

FILED IN THE  
UNITED STATES  
BANKRUPTCY COURT  
2012 DEC 14 PM 12:10  
DISTRICT OF UTAH

Trent J. Waddoups - (Bar No. 7657)

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*Receiver for Castle Arch Real Estate Investment Co., LLC*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re:

CASTLE ARCH REAL ESTATE  
INVESTMENT COMPANY, LLC,

Debtor.

)  
)  
) Bankruptcy No. 11-35082

)  
) Chapter 11

)  
) Honorable Joel T. Marker  
)  
)

**MOTION FOR DISCHARGE AND PAYMENT OF FEES —  
DISCHARGE AND PAYMENT IN FULL UNDER 11 U.S.C. §543 BY  
PRE-PETITION RECEIVER OR OTHER CUSTODIAN**

**COMES NOW** Trent J. Waddoups, State Court Receiver for the Debtors in Possession, Castle Arch Real Estate Investment Company, LLC; Castle Arch Opportunity Partners I, LLC; Castle Arch Opportunity Partners II, LLC; CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Smyrna, LLC; and Castle Arch Secured Development Fund, LLC , (collectively "the Debtors"), and hereby moves this Court pursuant to Rules 6002 and 9014 of the Fed. R. Bankr. P. (the "Bankruptcy Rules") and Local Rule 4001-1(a) for entry of an order, the proposed

19

form of which is attached hereto as Exhibit "A". In support of this Motion, the Receiver submits as follows:

### **SUMMARY**

Turnover was completed and an accounting was filed. The only matter remaining is payment for the services provided to the estate in the final amount of \$17,165.00 and final discharge by the Court (and then final discharge by the Second District Court).

### **I. JURISDICTION, VENUE AND PREDICATES FOR RELIEF**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).
2. The predicate for the relief requested herein is Bankruptcy Rules 6002 and 9014.

### **II. BACKGROUND**

3. On July 12, 2011, Debtor Castle Arch Real Estate Investment Company (CAREIC) was placed in receivership by the 2<sup>nd</sup> Judicial District Court, State of Utah, Case No. 100700353, and Trent J. Waddoups was appointed as Receiver for CAREIC. As a result of the same, all of the property of the Debtors was placed into receivership

and under control of the Appointing Court.

4. On September 9, 2011, the State Court ordered that Debtors Castle Arch Real Estate Investment Company, LLC; Castle Arch Opportunity Partners I, LLC; Castle Arch Opportunity Partners II, LLC; CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Smyrna, LLC; and Castle Arch Secured Development Fund, LLC, intervene as Respondents in the receivership action in the 2<sup>nd</sup> Judicial District Court, State of Utah, Case No. 100700353. As a result of the same, all of the property of all the Debtors was placed into receivership and under control of the Appointing Court.
5. On October 17, 2011 the Receiver caused a voluntary petition under Chapter 11 of the Bankruptcy Code to be filed on behalf of CAREIC.
6. On October 20, 2011 the Receiver caused voluntary petitions under Chapter 11 of the Bankruptcy Code to be filed on behalf of Castle Arch Real Estate Investment Company, LLC; Castle Arch Opportunity Partners I, LLC; Castle Arch Opportunity Partners II, LLC; CAOP Managers, LLC; Castle Arch Kingman, LLC; Castle Arch Smyrna, LLC; and Castle Arch Secured Development Fund, LLC.
7. Prior to filing the voluntary petitions, the Debtors appointed Trent J. Waddoups CEO/President of CAREIC and he duly served as debtor in possession in the bankruptcy proceeding.

8. At the § 341 Meetings of Creditors for the Debtors on November 21, 2011, the Receiver represented that he would:
  - A. resign as CEO/President and seek to withdraw from further proceedings herein and relinquish management of the Debtors to the prior management;
  - B. seek his discharge as Receiver from the 2<sup>nd</sup> Judicial District Court; and
  - C. would turn over any and all property of the Debtors to the prior management of the Debtors.
9. Immediately upon the conclusion of the § 341 Meetings of Creditors for the Debtors on November 21, 2011, the Receiver relinquished signature authority to the Debtor in Possession bank accounts to prior management of the Debtors and otherwise undertook to transition the business operations of the Debtors back to prior management<sup>1</sup> and fully delivered and turned over all property to the Debtors as required by 11 U.S.C. § 542.
10. On January 3, 2012 the Receiver provided a full and complete accounting of all property of the Debtors including all Receivership

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<sup>1</sup> The property under the control of the receivership, although deemed to be in custodia legis in the Second District Court, became part of the estate controlled by this Court under 11 U.S.C. § 541(a)(3).

costs and fees including funds held in trust which approximated the amount owed by the Debtors to the Receiver.

11. No objection was ever interposed within a reasonable time, or at any time, to the accounting and turnover of property.
12. The only property remaining in the Receiver's custody is money held in trust which is described in more detail in the attached billing for payment of fees for which no retention order was required.
13. Nothing else held by the Receiver currently is "property" as defined by 11 U.S.C. 542(a); rather, the items still remaining in the Receiver's control consists of documentation related to the Receivership.
14. The Receiver moved for Relief from the Automatic Stay and for Relief from 11 U.S.C. § 543 on or about December 8, 2011 in order to receive a discharge from the state court, but this Court denied that motion<sup>2</sup> directing that an accounting and this Motion be filed. Delay in filing this Motion was precipitated by an informal request from the Debtors' prior attorneys so that they could focus on other matters.

### **III. RELIEF REQUESTED**

15. The Receiver hereby requests that this Court enter an order,

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<sup>2</sup> See 28 U.S.C. § 1334(c) (permitting this Court to abstain from any proceeding under Chapter 11 in the interest of justice and comity with state courts).

substantially in the form attached hereto as Exhibit “A” declaring full compliance with the turnover provisions under 11 U.S. C. § 543 , permitting payment for services rendered<sup>3</sup> pursuant to 11 U.S.C. § 543(c)(2)<sup>4</sup> and allowing relief from the Stay to terminate the State Court Receivership Proceedings.

#### **IV. BASIS FOR RELIEF**

15. Bankruptcy Rule 6002 (a) states that:

(a) Accounting Required. Any custodian required by the Code to deliver property in the custodian's possession or control to the trustee shall promptly file and transmit to the United States trustee a report and account with respect to the property of the estate and the administration thereof.

(b) Examination of Administration. On the filing and transmittal of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after notice and a hearing, the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

16. 11 U.S.C. § 102 defines “notice and hearing” as follows:

(1) “after notice and a hearing”, or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

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<sup>3</sup> “The status of the fees due a receiver’s attorneys is in stark contrast to the prepetition claim of the debtor’s prepetition attorneys.” In re 400 Madison Avenue Ltd. Partnership, 213 B.R. 888 (Bkrtcy. S.D.N.Y. 1997).

<sup>4</sup> See also 11 U.S.C. §§ 503(B)(3)(E).

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

**V. NOTICE**

21. The accounting required by Rule 6002 was provided eleven (11) months ago, complete turnover was completed more than one (1) year ago and no objection was raised and no hearing was timely requested by any party in interest; therefore, the attached order may be entered without additional delay.

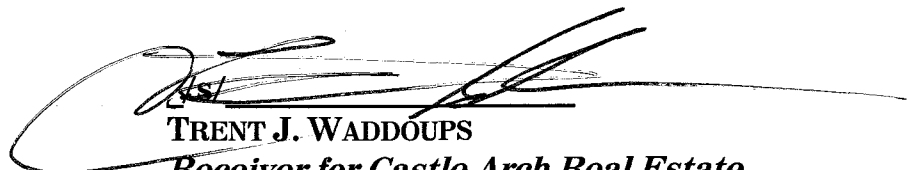
**CONCLUSION**

WHEREFORE, the Receiver respectfully requests that the Court enter an order substantially in the form annexed hereto as Exhibit "A", granting the relief requested herein, and grant such other and further relief as the Court may deem just and proper.

**The billing attached hereto is duly certified to be true and correct.**

DATED this 14 day of December, 2012.

CARR & WADDOUPS



TRENT J. WADDOUPS  
*Receiver for Castle Arch Real Estate  
Investment Co., LLC, et al.*

**CERTIFICATE OF SERVICE**

*I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Clerk of the Court, and that I provided copies of the same—together with the Exhibits referred to herein—to the following on this*

*14* day of ~~September~~  
*Dec* 2012:

Peggy Hunt  
DORSEY & WHITNEY, LLP  
136 S. Main St., Suite 1000  
Salt Lake City, Utah 84101-1685

  
TRENT J. WADDOUPS



**CARR & WADDOUPS**

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TRENT J. WADDOUPS  
TAYLOR D. CARR (1944 - 2001)

December 7, 2012

e-mail: trent@cw-law.net

Castle Arch

Re: Client: Castle Arch

Tax I.D. Number: 87-0644216

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**TOTAL AMOUNT DUE**

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<b>Timekeeper</b>	<b>Rate</b>	<b>Hours Billed</b>	<b>Total</b>
Trent J. Waddoups	\$225.00	75.00	\$16,875.00
Motion for Relief - Fee			\$176.00
Skip Trace Fee			\$114.00
<b>CURRENT AMOUNT DUE FOR COSTS AND SERVICES</b>			<b>\$17,165.00</b>
Amount in Trust is \$11,640.90 for total payment owed of \$5,524.10			

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November 15, 2011	Correspond w/ G. Martinsen re: Various Investor, Payroll, and Insurance Matters	1.00	1.00
November 15, 2011	Conf. w/ G. Martinsen and Correspond w/ J. Austin and C. Mitchell re Longview Case Status/Attempts to Settle Same, and Work to Be Done on Same	0.50	0.00
November 15, 2011	Correspond w/ C. Mitchell and Atty. Labertew re: Longview Case, Status, Stipulation,	0.40	0.00
November 15, 2011	Telephonic Conf.'s Atty. Schoenberg, Atty. Ketulak, and Atty. Ditomassio re: Potential for Settlement of Longview, Higa, Feola, and Sharko's Actions in Light of BK Actions and Realities of Financial State of Co's	2.40	2.40
November 15, 2011	Telephonic Conf. w/ Atty. Labetew and Correspond w/ Same re: Initial Monthly Operating Reports for BK Trustee and Insurance Policy Disclosures to BK Trustee	0.70	0.70
November 15, 2011	Correspond w/ J. Austin re: Additional Requirements from A. Wendt	0.10	0.10
November 15, 2011	Correspond w/ J. Austin re: CEO Obligations and Telephonic Conf. W/ Same re: Calls to Schoenberg, Ketulak, and Ditomassio	0.60	0.60
November 16, 2011	Correspond w/ J. Austin re: CEO Obligations and Transition of Business back to Castle Arch	0.50	0.50
November 16, 2011	Telephonic Conf. W/ Atty. Mitchell re: Continuation of Sanctions Hearing, Status of Longview Action, and Plan for BK Action re: Same	0.70	0.00
November 16, 2011	Correspond w/ Atty. Mitchell re: Longview Action Status, Transition of Business back to Castle Arch, and Future Communications re: Same	0.20	0.00
November 16, 2011	Correspond w/ and Telephonic Conf's w/ Atty. Labertew, Atty. Sinks, and Atty. Mitchell re: Transition of Business to CA; and Bringing Longview, Higa, Feola, and Sharko's actions to Utah in BK case	2.50	2.50
November 16, 2011	Prepare Revisions to Employment Separation Agreement and Correspond w/ Atty. Affleck, Atty. Hunt, Atty. Labertew, and J. Austin re: Same	1.00	0.00

November 17, 2011	Correspond w/ Atty. Affleck, Atty. Hunt, and Atty. Labertew re: Employment Separation Agreement	1.20	0.00
November 17, 2011	Telephonic Conf's w/ Atty. Hunt, Atty. Affleck's Office, Atty. Labertew, and J. Austin re: Employment Separation Agreement and Change/Transition of Business back to Castle Arch	1.40	1.40
November 17, 2011	Correspond w/ G. Martinsen re: Timber Sale Contract and Office Items	0.20	0.20
November 18, 2011	Conference w/ G. Martinsen re: Checks, Continuation of Business, Renewals of Nevada Status for CAOP I, CAOP II, and CAOP Managers in Utah	0.80	0.80
November 18, 2011	Conference w/ Atty. Labertew re: Investors Desires, Information for Atty. Hunt re: Transition of Business back to Castle Arch & Section 341 Meeting	1.90	1.90
November 18, 2011	Preparation for and Conference w/ Atty. Affleck re: Employment Separation Agreement and Status of CA Resolutions, Offices, Records, And Various Items to Transition Business to CA and BK Action to Prince Yeates	2.00	0.00
November 18, 2011	Correspond and Telephonic Conf.'s Atty. Mitchell re: Outstanding Issues for Longview Action and Responses to Atty. Schoenberg's Concerns re: Sanctions and TRO Hearing for Next Week	1.50	1.50
November 20, 2011	Final Conference w/ Atty. Labertew to Prepare for 341 Creditors' Meetings	1.70	1.70
November 20, 2011	Conf. w/ Atty. Affleck, Atty. Hunt, and J. Austin re: Employment Separation Agreement, Status as CEO/President, Section 341 Meeting of Creditors, Investors' Desires/Determinations for DIP Proceedings, and Transition of Business Back to Castle Arch	1.20	0.00
November 21, 2011	Attend Section 341 Meeting of Creditors for Various Entities in BK	3.50	3.50

November 21, 2011	Conf. w/ J. Austin and Zion's Bank re: Transition of Business Back to Castle Arch, DIP Account Signature Authority to J. Austin, and Representation of DIP as Special Litigation Counsel for Pending Matters	1.00	1.00
November 21, 2011	Conf. W/ Atty. Labertew, R. Benson, G. Martinsen, J. Austin, Atty. Affleck, and Atty. Hunt re: Potential to Settle Outstanding Litigation, Transition of Business and Assets back to Castle Arch, and Future Representation	1.30	0.00
November 21, 2011	Conf. w/ Atty. Labertew and R. Benson re: Completion of Business Transition back to CA; Delivery of Files and Documents; and Transition of Assets Back to CA related to Same	2.20	0.00
November 22, 2011	Telephonic Conf's Atty. Schoenberg re: OSC Hearing in New York, Offer to Settle Actions, BK Status and Effects	0.70	0.70
November 22, 2011	Receipt, Review, and Sign Monthly Operating Statements for BK entities for Submission to Trustee	1.00	1.00
November 22, 2011	Correspond w/ G. Martinsen re: Monthly Operating Statements for BK Entities	0.10	0.10
November 22, 2011	Conference w/ G. Martinsen re: Nevada Renewals and Nevada Resident Agent for Same	0.50	0.50
November 22, 2011	Correspond w/ American Corporate Enterprises, Telephonic Conf. w/ Same, and w/ G. Martinsen re: CAOP I, CAOP II, Nevada Registered Agent Matters and Additional Requirements to Reinstate Businesses	1.40	0.00
November 23, 2011	Correspond & Telephonic Conf w/ G. Martinsen re: Items to Be Returned to Castle Arch in Transition	0.60	0.60
November 28, 2011	Prepare Motion to Discharge Receiver and Order re Same for State Court Receivership	1.50	0.00
November 29, 2011	Research re & Preparation of 543 Motion and Report to BK Court re Receivership	4.60	0.00
December 2, 2011	Telephonic Conf. w/ Atty. Labertew re: Discharge of Receiver, Effect of Section 543, Lifting of Stay, and Dismissal of State Court Action	0.80	0.80

December 5, 2011	Research re: & Preparation of Stipulated Motion to Approve Payment and to Discharge Receiver For State Court Action	2.00	2.00
December 5, 2011	Preparation of Order Approving Payment and to Discharge Receiver for State Court Action	0.50	0.50
December 5, 2011	Correspond w/ Atty. Conder re: Stipulated Motion to Approve Payment and to Discharge Receiver	0.10	0.10
December 6, 2011	Telephonic Conf. w/ Atty. Conder's Office & Leave Message re: Stipulated Motion and Order	0.10	0.10
December 6, 2011	Conf. w/ Atty. Hunt re: Stipulated Motion and Order and Removal of Receiver Matters from BK Action	0.30	0.30
December 6, 2011	Continue Legal Research re: Section 543, Lifting of Stay, and Discharge of Receiver & Payment of Receiver Expenses and Costs – Begin Preparation of Motion in BK Action for Same	2.40	2.40
December 7, 2011	Receipt and Review Correspondence from Atty. Conder re: Stipulated Motion and Order - Telephonic Conf. w/ Atty. Conder's Office & Leave Message re: Same	0.20	0.20
December 7, 2011	Receipt and Review of Atty. Affleck's Motions for Retainer and Retention of Counsel in BK Action - Outline Summary of Factual Misstatements and Errors re: Same	1.30	1.30
December 7, 2011	Telephonic Conf. to Atty. Affleck's Office & Leave Message re: Motions, Errors, and Response to Same & Stipulation for Discharge of Receiver	0.10	0.10
December 8, 2011	Receipt and Review Correspondence from Atty. Affleck re: Stipulated Motion and Order, and Draft Response correspondence to same	1.00	1.00
December 8, 2011	Receipt and Review Correspondence from Atty. Conder re: Stipulation and Order – Telephonic Conf. w/ Atty. Conder's Office and Leave Message re: Same	0.20	0.20
December 9, 2011	Additional Legal Research re: Receiver in BK, Release of Same, Authority of State Court for Property Held in Receivership - Preparation of Motion for Relief from Stay	3.50	3.50

December 9, 2011	Preparation of Revisions to Motion for Relief and Proposed Order re: Same	1.60	1.60
December 9, 2011	Telephonic Conf. w/ Atty. Hunt re: Lack of Response from Atty. Affleck, Proposed Lifting of Stay, and Discharge of Receiver in State Court Action	0.20	0.20
December 12, 2011	Legal Research re: and Preparation of Final Revisions to Motion for Relief, Exhibits, and Proposed Order	1.00	1.00
December 13, 2011	Correspond w/ Atty. Affleck, Atty. Labertew, Atty. Conder & U.S. Trustee re: Motion for Relief, Exhibits, and Proposed Order	0.10	0.10
December 13, 2011	Telephonic Conf. w/ Atty. Affleck's Office & Leave Message re: Potential Objection to Motions for Retainer and To Appoint Counsel	0.10	0.10
December 13, 2011	Legal Research re: Standards for BK Attorneys and Conflict of Interest re: Officers/Creditors of BK Entity	2.60	2.60
December 16, 2011	Continue Research re: and Begin Preparation of Objection to Atty. Affleck's Motions	1.80	1.80
December 19, 2011	Final Revisions to Objection to Atty. Affleck's Motions	0.90	0.90
December 20, 2011	Correspond w/ Atty. Affleck, Atty. Labertew, Atty. Conder & U.S. Trustee re: Objection to Atty. Affleck's Motions	0.10	0.10
December 20, 2011	Preparation for and Attend Motion Hearing in BK Court	2.50	2.50
December 20, 2011	Conference w/ Atty. Labertew re: Withdrawal, Discharge of Receiver, Accounting in BK Action, and Professional Billing Forms for BK Action	0.40	0.40
December 20, 2011	Receipt and Review Atty. Affleck Objection to Motion for Relief from Stay	0.40	0.40
December 27, 2011	Receipt and Review Atty. Schoenberg Objection to Motion for Relief from Stay	0.60	0.60
December 27, 2011	Research re: and Begin Preparation of Accounting of Time and Billings as Receiver, Officer, and Transition	3.20	3.20

December 28, 2011	Complete Preparation of Accounting of Time and Fillings as Receiver, Officer, and Transition	4.80	4.80
January 3, 2012	Prepare Reply Brief to Debtor's Objection to Motion for Relief	2.40	2.40
January 3, 2012	Prepare Reply Brief to Longview's Objection to Motion for Relief	1.60	1.60
January 3, 2012	Prepare Final Revisions to Notice of Accounting	1.10	1.10
January 3, 2012	Correspond w/ Trustee, Atty. Affleck, Atty. Labertew, Atty. Conder, Atty. Adams, and Atty. Robinson re: Court Filings	0.10	0.10
January 3, 2012	Continue Legal Research re: Receiver's Position and Obligations on Filing of BK	2.30	2.30
January 4, 2012	Preparation for and Attend Motion Hearing re: Motion for Relief	2.00	2.00
January 4, 2012	Attend Renewed 341 Meeting of Creditors		
February 1, 2012	Send Correspondence with David Hunt, Adam S. Afflec, Michael Labertew, and Glen Martinsen in regards to CAOP II	0.20	0.20
February 21, 2012	Phone call to Adam Affleck	0.10	0.10
February 21, 2012	Received phone call from Adam Affleck	0.10	0.10
February 12, 2012	Return phone call to Adam Affleck	0.50	0.50
March 9, 2012	Discussion with Ted Cundit an associate of Adam Afflect about Motion to Appoint Trustee	0.30	0.30
March 19, 2012	Review e mails and send e mails regarding renewal of Business License	0.30	0.30
April 5, 2012	Review Subpoena for Deposition	0.50	0.50

April 9, 2012	Prepare Motion to Quash Subpoena for Deposition.	2.00	2.00
April 11, 2012	Prepare for and Attend Deposition	1.00	1.00
April 19, 2012	Attend Hearing and Testify	1.00	1.00
November 2, 2012	Gather files for trustee	2.00	2.00
November 6, 2012	Meet with trustee	1.00	1.00
November 15, 2012	Prepare electronic files for trustee	1.00	1.00
			75.00



**Exhibit A**

Trent J. Waddoups - (Bar No. 7657)

CARR & WADDOUPS

ATTORNEYS AT LAW, L.L.C.

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*Receiver for Castle Arch Real Estate Investment Co., LLC*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

In re:	)	
	)	
CASTLE ARCH REAL ESTATE	)	Bankruptcy No. 11-35082
INVESTMENT COMPANY, LLC,	)	Chapter 11
	)	
Debtor in Possession.	)	Honorable Joel T. Marker
	)	

**[PROPOSED] ORDER AFFIRMING FULL TURNOVER, APPROVING PAYMENT OF FEES, AND DISCHARGE OF RECEIVER**

**THIS MATTER HAVING COME** before the Court on the Motion of the Pre-Petition Receiver, Trent J. Waddoups, for relief under 11 U.S.C. § 543;

**THE COURT BEING** fully advised in the premises, it appearing that the motion is well-taken; and good cause otherwise appearing for the relief requested therein;

**IT IS THEREFORE ORDERED** that the Receiver's Motion for Payment and Discharge be, and hereby is, **GRANTED**;

**IT IS FURTHER ADJUDGED** that pursuant to 11 U.S.C. § 543 (b)-(c), the

Receiver provided a full accounting and immediate turnover of property of the Debtors; the Receiver's services and expenses were reasonable and appropriate under the circumstances; and that final compensation is also appropriate;

**IT IS FURTHER ORDERED** that pursuant to 11 U.S.C. § 543(c)(2), the Court approves the Receiver's compensation and the Receiver shall be paid the remaining balance he is owed: \$17,165.00;<sup>1</sup>

**IT IS FURTHER ORDERED**, the stay is modified to permit the following proceedings before the 2<sup>nd</sup> Judicial District Court of the State of Utah, Case No. 100700353:

- a. The 2<sup>nd</sup> Judicial District Court of the State of Utah may proceed as allowed by non-bankruptcy law to terminate the Receivership and discharge the Receiver.

**IT IS FURTHER ORDERED** that this Order shall be binding upon and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code and the 10-day stay provided by Bankruptcy Rule 4001 (a)(3) be and is hereby waived.

DATED this \_\_\_ day of December, 2012.

**HONORABLE JOEL T. MARKER**  
UNITED STATES BANKRUPTCY JUDGE

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<sup>1</sup> The total expenses of the Receivership: \$120,524.10.