Hearing Date: No hearing scheduled
Location: <<CourtRoomNumber>>
Judge: Calendar, 64

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

FIRST BANK OF HIGHLAND PARK, a Division of First Bank Chicago, an Illinois Corporation, Plaintiff, v. THE FULTON BUILDING, LLC, an Illinois limited liability company; MICHAEL FEDEROW, an Individual; and UNKNOWN OWNERS AND NON-RECORD CLAIMANTS, Defendants.	No. 25 CH 10558 Calendar No. 64 Hon. James A. Wright 2701-09 W. Fulton St., Chicago, IL 60612 Hearing: October 26, 2026, 1:00 p.m.

PROPOSED INTERVENORS' RESPONSE TO THE RECEIVER'S MOTION TO RETAIN COUNSEL AND PETITION FOR TURNOVER

Phillip Bleicher, the occupant of Unit 3N at 2701-09 W. Fulton St., and Christian Black, the lessee named in the Unit 3N lease (together, "Proposed Intervenors"), by their attorney, respond to the Receiver's Motion to Retain Counsel (the "Motion") and the Receiver's Petition for Turnover (the "Petition"), both filed October 9, 2026 and noticed by the Receiver for October 26, 2026 at 1:00 p.m., and state:

Exhibits cited by letter (Ex. A through Ex. S) are those filed September 29, 2026 with Proposed Intervenors' Petition for Leave to Intervene for a Limited Purpose and Emergency Motion for Instructions to the Receiver (the "Motion for Instructions"). The Order Appointing Receiver entered August 31, 2026 (the "Order") is of record.

INTRODUCTION

1. Proposed Intervenors welcomed the appointment of a receiver. They and other occupants had asked for years for repairs the mortgagor never made, and they expected the Court's officer to bring the building under lawful, competent management. That has not happened. In the first 46 days of the receivership the Receiver has not given the notice the Foreclosure Law requires before he may collect rent; has not engaged an exterminator; has not inspected or repaired the roof; has not answered a single written request from the occupants except with demands that they prove their right to live in their homes; has served five-day notices for sums he now tells the Court he cannot yet verify; and has filed papers that misstate this Court's Order and the governing statute, supported by an undated affidavit that identifies nothing.

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2. Proposed Intervenors do not oppose the Petition. They have said from the start that the leases, ledgers, deposits and other records described in ¶ 5 of the Order must come from the mortgagor. Nor do they oppose the employment of counsel to enforce the Order against the mortgagor.

3. They respond because the Motion asks the Court to fund something else. The Receiver "may subsequently seek leave to reject the tenant leases due to the violations of the City of Chicago zoning code and a violation of public policy" (Mot. ¶ 6), and his affidavit states that counsel would be used for "either evicting the delinquent and non-paying tenants at the Property or having their leases rejected" (Mot. Ex. C ¶ 5). The Order already allows the Receiver to employ attorneys for tenant evictions without approval. (Order ¶ 9.) The only thing approval would add is a campaign to "reject" leases — a remedy the Illinois Mortgage Foreclosure Law does not provide — billed at $400 per hour (Mot. Ex. B) to the rents of the very occupants it targets. Proposed Intervenors ask that any approval of counsel be limited and conditioned as set out in Part VI.

4. Proposed Intervenors' Petition for Leave to Intervene for a Limited Purpose, filed September 29, 2026, has not been ruled on; on September 30 the Court declined to hear the accompanying Motion for Instructions on an emergency basis, without prejudice. Proposed Intervenors have noticed the Petition and the Motion for Instructions for October 26, 2026 at 1:00 p.m., with the Receiver's motions, to which they relate. Any person who has or claims an interest in the mortgaged real estate "shall have an unconditional right to appear and become a party" before judgment, and a lessee's appearance does not terminate its lease. 735 ILCS 5/15-1501(d), (e)(1); see also 735 ILCS 5/2-408(a)(2)–(3).

I. THE RECEIVER'S AFFIDAVIT DOES NOT SUPPORT THE RELIEF SOUGHT

5. The only evidence offered for the Motion is a one-page "Affidavit of Daniel Hyman." (Mot. Ex. C.) It cannot carry the weight placed on it:

(a) **It is undated.** No date appears anywhere on it, so the Court cannot tell when the Receiver made the review he describes or what he had in hand when he made it.

(b) **It is in two inconsistent forms.** It opens "being first duly sworn on oath, depose and state," but bears no jurat, notary signature or seal; it closes instead with a certification under 735 ILCS 5/1-109. Whatever form was intended, it was not completed as an affidavit.

(c) **It identifies nothing.** It names no unit, no tenant, no lease, no amount and no date. It says only that "some of the tenants are living in their units" and that "some of the tenants are not current in their rent and have a large pre-appointment balance due and owing." (Ex. C ¶ 4.) No occupant could answer it, and the Court could not act on it as to any occupant.

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(d) **Its "personal knowledge" is the mortgagor's paper.** The affiant swears to personal knowledge (¶ 2), but the only source he gives is that he "reviewed the commercial leases" (¶ 4). The Receiver has no personal knowledge of leases signed years before his appointment; he has whatever the mortgagor handed him. The Petition, filed the same day, says the mortgagor has "failed to cooperate with the turnover of documents." (Pet. § I.) The affidavit does not say which leases were reviewed, for which units, or who supplied them.

(e) **It contradicts the Petition on back rent.** The affidavit swears to "a large pre-appointment balance due and owing." (Ex. C ¶ 4.) The Petition, filed the same day by the same counsel, says "[i]t is essential for the Receiver to inspect the tenant ledger, so he can determine if any back rent owed is owed." (Pet. § II.) The Receiver cannot both know of large balances and not yet know whether any back rent is owed.

(f) **Its object is lease "rejection."** Paragraph 5 states the Receiver's opinion that counsel is needed for "either evicting the delinquent and non-paying tenants at the Property or having their leases rejected." As shown in Part V, the Foreclosure Law gives a receiver no power to reject leases.

II. THE RECEIVER'S PAPERS MISSTATE THE ORDER AND THE STATUTE

6. The Motion and Petition contain errors that bear directly on what they ask for:

(a) **"Historical" rent.** The Petition asserts that the Receiver may collect "historical, current, or prospective rents." (Pet. § II.) The Order says no such thing. It directs tenants to pay the Receiver "from the effective date of this order, until further notice." (Order ¶ 4.)

(b) **A misquoted order.** The Petition places in quotation marks language that the Receiver "shall have complete and exclusive control of the property and the tenants of the property." (Pet. § I.) Those words do not appear in the Order.

(c) **Paragraphs that do not exist.** The Petition refers to "Paragraph 5 (a-p)" and production "within 5 days." (Pet. § I.) Paragraph 5 contains items (a) through (g), and runs from five business days after approval of the bond.

(d) **A statute that does not exist.** The Petition quotes "735 ILCS 5/16-1704(f)(6)." (Pet. § III.) There is no Article XVI of the Code of Civil Procedure; the provision is 735 ILCS 5/15-1704(f).

(e) **Whose motion it is.** The Motion recites that "the Plaintiff states as follows," and the Notice of Motion is signed by proposed counsel as "Attorney for the Plaintiff." A motion to engage counsel "shall be brought before the Court by the receiver … and not by Plaintiff's counsel as the receiver is an agent of the Court and not of the Plaintiff." Standing Order § XXI(j). An attorney for a receiver may not be "directly or indirectly interested in the action or in the receivership estate." Cir. Ct. Cook Cnty. R. 8.2(b).

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(f) **Incomplete and mislabeled text.** Paragraph 2 of the Motion reads, in full: "The Property consists of multiple commercial units and commercial units." Paragraph 6 refers to "this Motion to Retain the Receiver."

(g) **The § 15-1704(f) notice.** The Petition represents that the Receiver "was required and did provide notice to any and all occupants" under § 15-1704(f), which requires posting "on the primary entrance of each dwelling unit." (Pet. § III.) No such notice has been posted on the door of Unit 3N or of any other unit in the building. The Petition gives no date of posting, attaches no copy, and offers no proof of posting. See ¶ 9 below.

7. These are not matters of style. The Receiver is the Court's officer, and the Court is asked to approve $400-per-hour counsel, payable from the rents, on the strength of these papers.

III. THE FIRST 46 DAYS OF THE RECEIVERSHIP

8. A receiver "must manage the mortgaged real estate as would a prudent person," 735 ILCS 5/15-1704(c), including to "use reasonable efforts to maintain the real estate … in at least as good condition as existed at the time the receiver took possession" and to make repairs needed to comply with "building, housing, and other similar codes," id. (c)(2), (c)(7). The Order found the Receiver qualified "to manage the property as would a reasonably prudent person." (Order ¶ 1.) The record of the first 46 days follows.

9. **No § 15-1704(f) notice.** The Order required the Receiver to give the § 15-1704(f) notice to all occupants "[w]ithin 21 days" — by September 21, 2026. (Order ¶ 4.) He has not. The only written notice he has given is an August 31 letter to "Valued Tenant" that names no occupant and omits most of what the statute requires. (Ex. H; Mot. for Instructions ¶¶ 10, 17.) The only other "notice," emailed September 17, was addressed to the tenants of four other buildings and carried two other case numbers; the next morning the Receiver wrote that it "was a defective notice." (Ex. I.) Nothing has been posted on the door of any unit. Until the notice is served, the Receiver "may not collect any rent due and owing from a known occupant, or terminate a known occupant's tenancy for non-payment of such rent." 735 ILCS 5/15-1704(f)(5)(i).

10. **Five-day notices on numbers he says he does not have.** On September 17 the Receiver wrote to the tenants that "we have not received the necessary information or documentation from the owner." (Ex. I.) Five days later he hand-delivered to Unit 3N a pre-completed five-day notice addressed to "Christine Black" — there is no such person — demanding $23,950.88, and served like notices on Unit 9PH for $10,389.15 and Unit 6S for $5,581.83. (Exs. J, K, L.) The Unit 3N demand is about seven months of the unit's $3,385 rent; it is the mortgagor's disputed pre-appointment balance, not rent accrued to the Receiver after August 31. The 6S demand is the "Total Due" on the mortgagor's own August 20 invoice, late fees and "late notice" charges included. (Ex. M.) The Receiver now tells the Court that he still needs the ledger "to determine if any back rent owed is owed." (Pet. § II.)

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11. **No answer to any written request.** The occupants have written to the Receiver repeatedly. He has answered none of their requests on the merits:

(a) **September 16, 2026** — a letter from the occupants of six units, by FedEx and email, asking for the records the Order requires and reporting the building's conditions, including the September 3 carbon-monoxide evacuation. (Ex. F.) The Receiver's only replies were a September 17 email attaching the Order and the notice he called defective the next morning, and September 18 emails asking every occupant for a lease and September rent and announcing a walk-through. (Ex. I.) He did not address the conditions or the records.

(b) **September 17, 2026** — Mr. Bleicher's own letter asking that entry be by appointment and that the Receiver stop handling his mail. (Ex. G.) No response.

(c) **September 24, 2026** — written notice under Chi. Mun. Code § 5-12-110(f) that Unit 3N had no heat. The Receiver wrote that he "will have a contractor look into it"; no contractor ever called or came. He then wrote that he was "unable to authorize any repairs without knowing the terms" of the lease, that "without the lease unable to help you," and, by afternoon, asked Mr. Bleicher to "either vacate the premises or provide us with documentation" of his right to be there. (Ex. O; Mot. for Instructions ¶ 5.) The furnace was eventually relit by Peoples Gas — not by the Receiver — and still leaks carbon monoxide.

(d) **September 24, 2026** — counsel's letter to the Receiver and all parties. (Ex. P.) No response.

(e) **September 30, 2026** — Mr. Bleicher's written notice under Chi. Mun. Code § 5-12-110(c) and (d) of conditions in Unit 3N and the common areas, giving 14 days to repair. The Receiver's only response, on October 1, was: "Please provide as we have asked multiple times your legal connection to the unit. Actually, have your lawyer provide this proof." The 14 days ran on October 14. Nothing has been repaired.

12. **Other occupants fare no better.** The occupant of Unit 9PH gave the Receiver written notice on September 24 that her home had had no heat since August 1; he answered that heat is the lessee's responsibility, that the building "is used as a work/live space," and that a space to live in "also has to have a business license." (Ex. R.) When the occupant of Unit 1N complained that the Receiver was using a lease different from his own, the Receiver wrote that "it was the same lease"; asked for his version of it, he answered: "You first." (Ex. S.)

13. **Conditions not addressed.** To Proposed Intervenors' knowledge, the Receiver has not engaged an exterminator, although insects infest the common areas and units on several floors and occupants have complained repeatedly; Mr. Bleicher pays for his own monthly pest control. The roof has been neither inspected nor repaired, although water entered Unit 3N and other units in the storms of July 3, mid-September and September 19–20, 2026, and the occupant of Unit 2N reports that his office ceiling collapsed on September 20. Water still leaks in the

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third-floor hallway at what appears to be the building's sewer stack, with sewer odor in the second- and third-floor hallways. The first-floor rear corridor — the building's exit path — remains obstructed and its doors locked. (Ex. F § 3(a); Mot. for Instructions ¶ 22(g).) No one asked to inspect Unit 3N during the September 25 fire inspection, although Mr. Bleicher was home. (Ex. A ¶ 13.)

14. **Conduct at the units.** On September 16 the Receiver came to Unit 3N unannounced; the building's camera recorded him opening Mr. Bleicher's exterior U.S. Postal Service mailbox, removing the mail, setting it on the package locker below, photographing it, returning it and leaving the mailbox door open. (Mot. for Instructions ¶ 22(h).) On September 22 he handed Mr. Bleicher the pre-completed five-day notice described above at the end of a walk-through of the unit. (Ex. A ¶ 8.)

15. **The mortgagor is still at the building.** The Order prohibits the defendants "from interfering with the powers or duties of receiver" and from "directing anyone to interfere." (Order ¶ 6.) The Receiver's own proposal undertook to "[e]nsure tenants are not in communication with or paying rents to owner." (Pet. for Appointment of Receiver (June 15, 2026), Ex. D, at 4, of record.) Yet defendant Michael Federow was at the building during the September 25 fire inspection and on September 26 (Ex. A ¶ 13), has continued to come to the building every few days since, most recently on October 15, 2026, and at least one occupant has reported that, after the Order was entered, Mr. Federow asked that occupant for rent.

16. **The Receiver's own words.** On August 31 the Receiver wrote to the tenants: "Your lease and its terms are valid and will be honored." (Ex. H.) On September 24 he wrote that "the premises at 2701 W. Fulton is used as a work/live space." (Ex. R.) His Petition invokes the § 15-1704(f) notice, which applies only to "occupants of dwelling units." 735 ILCS 5/15-1704(f)(1)–(2). The Clerk's docket classifies this action as "Commercial, Mixed Commercial/Residential or Industrial." Yet the Motion now tells the Court that the building is "commercial non-residential property" whose residents are in violation of their leases. (Mot. ¶ 4.)

17. Proposed Intervenors do not ask the Court to remove the Receiver today. They ask that his authority be confined to what the Order and the statute allow, and that he be held to the duties he has not yet performed. If the receivership continues as it has begun, Proposed Intervenors will seek, or will support, his removal. See 735 ILCS 5/2-415(b).

IV. THE PETITION FOR TURNOVER AND THE TENANTS' DEPOSITS

18. Proposed Intervenors support the Petition. The Receiver's own Receivership Proposal, filed by the plaintiff as Exhibit D to its June 15, 2026 Verified Petition for the Appointment of a Receiver, told the Court that he would "[a]ssume possession of the asset, including rent and security deposits," "[c]ollect and manage security deposits and move-in fees," and "[m]aintain [a] separate bank account." (Pet. for Appointment of Receiver, Ex. D, at 3–4, of record.) The Order contains no provision for deposits, and the mortgagor has not accounted for them. The Receiver seeks the mortgagor's claimed "historical" rents from the tenants, yet he has

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not obtained from the mortgagor the tenants' own deposits he promised to take. Proposed Intervenors ask that the turnover order (a) expressly include all security deposits (including sums the mortgagor called "key deposits") and similar sums the mortgagor or any affiliate collected for any unit — including Unit 3N's $5,077.50 — with an accounting under oath and turnover of the funds within 14 days; (b) direct that deposits be held in a separate account and reported; and (c) provide that, on an occupant's request, the Receiver will produce the lease, ledger and notices turned over for that occupant's unit and identify who gave each document to him and when. (See Mot. for Instructions ¶ 22(d)–(f).)

19. Given the Receiver's statement that he must inspect the ledger to determine whether any back rent is owed, Proposed Intervenors ask that he be instructed to make no demand on any occupant for amounts claimed for periods before August 31, 2026 unless and until he has received the ledgers and reported the claimed balance to the Court, with notice to the occupant. This concerns the Receiver's accounting for the estate's receivables; it does not ask the Court to decide any question of possession.

20. The Petition also asks that the defendants be ordered to "cease interfering" with the receivership. Proposed Intervenors support that request and ask that it be made specific: that Mr. Federow and anyone acting for him not work on the building's systems, not demand or accept rent from any occupant, and not enter common areas, mechanical rooms, the roof, meter areas or units except with the Receiver's written authorization and in the presence of the Receiver or his agent.

V. THE MOTION TO RETAIN COUNSEL

21. **No power to "reject" leases.** A receiver has possession and "full power and authority to operate, manage and conserve" the property, with "all the usual powers of receivers in like cases," including the power to "secure tenants and execute leases," collect rents, insure, and "employ counsel, custodians, janitors and other help." 735 ILCS 5/15-1704(b). None of these is a power to reject, disaffirm or cancel existing leases, and the Foreclosure Law addresses that subject directly. A receiver takes possession only "to the same extent to which the mortgagor, absent the foreclosure, would have been entitled," 735 ILCS 5/15-1701(a), and a lease "shall not be terminated automatically solely by virtue of the entry into possession by … a mortgagee or receiver prior to the entry of an order confirming the sale." 735 ILCS 5/15-1701(e). "[W]hoever takes possession can take only those rights that the mortgagor had," and "if the mortgagor would be bound by a lease, the mortgagee in possession would also be bound." *Kelley/Lehr & Assocs., Inc. v. O'Brien, 194 Ill. App. 3d 380, 388 (2d Dist. 1990).* Even a lessee made a party keeps its lease "unless the termination of the lease … is specifically ordered by the court in the judgment of foreclosure." 735 ILCS 5/15-1501(d). A receiver may terminate a tenancy for non-payment only "if the receiver otherwise has such right to terminate." 735 ILCS 5/15-1704(f)(5)(i). "Rejection" of leases is a remedy of the Bankruptcy Code, 11 U.S.C. § 365, not of the Foreclosure Law.

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22. **"Public policy."** That a unit's use may not conform to zoning does not void a lease. "[T]he fact that there has been a statutory violation does not, in itself, automatically render a contract unenforceable." *K. Miller Constr. Co. v. McGinnis, 238 Ill. 2d 284, 294 (2010).* Enforcement is denied "only if the factors that argue against enforcement clearly outweigh the law's traditional interest in protecting the expectations of the parties, its abhorrence of any unjust enrichment, and any public interest in the enforcement of the particular term." Id. at *Id.* at 294 (quoting Restatement (Second) of Contracts § 178 cmt. b (1981)). The Chicago Zoning Ordinance supplies its own remedies and does not declare leases void. Chi. Mun. Code §§ 17-16-0501 to 17-16-0512. And the Receiver stands in the shoes of a mortgagor that advertised Unit 3N as a "Commercial Loft" "with a possible work/living arrangement on 3 floors," received a letter of intent stating "We will use the space as a live/work space," and accepted rent for four years from a tenant it knew lived there. (Ex. A Att. 2; Exs. C-1, C-2; Mot. for Instructions ¶ 3.) Proposed Intervenors do not ask the Court to decide these questions now; they ask only that counsel not be approved to pursue a remedy the statute does not provide.

23. **The fees.** Costs and expenses, including counsel's, are payable from receipts only if "reasonable," 735 ILCS 5/15-1704(d)(1), and the Receiver's own fees only as "allowed by the court," id. (d)(4). Four points bear on reasonableness here:

(a) **What approval adds.** The Order already allows the Receiver to employ attorneys for tenant evictions without approval. (Order ¶ 9.) Enforcement against the mortgagor is a proper purpose. The remaining purpose — "rejection" — is not one the statute allows.

(b) **Work before approval.** "The receiver may not employ attorneys except with explicit court approval, unless for tenant evictions." (Order ¶ 9; Cir. Ct. Cook Cnty. R. 8.2(a).) The Petition was filed "by and through his counsel" on the same day the Receiver first asked to employ that counsel. No receivership funds should be applied to fees for work performed before approval except on further order.

(c) **The representations on which he was appointed.** The Receiver's proposal stated: "Receiver Fee: $0 | Millennium does not charge a receiver's fee," and "Legal Fees: Millennium only retains counsel if needed for evictions, tax protests, or extremely complicated leases." (Pet. for Appointment of Receiver, Ex. D, at 7, of record.) The proposal listed Millennium's fees as a $750 set-up fee and $750 per month minimum against 5% of collections — the same figures the Order adopts as the "receiver's fees." (Order ¶ 12.) The Order separately authorizes the Receiver to retain Millennium, his own firm, on the representation that its fees "will be the same as the receiver's fees," and requires him to "distinguish his/her fees, activities, and responsibilities from the management company's fees." (Order ¶ 9.a.) The estate should not be charged twice for the same work.

(d) **Fees against the people paying them.** The occupants' rents are the estate's principal receipts. Counsel at $400 per hour to pursue the "rejection" of those occupants' leases would consume the very receipts from which the Receiver is to pay for maintenance,

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repairs and insurance, 735 ILCS 5/15-1704(d)(2), while the roof, the infestation and the carbon-monoxide leak remain unaddressed.

24. **Notice to occupants.** The occupants are not parties, and the plaintiff has named none of them. Notice of motions is required only to parties who have appeared and those whose time to appear has not expired. Cir. Ct. Cook Cnty. R. 2.1(a). An occupant whose tenancy a motion would end may never learn of it before it is heard. Neither the Motion nor the Petition was served on any occupant; apart from the parties, the only person served was Proposed Intervenors' counsel. (Receiver's Notice of Motion, Service List.) The Court, which holds the property through its Receiver, may require that its officer give that notice. *See Bleck v. Cosgrove,* 32 Ill. App. 2d 267, 274 (2d Dist. 1961).

VI. REQUESTED RELIEF

WHEREFORE, Proposed Intervenors respectfully request that the Court:

A. Grant their Petition for Leave to Intervene for a Limited Purpose;

B. Grant the Receiver's Petition for Turnover, and order that it include all security and "key" deposits with an accounting under oath within 14 days, that deposits be held in a separate account and reported, and that the Receiver produce to an occupant on request the lease, ledger and notices turned over for that occupant's unit;

C. Order that defendant Michael Federow and anyone acting for him shall not perform any work on the building's heating, gas, electrical, plumbing or other systems, shall not demand or accept rent from any occupant, and shall not enter any common area, mechanical room, roof, meter area or unit other than his own office, if any, except with the Receiver's written authorization and in the presence of the Receiver or his agent; and direct the Receiver to report what keys and access the mortgagor has;

D. Instruct the Receiver to make no demand on any occupant for amounts claimed for periods before August 31, 2026 unless and until he has reported the claimed balance to the Court with notice to the occupant;

E. Direct the Receiver to serve and post the notice required by 735 ILCS 5/15-1704(f) on every unit within 7 days and to file proof of service and posting;

F. Approve the employment of counsel to enforce the Order against the defendants and otherwise to assist the Receiver in performing his duties under the Order, on these conditions: (i) proposed counsel shall file a statement disclosing whether he represents or has represented in this matter the plaintiff or any party; (ii) approval is prospective only, and no receivership funds shall be applied to fees for work performed before approval except on further order; (iii) counsel's fees shall be itemized in each receiver's report, separating work on enforcement against the mortgagor from work concerning occupants; (iv) the Receiver shall not file any motion or begin any proceeding in this action to terminate, reject or disaffirm the lease or tenancy of any occupant except on motion

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served on each affected occupant by name at the unit and by posting on its entrance, with an opportunity to be heard; and (v) the estate shall not be charged both a receiver's fee and a management fee for the same work;

G. Deny the Motion to the extent it seeks approval of counsel to seek the "rejection" of tenant leases; and

H. Grant such other relief as is just.

Dated: October 19, 2026

Respectfully submitted,

PHILLIP BLEICHER and CHRISTIAN BLACK

By: /s/ Corinthia Hicks
One of their attorneys

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Statement pursuant to Calendar 64 Standing Order § XII(i): this document was prepared in part with the assistance of artificial intelligence, and has been reviewed and adopted by counsel, who has verified each citation.