

IN THE CIRCUIT COURT OF THE  
ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 11-25608-CA-02

CARIBEVISION HOLDINGS, INC., et al.,

*Plaintiffs/Counter-Defendants,*

v.

OMAR ROMAY, et al.

*Defendants/Counter-Plaintiffs.*

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**ORDER GRANTING PLAINTIFFS' AMENDED RENEWED MOTION FOR APPOINTMENT OF A  
RECEIVER**

THIS MATTER, came before the Court on Plaintiffs' Amended Renewed Motion for Appointment of a Receiver Pursuant to §607.1432(6) and §608.4492(6), Florida Statutes (the "Motion"). The Court reviewed the Motion, Defendants' Response, Plaintiffs' Reply, reviewed the court file and records, held an evidentiary hearing and heard argument of counsel on April 10, 2015 and April 13, 2015. Based on the foregoing, the Court makes the following findings of fact and conclusions of law:

***Relevant Procedural Background***

In 2011, Plaintiffs sued Defendants in what can best briefly be described as a corporate divorce between two groups that were part of a joint venture. Plaintiffs have repeatedly requested the appointment of a receiver on the basis that Defendants are engaged in self-dealing and financial wrongdoing and that Defendants' continued unilateral running of the joint

venture without holding board meetings, was causing irreparable harm to the joint venture and their interests.

Previously, in January of 2014, the predecessor trial judge entered an order appointing a "referee" for "the purposes of facilitating the corporate board meetings" of the joint venture. Defendants immediately sought and received a stay pending the outcome of the appeal.

On August 27, 2014, the Third District Court of Appeal affirmed the trial court's decision and issued an opinion addressing the trial court's reluctance to appoint a receiver based on Defendants' argument that the trial court lacked jurisdiction to appoint a referee. *Omar Romay, et al. v. Caribevision Holdings, Inc., et al.*, 147 So.3d 125 (Fla. 3<sup>rd</sup> DCA 2014). The Third District Court wrote that the trial court had discretion on remand, upon motion, to appoint a receiver. However, it did not express an opinion regarding the appropriateness or outcome of any such action. Defendants immediately moved for a rehearing, which was ultimately denied.

In December of 2014, Plaintiffs filed this renewed motion for appointment of a receiver based on actions taken by the Defendants during and after the stay of the trial court's order appointing the referee. On April 10 and 13, 2015, this Court held an evidentiary hearing on the motion. The Plaintiffs presented the testimony of Defendant Omar Romay. Defendants presented the testimony of Marcelo Saldano (the joint venture's Chief Financial Officer) and Alfredo Duran (a professional with specialized knowledge of the type of business run by the joint venture).

### ***Findings of Fact***

Hereafter, Plaintiffs will be referred to as, the "Caribevision Interests" and Defendants will be referred to as, the "Romay Interests."

In 2009 and 2010, the Caribevision Interests and Romay Interests entered into what was ostensibly a 50%-50% joint venture to produce and broadcast Spanish television programs to viewers in Miami, New York and Puerto Rico. The parties formed the "America-CV entities<sup>1</sup>" in Delaware, but with corporate offices in Hialeah Gardens. The entities were to carry out the purposes of the JV. Under the amended shareholders' and operating agreements for the JV, the ownership interests were divided equally between the Caribevision Interests and Romay Interests, and board and management interests were allocated in a similar manner. As acting chief executive officer of the JV, however, Omar Romay was also granted a tie-breaking vote.

Subsequently, the Caribevision and Romay principals later disagreed regarding the operations and financial commitments of the JV. The parties could not conduct board meetings because they could not muster the required quorum. Claims of financial wrongdoing and conflicts of interest were asserted. (*Omar Romay, et al. v. Caribevision Holdings, Inc., et al.*, 147 So.3d 125 (Fla. 3<sup>rd</sup> DCA 2014)). Ultimately, the predecessor judge found that the JV was threatened with substantial irreparable harm as a result of the inability to hold board meetings.

Despite this ruling by the court and the appellate court having upheld such ruling, Mr. Romay, without a credible explanation, has unilaterally continued to run the joint venture without holding required board meetings. Mr. Romay's actions violated the amended shareholder's agreement (ASA).

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<sup>1</sup> The America-CV entities will be referred to as the joint venture or the JV.

## I.

**Mr. Romay**

Mr. Romay, has a special skill set with regard to running and producing successful Spanish television shows that appeal to a widespread Spanish-speaking audience throughout the United States and elsewhere. He is well-regarded in the industry and has been proficient at successfully programming numerous shows in order to broadcast to a wider audience. He is undoubtedly a valuable asset to the production side of the JV.

A. Romay Interests Loans to the JV

In these proceedings, the Romay Interests have contended the necessity to infuse ongoing and undocumented "loans" into the JV. Mr. Romay unilaterally decided to infuse these purported loans in contravention of the ASA. He contends these purported loans were required so that the business would not be thrust into bankruptcy. The court notes, amazingly, the Romay interests have simultaneously alleged in their pleadings that the company is thriving and solvent.<sup>2</sup> The court finds that the Romay Interests' position in light of Mr. Romay's testimony and actions, is untenable.

First, Mr. Romay clearly testified that he unilaterally decided to make these loans by allotting himself stock ownership (in certain instances) by giving the company debt forgiveness (in the way of not paying himself bonuses). Yet, it is uncontroverted that Mr. Romay refused to accept the 1.75 million dollars in cash that the Caribevision Interests had placed in escrow pursuant to a capital call. Second, it is axiomatic that for a company to be solvent outside of

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<sup>2</sup> Solvency is defined as the ability to pay debts as they mature and come due or the ability to pay debts in the usual and ordinary course of business. (*Black's Law Dictionary, Sixth Edition; citing Jeck v. O'Meara*, 343 Mo. 559, 122 S.W.2d 897, 903)

bankruptcy, it should be able to pay its accounts receivables and salaries out of general revenues on a timely basis.

Thus, if the JV was in such a continuous dire financial position, then there could be no legitimate reason for the Romay interests to turn down that needed cash infusion to keep it afloat. Additionally, if this were the legitimate reason for his debt forgiveness, clearly the company was not solvent. In which case, Romay has no legitimate reason not to forego the Caribevision cash infusion.

The court further finds that Mr. Romay's testimony that he needed to regularly provide loans to the JV in order to pay salaries is disingenuous and not credible. Romay testified under oath that he was aware his loans were in violation of the ASA, made them unilaterally anyway, and instructed the CEO of the JV to issue him additional stock ownership from the Caribevision Interests. The court additionally finds that there were both reasonable alternatives to his unauthorized lending by way of debt forgiveness and better alternatives, ie: accepting the \$1.75 million that the Caribevision Interests placed into escrow.

**B. Romay Interests Repeated Violations of the ASA**

While Romay has production talent, it is clear to the court that he has engaged in self-dealing to the detriment of the JV in an effort to obtain a self-declared supermajority ownership interest, during the pendency of this litigation. Specifically, the court finds that he settled a claim with Comcast in contravention of the ASA for more money than was necessary,<sup>3</sup> and unilaterally charged the entire debt to the Caribevision Interest instead of equally to the JV.

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<sup>3</sup> Mr. Romay admitted during opposing counsel's questioning that Comcast had offered him a settlement of \$800,000, but he instead paid \$1,600,000 and charged it entirely to the Caribevision Interests' portion of equity.

Mr. Romay performed this chicanery in an effort to justify granting himself a higher percentage ownership of the JV.

The court also finds that he settled other claims in violation of the ASA and charged them to the Caribevision Interests in order to enhance his ownership from the original agreed upon 50% plus tie-breaking vote ownership to attempt to obtain his new, self-declared 79% supermajority interest. The court points out that Romay testified he was aware that he did not have authority to settle these claims unilaterally pursuant to the ASA. He also testified, he did not comply with the ASA because he knew the board would not approve of his actions.

Romay testified that the last board meeting for the JV was held on February 15, 2013, and that he continued making decisions unilaterally because the Caribevisions Interests did not “participate” in the meetings he convened. The court was shocked by Romay’s admission concerning the last official board meeting. Romay admitted that when he called the meeting, he personally ordered the Caribevision Interests’ principals be escorted off the premises by security personnel. Romay then unabashedly agreed with opposing counsel that it would be hard for them to “participate” when they were excluded. This illustrates one of several areas of Mr. Romay’s testimony which highlights his disregard to the ASA and his lack of candor.

It was soon after the meeting excluding the other shareholders, that Romay declared his supermajority interest and then appointed his wife Isabel, his son Damian and his two daughters to the board of directors. Again, this Court was shocked by Mr. Romay’s actions.

Romay testified he has lent the company unauthorized loans in the amount of \$5 million dollars, the loans were undocumented, have no interest clause or maturity date and that he is

entitled to call them at will. Romay testified that as CEO, he believes he can unilaterally call the loans at any time and force the JV into bankruptcy if it is unable to pay him.

Romay agreed that since 2013 he has been "restructuring" the JV. During this "restructure" period, Romay has not just indebted the JV to himself, but in 2014 the JV lost \$6,228,273.61. To date in 2015, Romay testified the company has already lost an additional \$6 million dollars. It is evident that Mr. Romay is suddenly running the JV into the ground.

#### Other Salient Romay facts

At the time the JV was initiated, both parties each individually contributed what they described as 17.5 million dollars in either assets or equity to the JV. It is uncontroverted that the Caribevision Interests contributed 4 major television stations in Puerto Rico. These four Caribevision television stations were independently owned and contributed towards their share of their 17.5 million contribution.

Romay and the JV were recently made aware that in 2016, the FCC will hold an auction in an effort to recall bandwidth. Romay testified he unilaterally fully intends on selling, at auction, the entire bandwidth of these four stations to the FCC. The opening bid for the span of bandwidth owned by the four stations is \$130 million dollars. He then intends on paying off all the debt, including a loan that comes due in 2017 and the loans he made to the company. Romay testified that after he sells the four stations' bandwidth capabilities, he will hold a meeting of the board of directors to decide what to do. At the evidentiary hearing, it was unclear to the court whether Romay meant he would include the Caribevision Interests or just his immediate family members, who he now considers board members.

**II.****The CFO, Mr. Saldano**

While more forthcoming, the CFO has worked with Romay for about 20 years and is clearly beholden to Mr. Romay and not the JV. He testified that he would never allow a company to take undocumented loans. However, when it came to Mr. Romay, he has consistently allowed undocumented loans. He clearly seems to regard the JV's governing documents as perhaps an aspirational goal, but not worth complying with if Romay instructs him to act in contravention of the ASA. His testimony corroborated the losses and most of what has already been addressed, with the exception that Mr. Saldano was able to testify that in 2012 (just prior to Romay excluding the Caribevision Interests from the JV), the JV was profitable and made \$1,923,926.

**III.****Alfredo Duran**

Mr. Duran is an expert in the field of television production within the Spanish television community. He testified that Romay was talented in the production aspects of the JV, but was not aware of the financial details of how Romay runs the JV. He testified there are others in the industry, including himself, who could run the JV.

***Legal Analysis and Conclusions***

"Appointing a receiver" has been found to be "a rare and extraordinary remedy." *Plaza v. Plaza*, 78 So.3d 4,6 (Fla. 3<sup>rd</sup> DCA 2011). The role of a receiver is to preserve the value of the secured property. *Barnett Bank of Alachua County v. Steinberg*, 632 So.2d 233, 234 (Fla. 1<sup>st</sup> DCA



1994). Although the appointment of a receiver is within the court's discretion, it is an abuse of discretion to appoint a receiver in the absence of a showing that the secured property is being wasted or is otherwise subject to serious risk of loss. See *Alafaya Square Association, LTD., etc. v. Great Western Bank*, 700 So.2d 38, 40 (Fla. 5<sup>th</sup> DCA 1997); citing *Atco Construction & Development Corp. v. Beneficial Savings Bank*, 523 So.2d 747,750 (Fla.5<sup>th</sup> DCA 1988).

Moreover, any appointment should be made only if "absolutely necessary to do complete justice." *Recarey v. Rader*, 320 So.2d 28,30 (Fla. 3<sup>rd</sup> DCA 1975). The party who seeks the appointment has the burden of introducing evidence--not just allegations--to merit receivership. See *Glary v. Israel*, 53 So.3d 1095, 1098 (Fla. 1<sup>st</sup> DCA 2011). This evidence must clearly prove fraud or imminent danger to the business. *Mirror Lake Co. v. Kirk Sec. Corp.*, 124 So. 719, 721 (Fla. 1929).

The Court finds from the specific facts set forth by the Caribevision Interests in their Motion and as corroborated by the evidence presented at the hearings, circumstances exist requiring the appointment of a receiver over the JV. In light of Romay's acts of self-dealing, the court finds it would cause irreparable harm to allow Romay to continue running the JV and that the Caribevision Interests have shown clearly that there is imminent danger of loss to the JV. The Court notes the Third District Court of Appeal has found that Florida's Business Corporations Act and Limited Liability Company Act expressly authorize a Florida court to appoint an ancillary receiver here for a foreign entity "even though no receiver has been appointed elsewhere." *Romay, et al*, 147 So.3d at 130.

Additionally, should Romay be allowed to unilaterally decide whether and at what price to sell back the bandwidth to the FCC, it would cause irreparable harm to the Caribevision Interests, as bandwidth availability is unique to specific areas, limited and not readily replaceable. Monetary damages would be insufficient as they may not be able to acquire or purchase, at any price, equivalent bandwidth. The Caribevision Interests' sole business in this endeavor, even prior to entering in the JV, is the running of television stations. This unique bandwidth is required for them to continue their business upon dissolution of the JV.

In this case, the parties have argued that the only remaining issue to be decided by the jury is the respective ownership interest of the parties. The Romay interests agree in their best case scenario, at a minimum, that the Caribevision Interests still own 20% of the JV. Based on Romay's testimony that he charged joint debts of the company against the Caribevision Interests' ownership value only, the Court also finds that the Caribevision Interests have a strong likelihood of success at trial of proving they own more than 20% of the company.

Justification for the appointment of a receiver of a partnership or joint venture has frequently been found to be present in the event of waste, fraud, misconduct, or other breach of duty by the offending partner; his exclusion of other partners from the premises, or his conversion or misappropriation of property; or his refusal to render an account or to allow his partners to have access to the books and records. 23 A.L.R.2d 583 §1[6]. The court finds that Mr. Romay has excluded the Caribevision Interests from participation in running of the JV in contravention of the ASA. Romay has also continued to run the JV without holding the

requisite board meetings and his self-dealing and misconduct has resulted in waste requiring the appointment of a receiver to prevent further loss, waste or misconduct.

The Romay Interests argue that Romay is protected under the business-judgment rule, which protects corporate decisions as long as they don't lack "any rational purpose." See *Freedman v. Adams*, 58 A.3d 414, 417 (Del. 2013). However, Romay could not give any rational purpose for paying \$1,600,000 to settle the Comcast debt when Comcast had offered to settle for \$800,000. Similarly, he could not give any rational purpose for apportioning all of that debt to the Caribevision Interests when it was a joint debt. Romay also could not give any rational purpose for refusing to accept the \$1.75 million dollars in escrow, except that he decided it was "too late" to do so. The Court finds that there was no rational purpose for these decisions except for Romay to use them as a subterfuge to apportion himself a supermajority ownership interest and appoint his wife and children to the board of directors.

Here, the Romay Interests also argue that appointment of a receiver is premature, as the referee has not been utilized and there has been no change in circumstances. One of the only points upon which both sides agree in this case is that neither party has seen fit to employ the referee. The Romay Interests, seemingly claim not to have done so because they had no need to do so. That is because Romay apportioned himself 79% of the business and then interprets that he has a supermajority, so he is empowered to make all decisions unilaterally.

The Caribevision Interests, seemingly have not done so because since Romay claims his self-apportioned 79% supermajority interest, he can do whatever he pleases without their input and Romay has not called a shareholder's meeting after he had the Caribevision Interests

escorted off the property by security. Additionally, Caribevision Interests assert that the referee was basically meant to be a mediator/spectator in order to inform the court at a later date, if necessary. This, in their view is insufficient, to protect the JV and their interests from the irreparable harm Romay is causing by self-dealing and unilaterally running the JV into the ground.

It is clear that both sides were made aware of the court's findings that failure to hold board meetings was threatening **substantial irreparable harm** to the JV. Despite this ruling by the court and the Third District Court having upheld such ruling, Mr. Romay has continued to unilaterally run the JV without holding the requisite meetings. The Romay interests cannot be heard to complain of the referee not being employed when they were in complete control of the board, property, assets and running of the company.

This point goes to the heart of bad faith and mismanagement, at least since the time the Third District Court entered its order. A CEO acting in the best interest of the JV would not continue to allow irreparable harm to persist. As the majority shareholder of the JV and CEO, Romay was aware of the appellate court's findings. The court finds that his failure to hold such meetings when he has been in **complete** control of the JV, further evidences his self-dealing.

The Court also finds that the upcoming opportunity to sell arguably the most valuable asset of the company (the 4 stations' bandwidth, which was provided in full by the Caribevision Interests) and Romay's self-apportionment of a supermajority ownership in violation of the ASA, together with all of the other facts presented, has created a change in circumstances which justifies this extraordinary remedy.

In sum, the Court finds that appointment of a receiver is absolutely necessary in this case in order to do complete justice.

### ***The Receivership***

1. **Status Quo.** The Court finds that there is an imminent need to maintain the status quo during the pendency of the litigation. Accordingly,
  - a. During the pendency of the action Omar Romay is precluded from calling any of the loans allegedly made by him or any entity controlled by him to the JV.
  - b. During the pendency of the action Omar Romay is precluded from converting to equity any of the loans allegedly made by him or any entity controlled by him to the JV.
  - c. During the pendency of the litigation, the Caribevision owners and board designees shall not be precluded from accessing the premises of the JV, at the direction and under watch of the receiver. They may seek to access information regarding the finances and status of the company through the receiver.
  - d. In compliance with Section 4.02(c) of the Amended and Restated Shareholders Agreement and Operating Agreement, the Caribevision Interests shall be entitled to appoint two members of the management team.
  - e. Romay is to immediately stop engaging in business on behalf of the JV, unless first approved by the receiver. Specifically, he is also not to attempt to start the process of selling the bandwidth from the 4 stations in Puerto Rico to the

FCC. Should the parties decide they will auction the bandwidth, it shall be through the receiver.

2. **Appointment of Receiver.** A Receiver is appointed to take control of the assets and business operations of the JV, and to take control of all of the Companies' real and personal property, specifically including, but not limited to, its bank accounts, accounts receivable and payable, chattel, paper, all books and records, and all other personal property, tangible or intangible, that is used or useable or related to operations of the JV (collectively the "Receivership Property").
3. **Designation of Receiver.** Within 48 hours of the entry of this order, the parties are to inform the Court of a receiver agreed upon by both parties. The agreement to the named receiver shall not constitute a waiver of any objection by either party to the appointment of a receiver. In the event the parties cannot agree as to who shall serve as receiver, the Court will unilaterally designate the receiver.
4. **Possession and Control of Receivership Property.** The Receiver is authorized to immediately take possession and control of the Receivership Property and to manage, maintain, and operate the business of the JV in the ordinary course, to hire and fire personnel, to enter into agreements and execute documents related to pending or future sales, leases, and licenses related to the Receivership Property. Defendants and their principals, members, managers, officers, directors, agents, employees, successors, predecessors, subsidiaries, and affiliates are directed to refrain from exercising control in any manner over any of the Receivership property except as the Receiver may specifically direct.

5. **Omar Romay will continue to be responsible for Programming and Production Operations.** The Court finds that there is no imminent danger or harm in allowing Romay to run the creative side of programming and production, as long as the receiver remains fully in charge of all financial decisions. Should he wish to do so, Mr. Romay can continue assisting in the production of all programming, subject to his compliance with the receiver's direction. Should he not wish to do so, the receiver will find an appropriate substitute.
6. **Board Meetings.** The Receiver shall, within 30 days of appointment, hold a meeting of the shareholders/board designees of the JV in order to keep board members informed. The Receiver is authorized to convene, preside over, and conduct the meeting. Should the receiver elect to put any issue to a vote, the parties will vote pursuant to the ASA, meaning a 50%-50% interest to each respective party, with Mr. Romay having the tie-breaking vote. The Board of Directors will be those named pursuant to the ASA or those in place at the inception of this lawsuit.
7. **Turnover of Receivership Property.** The JV and all of their principals, members, shareholders, managers, directors, officers, employees, agents, successors, predecessors, subsidiaries, and affiliates, are directed to turn over all of the Receivership Property to the Receiver, to the extent that they are in its possession, custody, and control, including but not limited to, the following:
  - a. All keys and access codes necessary for the Receiver to obtain possession and manage the Receivership Property as provided in this Order.

- b. All documents, books, records, computer files and records concerning the finances, operation and management of the Receivership Property.
- c. A list of all payables and receivables, and all details regarding same.
- d. All documents identifying pending litigation.
- e. All utility and lease agreements.
- f. Such other records pertaining to the operation and management of the Receivership Property as the Receiver may reasonably request, including but not limited to, management, services, vendor, and advertisement contracts.
- g. All executor contracts, including, but not limited to, purchase orders, leases, consignment agreements, service contracts, and management contracts.
- h. Insurance policies on all properties.
- i. Records for all bank accounts in which funds relating to the Receivership Property, from any source, are deposited.
- j. Records for all accounts where funds relating to the Receivership Property are held in escrow, and accountings for all such funds that have been received relating to the Receivership Property.
- k. Copies of all operating licenses.
- l. Copies of all reports filed with the State of Florida or the State of Delaware.
- m. Copies of all pending pleadings and papers filed in any litigation relating to the Receivership Property, and of documents related to any threatened litigation, whether offensive or defensive.
- n. Copies of any notices of violation relating to the Receivership Property.



8. **Surety Bond.** The Receiver is directed to obtain a surety bond in the amount of 800,000 to be provided by a surety authorized to do business in the State of Florida securing performance of the Receiver of the duties and obligations of the office of Receivership. The bond shall provide coverage to Plaintiffs, Defendants, and the Receivership estate for loss due to acts of all agents, servants, and employees of the Receiver. The bond shall be submitted for approval within 2 days of this Order. The costs of the bond shall be an expense of the Receivership, for which the Receiver shall be reimbursed in accordance with the terms of this Order.
9. **Collection of Income.** The Receiver is authorized to collect and take possession and control of all income, accounts receivable, profits, and other sums or charges collected from the Receivership Property. Defendants are directed to refrain from exercising any control over such sums, including, but not limited to, any operating or escrow accounts related to the Receivership Property, and to turn over to the Receiver any and all such sums that Defendants may receive or may have received, whether past, present, or future. The Receiver is authorized to assume control of, liquidate, transfer, and/or be named as authorized signatory for all accounts at any bank, brokerage firm or financial institution which has possession, custody or control of any assets or funds wherever situated of the JV or any of its subsidiaries or affiliates.
10. **Checks.** The Receiver is authorized to endorse any and all checks payable to the JV and deposit same into accounts under the Receiver's control.

**11. Actions in Furtherance of Possession and Control.** The Receiver is authorized to take any reasonable action which he shall deem necessary or appropriate to take possession of, exercise full control over, to prevent waste, and to otherwise preserve, manage, maintain, secure and safeguard the Receivership Property. The Receiver may also retain the services of parties or professionals as may become necessary to effectuate the Duties of the Receiver. Moreover,

- a. All banks, brokerage houses, financial institutions and other business entities with possession, custody or control of any assets, funds or accounts in the name of or for the benefit of the JV shall cooperate expeditiously in the granting of control and authorization to the Receiver as a necessary signatory to said assets and accounts; and
- b. The United States Postal Service is directed to provide any information that the Receiver requests relating to the JV, and to handle future deliveries of the Companies' mail as the Receiver directs; and
- c. The Miami Dade County Sheriff may assist the Receiver in the performance of the Receiver's duties under this Order, when the Receiver deems such assistance necessary, without further order of the Court.

**12. Inventory.** The Receiver shall prepare and file with the Court, pursuant to Rule 1.620 of the Florida Rules of Civil Procedure, a complete inventory, under oath, of all of the assets of which the Receiver takes custody and control of under this Order.

**13. Reporting.** The Receiver is directed to prepare and file within 15 days of the date of this Order and on or before the 30<sup>th</sup> day of each month thereafter so long as the

receivership is in force, a report as required by Rule 1.620 of the Florida Rules of Civil Procedure, under oath, setting forth and reporting all changes in assets in the Receiver's charge or claims against the assets that have occurred during the period covered by the report. The Receiver shall file such report with the Clerk of Court and shall serve a copy of each report upon counsels of record for Plaintiffs and Defendants.

14. **Interference with Receiver.** All parties to this action, along with their respective principals, officers, agents, servants, employees, representatives, and all those in active consort or participation with any of them, are prohibited from interfering in any way, directly or indirectly, with the duties and activities of the Receiver.
15. **Cooperation with Receiver.** All parties and their principals, members, managers, officers, directors, agents, employees, successors, predecessors, subsidiaries, and affiliates are directed to honor the requests of the Receiver in the discharge of the Receiver's duties, including, but not limited to, production of documents requested by Receiver within 5 business days from the Receiver's request. Such documents may be produced to the Receiver by facsimile or electronic mail.
16. **Consultants and Professionals.** The Receiver is hereby required to employ independent legal counsel to furnish legal advice to the Receiver for such purposes as may be necessary during the period of receivership. The Receiver shall hire independent legal counsel to represent the JV in all legal matters during the pendency of this litigation. The Receiver is also empowered to employ accountants, auditors, consultants, developers, and other professionals to furnish advice and

services to the Receiver for such purpose as may be reasonable and necessary during the term of the Receivership.

**17. Compensation of Receiver and Agents.** The JV shall bear the ultimate responsibility to pay the fees of the Receiver and all necessary professionals/personnel/entities utilized by the Receiver to carry out the Receiver's obligations and duties as provided herein.

- a. The Receiver may seek payment directly from the JV for any and all fees and costs relating to the Receiver carrying the obligations and duties provided herein.
- b. The Receiver shall provide an invoice to the JV on a monthly basis detailing any and all fees and costs incurred pursuant to the Receiver carrying out the obligations and duties provided herein.
- c. The JV shall reimburse the Receiver within 30 days of the date of the Receiver's invoice unless they object to same and file a motion and objection with the Court within 10 days of the Receiver's invoice.
- d. The Court shall resolve any dispute concerning the Receiver's billing, fees, and costs provided that the objecting party complies with the procedures set forth in subsections (b) and (c) above.
- e. The Court reserves all jurisdiction relative to the Receiver's fees and any and all professional/personnel/entities who incur any fees or costs relative to the Receiver carrying out its obligations and duties provided herein.

18. **Exercise of Powers Available Under Applicable Law.** Without limiting or expanding the foregoing, the Receiver is authorized to exercise all powers generally available under the laws of the State of Florida, which may be incidental to the powers described in this Order, and to act on behalf of and in the name of the JV as the Receiver deems appropriate.
19. **Further Instruction.** The Receiver shall have the right to apply to the Court for further instructions and authorization during the pendency of this action.
20. **No Transfer of Title.** Nothing contained in this Order shall be construed to transfer title to Receivership Property to the Receiver.
21. **No Waiver of Claims or Defenses.** Nothing contained in this Order shall enlarge or restrict any party's claims or defenses with respect to the Receivership Property.
22. **Receiver as a Fiduciary.** The Receiver shall faithfully discharge all of the duties outlined in this Order and shall obey all other orders of the Court. The Receiver shall be deemed a fiduciary for the benefit of all persons or entities having or claiming an interest in the Receivership Property and shall exercise the office accordingly.
23. **Judicial Immunity.** The Receiver and the Receiver's attorneys and agents: (i) may rely on any and all outstanding court orders, judgments, decrees, and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order, judgment, decree or rule of law; (ii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as a Receiver, or as attorney or agent for Receiver; and (iii) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were

outside the scope of their duties or were grossly negligent. Except for matters set forth in (iii) of the preceding sentence, persons dealing with the Receiver shall only look to the Receivership estate assets and bond posted by the Receiver to satisfy any liability, and neither the Receiver nor his attorneys or agents shall have any personal liability to satisfy any such obligations.

**24. Acceptance and Appointment as Receiver.** The Receiver's duty to act in that capacity is subject to the written acceptance and approval of the terms of this Order. Upon acceptance, the Receiver shall be bound by the terms of this Order and all obligations imposed under it.

**25. Duration of Receivership.** This Receivership shall continue until further order of the Court.

**26. Final Accounting.** Within 45 days after the termination of the Receivership, the Receiver shall submit a final accounting to the Court, with copies to be furnished to the parties to this action.

**27. Court Approval of Final Accounting.** 30 days after the service of the Receiver's final accounting, the final accounting shall be deemed approved and the Receiver shall be discharged without further order of the Court.

DONE AND ORDERED in Chambers at Miami-Dade County, Florida this 20<sup>th</sup> day  
of April, 2015.



\_\_\_\_\_  
THE HONORABLE MONICA GORDO  
CIRCUIT COURT JUDGE

Copies furnished to: All counsels of record

**Certificate of Service**

**Attorney for Plaintiff**

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