


The Order of the Court is stated below:  
Dated: December 22, 2023 /s/ ANGELA FONNESBECK  
09:44:51 AM District Court Judge



Michael R. Johnson (7070)  
Austin C. Nate (17789)  
**RAY QUINNEY & NEBEKER P.C.**  
36 South State Street, Suite 1400  
P. O. Box 45385  
Salt Lake City, UT 84145-0385  
Tel: (801) 532-1500  
[mjohnson@rqn.com](mailto:mjohnson@rqn.com)  
[anate@rqn.com](mailto:anate@rqn.com)

Parcel Numbers:  
41-21-403-0101 41-21-404-0101  
41-21-403-0102 41-21-404-0102  
41-21-403-0201 41-21-404-0201  
41-21-403-0202 41-21-404-0202  
41-21-403-0301 41-21-404-0301  
41-21-403-0302 41-21-404-0302  
41-21-403-0401 41-21-404-0401  
41-21-403-0402 41-21-404-0402

Attorneys for Plaintiff Construction Loan Services II, LLC

IN THE FIRST JUDICIAL DISTRICT COURT  
RICH COUNTY, STATE OF UTAH

CONSTRUCTION LOAN SERVICES II, LLC, a Washington limited liability company,  Plaintiff,  v.  THE WATERS EDGE PROPERTIES, LLC, a Utah limited liability company,  Defendant.	<b>ORDER GRANTING MOTION FOR APPOINTMENT OF A RECEIVER AND ORDER APPOINTING JOHN H. CURTIS AS RECEIVER</b>  Case No. 230100037  Judge Angela Fonnesebeck  Tier 2
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This matter came before the Court on Plaintiff Construction Loan Services II, LLC’s (“CLS II” or “Plaintiff”) *Stipulated Motion for Appointment of Receiver* (the “Motion”). The Motion, which has been stipulated to by Defendant The Waters Edge Properties, LLC (“Waters Edge” or “Defendant”), requests, among other things, an Order appointing John H. Curtis of Rocky Mountain Advisory, LLC, whose business address is 15 West South Temple, Suite 500, Salt Lake City, Utah 84101, as receiver over the “Collateral”, which “Collateral” is more particularly defined as follows:

**A.** Any and all personal property, whether tangible or intangible, owned by Defendant The Waters Edge Properties, LLC (“**Waters Edge**”) and described and identified in that certain Loan Agreement, dated June 24, 2022; that certain Promissory Note, dated June 24, 2022; and that certain UCC Financing Statement, all of which are further described in Plaintiff’s Verified Complaint and Application for Receiver on file herein.

**B.** All real property and related improvements and existing and future easements, access rights, appurtenances, privileges, licenses, hereditaments, franchises and tenements, all water stock and water rights, minerals, oil, gas, other commercially valuable substances in connection with such real property, buildings, structures, permits, plans, subdivision rights, contracts, contract, rights, existing and future leases, subleases, sub-tenancies, goods, materials, supplies, chattels, furniture, appliances, fixtures, equipment and machinery, rents, security or similar deposits, revenue, issues, royalties, earnings, products, and proceeds related to or arising from such real property and related improvements profits identified and pledged to CLS II under that certain *Deed of Trust, Security Agreement, Assignment of Leases and Rents, Assignment of Contracts and Plans, and Fixture Filing*, dated June 24, 2022, executed by Waters Edge as grantor/trustor, in favor of CLS II as grantee/beneficiary, and recorded in the Official Records of Rich County, Utah;

As part of the Motion, CLS II and Waters Edge have also stipulated that the Court may enter an order enjoining and restraining Waters Edge and any person or party acting in concert or participation with it, or any of them, from, directly or indirectly, transferring, selling, leasing, disposing of, encumbering, injuring, converting, gifting or otherwise interfering with the Collateral without CLS II’s express prior written consent and the written consent of the Receiver,

or further Order of the Court.

Based upon the Motion, the allegations of the Verified Complaint on file herein, John H. Curtis’s Declaration of Disinterestedness and Receiver’s Oath, the other pleadings and papers submitted in support thereof, and the arguments and evidence (if any) presented in support of the Motion, and good cause appearing therefore, the Court makes the following findings:<sup>1</sup>

1. Good and sufficient grounds exist to grant the Motion and appoint a receiver over the Collateral, in that:

A. CLS II appears to hold a properly perfected lien on and security interest against the Collateral;

B. The Collateral secures the performance and payment of substantial monetary obligations owed by Waters Edge to CLS II;

C. Waters Edge has defaulted under the Loan and the Loan Documents;

D. As of December 8, 2023, there was due and owing to CLS no less than the following amounts on the Loan:

Loan 72750

Principal:	\$5,708,001.31
Interest:	\$ 11,098.89
Fees:	\$ 350.00
TOTAL:	\$5,719,450.20

E. Additionally, CLS II is owed further contractual and default interest thereafter at the rates set forth in the Loan Documents, both before and after judgment, until paid, together with costs and attorneys’ fees incurred by CLS II in enforcement or collection of the Loan

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<sup>1</sup> Capitalized terms not defined herein shall have the meaning given them in CLS II’s Verified Complaint and the Motion.

secured by the Collateral;

F. Waters Edge has committed Events of Default concerning the Loan;

G. The DOT provides, among other things, that upon the occurrence of an Event of Default, CLS II shall be entitled to the appointment of a receiver;

H. Further, the DOT provides for the assignment of all rents, insurance proceeds and other income generated from the Property secured by CLS II's DOT, and further provides that CLS II is entitled to collect said rents, insurance proceeds and other income if an Event of Default occurs; and

I. Waters Edge owns or otherwise controls the Collateral.

2. Events of Default have occurred under the Loan Documents, and all amounts owed to CLS II related to the Loan have been accelerated and are due and payable in full.

3. The Collateral secures the performance and payment of all obligations owed under the Loan.

4. Waters Edge is unable or unwilling to repay the obligations owed to CLS II under the terms of the Loan and the Loan Documents.

5. Waters Edge continues to use and enjoy the Collateral.

6. It is impractical or impossible for CLS II to enjoy the rights granted to it under the Loan Documents without the appointment of a receiver who has the exclusive and broad power and authority to take possession of, control, manage and operate the Collateral.

7. Furthermore, additional funds may be required to maintain and preserve the value of the Collateral, and CLS II is unwilling to advance those funds without the appointment of a receiver and appropriate judicial oversight.

8. It appears that the Collateral is in imminent danger of waste, loss, dissipation, or impairment in violation of CLS II's rights.

9. It also appears that the Collateral's revenue-producing potential is likewise in imminent danger of waste, loss, dissipation, or impairment in violation of CLS II's rights.

10. Pursuant to the Loan Documents, and pursuant to applicable law, CLS II is entitled to the immediate appointment of a receiver over the Collateral.

11. Money damages may be insufficient to protect CLS II if the Collateral or the rents, insurance proceeds and other income thereof is removed, lost, sold, encumbered, destroyed or concealed. Other potential remedies are either unavailable or inadequate.

12. Further, Waters Edge has stipulated to the appointment of a receiver over the Collateral.

13. The appointment of a receiver in this matter is authorized by law and, in particular, pursuant to Utah Code Ann. § 78B-21-101 *et seq* and Rule 66 of the Utah Rules of Civil Procedure, in that, among other reasons, the Collateral is subject to CLS II's rights under the Loan Documents; the Collateral and its revenue-producing potential are in imminent danger of waste, loss, dissipation, or impairment; the DOT expressly authorizes the appointment of a receiver in the event of Waters Edge's default which has now occurred; and courts from other jurisdictions have appointed receivers in circumstances similar to this case.

14. In addition, the failure to appoint a receiver in this action over the Collateral could result in the immediate and irreparable injury, loss, or damage to CLS II's interest in the Collateral.

15. The appointment of a receiver over the Collateral is reasonably necessary to preserve and protect the collateral, and to ensure that the Collateral is not lost, dissipated, damaged or commingled.

16. CLS II is entitled to the appointment of a receiver over the Collateral, and all rents, income and other proceeds thereof, pursuant to the provisions of the Uniform Commercial Real Estate Receivership Act (“UCRERA”), Utah Code Ann. § 78B-21-101 *et seq.*

17. Furthermore, in order to provide substantial justice, the receiver should be granted any and all rights, powers and responsibilities granted or authorized to a general receiver by Utah law, and/or any other applicable basis in law or equity, including but not limited to the power to sell or otherwise liquidate the Collateral for the benefit of CLS II.

18. John H. Curtis, the proposed Receiver over the Collateral, is qualified under Utah law to serve as receiver in that Mr. Curtis (a) is not a party, attorney or other person who is interested in this action; (b) is not disqualified to serve as a receiver; (c) has substantial experience as a receiver; and (d) has provided his oath under which he has sworn to perform his duties faithfully.

19. Injunctive relief also is appropriate in this case under Utah Code Ann. § 78B-21-114 because CLS II has demonstrated that it is entitled to the appointment of a receiver for the reasons outlined above.

20. Therefore, pursuant to Utah law, and in aid of and to assist the receiver in the performance of the receiver’s duties, CLS II is entitled to an order enjoining Waters Edge, any persons acting in concert therewith, and any third parties from (1) possessing, exercising control, or enforcing a judgment against the Collateral; (2) enforcing a lien against the Collateral other

than those asserted by CLS II under the Loan Documents; or (3) taking or initiating any act, action, or proceeding relating to the Collateral in order to protect and preserve the Collateral and facilitate administration of the receivership.<sup>2</sup>

21. The monetary obligations owed by Waters Edge to CLS II under the Loan Documents have been accelerated, are due and payable in full, have not been paid, and are in default.

22. Notice as required by Utah law has been properly and timely given to all parties entitled to such notice.

Based upon the foregoing findings of fact, and such other facts as the Court made upon the records, which are incorporated herein by this reference, it is hereby **ORDERED**,

**ADJUDGED AND DECREED**, as follows:

1. **APPOINTMENT OF RECEIVER.** John H. Curtis (“**Receiver**”), whose office is located at c/o Rocky Mountain Advisory, LLC, 15 W. South Temple, Suite 500, Salt Lake City, Utah 84101; Telephone: 801-428-1604; email: jcurtis@rockymountainadvisory.com, shall be, and hereby is, appointed as receiver over the Collateral, on the further terms and conditions of this Order.

A. The Receiver is hereby appointed as a receiver pursuant to Utah Code Ann. § 78B-21-106 and Rule 66 of the Utah Rules of Civil Procedure. The Receiver is hereby granted all rights, privileges, and powers as allowed by Utah Code Ann. § 78B-21-106 and Rule 66, and as otherwise reflected in the Order.

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<sup>2</sup> Pursuant to Utah Code Ann. § 78B-21-114(4)(a), CLS II’s ability to pursue to foreclosure and enforce the Trust Deeds is expressly preserved and unaffected by the injunctive relief contemplated herein.

B. Notwithstanding Utah Code Ann. § 78B-21-108, no bond is required of the Receiver. The Receiver is authorized to act by and through his agents, representatives and employees. During the term of the Receiver's appointment, and until further order of the Court, the Collateral shall remain under the Court's exclusive jurisdiction. The Receiver is not interested in this action and is competent and qualified to act as the receiver over the Collateral. The Receiver shall not be subject to the control of any other parties to this matter but shall be subject only to the Court's direction in the fulfillment of the Receiver's duties.

C. At all times during until the Receiver is discharged by the Court, the Receiver shall maintain errors and omissions insurance with a policy limit of at least \$1,000,000.00 per claim.

D. The Receiver shall file and serve on all parties in interest all reports required by Utah law, including the provisions of UCRERA, or the terms of this Order.

E. The requirements of Utah Code Ann. § 78B-21-115 are modified in the following respects:

i. The Receiver may engage attorneys, accountants, appraisers, auctioneers, brokers or other professionals ("**Receiver Professionals**") to assist the Receiver in performing his duties without first obtaining the approval of this Court;

ii. Promptly upon engaging Receiver Professionals, however, the Receiver shall file with the Court and serve on all parties the disclosures required by Utah Code Ann. § 78B-21-115(b); and

iii. The Receiver may compensate the Receiver and any Receiver Professionals without first obtaining the approval of this Court *provided*, however, that the Receiver shall file



with the Court at least every calendar quarter an itemized statement of all compensation paid to the Receiver or any Receiver Professionals and *provided, further*, that any compensation paid to the Receiver or any Receiver Professional shall be interim only and subject to disgorgement until such compensation is ultimately approved by this Court on a final basis after notice and opportunity for a hearing. To the extent such compensation has not previously been approved by the Court, the Receiver shall include a request for approval of all such compensation as part of his motion to approve the Receiver's final report.

F. In accordance with Utah Code Ann. § 78B-21-120, the Receiver shall not be required to provide mail and/or publication notice of his appointment to creditors of Waters Edge (except for creditors who have recorded liens against all or any part of the Collateral), and the Receiver shall not be required to solicit the filing of claims by creditors of Waters Edge, unless the Receiver, in his business judgment, determines that there will or may be assets of the receivership estate that are or may become available for distribution to Waters Edge's unsecured creditors. Notwithstanding the foregoing, however, if the Receiver determines that any other party has or claims to have or hold a lien on or other interest in any of the Collateral, the Receiver shall promptly provide such party with notice of his appointment, and such party shall be added by the Receiver as a service party entitled to notice in this action.

G. Pursuant to Utah Code Ann. § 78B-21-103 and applicable provisions of the Utah Rules of Civil Procedure, certain actions of the Receiver will only be effective upon approval by the Court after notice and opportunity for a hearing, as appropriate under the circumstances, and the entry of an Order from the Court. The Court hereby finds that any notices issued by the Receiver or other parties in interest shall be appropriate under the circumstances if such notices

provide opposing parties at least seven (7) calendar days to respond, and at least ten (10) calendar days' notice of any hearings. Nothing set forth herein, however, shall preclude the Receiver or any other party in interest from requesting shorter notice periods or otherwise requesting expedited relief, upon separate application seeking such relief.

**2. ALL OF THE COLLATERAL IS HEREBY PLACED IN THE POSSESSION OF THE RECEIVER, AND UNDER THE COURT'S CONTROL, PENDING FURTHER ORDERS OF THE COURT.** The Receiver, as an officer of this Court, shall have all powers, duties, and authorities as provided by law as to Waters Edge, including but not limited to act as executive, president, and/or manager under articles and bylaws or similar governing documents of Waters Edge, to have and take possession, custody and control, either physically or constructively as determined by the Receiver in his sole and absolute discretion, of the Collateral, and to use, operate, manage or sell the Collateral, subject to all existing and valid liens, claims and encumbrances of secured or lien creditors (including all liens and claims of CLS II), including any and all rents, income, profits or proceeds of the Collateral both tangible and intangible and both choate and inchoate, whether now existing or after-acquired, and any and all books and records related to the Collateral (hereinafter the **"Receivership Estate"**).

The Receivership Estate includes, but is not necessarily limited to, all of Waters Edge's real and personal property assets identified in the Loan Documents as constituting the Collateral.

**3. POWERS AND DUTIES OF RECEIVER WITH RESPECT TO THE RECEIVERSHIP ESTATE.** The Receiver is hereby granted all powers and charged with all duties with respect to the Receivership Estate set forth in Utah Code Ann. § 78B-21-112.

**4. RECEIVER COMPENSATION AND OTHER MATTERS.** The Receiver

shall:

A. Be compensated in the ordinary course of business at the rate of \$345 per hour, plus hourly rates of no more than \$330 per hour for all employees, associates and staff for work performed on or after the date of entry of this Order, which rate will be subject to annual increases, plus actual out of pocket expenses reimbursable at cost with no markup, for services as Receiver herein, *provided, however*, that any such compensation paid to the Receiver shall be subject to the approval of this Court after appropriate notice to parties in interest;

B. On or before April 15, 2024, and provided the Receiver has the ability to do so from the records of the Receivership Estate, file and serve upon the parties to this action an initial written report of all receipts and disbursements relating to the Receivership Estate through the period ending March 31, 2024, or such later date that the Receiver deems necessary and appropriate;

C. Retain originals and/or legible copies of all writings and other documents which were used or referred to in order to prepare the statements under the foregoing paragraphs of this Order, including, but not limited to, checks, contracts, agreements, and invoices;

D. Subject to the requirements for the employment and compensation of professionals set forth herein, nothing in this Order shall preclude the Receiver from hiring professionals and third-party providers or vendors to assist the Receiver in the performance of the Receiver's duties under this Order, so long as the fees charged for such services are deemed by the Receiver in the Receiver's business discretion to be usual and customary in the locality where the services are to be found, and any compensation for such services are subject to approval of this Court after appropriate notice to parties in interest; and

E. Subject to the compensation procedures previously set forth in this Order, the Receiver is hereby authorized to employ George Hofmann and the firm of Cohn Kinghorn, P.C. ("CK"), as counsel for the Receiver. George Hofmann's rate for the matter shall be \$425 per hour. Any partners, associates or paralegals of CK working on this matter shall be billed at their current prevailing rates, without mark-up. Further, any and all expense reimbursements requested by CK shall be at the firm's usual and customary prevailing rates.

5. **FURTHER POWERS GRANTED TO RECEIVER.** The Receiver is further empowered and authorized to generally do such other things as may be necessary or incidental to the specific powers, directions, and general authorizations set out in this Order, and may take any further actions relating to the Receivership Estate that are necessary and appropriate to fulfill the Receiver's duties hereunder beyond the scope contemplated by the provisions set forth above, *provided however*, that for transactions that are outside the usual and ordinary course of Waters Edge's business, the Receiver shall obtain prior approval from this Court for any such transactions, after appropriate notice to parties in interest. The Receiver is further empowered and authorized to investigate, prosecute, settle, dismiss, or not to prosecute claims on behalf of creditors of Waters Edge against any party other than Waters Edge, including those that arise under Utah Code Annotated § 25-6-101 *et seq.*

6. **GRANT OF IMMUNITY.** To the fullest extent allowed by law, the Receiver and the Receiver's officers, 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, its or their performance of

duties or obligations pursuant to the terms of this Order.

Any loss, damage or expense suffered or incurred by the Receiver or its authorized representatives in any claim, suit, action or other demand or proceeding brought against the Receiver and/or its authorized representatives in connection with the performance of their duties for the Receivership Estate, except for any claims, damage or expenses resulting from willful misconduct, will be an expense solely of the Receivership Estate that survives termination of the receivership, but such claim shall be junior to any claim of CLS II. No obligation incurred by the Receiver in the good faith performance of its duties in accordance with the orders of this Court, whether pursuant to any contract, by reason of any tort, or otherwise, shall be the Receiver's obligation or the personal obligation of its principals or agents. Rather, the recourse of any person or entity to whom the Receiver becomes obligated in connection with the performance of its duties and responsibilities shall be solely against the unencumbered assets of the Receivership Estate. 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.

**7. RECEIVERSHIP LOANS AND ADVANCES.** If the Receivership Estate does not generate sufficient revenue following the appointment of the Receiver sufficient to pay the operating expenses and approved charges and expenses of the Receiver and the fees and expenses of any attorneys, accountants, or other professionals employed by the Receiver in accordance with the requirements of this Order, the Receiver may and is hereby authorized without further order of the Court to borrow money from CLS II in order to pay such expenses. All sums borrowed by the Receiver from CLS II shall be considered for all purposes to be "obligatory or protective advances" made by CLS II to Waters Edge under the terms of the Loan

Documents between CLS II and Waters Edge. All such advances shall be added to the total loan balance owed by Waters Edge on the Loan. The Receiver may execute, issue and deliver (but is not required to do so to effectuate the prior sentence) in favor of CLS II promissory notes or other instruments and documents evidencing the additional indebtedness with respect to all sums borrowed by the Receiver on behalf of Waters Edge. All sums advanced by CLS II to the Receivership Estate pursuant to this Order, together with interest thereon at the rates set forth in the Loan Documents, shall be secured by CLS II's existing liens on and security interests in the Collateral, and otherwise shall constitute a first and senior lien with respect to all such assets. In addition, all funds that the Receiver borrows from CLS II shall be deemed administrative expenses of the Receivership Estate, subordinate only to the allowed fees and costs of the Receiver and the Receiver Professionals. The Receiver, as an individual, however, shall bear no obligation or responsibility for repayment of any such loans or advances.

**8. FILING OF TAX RETURNS FOR WATERS EDGE.** Notwithstanding any other term or provision of this Order, the Receiver shall be under no obligation to prepare or file any tax returns or other governmental returns or forms for or on behalf of Waters Edge. Upon reasonable notice to the Receiver, the Receiver shall provide to Waters Edge reasonable access to financial information necessary for Waters Edge to prepare and file such governmental returns or forms.

**9. PAYMENTS TO CLS II.** Notwithstanding any other provisions of this Order, the Receiver shall distribute to CLS II as soon as reasonably practicable all surplus cash of the Receivership Estate, not reasonably necessary for the operation and administration of the Receivership Estate, as well as all income, profits and proceeds resulting from the sale of the

Collateral, after such notice and hearing as may be required by this Order.

**10. FURTHER ORDERS.** The Receiver or the other parties in this action 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. Any motion by the Receiver or the other parties to this action seeking Court approval of any act of the Receiver shall be served on each party hereto and each other person who has filed and served on the Receiver a written request for special notice. Further, the Receiver may file requests for special notice on behalf of any party; however, such requests filed by the Receiver shall not be deemed consents to the jurisdiction of this Court. In addition to service by mail or hand-delivery, service in this action may be made by facsimile or electronic mail.

Notwithstanding any provision of this Order requiring Court approval of any act of the Receiver, the Receiver may nonetheless undertake an action without prior Court approval if the Receiver obtains the written consent of each party hereto and each other person who has filed and served on the Receiver a request for special notice. Such acts shall, as soon as practicable thereafter, be identified to the Court.

**11. RESTRAINING ORDER/NON-INTERFERENCE WITH RECEIVER.** It is hereby further ordered that Waters Edge and any other parties with actual or constructive notice of this Order who are subject to the jurisdiction of this Court, including, without limitation, Waters Edge's agents, servants, employees, attorneys, and other persons and entities acting in concert or participation with them, or any of them, are hereby enjoined and restrained from, directly or indirectly, transferring, selling, leasing, disposing of, encumbering, injuring, converting, gifting or otherwise interfering with the Receivership Estate without CLS II's

express prior written consent and the written consent of the Receiver, or further Order of the Court, including but not limited to from taking or engaging in the following actions:

- A. Interfering, directly or indirectly, with the Receiver or the Receiver's custody and control of the Receivership Estate, including, without limitation, withholding access codes and computer passwords;
- B. Interfering, directly or indirectly, with the Receiver's effort to collect or take possession of the Receivership Estate, or the rents, income, profits or proceeds thereof;
- C. Collecting or attempting to collect the Receivership Estate, or the rents, income, profits or proceeds thereof, other than at the written direction of the Receiver;
- D. Extending, dispersing, transferring, assigning, selling, conveying, devising, pledging, mortgaging, creating a security interest in or disposing of the whole or any part of the Receivership Estate or the rents, income, profits or proceeds thereof, without the prior written consent of the Receiver;
- E. Taking any actions which would damage or dissipate the assets of the Receivership Estate; and/or
- F. Doing any act which will, or which will tend to, impair, defeat, divert, prevent or prejudice the preservation of the Receivership Estate and the rents, income, profits or proceeds thereof, or this Court's jurisdiction over the Receivership Estate.

Furthermore, Waters Edge shall:

- A. Within five (5) business days of the entry of this Order, deliver actual or constructive possession, custody and control of the Collateral to the Receiver, including all income, proceeds, rents and profits received or generated thereby;



B. Within five (5) business days of the entry of this Order, supply the Receiver with information necessary to enable the Receiver to complete any schedules that the Receiver may be required to file, and otherwise assist the Receiver in the completion of the schedules;

C. Within five (5) business days of this Order, provide the Receiver with all books and records referring or relating to the Receivership Estate;

D. Within five (5) business days of this Order, provide the Receiver with a copy of such financial and business records of Waters Edge as the Receiver may request; and

E. To the extent requested by the Receiver, submit, by and through their most knowledgeable representatives, to an examination by the Receiver or CLS II, under oath and subject to penalty of perjury, concerning the acts, conduct, property, liabilities and financial condition of or concerning the Receivership Estate, or any matter relating to the Receiver's administration of the Receivership Estate.

**12. UTILITY PROVIDERS AND TRADE VENDORS.** Any utility company and all other trade vendors or suppliers providing goods or services to the Receivership Estate shall be prohibited from discontinuing such goods or service based on or because of any non-payment for such goods or services by Waters Edge prior to the Receiver's appointment by this Court. Further, all deposits held by such providers of goods or services shall be transferred to the exclusive control of the Receiver, and such providers of goods or services shall be prohibited from demanding that the Receiver deposit additional funds in advance to maintain or secure such goods or services. With respect to utility services, and to the extent the Receiver deems it prudent in the Receiver's business discretion, the Receiver may, but shall not be required to, open up net utility accounts in the name of the Receivership. Utility companies are prohibited from

discontinuing service while the new Receivership accounts are in process of being established.

**13. ACTIONS AGAINST RECEIVER.** With respect to the Receivership Estate, and except for the pursuit of CLS II's claims herein, all actions against the Receiver or the Receivership Estate shall comply with the requirements of Utah Code Ann. § 78B-21-101 *et seq.* Notwithstanding the foregoing, no prior court order is required to file a motion in this action to enforce the provisions of this Order or any other order of this Court in this action, and nothing set forth herein shall preclude or prejudice any party from asserting claims in this proceeding, provided that adjudication of such claims shall be subject to any agreements executed by or affecting any party. All defenses to such claims are reserved and unaffected by this paragraph.

**14. TURNOVER.** It is hereby further ordered that Waters Edge and any other parties with actual or constructive notice of this Order who are subject to the jurisdiction of this Court, including, without limitation, Waters Edge's managers, officers, directors, employees, agents, representatives, attorneys and consultants, and all persons or entities acting for or in concert with them, shall:

A. Turn over to the Receiver the Receivership Estate, 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 Receivership Estate, 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 Estate 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 relating thereto as well as all banking records, statements and canceled

checks); and

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, reports to governmental units, tax returns, permits or governmental approvals, or other agreements of any kind whatsoever, whether currently in effect or lapsed, which relate to the Receivership Estate or any interest therein, or to the rents, income, profits or proceeds therefrom.

**15. INVESTIGATION OF CLAIMS; RIGHT TO BRING SUIT.** In exercising its duties on behalf of the Receivership Estate, the Receiver may, in his sole discretion, direct that reasonable and necessary costs be expended to evaluate or challenge any secured or unsecured claims or the validity, extent, perfection and priority of any liens against the Receivership Estate, other than CLS II's secured claims against the Collateral, *provided, however*, that nothing set forth in this paragraph shall require the Receiver to do so. Further, the Receiver shall have standing to bring suit to challenge, object to or otherwise question any such secured or unsecured claims.

**16. DISCHARGE OF RECEIVER.** The Receiver may at any time file a motion requesting that the Receiver be exonerated, discharged and/or released from the Receiver's appointment under this Order. Such motion may be heard by the Court on no less than five (5) business days' notice. The receivership shall not be terminated, and the rights and obligations of the parties subject to this Order shall remain in full force, until this Court approves the Receiver's final report or until the Court enters an order terminating the receivership and discharging the Receiver.

**17. EFFECTIVE DATE OF ORDER/RESOLUTION OF INCONSISTENCIES.**

This Order shall be effective when signed. To the extent there is any inconsistencies between the terms of this Order and the provisions set forth in UCRERA, the terms of this Order shall control.

**\*\* In accordance with the Utah State District Courts E-filing Standard No. 4, and URCP Rule 10(e), this Order does not bear the handwritten signature of the Judge, but instead displays an electronic signature at the upper right-hand corner of the first page of this Order. \*\***

1657226

EXHIBIT A  
LEGAL DESCRIPTION

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*Security Instrument*

*Acknowledgement Page*

**Exhibit "A"**  
**Property Description**

Property 1:

Lake Residences at Bear Lake Phase 7A, Building "C", located in Garden City, Rich County, Utah, according to the official plat thereof.

Tax Parcel #: 41-21-403-0101, 41-21-403-0102, 41-21-403-0201, 41-21-403-0202, 41-21-403-0301, 41-21-403-0302, 41-21-403-0401 & 41-21-403-0402

Property 2:

Lake Residences at Bear Lake Phase 7B, Building "B", located in Garden City, Rich County, Utah, according to the official plat thereof.

Tax Parcel #: 41-21-404-0101, 41-21-404-0102, 41-21-404-0201, 41-21-404-0202, 41-21-404-0301, 41-21-404-0302, 41-21-404-0401 & 41-21-404-0402