

DISTRICT COURT, PITKIN COUNTY, STATE OF COLORADO Pitkin County Courthouse 506 East Main Street, Ste E Aspen, CO 81611	EFILED Document CO Pitkin County District Court 9th JD Filing Date: Sep 13 2010 2:01PM MDT Filing ID: 33200858 Review Clerk: Vicky Spaulding-Goddard
Plaintiff: DOWNTOWN ASPEN INVESTMENTS, LLC Defendant: ASPEN LEGACY HOLDINGS, LLC	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
HOLME ROBERTS & OWEN LLP Tracy L. Ashmore, #25944 Robert A. Holmes, # 10218 1700 Lincoln Street, Suite 4100 Denver, CO 80203-4541 Telephone: (303) 861-7000 Facsimile: (303) 866-0200 E-mail: tracy.ashmore@hro.com bob.holmes@hro.com Attorneys for Plaintiff	Case Number: 2010 CV 118 Ctrm/Div: C
ORDER FOR APPOINTMENT OF RECEIVER	

The Court, having considered the Verified Complaint for Appointment of Receiver and Verified Motion for Ex Parte Appointment of Receiver (collectively, the "Verified Complaint and Motion") of Plaintiff Downtown Aspen Investments, LLC ("Lender"), and being fully advised in the premises, and for other good cause having been shown,

HEREBY FINDS:

1. Jurisdiction is proper.

2. The allegations set forth in the Verified Complaint and Motion establish a right to the relief requested.

3. Defendant Aspen Legacy Holdings, LLC, a Colorado limited liability company (“Borrower”), is the owner of certain real property, and improvements thereon, located within Pitkin County, Colorado (the “Property”). The Property, among other things, secures the obligations of Borrower under that certain loan indebtedness described herein. The legal description of the Property is attached to the Complaint as **Exhibit 1** and incorporated herein.

4. Lender made a loan (the “Loan”) to Borrower, and in connection therewith is the holder and owner of that certain Promissory Note dated as of October 31, 2008 in the original principal amount of \$9,200,000.00, wherein the maker is identified as “Borrower” (the “Note”). A copy of the Note is attached to the Complaint as **Exhibit 2** and incorporated herein.

5. The Note is secured, in part, by that certain Deed of Trust, Assignment of Rents & Security Agreement (“Deed of Trust”), dated as of October 31, 2008, executed by Borrower and recorded October 31, 2008, under Reception No. 553975 of the records of the Clerk and Recorder of the County of Pitkin, State of Colorado (the “Clerk and Recorder”). A copy of the Deed of Trust is attached to the Complaint as **Exhibit 3**¹ and incorporated herein.

6. Borrower and Lender are also parties to that certain Loan Agreement and Venture Capital Participation Agreement, dated as of October 31, 2008 (“Loan Agreement”). A copy of the Loan Agreement is attached to the Complaint as **Exhibit 4** and incorporated herein.

7. Pursuant to the Deed of Trust, Borrower granted to Lender a lien upon certain property located in Pitkin County, Colorado and included in the Property, including without limitation, the Payment Escrow as defined in paragraph 2 of the Loan Agreement, as well as:

All goods, building and other materials, supplies, work in process, equipment, machinery, fixtures, furniture, furnishings, signs and other personal property, wherever situated, which are or are to be incorporated into, used in connection with or appropriated for use on the Property; all rents, issues, deposits, profits, income, receipts and revenues of or derived from the Property or any business or activity conducted thereon of the Property (to the extent, if any, they are not subject to the Absolute Assignment of Rents and Leases); all inventory, accounts, cash receipts, deposit accounts, impounds, accounts receivable, contract rights, general intangibles, software, chattel paper, instruments, documents, promissory notes, drafts, letters of credit, letter of credit rights, supporting obligations, insurance policies, insurance and condemnation awards and proceeds, any other rights to the payment of money, trade names, trademarks and service marks arising from or related to the Property or any business now or hereafter conducted thereon by Borrower; all permits, consents, approvals, licenses, authorizations and other rights granted by, given by or obtained from, any governmental entity with respect to the Property, all deposits or other security now or hereafter made with or given to utility companies by Borrower with respect to the Property; all advance payments of insurance premiums made by Borrower with respect to the Property; all plans, drawings and specifications relating to the Property; all loan funds held by Lender, whether or not disbursed; all funds deposited with Lender pursuant to any Loan Document; all reserves, deferred payments, deposits, accounts, refunds, cost savings and payments of any kind related to the Property or any portion thereof, including, without limitation, all "Impounds" as defined herein; any interest described as part of the Property that constitutes a personal property interest under applicable law; together with all replacements and proceeds of, and additions and accessions to, any of the foregoing, and all books, records and files relating to any of the foregoing.

(collectively, the "Collateral"). See Deed of Trust, ¶ 4.1; Loan Agreement, ¶ 2.

8. All of the above referenced instruments and any other documents evidencing or securing the payment of the indebtedness due and owing under the Note, including without limitation, the Note, the Loan Agreement and the Deed of Trust, as any such instruments and documents may be amended, restated or supplemented from time to time, may hereafter be referred to collectively as the "Loan Documents." The Lender is the owner and holder of the Loan Documents.

Lender's Right to a Receiver

¹ Capitalized terms not otherwise defined herein shall have the meanings set forth in the

9. The facts which justify the ex parte appointment of a receiver for the Collateral in this matter are those set forth in the Verified Complaint and Motion including the following:

(a) The Borrower is in monetary default as set forth in the Verified Complaint and the Court does not address the other alleged defaults.

(b) Under the Deed of Trust, in the event of a default by Borrower, Lender may, at any time, at its option and in its sole discretion, exercise its rights and remedies under the Deed of Trust and the other Loan Documents (and such rights and remedies shall be separate, distinct and cumulative, and none of them shall be in exclusion of the others), including but not limited to the following: (i) accelerate the debt, and (ii) seek and obtain the ex parte appointment of a receiver.

10. David S. Cohen, Esq. is experienced in dealing with issues involved in managing and operating commercial property and is qualified to act as receiver in this case.

IT IS THEREFORE ALSO ORDERED, ADJUDGED, AND DECREED:

(a) that David S. Cohen is appointed as receiver ("Receiver") to act and serve as receiver with respect to the Collateral ^{Further order of the Court or until} until the loan that is the subject of the Loan Documents is paid in full and all other obligations of the Borrower under the Loan Documents have been satisfied, and with respect to any income therefrom, whether now existing or hereafter collected, including the rents, profits and income from the Property; ^{JHC}

(b) that Lender shall give notice of the appointment of the Receiver in compliance with C.R.C.P. 66;

(c) that the Receiver shall take and have complete and exclusive control, possession and custody of the Collateral, together with any and all bank accounts and escrow accounts, wherever located, receipts, demand deposits, reimbursement rights, bank deposits, security deposits, and all other forms of accounts, accounts receivable, payment rights, cash, and cash equivalents;

(d) that the Receiver shall take any and all actions the Receiver deems reasonable and appropriate to prevent waste to and to preserve, secure, manage, maintain and safeguard the Collateral and all other forms of property to which the Receiver is entitled to take possession and control under the Court's order and that the Sheriff's assistance to enforce the terms of this Order in the form of peace-keeping duties is authorized by the Court;

(e) that Borrower, together with its members, and all persons acting under the direction of any of them shall deliver possession of the Collateral to the Receiver, without any right of offset or recoupment, and including all keys, all books, records, documents and papers

Deed of Trust.

constituting a part of the Collateral (without the necessity of a confidentiality agreement between the parties and at no cost to the Receiver or the Lender), together with all cash forming a part of the Collateral, then or thereafter in the possession of Borrower, all sums relating to the use, possession or improvement of all or any part of the Collateral, and any accountings of any of the foregoing, any and all accounts receivable and accounts payable reports any and all documents pertaining to any ongoing litigation, any and all documents pertinent to any licenses maintained in connection with the Collateral, and all communications and correspondence pertinent thereto, any and all documents pertinent to any agreements entered into in connection with the Collateral, and all communications and correspondence pertinent thereto, any and all contracts in effect with respect to any of the Collateral, and all communications and correspondence pertinent thereto, any and all contracts, bids or other materials relating to any contractor work at the Property, any and all payroll records, employee files, applications and other materials relevant to those persons employed by or at the Property; and such other records pertaining to the management of the Collateral. To the extent that such books and records contain confidential personal information of third parties, such as mortgage applications and the like, the Receiver shall forthwith return such documents to the Borrower or its successors (to the extent relevant to administration of the receivership, Receiver may retain copies thereof);

(f) that Borrower, together with its members, and all persons acting under the direction of any of them shall promptly provide to the Receiver the names and contact information for tenants as well as anyone providing services or materials for use on the Property;

(g) that Borrower, together with its members, and all persons acting under the direction of any of them are enjoined from in any manner disturbing the Receiver's possession of the Collateral or any other property that is the subject of the Court's order, and are prohibited and restrained from disposing of, dissipating, mishandling or misappropriating any of the Collateral, and are prohibited and restrained from:

(i) collecting any rents, revenues or any other sums due Borrower with respect to the Collateral or withdrawing funds from any bank or other depository account relating to the Collateral unless otherwise ordered by the Court;

(ii) terminating or causing to be terminated any license, permit, lease, contract or agreement relating to the Collateral or the operation of any of the businesses on the Collateral;

(iii) withdrawing, expending or encumbering the management account or operating account for the Collateral, unless otherwise ordered by the Court;

(iv) continuing directly or indirectly, or permitting any construction work on the Collateral;

(v) from entering upon the Collateral without the prior express consent of the Receiver, which shall not be unreasonably withheld, or the Court; and

(vi) Notwithstanding the foregoing, nothing shall prevent, limit or enjoin the Borrower, or Edward Dingilian, from continuing to pursue opportunities to refinance the

Property or restructure and recapitalize the Borrower so long as such efforts do not interfere with those of the Receiver. Any such opportunities shall be immediately presented to the Receiver who shall have sole power and discretion to continue negotiations or enter any such contracts or agreements pursuant to Section (h) below.

(h) that the Receiver is authorized to continue any business operated with respect to the Collateral consistent with the loan documents;

(i) that the Receiver is authorized, with the consent of Lender, to sell all or substantially all of the Collateral subject to the approval of the Court;

(j) that the Receiver is authorized to retain, hire or discharge employees at the Property, without any liability to the Receiver;

(k) that the Receiver is authorized to open one or more bank accounts and authorized, but not obligated to, make payments and disbursements, in the ordinary course of business, as may be needed and proper for the preservation of the Collateral;

(l) that the Receiver is authorized to maintain appropriate insurance, authorized to continue any current policies in place, and authorized to purchase further insurance with regard to the Collateral, as the Receiver deems appropriate, subject to Approval, as defined below;

(m) that the Receiver is authorized to pay all current and past due real estate taxes, personal property taxes and any other taxes and assessments against any of the Collateral, but subject to Approval in the event net operating income from the Property is not sufficient to pay such taxes and assessments at any given time;

(n) that the Receiver is authorized to amend, prepare and file tax returns with respect to the Collateral as may be required by law, provided, however, that the Receiver shall not be responsible for the preparation of any tax returns for the Borrower, its members, or any of their respective affiliates;

(o) that the Receiver is authorized to: 1) reject any leases or unexpired contracts related to the Collateral; 2) negotiate and enter into contracts and leases in the ordinary course of the business of the Collateral; 3) modify, terminate and enforce remedies under all contracts and leases in the ordinary course of the business of the Collateral; 4) pay all utilities, expenses and other obligations secured by, or which may give rise to, liens, including, with Approval, obligations incurred prior to the commencement of the receivership so long as the Receiver has determined in its discretion that it is prudent to do so in order to maintain business relationships that are beneficial to the conduct of the receivership; 5) make repairs necessary in order to preserve the Collateral in the ordinary course of business, provided, however, that the Receiver shall not make any improvements or repairs having a cost of \$5,000.00 or more without first obtaining Approval; and 6) take all steps necessary to comply with all requirements, regulations and laws, including but not limited to environmental and/or health requirements, regulations and laws, applicable to the Collateral, and to deal with all governmental authorities in connection with the same;

(p) that the Receiver is authorized to, in his discretion, institute, prosecute, defend, compromise and/or intervene in or become a party to such actions or proceedings in state or federal courts which may in the Receiver's opinion be advisable for the protection, maintenance and preservation of the Collateral, for the carrying out of the terms of any order of the Court affecting the Collateral, and/or to defend against any action brought against the Receiver acting in such capacity, and, with Approval (except as to tenant eviction proceedings for which no Approval shall be required), to utilize counsel for Lender and/or retain other counsel in connection with the foregoing;

(q) that the Receiver is authorized to issue Receiver's certificates for the purpose of preserving and maintaining and completing improvements of the Collateral, without further approval of this Court, but with Approval, in exchange for funds advanced by third parties or Lender, during the term of the receivership, which Receiver's certificates shall bear interest at the rate of 8% per annum and which Receiver's certificates shall be a lien and security interest junior only to the Lender's lien and a preference claim upon the property of the receivership estate, and in the event funds shall be advanced by the Lender, shall be added to the outstanding indebtedness due under the Note;

(r) that the Receiver is authorized to enter into further lending transactions by which Lender may lend monies to be used by the Receiver (on a nonrecourse basis as to Receiver) to enable the Receiver to perform its duties hereunder, in which case any monies loaned shall be secured by a first and prior lien and security interest on the Collateral in favor of Lender, pursuant to Lender's existing Loan Documents;

(s) that the Receiver may apply income from the Collateral, subject to the lien rights of Lender, as follows: 1) to the Receiver's approved fees and expenses (including fees of legal counsel of Receiver); 2) to current operating expenses of the receivership in the ordinary course of business, and to other expenses, with Approval; 3) to the obligations owed to Lender under the Loan Documents or otherwise; and 4) to such other obligations as the Court may authorize;

(t) that the Receiver is authorized to maintain sufficient cash on hand to enable the Receiver to meet expenses, in an amount to be agreed to between the Receiver and Lender;

(u) that the Receiver will be paid by the Lender \$350.00 per hour, plus reimbursement for necessary expenses with a per diem cap of \$500 per day for travel expenses;

(v) that the Receiver is directed to file with the Court and serve on parties of record, within 45 days of entry of the order of the Court, and not less than quarterly thereafter, and within 30 days after termination of the receivership, full and complete reports, detailing receipts, disbursements and transactions affecting the Collateral and that, at the option of Lender, such reports may be submitted to the Clerk of the Court under seal and shall not be available for public inspection without further order of the Court;

(w) that the Receiver is directed to post a surety bond in the amount of \$10,000.00, the cost of which shall be an expense of the receivership;

(x) that it is ordered that no person or entity may file suit against the Receiver, in his capacity as Receiver, unless otherwise authorized in advance by this Court;

(y) that the Receiver is authorized, in his discretion, to hire agents, managers, and/or consultants as he believes are reasonably necessary to perform his duties as receiver herein;

(z) that the Receiver, and those agents and any property manager acting under his control, have no personal liability in connection with any obligations owed by the Borrower to its creditors;

(aa) that the Receiver, and those agents and property manager identified in Section (j) above acting under his control, have no personal liability in connection with their conduct in the course of this receivership, except for claims due to their gross negligence, gross or willful misconduct, malicious acts, and/or failures to comply with the orders of this Court;

(bb) that the Receiver is authorized to undertake all actions specifically set forth in the order of the Court, as well as to exercise the usual and customary powers accorded to a receiver under Colorado law (except as otherwise limited by the order of the Court or any subsequent order of the Court);

(cc) that upon motion to the Court with notice to Lender and Borrower, the Receiver may be removed upon 15 days written notice by Lender that Lender desires such removal, with a copy of such notice lodged with the Court. Receiver may resign and request an order approving the Receiver's resignation, discharging the Receiver, and releasing the Receiver's bond. Upon removal or resignation of the Receiver, the Court shall appoint a substitute receiver to be recommended by Lender;

(dd) that nothing contained in this order shall be construed as obligating the Receiver to advance its own funds in order to pay the costs and expenses of the receivership that have been approved by the Lender and the Court;

(ee) that nothing contained in this order shall be construed as obligating the Lender for the costs and expenses of the Receiver nor requiring the Lender to advance funds to the Receiver to meet any capital needs of the Collateral;

(ff) that the Receiver may apply at any time to the Court, with notice to all other parties in this case, for further instruction and for further power necessary to enable the Receiver to properly fulfill its duties;

(gg) that the bond of the Receiver shall be canceled, and the Receiver discharged, upon the Court's approval of the Receiver's final accounting, including, without limitation, upon removal or resignation as provided in Section "bb" of this Order;

(hh) that the entry of the Court's order appointing the Receiver shall not in any manner prejudice any of the other rights and remedies of Lender under its Loan Documents and/or under applicable law;

(ii) that, any time "Approval" be required with respect to any action authorized in the order of the Court, such action be authorized only if and when the Receiver receives the written consent of Lender to such action or when the Receiver obtains entry of a further order of the Court;

(jj) that the Receiver is authorized (i) to employ counsel to aid him and to provide him counsel in connection with his duties as Receiver and, subject to Approval, which shall not be unreasonably withheld, (ii) to pay his counsel at the customary hourly rates for reasonable legal services rendered in connection therewith;

(kk) that, notwithstanding anything set forth hereinabove which may state or imply to the contrary, Receiver shall not be obligated to advance any monies to make improvements to, or to rehabilitate the Property, or incur or pay any other expenses or bills in connection with his role as Receiver, except to the extent that monies for such matters are available either from operating revenues generated by the Property and/or funds provided by Lender or another party as provided in Section "q" of this Order;

(ll) that the Receiver is immediately vested with (and Borrower, its members, and their respective agents, shall immediately deliver) the books and records with respect to the operation of the Collateral, including any and all information related to: 1) amounts paid by obligors of Borrower; 2) liens, encumbrances and other interests against or affecting the Collateral and/or other property; 3) property taxes owed by Borrower; 4) all types of insurance affecting the Collateral and/or other property; 5) plans, specifications, surveys and drawings of the Collateral; 6) all computers, computer systems, software necessary to review, understand, print and deal with computerized records, and all access codes/passwords associated therewith; 7) all operating statements of Borrower; 8) all maintenance manuals for any equipment located at the Property; 9) all repair and maintenance records for the Collateral; and 10) all other aspects of the Collateral and other property and the operation and management thereof; and

(mm) that the Receiver is authorized to receive and collect any and all sums due and owing to Borrower, whether the same are now due or hereafter become due and owing, and to deposit such sums into an account in its own name (which sums shall not be commingled with any other funds) established and maintained by the Receiver.

(nn) that the Receiver shall, before entering upon his duties, be sworn to perform them faithfully, and shall execute an undertaking with the people of the state of Colorado in the amount of \$10,000 to the effect that he will faithfully discharge his duties and will pay over and account for all money and property which may come into his hands and will obey the orders of the court. This undertaking must be filed with the court.

Dated: September 13, 2007

Gael H. Njehob
District Court Judge