

RECORDING COVER SHEET (Please print or type)

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, and does NOT affect the instrument. ORS 205.234

2023-004863**Klamath County, Oregon****06/26/2023 08:28:02 AM****Fee: \$132.00****After recording return to:** ORS 205.234(1)(c)

Danny Newman

888 SW 5th Avenue, Suite 1600

Portland, OR 97204

1. Title(s) of the transaction(s)

ORS 205.234(1)(a)

Order Granting Motion for Appointment of Receiver (recorded pursuant to ORS 37.120(4))

2. Direct party(ies) / grantor(s)

Name(s)

ORS 205.234(1)(b)

Cathay Bank, a California banking corporation, successor by merger to Far East National Bank - Plaintiff

3. Indirect party(ies) / grantee(s)

Name(s)

ORS 205.234(1)(b)

Mark S. Hemstreet, an individual - Defendant

Shilo Management Corporation, an Oregon corporation - Defendant

Cascade Hotel Corporation, an Oregon corporation - Defendant

Brian Weiss - Receiver

4. True and actual consideration:

ORS 205.234(1) Amount in dollars or other

\$

Other:

5. Send tax statements to:

ORS 205.234(1)(e)

6. Satisfaction of lien, order, or warrant:

ORS 205.234(1)(f)

☐

FULL

☐

PARTIAL

7. The amount of the monetary obligation imposed by the lien, order, or warrant:

ORS 205.234(1)(f)

\$

8. Previously recorded document reference:**9. If this instrument is being re-recorded complete the following statement:**

ORS 205.244(2)

"Rerecorded at the request of

to correct

previously recorded in book _____ and page _____, or as fee number _____."

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FILED.
2023 JUN -7 PM 4:05
4TH JUDICIAL DIST.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

CATHAY BANK, a California banking
corporation, successor by merger to Far East
National Bank,

Plaintiff,

v.

MARK S. HEMSTREET, an individual;
SHILO MANAGEMENT CORPORATION,
an Oregon corporation; CASCADE HOTEL
CORPORATION, an Oregon corporation; and
DOES 1 through 50, inclusive,,

Defendants.

Case No. 22CV28471

ORDER GRANTING MOTION FOR
APPOINTMENT OF RECEIVER

Judge: Shelley D. Russell



CERTIFIED TO BE A TRUE COPY
OF THE ORIGINAL.

DATED: 6/16/23

Jamie Proctor
CLERK OF THE COURT

This matter came before the Court on Plaintiff's Motion for Appointment of Receiver (the
"Motion").¹ Based on the Motion and the record herein,

IT IS HEREBY ORDERED:

1. Brian Weiss (the "Receiver") is hereby appointed as receiver to exclusively
possess, manage, and control Shilo Management Corporation, an Oregon corporation ("SMC"),
Cascade Hotel Corporation, an Oregon corporation ("CHC"), and Mark S. Hemstreet's
("Hemstreet") (i) membership interests in the Non-Debtor Shilo Inns,² (ii) stock in the Non-

¹ Capitalized terms used but not defined herein shall have the meanings given to them in the
Motion.

² "Non-Debtor Shilo Inns" means: Shilo Inn, Elko, LLC; Shilo Inn, Killeen, LLC; Shilo Inn,
Klamath Falls, LLC; Shilo Inn, Newport, LLC; Shilo Inn Seaside Oceanfront, LLC; and Shilo Inn,
Yuma, LLC. The Non-Debtor Shilo Inns are each organized under Oregon law.

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Debtor Manager Corporations,³ and (iii) membership interests in the Additional LLCs⁴ (the Non-Debtor Shilo Inns, the Non-Debtor Manager Corporations, and the Additional LLCs, collectively, the “**Hemstreet Companies**”) (SMC, CHC, and the Hemstreet Companies, collectively, the “**Estate Property**”). Pursuant to this order and ORS 37.110, the Receiver has the power in his sole discretion, subject to the requirement set forth below of obtaining a further order of court for certain actions, to:

- a. Collect, control, manage, conserve, and protect the Estate Property;
- b. Operate the business constituting the Estate Property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the Estate Property in the ordinary course of business;
- c. In the ordinary course of business, incur unsecured debt and pay expenses incidental to the Receiver’s preservation, use, sale, lease, license, exchange, collection, or disposition of the Estate Property;
- d. Assert a right, claim, cause of action, or defense of any owner (as defined in ORS 37.030(11)) that relates to the Estate Property;
- e. Seek and obtain instruction from the Court concerning the Estate Property, exercise of the Receiver’s powers, or performance of the Receiver’s duties;
- f. On subpoena, compel a person to submit to examination under oath in the manner of a deposition in a civil case, or to produce and permit inspection and copying of designated records or tangible things, with respect to the Estate Property or any other matter that may affect administration of the receivership;

³ “**Non-Debtor Manager Corporations**” means: Shilo Elko Corp.; Shilo Klamath Falls Corp.; Shilo Newport Corp.; Shilo Seaside Oceanfront Corp.; Castle Dome Hotel (2) Corp.; and Shilo Office Campus Manager Corp. The Non-Debtor Manager Corporations are each organized under Oregon law.

⁴ “**Additional LLCs**” means: Shilo Inn, Tillamook, LLC; Shilo Inn Helena, LLC; and Shilo Office Campus, LLC. The Additional LLCs are each organized under Oregon law.

g. Apply to a court of another state for appointment as ancillary receiver with respect to estate property in that state under ORS 37.390;

h. Incur debt for the use or benefit of the Estate Property other than in the ordinary course of business under ORS 37.260;

i. Make improvements to the Estate Property;

j. Use, sell, or transfer the Estate Property other than in the ordinary course of business under ORS 37.250, including LLC membership interests;

k. Assume or reject executory contracts of any owner with respect to the Estate Property under ORS 37.240;

l. Pay compensation to the Receiver;

m. Engage and pay compensation to one or more professionals, including but not limited to, legal counsel, to represent the Receiver and real estate brokers and appraisers to assist the Receiver in marketing for sale the Estate Property as provided under ORS 37.310;

n. Determine whether or not to establish a claims procedure under ORS 37.340; provided, however, that, in discharging its above duties, the Receiver may avoid administering unsecured claims or providing notice to unsecured creditors or filing a plan of distribution if, in the Receiver's business judgment, no purpose would be served thereby; or allow or disallow a claim of a creditor under ORS 37.360;

o. Make a distribution of the Estate Property under ORS 37.370;

p. Take any other action authorized under the Oregon Receivership Code;

q. Take any other actions that the Court deems reasonably necessary for the preservation of the receivership estate and the Estate Property, or to avoid injustice; and

r. For the avoidance of doubt, prior to taking the actions described in subparagraphs (i), (k), (l), (o), (p), (q), or (r) of this paragraph 1, the Receiver shall file a motion and obtain a further court order authorizing such proposed specific act or transaction as set forth in ORS 37.180.

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2. The Receiver shall be vested with, and is authorized, directed and empowered to exercise, all of the powers of SMC and CHC, and their officers, directors, shareholders, and general partners or persons who exercise similar powers and performs similar duties; and SMC and CHC, and their officers, agents, employees, representatives, directors, successors in interest, attorneys in fact, and all other persons acting in concert or participating with them, are hereby divested of, restrained and barred from exercising any powers vested herein in the Receiver.

3. The Receiver shall be vested with, and is authorized, directed and empowered to exercise all of the powers of Hemstreet and all affiliates (as defined in ORS 37.030(1)) of Hemstreet, including Shannon Hemstreet, in the governance of the Hemstreet Companies.

4. The Receiver shall perform the duties of a receiver set forth in ORS 37.120.

5. The Receiver shall file with the Court and serve on all parties in interest a quarterly report of the receivership's operations and financial affairs. The Receiver shall file each report not later than 30 days after the end of a reporting period, which reporting period shall be each calendar quarter. The Receiver must file and serve his initial report by no later than 120 days after the date of entry of this Order.

6. Pursuant to ORS 37.130, SMC, CHC, and Hemstreet, as applicable, and their managers, officers, members, agents, representatives, and employees, and any other parties with actual or constructive notice of this Order who are subject to the jurisdiction of this Court, shall: turn over to the Receiver the possession, custody, and control over any Estate Property within their possession, custody, or control, including, but not limited to:

a. All tangible Estate Property, equipment and goods, including the rents, income, profits, and proceeds therefrom, and all other property incidental thereto or that is or may be necessary or useful to allow and assist the Receiver in operating or in collecting the property and assets of and relating to the Receivership Estate;

b. All intangible Estate Property, including, but not limited to, any and all access codes and keys to the physical premises and electronic records that relate to the Estate

Property, as well as electronic sign-in information and passwords to all hardware and software that relate to the Estate Property;

c. All books of account, ledgers and business records that relate to the Estate Property, wherever located and in whatever mode maintained (including, without limitation, information contained on computers and any and all software relating thereto, as well as all banking records, statements and cancelled checks);

d. All rights and authority over bank accounts or other financial accounts or financial products that constitute the Estate Property;

e. All documents which constitute or pertain to the Estate Property, including, but not limited to, building designs, licenses, permits, or governmental approvals;

f. All documents which constitute or pertain to insurance policies that relate to the Estate Property, whether currently in effect or lapsed;

g. Immediate access and administrative control passwords to all bank accounts, software programs, physical computer servers, and cloud-based computer servers and software;

h. All post office boxes by which the Receiver may take any and all necessary steps to retrieve, collect, and review all mail addressed to SMC and CHC and the Receiver is authorized to instruct the United States Postmaster to reroute, hold and/or release said mail to Receiver to his current office address of Force Ten Partners, LLC, 5271 California Avenue, Suite 270, Irvine, CA 92618. Mail retrieved and reviewed by the Receiver will be promptly made available to SMC and CHC, as applicable; and

i. All contracts, leases and subleases, management agreements, franchise agreements, royalty agreements, employment agreements, licenses, assignments or other agreements of any kind whatsoever that relate to the Estate Property, whether currently in effect or lapsed.

7. SMC, CHC, and Hemstreet shall each perform the duties of an "owner" set forth in ORS 37.150. SMC, CHC, and Hemstreet, as applicable, and their members, agents,

11 representatives, and employees shall fully cooperate with the Receiver and otherwise comply with
12 the requirements of ORS 37.150. Specifically, and without limiting the foregoing, SMC, CHC,
13 and Hemstreet, as applicable, and their members, agents, representatives, and employees are
14 hereby prohibited from:

15 a. Interfering with Receiver in the management and operation of the Estate
16 Property and operations;

17 b. Expending, disbursing, transferring, assigning, selling, conveying,
18 devising, pledging, mortgaging, creating a security interest in, or otherwise disposing of the whole
19 or any part of the Estate Property; and

20 c. For the avoidance of doubt, and not in limitation of the foregoing, SMC,
21 CHC, and Hemstreet, as applicable, are prohibited from canceling, reducing, or modifying any
22 existing bank accounts, financial products or insurance coverage currently in effect with respect
23 to the Estate Property or the business constituting the Estate Property without the prior written
24 approval of the Receiver.

25 8. The Receiver shall maintain segregated accounts (the “**Accounts**”) in its name as
26 receiver at a federally insured banking institution. Upon receipt, all proceeds, profits and moneys
27 derived from the Estate Property and their operations shall be deposited by Receiver in the
Accounts. Until further order of the Court, Receiver shall apply the proceeds in the Accounts in
accordance with the priorities set forth in ORS 37.370 and the requirements of the Oregon
Receivership Code.

9. The Receiver has all other rights, powers and duties provided under the provisions
of ORS Chapter 37.

10. Receiver shall charge an hourly rate not to exceed \$650 per hour for his services.
In addition, Receiver shall be reimbursed for all expenses incurred by Receiver while performing
duties on behalf of the Receivership Estate. The Receiver may engage Force 10 to assist with the
receivership duties, including accounting, reporting, asset investigation, and other tasks. The
hourly rates for other members of Force 10 range from \$255 to \$950 per hour, however, the hourly

1 rate will be capped and not to exceed \$650 per hour. Receiver and his agents, employees, clerks,
2 accountants, property managers, consultants, and legal counsel shall be paid on a monthly basis.

3 11. To be compensated or reimbursed from fees and expenses incurred hereunder, the
4 Receiver, for himself and on behalf of others retained by him pursuant to this order, must file a
5 statement of account with the Court (a "**Fee Statement**") and serve a copy on all parties and parties
6 requesting special notice. The Receiver may pay the amounts reflected in the Fee Statement from
7 the proceeds of the Estate Property unless an objection is filed within ten (10) days of filing of the
8 Fee Statement. Such objections must be served on the Receiver, all parties and parties requesting
9 special notice, and shall be made on a line-item basis with a statement of the reason for each such
10 objection. Specific items objected to shall not be paid absent further order of the Court. Failure
11 of a party to object within this ten (10)-day period shall constitute a waiver of that party's
12 objections to the fees and expenses contained in that Fee Statement. Amounts reflected in the Fee
13 Statements to which there are no unresolved objections deemed approved, and fully and finally
14 earned, and may be paid without further order or leave of the Court. To the extent a party in
15 interest filed a timely objection to a Fee Statement, no fees shall be paid to the Receiver or his
16 professionals without an order of the Court.

17 12. Approved fees and expenses of the Receiver and any professionals engaged by the
18 Receiver shall be paid from the proceeds of the Estate Property to the extent such proceeds become
19 available. To the extent proceeds of the Estate Property are insufficient to pay the fees and
20 expenses of the Receiver and/or any professionals engaged by the Receiver for each period, any
21 balance shall be paid by the plaintiff. Amounts paid by the plaintiff shall be added to the Judgment,
22 plus interest thereon. The Receiver shall provide monthly reporting to the plaintiff setting forth
23 fees and expenses incurred through the date of the applicable report for both the Receiver and any
24 professionals engaged by the Receiver.

25 13. Pursuant to ORCP 82A(2) and ORS 37.090, the Receiver shall not be required to
26 post a bond or provide other security.

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14. To the fullest extent allowed by law, and except as may otherwise be provided under the Receivership Code dealing with the personal liability of a receiver, the Receiver and the Receiver's agents, attorneys, consultants and employees, shall be immune from and shall be held harmless from and against any and all suits, liabilities, claims, losses, lawsuits, judgments, and/or expenses, including but not limited to attorney fees, costs and monetary damages, arising out of or related to, either directly or indirectly, his, her, it's or their performance of duties or obligations pursuant to the terms of this Order.

15. The Receiver is authorized to seek the assistance of the County Sheriff or other law enforcement officials as necessary or proper to preserve the peace and protect the Estate Property, the Collateral, and to enforce this Order. The Sheriff of Multnomah County, Oregon, is hereby authorized and directed to assist in the enforcement of the terms of this Order as may be requested by the Receiver. The Sheriff of every other county in the state of Oregon is similarly authorized and directed to assist in the enforcement of the terms of this Order as may be requested by the Receiver to the extent any of the Estate Property is found or located in said county and/or to the extent any person holding any portion of the Estate Property or otherwise failing to comply with the terms of this Order is found or located in said county.

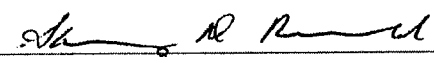
16. Notwithstanding any term or provision of this Order, the Receiver shall be under no obligation to file any tax returns or other governmental returns or forms for or on behalf of SMC, CHC, or Hemstreet. Upon reasonable notice to the Receiver, the Receiver shall provide SMC, CHC, and Hemstreet, as applicable, with reasonable access to financial information necessary for them to prepare and file such governmental returns or forms.

17. SMC, CHC, and Hemstreet shall indemnify and hold the Receiver, Force 10, its agents and affiliates, harmless from and against any and all claims, losses, damages, liabilities, and expenses (including, but not limited to, reasonable attorney fees) arising in connection with Receiver's services, unless resulting from (a) the grossly negligent or wrongful acts or omissions of Receiver or Receiver's employees or agents, (b) any acts of Receiver or his agents outside the scope of his engagement or authority, or (c) any breach of this Order by the Receiver.

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June 7, 2023,



Russell

Presented By:
Bruce H. Cahn, OSB No. 935450
Andrew J. Geppert, OSB No. 203744
Attorneys for Plaintiff

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL 1:

Lots 2, 3, 4, and 5, in Block 3 of Tract 1163, CAMPUS VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. TOGETHER WITH that portion of vacated Almond Street which inurred thereto as evidenced by Ordinance 6597, recorded July 6, 1990 in Volume M90, page 13373, Microfilm Records of Klamath County, Oregon.

PARCEL 2:

All that portion of the NW¼ SW¼ of Section 20, Township 38 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon, lying Northeasterly of the Eastside Bypass conveyed to the State of Oregon by deed recorded June 18, 1957 in Volume 292 at page 373, Deed Records of Klamath County, Oregon and recorded December 28, 1961 in Volume 334 at page 481, Deed Records of Klamath County, Oregon.

PARCEL 3:

Lots 3, 4, and 5 in Block 4 of TRACT NO. 1163, CAMPUS VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon. TOGETHER WITH that portion of vacated Almond Street which inurred thereto, as evidence by Ordinance 6597 recorded July 6, 1990 in Volume M90, page 13373, Microfilm Records of Klamath County, Oregon.

PARCEL 4:

Lots 1 and 6 in Block 3 of Tract No. 1163, CAMPUS VIEW, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon.

END

State of Oregon, County of Klamath
Recorded 05/08/00, at 3:22 p. m.
In Vol. M00 Page 16524
Linda Smith,
County Clerk Fee \$ 26⁰⁰