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7
8 SUPERIOR COURT, STATE OF CALIFORNIA

9 COUNTY OF SAN MATEO

10
11 WACHOVIA BANK, NATIONAL
ASSOCIATION,

12 Plaintiff,

13 v.

14 OLD YORK FINANCIAL SERVICES LLC;
15 1909 COOLEY, LLC; 1703 WOODLAND,
LLC; 2025 EUCLID, LLC; 1846 BAYSHORE,
16 LLC; 1820 BAYSHORE, LLC; 1827 CLARKE,
LLC; 1787 WOODLAND, LLC; 1821
17 CLARKE, LLC; 1785 WOODLAND, LLC;
1805 CLARKE, LLC; 655 SCOFIELD, LLC;
18 2040 EUCLID, LLC; 375 DONOHUE, LLC;
2032 EUCLID, LLC; 1820 CLARKE, LLC;
19 1908 CAPITOL, LLC; 1902 CAPITOL, LLC;
1955 MANHATTAN, LLC; 2036 EUCLID,
20 LLC; 1643 WOODLAND, LLC; 1835
WOODLAND, LLC; 1839 WOODLAND, LLC;
21 1974 EUCLID, LLC; 1995 MANHATTAN,
LLC; 530 OCONNOR, LLC; 640 CIRCLE,
22 LLC; 1916 CAPITOL, LLC; 466 OKEEFE,
LLC; 1779 WOODLAND, LLC; 1920/1928
23 COOLEY, LLC; 355 OKEEFE, LLC; 402/430
OKEEFE, LLC; 2012 EUCLID/501 OCONNOR,
24 LLC; 2001 MANHATTAN, LLC; 1941
COOLEY, LLC; 395/435 OKEEFE, LLC; 685
25 SCOFIELD AVENUE, LLC; 1943 CAPITOL,
LLC; 201 OKEEFE, LLC; 5 NEWELL, LLC; 360
26 OKEEFE, LLC; 380 OKEEFE, LLC; 1920
CAPITOL, LLC; 1962 EUCLID, LLC; 1957
27 COOLEY, LLC; 1934 CAPITOL, LLC; 504
OCONNOR, LLC; 1994 EUCLID, LLC; 2033
28 MANHATTAN, LLC; 1879 WOODLAND,

CASE NO. CIV 487665

**[PROPOSED] EX PARTE ORDER
APPOINTING DAVID D. WALD TO ACT
AS RECEIVER; ORDERS TO SHOW
CAUSE AND TEMPORARY RESTRAINING
ORDER—RENTS, ISSUES AND PROFITS**

Hearing Date: September 9, 2009
Hearing Time: 2:00 p.m.
Hearing Place: Dept. 11

1 LLC; TINNEY PROPERTIES, LLC; 1848
2 CLARKE, LLC; 340 OKEEFE, LLC; 1991
3 MANHATTAN, LLC; 1854 BAYSHORE, LLC;
4 445 OKEEFE, LLC; 300 OKEEFE, LLC; 438
5 DONOHOE, LLC; 320 OKEEFE, LLC; 2031
6 EUCLID, LLC; 15 NEWELL, LLC; 25
7 NEWELL, LLC; 1851 CLARKE, LLC; 450
8 OKEEFE, LLC; 35 NEWELL, LLC; 45/55
9 NEWELL, LLC; 1837 CLARKE, LLC; 1488
10 BAYSHORE, LLC; 2061 EUCLID, LLC; 1720
11 BAYSHORE, LLC; 245 OKEEFE, LLC; 1
12 NEWELL, LLC; DAVIS HOLDING LLC; 1669
13 WOODLAND, LLC; 2021 EUCLID, LLC; 1965
14 MANHATTAN, LLC; 1823 WOODLAND,
15 LLC; 1875 WOODLAND, LLC; 30 NEWELL,
16 LLC; 1721 WOODLAND, LLC; 1807
17 WOODLAND, LLC; 1986 EUCLID, LLC;
18 TINNEY HOLDINGS, LLC; 1871
19 WOODLAND, LLC; 2020 DUMBARTON,
20 LLC; 1859 WOODLAND, LLC; 1851
21 WOODLAND, LLC; 1609 WOODLAND, LLC;
22 1949 COOLEY, LLC; 1838 BAYSHORE, LLC;
23 1842 BAYSHORE, LLC; 420 OKEEFE, LLC;
24 2043 EUCLID, LLC; 2044 EUCLID, LLC; 1919
25 MANHATTAN, LLC; 1920 EUCLID, LLC;
26 TINNEY INVESTMENTS, LLC; 1901
27 COOLEY, LLC; 652 SCOFIELD, LLC; 1908
28 COOLEY, LLC; 1909 CAPITOL, LLC, each a
Delaware limited liability company; and DOES 1
through 10, inclusive,

Defendants.

19 The Application For (1) Ex Parte Appointment Of Receiver And Temporary Restraining
20 Order And (2) Orders To Show Cause Re Preliminary Injunction And Confirmation Of Appointment
21 Of Receiver of Wachovia Bank, National Association ("Plaintiff") came on for ex parte hearing on
22 Wednesday, September 9, 2009, in the above-entitled Court, the Honorable John L. Grandsaert
23 presiding.

24 The Court, having read and considered the moving papers, pleadings and evidence in this
25 matter, orders as follows:

26 **ORDER TO SHOW CAUSE RE CONFIRMATION OF RECEIVER AND RE**
27 **PRELIMINARY INJUNCTION**

1 1. To defendants named in the caption above and incorporated herein by reference
2 (“Defendants”):

3 2. Pursuant to California Rule of Court 3.1176(a), **THE COURT ORDERS** the
4 Defendants to appear in this Court in Department 11 on 9/30/09 at 9:00 A.M. to
5 give any legal reason

6 a. Why a receiver should not be confirmed to:

7 take possession and continue in exclusive possession of each and all of the “Premises” and all
8 “Improvements” thereon (each as respectively defined in each Deed of Trust, Assignment Of Leases,
9 Security Agreement And Fixture Filing recorded in the Official Records Of San Mateo County and
10 listed on Exhibit “A” attached hereto and incorporated herein by reference thereto with the same
11 force and effect as if set forth in full hereon and commonly known as: 1703 &1707 Woodland Ave,
12 1785 Woodland Ave, 1787 Woodland Ave, 1805 Clarke Ave, 1820 Clarke Ave, 1820 & 1830 West
13 Bayshore Road, 1821 Clarke Ave, 1827 Clarke Ave, 1846 W. Bayshore St., 1902 Capitol Ave, 1908
14 Capitol Ave, 1909 Cooley Ave [and 1911 Cooley Ave], 1916 & 1918 Capitol Ave, 1955 Manhattan
15 Ave, 1643 Woodland Ave, 1974 Euclid Ave, 1995 Manhattan Ave, 2032 Euclid Ave, 2025 Euclid
16 Ave, 2040/2042 Euclid Ave, 375 Donohoe St., 530 O'Connor St., 640 Circle Drive, 655 Scofield
17 Ave, 1835-1837 Woodland Ave, 1839-1841 Woodland Ave, 2036 Euclid Ave, 1669 Woodland Ave,
18 466 E. O'Keefe St, 1777 & 1779 Woodland Ave, 1920 & 1928 Cooley Ave, 355 E. O'Keefe St, 402
19 & 430 E. O'Keefe St, 501 O'Connor St. & , 2012 Euclid Ave, 2001 Manhattan Ave, 1941 Cooley
20 Ave, 395 E. O'Keefe St &, 435 O'Keefe St, 685 Scofield Ave, 1939-1943 Capitol Ave, 201 E.
21 O'Keefe St, 5 Newell Road, 360 E. O'Keefe St, 380 E. O'Keefe St, 1920 Capitol Ave, 1962 Euclid
22 Ave, 1957 Cooley Ave, 1934 Capitol Ave, 504 O'Connor St, 1994 Euclid Ave, 2033 Manhattan Ave,
23 340 E. O'Keefe, 1991 Manhattan Ave, 1854 W. Bayshore Rd, 445 E. O'Keefe St, 300 E. O'Keefe St,
24 438 Donohoe St, 320 E. O'Keefe St, 2031 Euclid Ave, 15 Newell Road, 25 Newell Road, 1851
25 Clarke Ave, 450 E. O'Keefe St, 35 Newell Road, 45 Newell Road &, 55 Newell Road, 1837 Clarke
26 Ave, 1488 W. Bayshore Rd, 2061 Euclid Ave, 1720 W. Bayshore Rd, 245 E. O'Keefe St, 1-8 Newell
27 Ct, 1523 Woodland Ave, 2021 Euclid Avenue, 30/40 Newell Road, 1875 Woodland Avenue, 1823-
28 1825 Woodland Avenue, 1965 Manhattan Avenue, Intentionally Omitted, 1721 Woodland Avenue,

1 1807 Woodland Avenue, 1986 Euclid Avenue, 2054 Euclid Avenue, 2020 Dumbarton Avenue, 1879
2 Woodland Avenue, 1871 Woodland Avenue, 1851 Woodland Avenue, 1859 Woodland Avenue,
3 1609 Woodland Avenue, 1836 W. Bayshore Drive, 1848 Clarke Street, 420 E. O'Keefe Street, 2043
4 Euclid Avenue, 2044 Euclid Avenue, 1949 Cooley Avenue, 1838 W. Bayshore Road, 1842 W.
5 Bayshore Road, 1919 & 1927 Manhattan Avenue, 1901 & 1909 Manhattan Avenue, 1920, 1930,
6 1940 and 1950 Euclid Avenue, 1901 Cooley Avenue, 1908 Cooley Avenue, 1909, 1917 & 1919
7 Capitol Avenue, 652-654 Scofield Avenue, in the City of East Palo Alto, County of San Mateo, State
8 of California; and

9 (1) Collect all present and future rents, royalties, issues, profits, bonus money,
10 revenue, income, rights and other benefits (collectively, "Rents" or "Rents and
11 Profits") of the Premises and/or the Improvements arising from the use or
12 enjoyment of all or any portion of the Premises and/or the Improvements;

13 (2) Manage the Premises and all Improvements thereon in accordance with this
14 Order until further order of the Court.

15 b. Why Defendants should not be prohibited from controlling or receiving any Rents
16 and Profits or other income from the Premises and all Improvements thereon,
17 except as expressly directed by the Receiver.

18 ORDER APPOINTING RECEIVER

19 **THE COURT ORDERS, pending the hearing on the Ex Parte Order to Show Cause Re**
20 **Confirmation of Receiver, the following:**

21 3. The Court appoints David D. Wald as receiver ("Receiver") to take possession of the
22 Properties described in 2.a above. Such appointment is to be effective on the filing of the Receiver's
23 oath of office and the filing of an undertaking or bond to the State of California in the sum of
24 \$1,400,000 ^(\$1.4 million) pursuant to California Code of Civil Procedure section 567(b). Said Receiver shall be
25 authorized and empowered to do each of the following subject to the terms and provisions hereof:

26 a. Charge for the Receiver's services as allowed and authorized by this Order no
27 more than \$295 per hour;

except for tenants and lawful guests

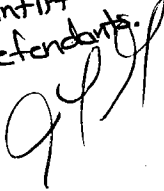
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- b. Take immediate and exclusive possession and control of each and all of the (i) Premises and all Improvements thereon and (ii) the Rents and Profits, together with all related documents, books and records of Defendants and care for, preserve, protect and maintain each and all of the Premises and all Improvements thereon and incur any expenses necessary for this purpose;
- c. Operate, manage, control and conduct the business of operating each and all of the Premises and all Improvements thereon and incur the expenses necessary in such operation, management, control and conduct in the ordinary and usual course of business, and do all things and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar properties, and no such risks or obligations so incurred shall be the personal risk or obligation of Receiver, but shall be a risk or obligation of the receivership estate;
- d. Enter into, administer and terminate contracts for the maintenance of each and all of the Premises and all Improvements thereon;
- e. Employ, supervise and terminate agents and employees as Receiver believes, in his business judgment, necessary to carry out the appointed duties, and to pay said agents and employees at ordinary and usual rates and prices, under appropriate contracts, from the funds that Receiver shall collect or, in the alternative, retain some or all of Defendants' existing property management personnel to perform, under the supervision of and at the direction of the Receiver, the functions of property manager, as Receiver deems appropriate to the extent necessary to preserve and protect each and all of the Premises and all Improvements thereon from material diminution in value;
- f. Pay, or establish and implement an appropriate mechanism pursuant to which some or all of Defendants' existing property management personnel will under Receiver's direction cause to be paid, all lawful debts of the Defendants' businesses related to each and all of the Premises and all Improvements thereon,

1 including but not limited to opening and maintaining checking and savings
2 accounts, subject to the express prior written consent of Plaintiff;

3 g. Take possession of, and receive from all depositories, banks, brokerages and
4 otherwise, any money on deposit in such institutions belonging to or arising from
5 the operation of each and all of the Premises and all Improvements thereon,
6 whether such funds be in accounts titled in the name of the Defendants or not, and
7 Receiver may indemnify the institution upon whom such demand is made, and is
8 empowered to open or close any other accounts. Receiver shall deposit moneys
9 and funds collected and received in connection with the receivership estate at
10 federally-insured banking institutions or savings associations which are not parties
11 to this case. Receiver David Wald and Wald Realty Advisors, Inc. Chief Financial
12 Officer Elissa Wald shall be the authorized signatories on the accounts. Moneys
13 coming into the possession of the Receiver and not expended for any purposes
14 herein authorized shall be held by the Receiver pending further orders of this
15 court;

Except for the
sums in the
Clearing Accounts
that Plaintiff
has instructed
City National
Bank (on September
9, 2009) to
release pursuant
to the September
4, 2009 Agreement
of Plaintiff
and Defendants.



16 h. Demand, collect and receive all Rents and Profits arising from or in respect of each
17 and all of the Premises and all Improvements thereon or any part of them that are
18 owed, unpaid and uncollected as of the effective date of this Order, or hereafter
19 become due;

20 i. Institute and prosecute all suits as may be reasonably necessary in Receiver's
21 judgment to preserve, maintain and protect each and all of the Premises and all
22 Improvements thereon, including but not limited to instituting and prosecuting all
23 proper actions to collect rents owing upon each and all of the Premises and all
24 Improvements thereon and instituting and prosecuting unlawful detainer actions
25 with respect to tenants of each and all of the Premises and all Improvements
26 thereon, and to defend all suits and actions as may be instituted against Receiver,
27 and resolve any pre-existing lawsuits, including but not limited to those involving
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1 the City of East Palo Alto, and negotiate all claims and resolve lawsuits against or
2 relating to all of the Premises and all Improvements thereon;

3 j. Employ qualified counsel to institute and prosecute or defend all actions
4 contemplated in subparagraph (i) herein, and to engage the services of the law firm
5 of Pasternak, Pasternak & Patton, A Law Corporation, as Receiver's receivership
6 legal counsel, and to engage the services of local unlawful detainer counsel if
7 necessary, without further application to the Court;

8 k. Pay and discharge out of the funds, income and revenue coming into Receiver's
9 hands by virtue of this appointment all expenses of receivership and costs and
10 expenses of operations and maintenance of each and all of the Premises and all
11 Improvements thereon, including all taxes and assessments lawfully imposed on
12 each and all of the Premises and all Improvements thereon and accruing during the
13 Receivership;

14 l. Investigate, report upon and maintain adequate insurance coverage for each and all
15 of the Premises and all Improvements thereon as in the judgment of Receiver may
16 seem fit and proper, and cause all presently existing policies to be amended by
17 adding Receiver and the receivership estate as an additional insured. If there is
18 inadequate insurance or insufficient funds in the receivership estate to procure
19 adequate insurance, Receiver is directed to immediately petition the Court for
20 instructions. During any period in which the each and all of the Premises and all
21 Improvements thereon are uninsured or underinsured due to insufficient funds in
22 the receivership estate to procure adequate insurance, Receiver shall not be
23 personally responsible for any claims arising therefrom;

24 m. Employ a locksmith for the purpose of entering the receivership premises to the
25 extent reasonably required;

26 n. Utilize the tax identification numbers previously utilized in connection with the
27 operation of each and all of the Premises and all Improvements thereon;

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1 o. Avoid liens placed against each and all of the Premises and all Improvements
2 thereon or the income therefrom.

3 4. In addition to the powers set forth in this Order, Receiver is hereby vested with all of
4 the general powers of receivers in cases of this kind, subject to the direction of this Court.

5 5. In the event that income from the operation of each and all of the Premises and all
6 Improvements thereon is insufficient to meet normal operating expenses and other costs, the Receiver
7 is authorized to borrow money and to issue Receiver's Certificates to secure such indebtedness upon
8 notice and further hearing herein.

9 6. Receiver and the parties to this action may, from time to time and on due notice to the
10 entitled parties, petition this Court for further instructions and for further powers necessary to enable
11 Receiver to properly perform his duties.

12 7. Pursuant to California Rule of Court 3.1181, within 60 days after taking control and
13 possession of each and all of the Premises and all Improvements thereon under this Order, Receiver
14 shall file an inventory containing a complete list of all property of which the Receiver has taken
15 possession by virtue of the appointment.

16 8. Pursuant to the requirements of California Rule of Court 3.1182, each month Receiver
17 shall prepare and serve on the parties, but not file, an accounting of the income and expenses incurred
18 in the administration of the receivership property, including the Receiver's fees and expenses and
19 those of his employees and agents. The Receiver may pay such fees and expenses from the
20 receivership estate 10 days after the service of the accounting contemplated herein if no objection has
21 been served on the Receiver. If an objection to such accounting has been timely served, the Receiver
22 may file a request for payment with the Court.

23 9. Plaintiff shall immediately file an applicant's bond under Code of Civil Procedure
24 section 566(b) in the amount of \$7500.

25 10. The Receiver shall immediately disclose to all parties any financial relationship
26 between the Receiver and any individual or company hired to assist in the management of the
27 receivership property. The Receiver intends to hire Wald Realty Advisors, Inc. which is owned by
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