

W2653631*

The Order of Court is stated below:
Dated: August 20, 2013 /s/ Mark R. DeCaria
12:22:00 PM District Court Judge



E# 2653631 PG 1 OF 11
ERNEST D ROWLEY, WEBER COUNTY RECORDER
30-Aug-13 12:51 PM FEE \$31.00 DEP SC
REC FOR: BACKMAN FPTP
ELECTRONICALLY RECORDED

STATE OF UTAH }
COUNTY OF WEBER }

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 20th DAY OF AUG 2013
CLERK OF THE COURT

BY Casey R. Hill DEPUTY

PAGE 1 THROUGH 11



6-055883

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR WEBER COUNTY,
STATE OF UTAH

WEST CRE VENTURE
2010-2, LLC,

Plaintiff,

v.

G & G PROPERTIES,
INC.,

Defendant.

ORDER APPOINTING
RECEIVER

Case No. 130903982

Judge Mark R. DeCaria

The Court, having reviewed and considered the Verified Complaint and the Plaintiff's Motion to Appoint Receiver, Memorandum in Support of Motion to Appoint Receiver, Declaration of Richard H. Forsyth, and all other information that the Court deems necessary and appropriate under the circumstances, and after full consideration of this information, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

Plaintiff's Motion is GRANTED and Richard H. Forsyth ("Receiver") is appointed as receiver of the following real property (the "Property"):

Parcel 1 (Commonly known as 1834 West 2550 South, West Haven, UT 84401; parcel id no. 15-068-0032):

Part of the Southwest Quarter of Section 25, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey: Beginning at a point on the North Line of 2550 South Street which is North 0°49'33" East 33.00 feet and South

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88°49'46" East 213.00 feet from the Southwest Corner of Said Section 25 and running thence North 0°49'33" East 402.00 feet, thence South 88°49'46" East 140.00 feet, thence North 0°49'33" East 105.00 feet; thence North 88°49'46" West 305 feet; thence North 0°49'33" East 127.50 feet along the East line of the State Highway (1900 West Street) thence South 88°49'46" East 460.00 feet; thence South 0°49'33" West 634.50 feet to the North line of 2550 South Street; thence North 88°49'46" West 295.00 feet to the point of beginning.

Parcel 2 (Commonly 2496 South 1900 West, West Haven, UT 84401; parcel id no. 15-068-0034):

DM ✓ A-
 Part of the Southwest Quarter of Section 25, Township 6 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey; Beginning at a point on the East line of 1900 West Street which is North 0°49'33" East 340.00 feet and South 88°49'46" East 48.00 feet from the Southwest Corner of said Southwest Quarter Section and running thence North 0°49'33" East 200.00 feet; thence South 88°49'46" East 305.00 feet; thence South 0°49'33" West 105.00 feet; thence North 88°49'46" West 140 feet; thence South 0°49'33" West 95.00 feet; thence North 88°49'46" West 165.00 feet to the point of beginning.

2. The Declaration of Richard H. Forsyth dated July 1, 2013, shall constitute the Oath and Acceptance of Receiver contemplated by Utah Rule of Civil Procedure 66(d).

3. The Receiver—who is and shall be disinterested and impartial as to all parties to and the subject matter of this action—is to take charge and to preserve, protect, repair, maintain, improve, operate and manage the Property. The Receiver may do all the things, and incur all the risks and obligations, ordinarily done or incurred by owners, managers, and operators of businesses and property similar to the Property possessed by the Receiver, except that the Receiver may not make any capital improvements to the Property without prior approval of the Court. The Receiver shall have all the rights and powers reasonably necessary to fulfill its obligations under this Order including, but not limited to, the following specific rights, duties and powers, subject to further order of the Court:

(a) to take immediate possession of the Property and any and all personal property used therewith, including, but not limited to rental payments, security deposits, revenues, issues, profits, records, contracts, leases, fixtures and equipment used or associated therewith, including all computer equipment and software used to operate the Property (all collectively referred to hereinafter as the "*Receivership Property*");

(b) to take such steps as shall be necessary or appropriate in order to preserve, protect, repair, maintain, improve, operate and manage the Receivership Property in a prudent and businesslike manner and to expend such funds as are necessary and appropriate therefore (to the extent that funds are available to the Receivership for such purposes), including, without limitation, the power to enter and perform (i) contracts for procurement of utility and other services for the benefit of the Receivership Property, (ii) property management contracts with third parties and leasing or lease brokering service contracts with third parties, if and for such periods as the Receiver deems it appropriate to obtain such services, and (iii) contracts for casualty, liability or property insurance for the Receivership Property from such companies and in such amounts as the Receiver deems appropriate;

(c) to open, transfer and change all bank and trade accounts relating to the Receivership Property to its name as Receiver, to open a separate fiduciary bank account and deposit all sums received in this bank account including, without limitation, rents, issues, deposits, and profits and to disburse from this account the payments the Receiver is entitled or required to make hereunder;

(d) to use the Defendant's tax identification number to establish bank

accounts at any bank the Receiver deems appropriate for the deposit of monies and funds collected and received in connection with his administration of the Property and, as to any existing accounts relating to the Property, to manage and modify such accounts, including, without limitation, the ability to change existing signature cards to identify the Receiver as the authorized party for such accounts, limit the use of such accounts by others, and/or to close such accounts as the Receiver deems appropriate;

(e) to account to the Court, if required by the Court, for all sums received and expenditures made;

(f) to the extent that funds become available, to repair and maintain the improvements located on the Receivership Property in the event that the Receiver determines that such repair is appropriate, and to purchase personal property necessary to the operation of the Property in order to prevent waste and to promote profitable use of the Receivership Property;

(g) to ratify, confirm and hold all existing leases, contracts, or other agreements related to the operation of the Receivership Property;

(h) to employ, discharge and replace assistants, employees, professional individuals, and independent contractors, as in the Receiver's judgment are customarily employed in the management and operation of and are necessary to continue operation of the Receivership Property;

(i) to make, enforce, modify and enter into such leases (including equipment leases), contracts and concessions agreements upon such rental rates and other

terms and conditions as the Receiver may deem appropriate in connection with the discharge of the Receiver's duties;

(j) to use rents and receipts from the Receivership Property and such funds as may be advanced by any entity for the payment of expenses of the Receivership and of the Receivership Property, and, if possible, to make principal and interest payments, in the order of priority, toward any debt which is secured by a lien on the Receivership Property;

(k) to borrow funds from time to time and in such amounts as it shall deem appropriate with authorization of the Court pursuant to paragraphs 9 and 10;

(l) to issue Receivership Certificates;

(m) to apply for, obtain and renew as necessary all licenses and permits required for the operation of the Receivership Property;

(n) with respect to any operation or activity that is now conducted on the Receivership Property or is customarily conducted on similar properties, and that may lawfully be conducted only under governmental license or permit, to continue such operation or activity under the licenses or permits issued to any owner or operator of the Receivership Property subject to compliance with the terms thereof;

(o) to engage, retain and obtain the advice and assistance of such legal counsel and accounting and other professionals as may be necessary to assist in the proper discharge of the Receiver's duties and to pay the fees of such counsel and other professionals from the funds received in connection with the Receivership Property;

(p) to demand and collect from any tenants or lessees of the Receivership

Property, or from any other persons liable therefore, rents and other charges due or hereafter to become due and to institute such legal actions as the Receiver deems necessary to collect accounts and debts, and enforce leases and other agreements, relating to the Receivership Property, and to recover possession of the Receivership Property from persons who may now or in the future be wrongfully occupying the Receivership Property or any part thereof;

(q) to pay and contest personal and real property taxes (although Receiver shall not be responsible for payment of any real property taxes, utility bills, unpaid payroll expenses or other unpaid invoices for services or utilities incurred by the Defendant or for the benefit of the Property prior to the Receiver's taking possession of the Property);

(r) to have possession of and access to all books and records with respect to the operation, leasing, renting and management of the Receivership Property;

(s) to change any or all locks on the Receivership Property and generally to do such other lawful acts as the Receiver reasonably deems necessary to the effective operation and management of the Receivership Property;

(t) to notify all local, state and federal governmental agencies, all vendors and suppliers, and any and all others who provide goods or services to the Property of his or her appointment as Receiver;

(u) to either open new utility accounts or continue existing utility accounts for the Property at the Receiver's discretion—regardless of whether the Receiver continues existing utility accounts or opens new utility accounts, the Receiver shall be entitled to maintain such accounts without providing any new deposit;

(v) to do any and all other acts necessary and convenient or incidental to the foregoing.

4. The Receiver succeeds to all right, title and interest of any entities, their successors or agents in any and all licenses relating to the Receivership Property. To the extent permitted by applicable law, the Receiver may continue to operate under those licenses, apply for transfer of the authority conferred by those licenses, or apply for new licenses. The Plaintiff and Defendant, their successors and assigns, and all persons with knowledge of this Order are ordered to cooperate with the Receiver in ensuring an orderly and lawful transition under all licenses relating to the Receivership Property.

5. The Receiver shall enter upon and file bonds of good and sufficient surety to be approved by the Court in the form of a receiver's surety bond in the sum of \$0.00, conditioned upon the faithful performance of duties as surety and the proper accounting of all Receivership Property. The costs of the bond shall be paid from the rents, issues and profits of the Receivership Property and shall not be paid out of the Receiver's compensation.

6. All persons (including, but not limited to, banks, accountants, employees and other agents) are ordered to deliver immediately over to the Receiver or his agents all of the Receivership Property and its proceeds, including, but not limited to, any and all security deposits, unpaid bills, revenues, profits, rents, dues and lease payments relating to the Receivership Property received after the date of this order, and bank accounts containing those funds, endorsed to the Receivership where necessary, and to continue to deliver immediately to the Receiver or his designee any such property received at any such time in the future, and to

deliver to the Receiver all books and other records relating to the operation, maintenance and management of the Receivership Property; and, where necessary or requested, to explain the operation, maintenance and management of the Receivership Property, and to permit the Receiver to carry out his duties hereunder without interference. No attorney shall be required to deliver any retainer amount to the Receiver.

7. All funds received by the Receiver that are in excess of the costs expended by the Receiver pursuant to its powers granted herein shall be retained by the Receiver in its fiduciary account or accounts and shall be subject to future order of the Court. To the extent practicable, the Receiver shall retain all such monies in interest-bearing accounts until disbursement. Each month the Receiver shall prepare and serve on the parties, but not file with the Court, an accounting of the income and expenses incurred in the management of the Property, including the Receiver fees and expenses and all disbursements.

8. Nothing herein contained nor any acts of the Receiver pursuant hereto shall be construed as subordinating, interfering with, or invalidating any lawful lien or claim by any person, organization or corporation, including but not limited to the rights and lien of the Plaintiff under the Deed of Trust referenced in the Verified Complaint.

9. The costs and expenses incurred by the receiver in performing its functions hereunder and in paying the sums it is required or entitled hereunder to pay shall be paid first from the rents, issues and profits of the Receivership Property and then (if necessary) shall be paid by loans as provided in the next paragraph. None of such costs and expenses shall be paid out of the Receiver's compensation.

10. If the rents, issues and profits of the Receivership Property available to the Receiver are not sufficient to pay all of such costs and expenses, the Receiver may apply for loans from the Plaintiff or its successors and assigns who may, in their discretion, make the same. Any such loans shall be taxed as additional costs of foreclosure and included in the amount necessary to cure or redeem.

11. The Receiver's compensation for Receiver services shall be paid at the rate of \$150.00 per hour. Such compensation shall be paid monthly from the rents, issues and profits of the Receivership Property or, if such revenues should be insufficient, the compensation shall be paid by Plaintiff or its successors and assigns. Any such payments by Plaintiff, its successors or assigns, shall be taxed as additional costs of foreclosure in accordance with the preceding paragraph.

12. Nothing in the Order shall be construed as imposing personal liability on the Receiver for payment of any loan, lien, or other obligation relating to the Receivership Property. The Receiver shall not be personally or individually liable or obligated for any action or inaction on its part, or for or under any contract entered into by Receiver pursuant to this order. Rather, any and all liability and obligations of the Receiver resulting from any such action, inaction, or contract shall be limited to and paid only and solely from the Receivership Property and the rents, issues and profits therefrom.

13. To the extent they have not already done so, all persons or entities shall immediately deliver to the Receiver possession of the Receivership Property, all rents, issues, profits and tenant security deposits therefrom, all leases or contracts relating to the Property, all

books and records relating to the Receivership Property, all funds maintained by Defendant or its agents/managers as repair and maintenance reserves, tax reserves, or any other reserve for the management of the Receivership Property and all funds received as income from the Receivership Property held for the Defendant's benefit by others.

14. The various tenants of the Receivership Property shall pay the rents and other charges owed by them to the Receiver upon demand.

15. The Defendant and anybody acting in concert with the Defendant are enjoined from interfering in any way with the Receiver or the Property.

16. The Defendant shall:

a. immediately turn over to the Receiver the Property and all of the following related to the Property: security deposits, prepaid rent, other rental or lease payments received after the date of this Order, funds in property management bank accounts, keys, computer equipment and software used to operate the Property, books, documents, leases, plans, specifications, drawings, certificates, proof of insurance, environmental studies, and any and all other records relating to the Property.

b. within 30 days of the date of this Order, provide to the Receiver an accounting of rents received from the Property since the date of the first breach of the obligation owed to the Plaintiff;

c. immediately advise the Receiver about the nature and extent of any insurance coverage on the Property;

d. immediately name the Receiver as an additional insured on each insurance

policy on the Property; and

~~e. not cancel, reduce or modify such insurance coverage related to the~~
Property.

17. Except as expressly stated by this Order, the Receiver shall comply with and have all powers and duties arising under the Utah Uniform Assignment of Rents Act, Title 57, Chapter 26, with regard to the receipt, application and disbursement of all rent proceeds received from the tenants and/or Defendant in connection with the Property. The Receiver shall also comply with Rule 66 of the Utah Rules of Civil Procedure as applicable.

18. This Order results in the Receiver being appointed as a receiver for two separate and distinct parcels of real property, collectively referred to herein as the Property. The Receiver shall continue in his capacity as a receiver for all such Property unless (1) released by order of the Court, (2) released by virtue of the Defendant having cured all defaults under the subject Deed of Trust and Assignment of Rents documents, including but not limited to the default on the underlying obligation owed to the Plaintiff under that Deed of Trust and Assignment of Rents, or (3) released by virtue of the respective parcel(s) of property, having been either (a) conveyed to Plaintiff or (b) sold in connection with the foreclosure of the subject Deed of Trust. The release of the Receiver from one, but less than all, parcel of the Property shall not automatically release the Receiver from the remaining parcel of the Property. Plaintiff shall notify the Receiver in writing within 48 hours of any event within Plaintiff's knowledge that terminates the receivership.