

The Order of the Court is stated below:

Dated: August 08, 2019  
12:37:53 PM

/s/ AMBER M. METTLER  
District Court Judge



Parcel No. 15-078-0002



\*W2999130\*

ANDERSON & KARRENBERG  
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E# 2999130 PG 1 OF 19  
Leann H. Kilts, WEBER COUNTY RECORDER  
26-Aug-19 0133 PM FEE \$40.00 DEP TH  
REC FOR: COHNE KINGHORN, P.C.  
ELECTRONICALLY RECORDED

Attorneys for St. George 4, LLC and MAK Brothers, LLC

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

ST. GEORGE 4, LLC, a Utah limited liability company and member, derivatively on behalf of nominal Defendant WARNER GATEWAY, LLC; and MAK BROTHERS, LLC, a Utah limited liability company and member, derivatively on behalf of nominal Defendants ZION VILLAGE RESORT, LLC, and JAYMAK OGDEN, LLC;

Plaintiffs,

vs.

JAY R. RICE, an individual; and RICE ASSET MANAGEMENT, LLC, a Utah limited liability company;

Defendants,

and

WARNER GATEWAY, LLC, a Utah limited liability company; ZION VILLAGE RESORT, LLC, a Utah limited liability company; and JAYMAK OGDEN, LLC, a Utah limited liability company;

Nominal Defendants.

**STIPULATED ORDER  
APPOINTING RECEIVER**

Case No. 190901628

Judge Amber M. Mettler

This matter is before the Court on Plaintiffs' Expedited Motion for Appointment of Receiver Mark Hashimoto over Warner Gateway, LLC and Jaymak Ogden, LLC (the "Receiver Motion"), filed on May 6, 2019 in connection with the above referenced lawsuit (the "Lawsuit"). Plaintiffs St. George 4, LLC and MAK Brothers, LLC, are represented by Heather M. Sneddon, Jared Scott, and John T. Anderson of the law firm Anderson & Karrenberg. Defendants Jay R. Rice ("Rice") and Rice Asset Management, LLC ("RAM") are represented by Stephen E. W. Hale of the law firm Parr Brown Gee & Loveless.

Without admitting the allegations or arguments contained in the Receiver Motion or related memoranda and declarations, all of which Rice and RAM deny, the parties to the Lawsuit (collectively the "Parties"), by and through their counsel, hereby stipulate to the appointment of Mark Hashimoto as a receiver for Warner Gateway, LLC and Jaymak Ogden, LLC, and request the Court's entry of this Stipulated Order Appointing Receiver. The Parties acknowledge and agree Rice's and RAM's agreement to the appointment of a receiver shall not be used against Rice or RAM as an admission of any of the allegations or arguments contained in the Receiver Motion.

Based on the foregoing, the Court hereby ORDERS, ADJUDGES, and DECREES as follows:

1. **APPOINTMENT OF RECEIVER.** Mark D. Hashimoto (the "Receiver"), who is a principal of Piercy Bowler Taylor & Kern, 7050 Union Park Avenue, Suite 140, Salt Lake City, Utah 84047, Tel: 801-990-1120, Email: [hashimoto@pbtck.com](mailto:hashimoto@pbtck.com), shall be, and hereby is, appointed as Receiver, to serve without bond in this action, for Warner Gateway, LLC and Jaymak Ogden,

LLC (the “Receivership Entities”), and all of the Receivership Entities’ assets, on the further terms and conditions of this Order. The Receiver is immediately appointed as a receiver over all financial aspects of the Receivership Entities.

2. **POSSESSION OF RECEIVER.** The Receiver, as an officer of this Court, shall immediately have and take possession, custody, and control, either physically or constructively as determined by the Receiver in his sole and absolute discretion, and subject to all existing and valid liens, claims, and encumbrances of secured or lien creditors, of the finances and assets of the Receivership Entities, including, without limitation, any and all real property owned by the Receivership Entities, and any and all income and profits of the Receivership Entities, of any kind and character whatsoever, both tangible and intangible and both choate and inchoate, whether now existing or after-acquired, and any and all books and records of the Receivership Entities (the “Receivership Property”).
3. **POWERS AND DUTIES OF RECEIVER.** The Receiver shall have all powers, duties, and authorities as provided by law and as a manager and/or officer under the governing documents of the Receivership Entities and/or Utah law, to take possession of, use, operate, manage, and control the Receivership Property, to collect and receive any and all rents, profits, and other income, to protect, preserve, and maintain, the value of the Receivership Property, and to incur expenses that are necessary and appropriate toward

those ends.

Without limiting the foregoing, the Receiver's powers shall specifically include the following:

- A. To investigate the nature and extent of the Receivership Property, and make a written report to the Court related thereto;
- B. To take control of any and all funds or other assets which constitute or are part of the Receivership Property and/or the rents, income, profits, or proceeds related thereto, including any bank accounts, securities accounts, and other cash accounts or cash equivalents, and lock box funds, and to change the signatory authority on such accounts;
- C. To deposit into the appropriate Receivership Entity's bank account, any checks, money orders, or other forms of payment made payable to the Receivership Entities, which constitute or are a part of the Receivership Property or the rents, profits, income, or proceeds related thereto, to endorse the same and collect the proceeds thereof, such proceeds to be held, used, and maintained as elsewhere provided herein;
- D. To open and utilize bank accounts for receivership funds relating to the Receivership Property, and the Receiver shall have no obligation to separately bond or insure any funds on deposit in amounts in excess of \$250,000;
- E. To collect monies, rents, income, profits, or other proceeds generated

by or from the Receivership Property, and to deposit the same into one or more accounts controlled by the Receiver;

F. To take any and all other actions with respect to the Receivership Property as he reasonably deems necessary and prudent to preserve and protect the value of the Receivership Property and to maximize the rents, income, profits, and proceeds therefrom, which may include but is not limited to the following, provided that any action that would have a significant impact on the Receivership Entities and that would be out of the ordinary course of business must be approved (a) by the unanimous written consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) this Court:

- i) Expending cash or other income generated from the Receivership Property for the benefit of the Receivership Entities;
- ii) Paying taxes and other legal obligations assessed against the Receivership Entities or the Receivership Property;
- iii) Employing attorneys and any other persons or entities deemed necessary or prudent to assist the Receiver with the discharge of his duties under this Order, with the costs of such services to be paid out of the Receivership Property of the Receivership

Entity to which it relates, so long as the fees charged for such services are usual and customary, and any compensation for such employment in excess of the aggregate amount of \$25,000 for any particular professional is subject to (a) review and unanimous written consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of the Court, after notice to the Receivership Entities and such other parties as the Court may direct, by filing a final fee application at the conclusion of the case. This \$25,000 cap may be altered by the unanimous written consents of Larry Dinkel, Igor Maksymiw and Jay Rice, or order of the Court, after the Receiver has gained experience with the financial aspects of the Receivership Entities.

- iv) The Receiver shall obtain (a) prior unanimous written consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of the Court, before he hires counsel and shall list the reasons why he thinks it is necessary to hire counsel. The Receiver shall use his attorney only in circumstances where he absolutely believes his use of an attorney is

necessary and financially prudent.

- v) Paying and discharging out of the funds coming into his hands as Receiver all of the costs and expenses of administration relating to the Receivership Property, except to members of the Receivership Entities, provided however, that the Receiver shall obtain (a) the prior written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of the Court, after notice to the parties in interest of his intent, to pay any single individual expense or cost that exceeds \$25,000, including all taxes, government assessments, invoices, and liens, and charges lawfully imposed upon the Receivership Entities or the Receivership Property;
- vi) Purchasing such goods, property, materials, supplies, and services as the Receiver deems necessary, prudent, and advisable to assist him in performing his duties hereunder and/or maintain the value of the Receivership Property, and to pay the ordinary and usual rates and prices;
- vii) Transferring, disposing of, selling and/or abandoning any tangible or intangible property

constituting a part of the Receivership Property provided, however, that the Receiver shall obtain (a) the prior written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of the Court, respecting the proposed terms of any such transfers, dispositions, sales or abandonments if either (I) the proposed transfer, disposition, sale, or abandonment would be outside of the Receivership Entities' ordinary course of business and the Receiver is unable to resolve or obtain the prior written unanimous consents of all other persons or entities disclosed by the public records as having or claiming a lien on the particular items of property to be transferred, disposed, sold or abandoned, or (II) the book value or market value of the tangible or intangible property that is proposed by the Receiver to be transferred, disposed of, sold, or abandoned is believed by the Receiver to be greater than \$50,000;

viii) Entering into contracts, and/or agreements on behalf of the Receivership Entities concerning the Receivership Property, or any part thereof,



including any agreements affecting a compromise or settlement of any claim or cause of action related thereto, provided, however, that the Receiver shall obtain (a) the prior written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of the Court, after notice to parties in interest, respecting the proposed terms of any such contracts and/or agreements if the aggregate costs over their term are reasonably expected by the Receiver to be greater than \$50,000; or any such contracts and/or agreements affecting a compromise or settlement where the amount in controversy is greater than \$100,000;

- ix) Liquidating and winding up the Receivership Entities, provided, however, that the Receiver shall obtain (a) the prior written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of this Court;
- x) Otherwise overseeing and managing all financial aspects of the Receivership Entities and the Receivership Property, and paying employees in the ordinary course of business, and in accordance with

ordinary and standard terms, and determining appropriate compensation for all employees.

- xi) Notwithstanding the foregoing, the Receiver shall not make any distributions, payments or transfers of any Receivership Property to any of the members of the Receivership Entities or their affiliates, and the owners of the foregoing, without the prior written unanimous consents of Larry Dinkel, Igor Maksymiw and Jay Rice. Moreover, Receiver shall separately account for his time spent working for each Receiver Entity, shall not commingle and shall separately account for the Receivership Property, shall satisfy his fee charged for work he performed from the Receivership Entity for whom the work was performed, and shall not use Receivership Property or the proceeds thereof to prosecute claims against the members of the Receivership Entities or any of their affiliates, including, but not limited to St. George 4, LLC, MAK Brothers, LLC, Zion Village Resort, LLC, Warner Gateway, LLC, Jaymak Ogden, LLC, Larry Dinkel, Igor Maksymiw, RAM or Jay Rice.

**4. HIRING OF PROFESSIONALS AND THIRD-PARTY PROVIDERS.**

Except as otherwise provided herein, nothing in this Order shall preclude the Receiver from hiring attorneys and other professionals and third-party providers or vendors to assist him with the performance of his duties under this Order, so long as the fees charged for such services are usual and customary in the locality where the services are to be found, and any compensation for such services in excess of \$25,000, is subject to the Receiver obtaining (a) the written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of this Court, after notice to parties in interest.

**5. COMPENSATION TO AND REPORTING REQUIREMENTS OF RECEIVER.** The Receiver shall:

- A. Be compensated at the rate of \$325 per hour, with staff assistance at standard rates ranging from \$140 to \$240 per hour, plus actual out of pocket expenses, for services as Receiver herein;
- B. Prepare an accounting of the Receivership Property, along with accountings of any sources and uses of payment and, upon their completion, file the same with the Court and serve such accountings on Larry Dinkel, Igor Maksymiw, and Jay Rice;
- C. Retain originals and/or legible copies of all writings and other documents which were used or referred to in order to prepare the accountings and/or statements under the foregoing paragraphs of this

Order, including, but not limited to, checks, contracts, agreements, and invoices;

- D. File, with the Receiver's final account and report, a final application for compensation and reimbursement of fees and expenses for the Receiver and all professionals employed by the Receiver;
- E. Account and pay for his fees separately from the Receivership Property of each Receivership Entity; and
- F. Record a copy of this Order with such governmental agencies and offices as the Receiver deems appropriate and advisable.

**6. RECEIVER EMPOWERED TO TAKE ALL ACTIONS NECESSARY AND INCIDENTAL TO SPECIFIC POWERS OUTLINED IN THIS ORDER.** Except as otherwise provided herein, the Receiver is further empowered and authorized to generally do such other things as may in his sole discretion be necessary or incidental to the specific powers, directions, and general authorizations set out in this Order, including any actions permitted or required by Utah Rule of Civil Procedure 66 and/or any other applicable law, and further may take actions relating to the Receivership Property beyond the scope contemplated by the provisions set forth above provided, however, that the Receiver obtains (a) the prior written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice, or (b) an order of the Court, after notice to parties in interest, for any actions beyond the scope contemplated herein.

7. **FURTHER ORDERS.** The Receiver may at any time apply to this Court for any further orders or other instructions and powers necessary to enable the Receiver to perform his duties properly.

8. **NON-INTERFERENCE WITH RECEIVER.** It is hereby further ordered that all officers, directors, members, managers, employees, agents, secured and unsecured creditors of, and counterparties to contracts with, the Receivership Entities, all of their representatives, attorneys and consultants, all persons in active concert or participation with them, and any other persons or parties with actual or constructive notice of this Order who are subject to the jurisdiction of this Court, shall be, and hereby are, enjoined and restrained from:

A. Interfering, directly or indirectly, with the Receiver's custody and control of the Receivership Property;

B. Interfering, directly or indirectly, with the Receiver's effort to collect or take possession of the Receivership Property, or the rents, income, profits, or proceeds thereof or collecting or attempting to collect from the Receivership Entities or their assets, or the rents, income, profits, or proceeds thereof, other than at the written direction of the Receiver;

C. Seizing, taking, extending, dispersing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in, cancelling, terminating or otherwise disposing of the whole or any part of the Receivership Property and/or the rents, income, profits, or

proceeds thereof, without the prior written consent of the Receiver;

D. Absent further Order of the Court, and except as expressly authorized under this Order, enforcing against the Receivership Property, any judgment obtained before the entry of this Order, or obtaining possession of or exercising dominion and control over the Receivership Property; or

E. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Receivership Property and the rents, income, profits, or proceeds thereof, or this Court's jurisdiction over the Receivership Entities.

9. **TURN OVER AND COOPERATION.** It is hereby further ordered that all officers, directors, members, managers, employees, agents, secured and unsecured creditors of, and counterparties to contracts with, the Receivership Entities, all of their representatives, attorneys and consultants, all persons in active concert or participation with them, and any other persons or parties with actual or constructive notice of this Order who are subject to the jurisdiction of this Court, and any and all banks, brokerage firms, financial institutions or other business entities having possession or control of property of the Receivership Entities or their assets, shall:

A. Turn over to the Receiver any portion of the Receivership Property, any rents, income, profits, and proceeds therefrom, and any and all other property incidental thereto or that is or may be necessary or

useful to allow and assist the Receiver in collecting the Receivership Property, including, but not limited to, all mail and other correspondence, all post office boxes, all keys to all locks, and the contracts, records, books of account, ledgers, files and all business records for the Receivership Entities or the Receivership Property or the rents, income, profits, or proceeds thereof, wherever located and in whatever mode maintained (including, without limitation, information contained on computers and any and all software related thereto as well as all banking records, statements and cancelled checks), it being understood by the Parties that Receivership Property does not include payments made to Rice and RAM at the time the complaint was filed in the Lawsuit and payments made thereafter that the plaintiffs claim should not have been made to Rice and RAM, and instead such payments shall be incorporated into the Receiver's accountings and written report to the Court and the Parties;

- B. Turn over to the Receiver all documents which constitute or pertain to all contracts, leases, subleases, royalty agreements, assignments, insurance policies, liens, security interests, licenses, permits or governmental approvals or entitlements, or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to the Receivership Property or any interest therein, or to the rents, income, profits, or proceeds therefrom; and

C. Cooperate in all other and further respects with the Receiver in the performance of his duties pursuant to this Order.

10. **OWNER ACCESS TO RECEIVERSHIP PROPERTIES.** Nothing in this Order shall be construed to deny Larry Dinkel, Igor Maksymiw, or Jay Rice reasonable access to the Receivership Property, including the Receivership Entities' financial records.

11. **INTERIM DISTRIBUTIONS OF NET PROCEEDS OF RECEIVERSHIP PROPERTY.** The Receiver may, in his sole discretion, make interim distributions of the net proceeds from the Receivership Property to the person or persons entitled thereto in the order of their priorities under applicable Utah law, except no such distributions shall be made to any of the Parties without the express prior written unanimous consents of Larry Dinkel, Igor Maksymiw and Jay Rice. Notwithstanding the foregoing, however, the Receiver shall be and hereby is authorized to at all times maintain a cash reserve in such amounts as the Receiver deems reasonable and prudent to pay future costs of administering the Receivership Entities and Receivership Property, and any costs necessary for the prudent operation of the Receivership Entities.

12. **TERMINATION OF RECEIVERSHIP.** The Receivership shall be terminated upon the written unanimous consents of Larry Dinkel, Igor Maksymiw, and Jay Rice. Absent their agreement, once the Receiver has completed his duties under this Order and has either fully administered or



abandoned all assets of the Receivership Entities, paid the costs, expenses, and claims of the Receivership Entities in their order of priority, and if prudent, liquidated and wound up the Receivership Entities, the Receiver shall obtain an order from this Court terminating the receivership and discharging the Receiver.

13. **EFFECTIVE DATE.** This Order shall become effective immediately upon its entry and the filing by the Receiver of the Receiver's Oath.

14. **RECEIVER'S LIABILITY.** Notwithstanding anything in this Order to the contrary, the Receiver shall have no liability to any party in connection with the discharge of his duties under this Order except in cases of gross negligence or intentional or fraudulent misconduct. Any action against the Receiver by or against any party in connection with the discharge of his duties under this Order shall be subject to the exclusive jurisdiction of this Court.

15. **FURTHER ORDERS.** The entry of this Order is without prejudice to the right of the parties to move the Court to expand or contract the duties or powers of the Receiver.

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So stipulated:

ANDERSON & KARRENBURG

          /s/ Heather M. Sneddon            
Heather M. Sneddon

Jared Scott  
John T. Anderson  
*Attorneys for Plaintiffs St. George 4, LLC  
and MAK Brothers, LLC*





PARR BROWN GEE & LOVELESS

          /s/ Stephen E. W. Hale            
Stephen E. W. Hale  
*Attorneys for Defendants Jay Rice and  
Rice Asset Management*

**THE COURT'S SIGNATURE APPEARS AT THE TOP OF THE FIRST PAGE**

**\*\*      END OF ORDER      \*\***

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- 15-078-1  View PDF
- 15-078-2  View PDF
- 15-078-3  View PDF
- 15-078-4  View PDF

**Dedication Plat**

Seven H Estates  
41-041(TIF)

Chip Square Sub  
41-041(TIF)  
31-040(TIF)

Foggy Flats Sub  
41-041(TIF)  
31-040(TIF)  
37-068(TIF)

Chip Square Sub #02  
41-041(TIF)  
31-040(TIF)  
37-068(TIF)  
31-048(TIF)

Concord Subdivision  
41-041(TIF)  
31-040(TIF)  
37-068(TIF)  
31-048(TIF)  
40-080(TIF)

2200 South Street  
41-041(TIF)  
31-040(TIF)  
37-068(TIF)  
31-048(TIF)  
40-080(TIF)  
66-014(TIF)

**Current References**

Entry #	Book	Page	Recorded Date
2809369			16-AUG-16
Kind of Instrument WARRANTY DEED			

**Prior Parcel Numbers**

No Prior Serial Numbers Found

**Legal Description**

*\* For Tax Purposes Only \**

THE EAST 1/2 OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE MERIDIAN. CONTAINING 20 ACRES. ALSO THAT PART OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 28, LYING AND BEING NORTH AND WEST OF A SLOUGH RUNNING THROUGH SAID LAND, DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTHWEST CORNER OF SAID NORTHEAST QUARTER OF NORTHEAST QUARTER OF SAID SECTION 28, AND RUNNING THENCE EAST 70 RODS, MORE OR LESS, TO WEST BANK OF A SLOUGH, THENCE SOUTHWESTERLY ALONG SOUTHWESTERLY BANK OF SAID SLOUGH TO SOUTHLINE OF SAID QUARTER-QUARTER SECTION, THENCE WEST 10 RODS, MORE OR LESS, TO THE WEST LINE OF SAID QUARTER-QUARTER SECTION, THENCE NORTH 80 RODS TO THE PLACE OF BEGINNING. CONTAINING 20 ACRES, M/L.