

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

URBAN DEVELOPMENT FUND II, LLC,  
CAPMARK FINANCE INC. and SPG CDE  
SUBFUND A LLC,

Lenders,

vs.

NAVY YARD AT NOISETTE, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-10-3444

ORDER APPOINTING RECEIVER

2009 NOV -2 PM 4:10  
JULIE J. ARMSTRONG  
CLERK OF COURT

FILED

This matter came before the Court for a hearing upon the Motion for Appointment of Receiver to manage the property of the Borrower, Navy Yard at Noisette, LLC, a South Carolina limited liability company ("Borrower"). The Plaintiffs, Urban Development Fund II, LLC, Capmark Finance Inc. and SPG CDE Subfund A LLC, filed an action for foreclosure and appointment of receiver in this Court on June 2, 2009 and also filed a Notice of Hearing, Lis Pendens and Motion for Appointment of a Receiver for the subject property, which is a multi-use property being operated as Navy Yard at Noisette located in North Charleston, Charleston County, South Carolina 29405.

Upon reviewing the verified pleadings, the parties' Stipulations, the consent of the Borrower, the applicable law and hearing statements and representations of counsel for the parties, I find that the motion is proper and that a receiver should be appointed.

**FINDINGS OF FACT**

1. Borrower is the owner of that certain real and personal property which is the subject of this action, generally described as Navy Yard at Noisette, located in Charleston County, South Carolina, and more particularly described in the Complaint filed in this action.

2. Lenders are the holders of: (a) that certain Promissory Note A, dated as of August 1, 2006, executed by the Borrower and payable to Urban Development Fund II, LLC (“Urban”) in the original principal amount of Six Million Eight Hundred Seventy Four Thousand and No/100 Dollars (\$6,874,000.00) (“Note A”); (b) that certain Promissory Note B, dated as of August 1, 2006, executed by the Borrower and payable to Capmark Finance Inc. (“Capmark”) in the original principal amount of Four Million and No/100 Dollars (\$4,000,000.00) (“Note B”); and (c) that certain Promissory Note C, dated as of August 1, 2006, executed by the Borrower and payable to SPG CDE Subfund A LLC (“SPG”; Urban, Capmark and SPG collectively, hereinafter “Lenders”) in the original principal amount of Twelve Million Nine Hundred One Thousand and No/100 Dollars (\$12,901,000.00) (“Note C”; Note A, Note B and Note C, collectively, hereinafter the “Notes”). A copy of the Notes are attached to the Complaint in this action and marked as Exhibit “A” thereto.

3. To secure the obligation of Borrower as represented by the Notes, Borrower executed and delivered to Lenders a certain Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing (the "Mortgage"), dated August 1, 2006, and filed and recorded with the Charleston County, South Carolina Register of Deeds on August 1, 2006, in Book 593, beginning at page 212, wherein and whereby Borrower mortgaged certain real property specifically described in the Mortgage (the “Mortgaged Property”). A copy of the Mortgage is attached to the Complaint in this action and marked as Exhibit “C” thereto. Pursuant to the Mortgage, to further secure the indebtedness evidenced by the Notes, Borrower conveyed to Lenders all of its right, title and interest in and to the following:

“All leases, subleases, licenses and other agreements granting others the right to use or occupy all or part of the [Mortgaged] Property together with all restatements, renewals, extensions, amendments and supplements thereto (“Leases”), now existing or hereafter entered into, and whether entered before or after the filing by or against Borrower of any petition for

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relief under the Bankruptcy Code, and all of Borrower's right, title and interest in the Leases, including, without limitation (i) all guarantees, letters of credit and any other credit support given by any tenant or guarantor in connection therewith ("Lease Guarantees"), (ii) all cash, notes, or security deposited thereunder to secure the performance by the tenants of their obligations thereunder "Tenant Security Deposits"), (iii) all claims and rights to the payment of damages and other claims arising from any rejection by a tenant of its Lease under the Bankruptcy Code ("Bankruptcy Claims"), (iv) all of the landlord's rights in casualty or condemnation proceeds of a tenant in respect of the leased premises ("Tenant Claims"), (v) all rents, ground rents, additional rents, revenues, termination and similar payments, issues and profits (including oil and gas or other mineral royalties and bonuses) from the Property (collectively with the Lease Guaranties, Tenant Security Deposits, Bankruptcy Claims and Tenant Claims, "Rents"), whether paid or accruing before or after the filing or against Borrower of any petition for relief under the Bankruptcy Code, (vi) all proceeds or streams of payment from the sale or other disposition of the Leases or disposition of any Rents, and (vii) the right to receive and apply the Rents to the payment of the Debt and to do all other things which Borrower or a lessor is or may become entitled to do under the Leases or with respect to the Rents."

4. To further memorialize terms and conditions of the Loan and the parties' rights, duties and obligations, Borrower, Navy Yard, and the Lenders executed that certain Loan Agreement dated as of August 1, 2006 (the "Loan Agreement"). A copy of the Loan Agreement is attached to the Complaint in this action and marked as Exhibit "B" thereto.

5. The Lenders are the present owners and holders of the Notes, the Mortgage, the Loan Agreement, all other documents evidencing or securing the loan (collectively, hereinafter the "Loan Documents"), and the indebtedness represented and secured thereby.

6. The Notes and Mortgage are currently in default under the terms thereof for Borrower's failure to pay the entire remaining indebtedness due under the Notes along with all other amounts due and outstanding under the Loan Documents on or before November 1, 2008, the Maturity Date, as defined in the Loan Agreement. Such failure to make payments by the Borrower is a breach of the terms and conditions of the Notes, the Mortgage and the Loan Agreement. The default automatically revokes Borrower's license to collect the rents and revenues generated by the Mortgaged Property and entitles the Lenders to seek the appointment of a receiver to manage and operate the Mortgaged Property. Lenders are entitled to have their

interests in the Mortgaged Property protected through the appointment of an appropriate receiver to manage the Mortgaged Property and collect the Rents.

7. Anchor Commercial, LLC (“Anchor”) is experienced in handling financial matters in fiduciary capacities, and is a fit and proper company to act as receiver herein. Anchor holds no interest which would interfere with the proper performance of its fiduciary duties as a receiver in this case and is willing to so serve.

### **CONCLUSIONS OF LAW**

1. The foregoing Findings of Fact are denominated Conclusions of Law to the extent that they constitute the same.

2. The Court concludes that the Lenders are entitled to the appointment of a receiver and that the appointment of a receiver for the Mortgaged Property during the pendency of this action is appropriate under the circumstances of this case.

NOW, THEREFORE, based upon the foregoing findings of fact and the conclusions of law, IT IS THEREFORE ORDERED that:

A. Anchor be and is hereby appointed receiver (hereinafter “Receiver”) of the Mortgaged Property, subject to the continuing jurisdiction of this Court.

B. Receiver is hereby authorized and directed to collect all Rents and profits derived from operations of the Mortgaged Property, for the benefit of the Lenders and Borrower. Receiver shall further have the power to present for payment any check, money order, credit card account, or other forms of payment made payable to the Borrower that constitutes rents, income and/or profits of the Mortgaged Property. The Receiver shall also have the power to endorse the same and collect the proceeds thereof for the benefit of the receivership estate.

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C. Receiver shall further have the full authority to take possession of the Mortgaged Property, either through itself or through a management company that it deems qualified in the exercise of its business judgment, and Borrower and any of its agents, management and management companies (including, but not limited to The Noisette Company), shall immediately upon request of Receiver deliver possession to the Mortgaged Property, and all improvements made on the Mortgaged Property or with respect thereto, and all Leases, Rents, books, records, bank accounts, check books, check registers, passbooks, funds, rent rolls, delinquency lists, contact lists, keys to occupied and vacant buildings, contacts for occupied buildings and tenants, site plans, building plans, floor plans, environmental reports, development agreements with the City of North Charleston and any other entity, any correspondence with the City of North Charleston about anything related to the Mortgaged Property, permits, plans, future plans, layouts for the Mortgaged Property, correspondence as it relates to the Port of Charleston and its expansion plans, correspondence relating to any railroad or rail provider, correspondence and agreements with any utility provider, any correspondence relating to the tax increment financing agreement with the City of North Charleston, correspondence and memoranda related to any pending leases or sales contracts related to the Mortgaged Property, correspondence and memoranda related to any pending or planned construction or infrastructure projects, copies of all service/maintenance contracts, copies of any correspondence related to any contractual or other obligations related to the property, revenues, and all other personal property related to the management of the Mortgaged Property. Additionally, Borrower is hereby directed to render to the Receiver and Lenders promptly, but in any event within ten (10) business days after the date of this Order, an itemization of all unpaid bills and other amounts due and payable relating to the Mortgaged Property, together with all bills, invoices and other writings evidencing or relating

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thereto, which unpaid bills and other amounts due shall remain the sole obligation and responsibility of Borrower and/or Borrower's management company and/or such other entity that incurred any such obligation. Nothing herein shall obligate the Receiver to utilize any Rents hereafter collected or remitted to it to satisfy or pay any existing liabilities incurred by Borrower and/or Borrower's management company and/or such other entity that incurred any such obligation arising out of the Mortgaged Property or otherwise. Notwithstanding, the Receiver may, in the exercise of its discretion and with the consent of the Lenders and without any obligation, pay any critical vendor of the Mortgaged Property.

D. Receiver shall have and may exercise all rights of Borrower in and to the Mortgaged Property under any Lease, rental agreement, occupancy agreement, operating agreement or other agreement affecting or relating to any portion of the Mortgaged Property. Receiver may file suit in its own name, in the name of Borrower, or both in connection with the operation of the Mortgaged Property.

E. From and after the date of this Order and until the receivership estate is dissolved in accordance with the terms hereof or by further order of this Court, except as specified herein the Borrower is hereby restrained from disposing of, transferring, conveying, or otherwise encumbering all or any portion of the Mortgaged Property; or any other property, including, but not limited to, books, files, records, statements, accounts, cash, funds, bank accounts, check books, check registers, passbooks and any other relevant written material evidencing or arising from the banking, borrowing or investment relations between Borrower and any other person or entity. Borrower shall have reasonable access to the books and records of the Mortgaged Property and those kept and maintained by the Receiver related to the Mortgaged Property. Notwithstanding the foregoing or any other provision in this Order to the contrary, upon receipt

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of the written consent of the Lenders the Borrower may convey any of the Mortgaged Property and is authorized to convey such without any further authorization by the Court upon receipt of written approval by the Lenders.

F. Borrower is hereby further ordered and directed to immediately convey and deliver to Receiver all cash, funds, bank accounts and assets of any kind which have arisen by virtue of rents, revenues or other receipts from the Mortgaged Property which are in the possession of the Borrower or its servants, agents or employees or affiliates, including, without limitation, any Rents, profits and revenues previously received by Borrower and not forwarded to the Lenders.

G. Borrower is ordered to cooperate with Receiver and to sign such legal documents as may be legally necessary and to furnish such records and other items or articles as set forth herein or as Receiver may otherwise require which relate to the Mortgaged Property and which are in Borrower's possession, custody, or control.

H. Receiver is authorized and directed to pay all customary and necessary expenses hereinafter incurred in the ordinary course of business of managing and operating the Mortgaged Property in the exercise of its reasonable business discretion. However, nothing herein shall obligate or compel the Receiver to pay any existing indebtedness of the Borrower or others arising out of the Mortgaged Property or otherwise incurred by the Borrower or any management company or affiliate working with the Borrower arising out of the Mortgaged Property.

I. Receiver shall remit all excess proceeds of collected Rents and other operating revenues to the Lenders monthly for credit against the outstanding balance of the indebtedness owed under the Notes, accompanied by an accounting of all such rents, profits and operating revenues collected and disbursements made therefrom. Any funds received by the Lenders from

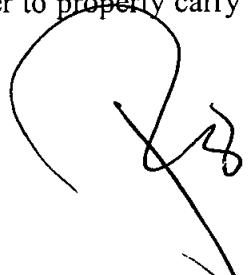
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Receiver pursuant to this paragraph shall be applied by the Lenders as is authorized by the Notes, Mortgage or Assignment of Leases.

J. The Receiver shall be named as an additional insured party on existing liability and property damage insurance policies on the Mortgaged Property and if needed, is authorized to obtain customary insurance coverage for the Mortgaged Property, as a expense of the receivership. As may become necessary the Receiver is further authorized, ordered and directed, on behalf of the receivership estate, to procure or maintain, at the expense of the receivership estate, public liability insurance, worker's compensation insurance and fire and extended coverage insurance or any other appropriate insurance for the protection of Receiver, the owner of the Mortgaged Property, the Lenders and any other mortgage creditors who are parties Borrower in the within action, as their respective interests may appear.

K. Receiver shall be entitled to compensation for its property management services rendered pursuant to and in accordance with this Order in the amount of the greater of \$6,500.00 per month or 7.5% of the monthly gross collections of the Rents or such other amounts as the Court may determine by further order of the Court. In calculating the Receiver's compensation, the Receiver's percentage fee (7.5%) shall not include the proceeds from the sale of any portion of the Mortgaged Property, unless the Lenders consent to the payment of some commission or additional compensation to the Receiver arising out of any such sale(s). The Receiver shall not enter into any new leases or renewals or extensions of existing leases for the Mortgaged Property without the consent of Lenders or further order of the Court. Receiver shall file with this Court a bond in the amount of \$ 175,000 to secure the performance under this Order.

L. Receiver may apply to this Court for further and other instructions and for such further power as may be necessary to enable the Receiver to properly carry out the terms of this

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Order and fulfill its duties as Receiver. Receiver shall have the power to institute, prosecute, or defend suits or actions of law or in equity relating to the Mortgaged Property under said receivership and is authorized, empowered, and directed to employ such assistants, servants, agents, attorneys, accountants, other professionals, managing agents, leasing agents and any other persons, firms or corporations as it deems necessary and proper to assist it in diligently executing the duties imposed on it by this Order, relative to renting, managing, operating, insuring, maintaining, preserving, protecting and developing the Mortgaged Property in its possession or under its care and control as such Receiver, on such terms and conditions as it deems just and beneficial to the performance of the trust of its office; Receiver is further authorized to pay the reasonable value of the services rendered by such persons from the funds hereinafter received by it and in its possession as such Receiver.

K. In accordance with the preceding paragraph the Court approves the Receiver's retention of The Noisette Company for the next four (4) weeks to provide assistance with the management transition of the Mortgaged Property, including but not limited to assisting in connection with the matters set forth in paragraph C herein, and to assist in the facilitation of the closing of any existing or future contracts for the sale of any portion of the Mortgaged Property. The Noisette Company shall be compensated by the payment of five thousand and no/100 dollars (\$5,000.00) per week for each of the four (4) weeks during this transition period. In the exercise of the Receiver's discretion and with the written consent of the Lenders, this period may be extended without further Court authorization. Additionally, neither the Borrower nor The Noisette Company are entitled the receive any of the proceeds from the sale of any portion of the Mortgaged Property. Notwithstanding, the Lenders, while having no such obligation, may

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consent in writing to the payment of some portion of such closing proceeds to the Borrower or The Noisette Company.

M. Receiver is further ordered and authorized to operate and manage the Mortgaged Property and to otherwise protect the Mortgaged Property effectively in accordance with the terms hereof. Additionally, when necessary Receiver is hereby authorized to accept cash advances made by the Lenders or borrow funds from any source Receiver deems appropriate for its use in operating and preserving the Mortgaged Property. Any advances made by the Lenders pursuant to this paragraph shall be secured by the Mortgage pursuant to the terms thereof. Nothing herein should be construed to compel the Lenders to make any advances.

N. The Receiver shall have no liability to any party for any claims, actions or causes of action arising out of or relating to events or circumstances occurring prior to the appointment of the Receiver. This protection of the Receiver from liability shall include, but is not limited to, any liability for performance of services rendered by third parties on behalf of Borrower, and any liability from performance of services rendered by third parties of behalf of Borrower, and any liability to which Borrower is currently or may ultimately be exposed under any applicable laws pertaining to the ownership and use of the Mortgaged Property and operation of the Borrower's business.

O. Upon request by Lenders, the Receiver is authorized to list or otherwise advertise for sale and to solicit offers to purchase the Mortgaged Property and to provide promptly to Lenders and Borrower with copies of all such offers. Lenders shall be permitted, from time to time, to contact any party or parties which may have an interest in purchasing the Mortgaged Property or which have made any proposal to purchase the Mortgaged Property and to discuss and negotiate the terms of such offer provided that Lenders shall report the nature and content of

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such discussions and negotiations to the Receiver periodically, and no such contact, discussion or negotiation with such party or parties shall render or cause or shall be deemed to render or cause Lenders to be a mortgagee in possession of the Mortgaged Property or otherwise subject Lenders to any liability under the Loan Documents or otherwise. The Receiver is hereby authorized and directed, without further order of this Court, to sell the Mortgaged Property, on such terms as are acceptable and approved in writing prior to such sale by Lenders and Borrower, by way of public or private sale or other disposition free and clear of all security interests, liens, claims and other interests with all valid security interests and liens to attach to the proceeds of such sale(s) in the order of priority as presently exists on the Mortgaged Property.

P. Receiver shall prepare and file with the Court, and forward to counsel for the parties, within forty-five (45) days after the date of this Order (which date may be extended by the Court upon good cause shown), a full and detailed report (the "First Accounting") regarding the Mortgaged Property identified herein, including values and income generated therefrom.

Q. Thereafter, Receiver shall file with the Court, and forward to counsel for the parties, every thirty (30) days an accounting of collections and disbursements and compensation received by it ("Periodic Accounting"). These Periodic Accounting(s) shall be filed until further order of the Court and a final accounting shall be prepared and filed with the Court at such time as the Court directs, in connection with the sale of the Mortgaged Property, or at such other time as the Court deems appropriate, and prior to obtaining a discharge as receiver. The initial Periodic Accounting required pursuant to this paragraph shall be due thirty (30) days from the due date of the First Accounting.

R. Notwithstanding any other provision hereof, the Receiver shall be under no obligation to complete or file tax returns on behalf of Borrower for income or other taxes arising

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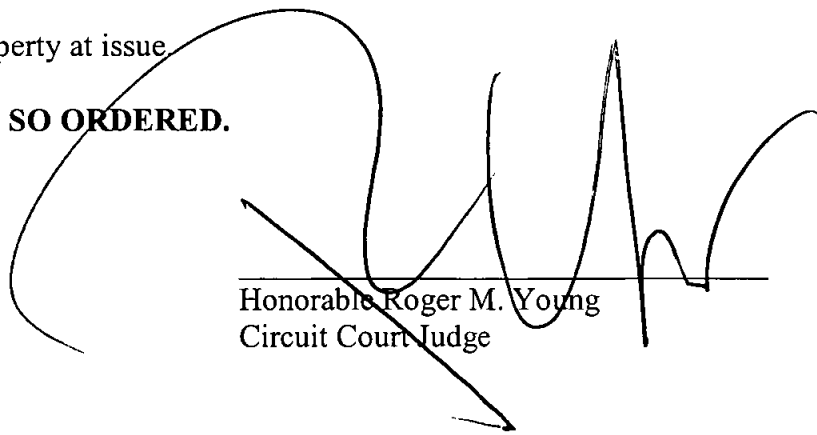
before the date of this Order. For the duration of its appointment, Receiver shall comply with all applicable laws related to tax reporting requirements. The Receiver shall furnish the Borrower with such accounts, books and records within the Receiver's custody and control as may be reasonably necessary in order for Borrower to complete and file tax returns.

S. At the conclusion of this action, Receiver shall file with the Clerk of Court and forward to counsel for the parties, an accounting, certified to be accurate, reflecting all receipts and all disbursements made during the accounting period.

T. The powers herein granted to Receiver shall be in addition to, and not in lieu of, all powers vested in Receiver by applicable law or rule of the Court. Receiver will be responsible only to the Court for the performance of its duties as Receiver, and neither Lenders nor Borrower shall delay, hinder or obstruct Receiver in the performance of his duties.

U. Jurisdiction over Receiver and the Mortgaged Property shall remain with the Court for the issuance of such further orders and further proceedings as are deemed just and proper and in the best interest of the parties and the management, maintenance and protection of the Mortgaged Property at issue.

**AND IT IS SO ORDERED.**

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Honorable Roger M. Young  
Circuit Court Judge

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