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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

DE ANZA COVE HOMEOWNERS
ASSOCIATION, INC., a California non-profit
corporation,

Plaintiff,

v.

CITY OF SAN DIEGO, a California
municipality;
and DOES 1-100, inclusive,

Defendants.

Case No. GIC 821191

[PROPOSED]

ORDER APPOINTING RECEIVER

DATE: May 13, 2005
TIME: 2:00 p.m.
DEPT: 66
JUDGE: Honorable Charles Hayes

AND RELATED CROSS-ACTION

Plaintiff De Anza Cove Homeowners Association, Inc.'s Motion to Appoint Receiver for De Anza Cove was heard on May 13, 2005, with counsel for all parties present. After considering Plaintiff's moving papers, Memorandum of Points and Authorities in support, declarations and exhibits therewith, Defendant City of San Diego's opposition papers, declarations, and exhibits, Plaintiff's reply papers, and arguments presented by counsel at oral argument, and after properly considering any evidentiary objections raised, the Court hereby finds good cause and orders, adjudges, and decrees as follows:

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1 **IT IS HEREBY ORDERED** that:

2 Richard M. Kipperman (the “Receiver”) is appointed as Receiver to take possession, custody,
3 and control of the property described below (“Property”).

4 **1. Description of the Property:**

5 The entire real property and common area improvements located at 2727 De Anza Road, San
6 Diego, California 92109, formerly known as De Anza Harbor Resort; now referred to by the
7 City of San Diego as “Mission Bay Park” at 2727 De Anza Road.

8 **2. Receiver’s Oath and Bond:**

9 Before performing his/her duties, the Receiver shall execute a receiver’s oath and file a bond in
10 Department 66 from an admitted surety insurer in the sum of \$_____, conditioned
11 upon the faithful performance of the Receiver’s duties.

12 **3. Receiver’s Fees:**

13 The Receiver shall charge no more than \$375.00 per hour for his services.

14 **4. Use of Management Services:**

15 The Receiver may employ a property management company. The Receiver is authorized to
16 employ the property management firm of Pacific Commercial Management, which will be paid
17 1.3% of the gross monthly rents plus actual costs and a \$20.00-per-lease set-up fee for its
18 services. The Receiver must disclose to all parties, in writing, any financial relationship
19 between the Receiver and any company he/she hires. The Receiver and/or property
20 management firm is authorized, in its discretion, to hire a security company for the Property.

21 **5. Receiver’s General Duties:**

22 After so qualifying, the Receiver shall immediately take possession, custody and control of the
23 Property and all of the improvements thereon, and collect all rents, issues, profits, and income
24 (collectively “Rents”) therefrom, care for, preserve, and maintain the Property, and incur the
25 expenses necessary for the care, preservation, and maintenance of the Property.

26 **6. Overhead Expenses:**

27 All fees and expenses incurred by the Receiver which pertain to general office administration
28 and/or overhead **shall not** be paid to the Receiver (or the Receiver’s management company, if

1 any) without **prior** authorization and approval from the court. These fees and expenses include,
2 but are not limited to office supplies, employee payroll, taxes and benefits and other charges
3 related to the overhead and office administrative costs.

4 **7. Inventory:**

5 Within thirty (30) days after qualification hereunder, the Receiver shall file an inventory of all
6 of the Property of which he/she has taken possession pursuant to this Order.

7 **8. Collection of Rents:**

8 The Receiver shall collect the Rents which are now or hereafter may be due from the tenants of
9 any portion of the Property and improvements thereon.

10 **9. Leases / Rentals:**

11 The Receiver may make and enter into leases for a term not exceeding one year, may obtain and
12 eject tenants, and may set or modify rents and terms of rent without prior Court approval. The
13 Receiver is authorized to employ and compensate unlawful detainer attorneys or eviction
14 services with respect to the operation of the Property without prior Court approval, but the
15 Receiver is to follow the Court's prior orders regarding seeking leave of court before institution
16 of eviction proceedings.

17 **10. Security Deposits:**

18 Any security or other deposits which tenants have paid to defendants or their agents and which
19 are not paid to the Receiver, and over which the Receiver has no control, shall be obligations of
20 the defendants and may not be refunded by the Receiver without an order of this Court. Any
21 other security or other deposits which tenants have paid or may pay to the Receiver, if
22 otherwise refundable under the terms of their leases or agreements with the Receiver, shall be
23 refundable by the Receiver in accordance with the leases or agreements.

24 **11. Monthly Statements:**

25 The Receiver shall prepare and serve on all parties monthly statements reflecting the Receiver's
26 fees and administrative expenses, including fees and costs of accountants and attorneys
27 authorized by the Court, incurred for each monthly period in the operation and administration of
28 the receivership estate. Upon service of each statement, the Receiver may disburse from estate

1 funds, if any, the amount of each statement. Notwithstanding periodic payment of fees and
2 expenses, all fees and expenses shall be submitted to the Court for its approval and
3 confirmation in the Receiver's Final Account and Report.

4 **12. Management of the Property:**

5 The Receiver shall operate and manage the Property including, but not limited to, collecting
6 Rent and taking possession of all accounts containing either security deposits or rental deposits.

7 The Receiver shall operate and manage the Property with all present and future homeowners,
8 residents, and occupants under the applicable terms of the Long Term Rental Agreements and
9 the Rules and Regulations De Anza Harbor Resort dated July 1997 in accordance with the
10 Court's status quo orders, unless and until there is a further order of the Court to the contrary.

11 The Receiver is authorized to make capital improvements and rehabilitate the Property, within
12 commercial reason and in the Receiver's discretion, to its state prior to November 2003.

13 The Receiver may employ agents, employees, clerks, accountants, and property managers to
14 administer the receivership estate, purchase materials, supplies and services, and pay for them
15 at the ordinary and usual rates out of the funds which shall come into the Receiver's possession
16 and shall do all the things and incur the risks and obligations ordinarily incurred by owners,
17 managers and operators of similar businesses and enterprises as such Receiver. No such risk or
18 obligation so incurred shall be the personal risk or obligation of the Receiver, but shall be the
19 risk and obligation of the receivership estate.

20 **13. Bank Accounts:**

21 The Receiver is empowered to establish bank accounts for the deposit of monies and funds
22 collected and received in connection with the receivership estate, at federally-insured banking
23 institutions or savings associations, which are not parties to this case. Monies coming into the
24 possession of the Receiver and not expended for any purposes herein authorized shall be held
25 by the Receiver in interest bearing accounts.

26 **14. Instructions from the Court:**

27 The Receiver and the parties to this case may at any time apply to this Court for further or other
28 instructions or orders and for further powers necessary to enable the Receiver to perform the

1 Receiver's duties properly.

2 **15. Expenditure of Monies Received:**

3 All monies coming into the Receiver's possession shall only be expended for the purposes
4 herein authorized, and the balance of funds shall be held by the Receiver pending further order
5 of this Court.

6 **16. Insurance:**

7 The Receiver shall determine upon taking possession of the Property whether in the Receiver's
8 judgment there is sufficient insurance coverage. With respect to any insurance coverage in
9 existence or obtained, the Receiver shall be named as an additional insured on the policies for
10 the period that the Receiver shall be in possession of the Property. If sufficient insurance
11 coverage does not exist, the Receiver shall immediately notify the parties to this lawsuit and
12 shall have thirty (30) calendar days to procure sufficient all-risk and liability insurance on the
13 Property (excluding earthquake and flood insurance) provided, however, that if the Receiver
14 does not have sufficient funds to do so, the Receiver shall seek instructions from the Court with
15 regard to whether insurance shall be obtained and how it is to be paid for. If consistent with
16 existing law, the Receiver shall not be responsible for claims arising from the lack of
17 procurement or inability to obtain insurance.

18 **17. IT IS FURTHER ORDERED** that Defendant City of San Diego and its respective agents,
19 partners, property managers, employees, attorneys, assigns, successors, representatives, and all
20 persons acting under, in concert with, or for them:

21 **A. Turnover of Property:**

22 Shall relinquish and turn over possession of the Property to the Receiver immediately upon
23 his or her appointment becoming effective;

24 **B. Turnover of Keys, Books and Records:**

25 Shall turn over to the Receiver and direct all property managers and other third parties in
26 possession thereof to turn over all keys, leases, books of account, ledgers, operating
27 statements, budgets, real estate tax bills, and all other business records relating to the
28 Property, wherever located, and in whatever mode maintained, including information

1 contained on computers and any and all software relating thereto, as well as all banking
2 records, statements, and cancelled checks;

3 **C. Turnover of Licenses, Permits and Taxpayer ID Number:**

4 Shall turn over to the Receiver all documents which pertain to all licenses, permits, or
5 government approvals relating to the Property and shall immediately advise the Receiver of
6 their Federal Taxpayer Identification Number used in connection with the operation of the
7 Property;

8 **D. Notification of Insurance:**

9 Shall immediately advise the Receiver as to the nature and extent of insurance coverage on
10 the Property. Defendants shall immediately name the Receiver as an additional insured on
11 the insurance policy/policies for the period that the Receiver shall be in possession of the
12 Property. Defendants are prohibited from canceling, reducing, or modifying any and all
13 insurance coverage currently in existence with respect to the Property; and

14 **E. Turnover of Monies and Security Deposits:**

15 Shall immediately turn over to the Receiver any security deposits and any other monies
16 (including, but not limited to, prepaid rent, or funds in property management bank accounts
17 for the Property) which represent rental or lease payments with respect to the Property,
18 which are received, or have been received by the Defendant. The tenants occupying, using
19 or leasing the Property, or any portion thereof, shall now make payments to the Receiver.

20 **18. IT IS FURTHER ORDERED** that pending further Order of this Court, Defendant City of San
21 Diego—and its agents, partners, property managers, attorneys, and employees, and all other
22 persons acting in concert with them who have actual or constructive knowledge of this Order,
23 and their agents and employees—**shall not:**

24 **A. Commit Waste:**

25 Defendant shall not commit or permit any waste on the Property or any part thereof, or
26 suffer or commit or permit any act on the Property or nay part thereof in violation of law, or
27 remove, transfer, encumber or otherwise dispose of any of the Property or the fixtures
28 presently on the Property or any part thereof;

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B. Collect Rents:

Defendant shall not demand, collect, receive, discount, or in any other way divert or use any of the Rents from the Property;

C. Interfere with Receiver:

Defendant shall not directly or indirectly interfere in any manner with the discharge of the Receiver’s duties under this Order or the Receiver’s possession of and operation or management of the Property;

D. Transfer or Encumber of Property:

Defendant shall not expend, disburse, transfer, assign, sell, convey, devise, pledge, mortgage, create a security interest in, encumber, conceal or in any manner whatsoever deal in or dispose of the whole or any part of the Property, including, but not limited to, the Rents, without prior Court Order, and

E. Impair Preservation of Property or Plaintiff’s Interest:

Defendant shall not do any act which will, or which will tend to impair, defeat, divert, prevent or prejudice the preservation of the Property, including the Rents, or the preservation of plaintiff’s interest in the Property and/or the Rents.

19. Prohibited Agreements by or with Receiver:

The Receiver shall not directly or indirectly agree to, or enter a contract, arrangement, or understanding with any party, or agent, or assignee thereof, concerning the following:

- A.** The Receiver’s role with respect to the Property following a trustee’s sale or termination of the case, without specific Court permission;
- B.** How the Receiver will administer the receivership, or how much the Receiver will charge for services, or pay for services to appropriate and/or approved third parties hired to provide services;
- C.** Who the Receiver will hire, or seek approval to hire, to perform necessary services to administer the receivership;
- D.** The making of expenditures for any capital improvements to the Property.

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1 **20. Utility's Termination of Services:**

2 No utility may terminate service to the Property as a result of the non-payment of pre-
3 receivership obligations without prior order of this Court.

4 **21. Plaintiff to Notify Receiver of Appearances of any Parties:**

5 The plaintiff is ordered to promptly notify the Receiver of any names, addresses, and telephone
6 numbers of all parties and their counsel who appear in the action, so that the Receiver may give
7 notice to all parties of any matters affecting the receivership.

8 **IT IS SO ORDERED.**

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10 Date: _____

JUDGE OF THE SUPERIOR COURT

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