of Ohio and this Order shall take precedence in the event of a conflict between them.


UNITED STATES DISTRICT JUDGE

Submitted by:

/s/ Scott K. Jones

Scott K. Jones (0069859)

Trial Attorney for Plaintiff

PNC Bank, National Association

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EXHIBIT A

[LEGAL DESCRIPTION]

SITUATED IN THE COUNTY OF MIAMI, IN THE STATE OF OHIO AND IN THE TOWNSHIP OF WASHINGTON IN SECTION 24, TOWN 8, RANGE 5 AND BOUNDED AND DESCRIBED AS FOLLOWS:

BEING LOTS NUMBERED ONE (1) AND TWO (2) IN PIQUA PLAZA DEVELOPMENT, AS THE SAME ARE NUMBERED AND DELINEATED UPON THE RECORDED PLAT BOOK 13, PAGE 78, RECORDER'S OFFICE, MIAMI COUNTY, OHIO.

EXHIBIT B

Responsibility of Receiver. The Receiver has the following authority and powers and agrees to assume all reasonable or authorized expenses in connection therewith.

(a) To enter the premises commonly known as Piqua Plaza, 1923-1947 Covington Avenue, Piqua, Miami County, Ohio 45356 in order to take possession of the Property.

(b) To take possession of all rents held by the Borrower produced by the Property.

(c) To demand, collect and hold all accounts receivable of the Borrower and all proceeds thereof related to the Property.

(d) To present for payment any checks, money orders, negotiable instruments or commercial paper by means of which Borrower is compensated for purposes related to the Property, such proceeds to be deposited in the account described in Subparagraph (e), and thereafter used and maintained as elsewhere provided herein.

(e) To open and utilize bank accounts for receivership funds. All funds of the Receivership in the possession of the Receiver shall be held in trust and shall be deposited by the Receiver in a special bank account maintained by the Receiver. Such funds shall not be commingled with other funds collected by the Receiver for its own account or as agent for others, or with the Receiver's own funds and shall remain on deposit until disbursed in accordance with the terms of the Order Appointing Receiver. The Receiver shall furnish the Plaintiff with true and complete copies of all statements issued by the bank with respect to such bank account regularly after receipt by the Receiver.

(f) To contact each of the accounts receivable debtors of Borrower related to the Property in order to instruct them to send any further payments to the Receiver.

(g) To determine the proper insurance coverage for the Property and cause such insurance to be obtained and/or maintained, at the expense of the Receivership, in such amounts and through such carriers as Plaintiff shall approve.

(h) To compromise debts of Borrower related to the Property, and to do all things and to incur the risks and obligations of similar businesses and enterprises; provided however, that no such risk or obligation shall be personal to the Receiver, but shall be the risk or obligation of the Receivership estate.

(i) To execute and prepare all documents and to perform all acts, either in the name of the Borrower or in the Receiver's own name, as the circumstances may require, which are necessary or incidental to preserving, protecting, managing, and controlling the Property.

(j) To employ or engage providers of bookkeeping or accounting services which the Receiver deems necessary to assist him in the discharge of his duties;

(k) To pay and discharge out of the funds coming into his hands all the expenses of the Receivership and the costs and expenses of performing the functions described in subparagraphs (a) through (j);

(l) To maintain, in a manner consistent with customary receivership practice, a system of accounting to which shall be entered fully and accurately, each and every financial transaction with respect to the operation of the Property.

(m) To expend funds to purchase merchandise, materials, supplies and services as the Receiver deems necessary and advisable to assist her/him in performing her/his duties and to pay therefore the ordinary and usual rates and prices out of the funds that may come into the possession of the Receiver.

(n) To borrow such funds from the Plaintiff as may be necessary to satisfy the costs and expenses of the Receivership, to the extent that cash, or cash derived from the assets of which the Receiver takes control, is insufficient to satisfy such costs and expenses. All sums the Receiver may borrow pursuant to this paragraph shall be deemed advances to protect the Property of which the Receiver takes control. The Receiver is further authorized to issue and execute such documents as may be necessary to evidence and secure the obligation to repay the advances.

(o) All funds coming into possession of the Receiver and not expended for any of the purposes herein authorized shall be held for payment to the Borrower's creditors, in order of their priority, including any past or future awards to the Plaintiff for costs and attorneys' fees, subject to such orders as this Court may hereinafter issue as to the disposition of such funds.

(p) To keep the Plaintiff informed of the financial status and physical condition of the Property and other items that the Plaintiff should reasonably be made aware of.

(r) To file and prosecute ad valorem tax and valuation appeals, to assume prosecution of any pending appeals, and to engage any professionals needed to prosecute such appeals.

(s) To generally do such other things as may be necessary or incidental to the foregoing specific powers, directions and general authorities and to take actions relating to the Property beyond the scope contemplated by the provisions set forth above, provided the Receiver obtains prior approval of this Court for any actions beyond the scope contemplated herein.

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