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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH**

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In re:

CEDAR CORNERS MANAGEMENT, LLC,

Debtor.

**MOTION OF JACOBSON  
EXCAVATION, LLC FOR ORDER  
PURSUANT TO BANKRUPTCY RULE  
2004 COMPELLING EXAMINATION OF  
A DESIGNEE OF THE DEBTOR, BRMK  
LENDING, LLC, RJ CONSTRUCTION  
SERVICES, LLC, AND TECH-FLOW,  
LLC PURSUANT TO FED. R. CIV. P.  
30(B)(6) AND FOR THE PRODUCTION  
OF DOCUMENTS**

Chapter 7

Case Number: 22-22580

Judge: Kevin R. Anderson

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Jacobson Excavation, LLC (“Jacobson”) hereby moves (the “Motion”) this Court for entry of an order pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) compelling examination of a Designee of Cedar Corners Management, LLC (the “Debtor”), BRMK Lending, LLC (“BRMK”), RJ Construction Services, LLC (“RJ Construction”), and Tech-Flow, LLC (“Tech-Flow,” collectively, the “Examinees”) pursuant to

Rule 30(b)(6) of the Federal Rules of Civil Procedure and for the production of documents. In support of this Motion, Jacobson respectfully states as follows:

### **JURISDICTION**

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory predicates for relief requested herein are Bankruptcy Rule 2004 and Rule 2004-1 of the Local Rules of this Court (the “Local Rules”).

### **BACKGROUND**

2. Debtor is currently the owner of over 32 acres located in Eagle Mountain, Utah known as “Sunset Flats.” The Debtor’s primary source of funds for the purchase and development of Sunset Flats is a note (the “Note”), which is currently owned by BRMK Lending, LLC (“BRMK”).

3. Upon information and belief, Debtor, before June 2021, entered into a contract with RJ Construction Services, LLC (“RJ Construction”) whereby RJ Construction agreed to act as general contractor to perform substantial improvements to and develop Sunset Flats (the “Project”).

4. In June 2021, RJ Construction and Jacobson entered into a \$2,959,474.68 unit-priced Subcontract Agreement (“Subcontract”) for underground utilities to be performed on Sunset Flats. RJ Construction, after paying about \$2.2 Million dollars to Jacobson for work performed, ceased paying Jacobson for work performed because it disputed change orders and actual quantities that Jacobson had submitted for payment.

5. On February 7, 2022, Jacobson filed a lien against the property in the amount of \$1,741,784.17. Jacobson subsequently filed a lien foreclosure action on May 13, 2022, in the Fourth Judicial District Court of Utah. After the filing of the foreclosure action, Tech-Flow began performing work on the Project.

6. BRMK is the holder of a promissory note and the first position lender on the property and filed a notice of default on February 28, 2022, and subsequently the trustee under the BRMK trust deed scheduled a trustee's sale of the property for July 11, 2022.

7. RJ Construction subsequently filed a motion for summary determination of the correct amount owing under the lien in the Fourth Judicial District Court of Utah. The Court upheld Jacobson's lien and ordered entry of alternate security at 150% of the lien amount that was filed.

8. The trustee scheduled a foreclosure sale of the property for July 11, 2022. Jacobson, together with two of its subcontractors on the Project, filed an Involuntary Petition for Bankruptcy Against Cedar Corners Management, LLC (the "Petition"), which caused a stay to be placed on the foreclosure sale, pending further proceedings.

9. On Friday, July 8, 2022, creditors filed an involuntary bankruptcy petition against the debtor, invoking a stay under Section 362 of the Bankruptcy code.

10. Jacobson has since requested information from the Debtor in order to evaluate its ability to recover in the bankruptcy proceeding. Information requested includes loan documents, loan repayment information, and other general information regarding Debtor's financial position. Debtor has declined to provide much of this information, regardless of repeated requests.

11. Jacobson has reason to believe that Debtor's declining to acquiesce is an attempt to conceal the fact that Debtor's agents, Brad Jensen and Heath Johnston, used funds from the Note for other projects of Debtor.

12. Accordingly, discovery regarding Debtor's use of funds received pursuant to the Note is necessary to determine the extent to which funds owed to BRMK were used on projects other than Sunset Flats in order to assess Jacobson's ability to recover in this bankruptcy proceeding. Jacobson also has an interest in discovering information related to payments from BRMK and/or Debtor to RJ Construction and/or Tech-Flow related to Sunset Flats and other projects.

#### **RELIEF REQUESTED**

13. By this 2004 motion, Jacobson requests the entry of an order compelling the examination of a designee of each Examinee pursuant to Federal Rule 30(b)(6). Jacobson also requests that the Court issue a subpoena to each Examinee ordering the production of documents and information described in the attached Exhibit A.

#### **BASIS FOR RELIEF**

14. Bankruptcy Rule 2004 provides as follows:

(a) Examination on Motion. On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of Examination. The examination of an entity under this rule ... may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In ... a reorganization case under chapter 11 of the Code, ... the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for the purposes of

consummating a plan and the consideration given or offered therefore, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling Attendance and Production of Documentary Evidence. The attendance of an entity for examination and for the production of documents ... may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial.

Fed. R. Bankr. P. 2004.

15. The scope of an examination under Rule 2004 can be very broad. *In re GHR Energy Corp.*, 33 B.R. 451, 453 (Bankr. D. Mass. 1983); *see also In re Vantage Petroleum Corp.*, 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983). The United States Bankruptcy Court for the Northern District of Illinois held that it can “legitimately be in the nature of a fishing expedition.” *In re Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985).

16. “The purpose of a Rule 2004 examination is ‘to show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditor may be preserved.’” *In re Coffee Cupboard, Inc.*, 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991) (citing *Cameron v. United States*, 231 U.S. 710, 717 (1914)). As such, examinations under Rule 2004(a) and (c) can include within their scope: any matter which may relate to the property and assets of the estate; any matter which may affect the administration of the estate; and the financial condition of the debtor. *See* Fed. R. Bank. P. 2004(b).

17. Additionally, “[b]ecause the purpose of the Rule 2004 investigation is to aid in the discovery of assets, any third party who can be shown to have a relationship with the debtor can be made subject to a Rule 2004 investigation.” *In re Ionosphere Clubs, Inc.*, 156 B.R. 414, 432 (S.D.N.Y. 1993), *affd*, 17 F.3d 600 (2d Cir. 1994).

18. The purpose of this examination is to fully determine the extent to which Debtor has used funds from BRMK on projects other than Sunset Flats, such as payments made to its general contractors, including RJ Construction Services, LLC and Tech-Flow, LLC. It is also to assess more broadly the financial condition of Debtor and the status of the assets and property of Debtor.

**NO PRIOR REQUEST FOR RELIEF**

19. No other motion for the relief requested in this Motion has been made to this Court or to any other court. Jacobson reserves the right to conduct further discovery, as necessary.

20. Because of the foregoing, Jacobson requests that this court grant the following relief.

- a. Grant this 2004 Motion in its entirety;
- b. Order the examination of a designee of each Examinee pursuant to Federal Rule 30(b)(6);
- c. Order the production of documents by each Examinee described in the attached Exhibit A within ten (10) days of the subpoena's issuance; and
- d. Further relief as this Court deems just and proper.

Dated: September 6, 2022

**SUMSION BUSINESS LAW**

*/s/ Steven R. Sumsion*  
Steven R. Sumsion  
Chase E. Olsen  
*Attorneys for Plaintiffs*

**EXHIBIT A**

**DEFINITIONS**

1. “BRMK” shall mean BRMK Lending, LLC, including any of its predecessors, affiliates, assigns, employees, agents, and others purporting to act on its behalf.
2. “RJ Construction” shall mean RJ Construction Services, LLC, including any of its predecessors, affiliates, assigns, employees, agents, and others purporting to act on its behalf as filed in the United States Bankruptcy Court, Central District of Utah, Case No 22-22580.
3. “Tech-Flow” shall mean Tech-Flow, LLC, including any of its predecessors, affiliates, assigns, employees, agents, and others purporting to act on its behalf as filed in the United States Bankruptcy Court, Central District of Utah, Case No 22-22580.
4. "Debtor" shall mean Cedar Corners Management, LLC, including any of its predecessors, affiliates, assigns, employees, agents, and others purporting to act on its behalf as filed in the United States Bankruptcy Court, Central District of Utah, Case No 22-22580.
5. “Examinee” shall mean, individually and collectively, BRMK Realty Capital, Inc., Cedar Corners Management, LLC, RJ Construction Services, LLC, and Tech-Flow, LLC, insofar as the Court grants Jacobson’s Motion for Examination and Production of Documents pursuant to Federal Bankruptcy Rule 2004 and Federal Rule 30(b)(6).
6. “Project” shall mean the project engaged in to improve the property in Eagle Mountain, Utah known as “Sunset Flats,” purported to be owned and operated by Cedar Corners Management, LLC.
7. “Document” shall mean written, graphic, electronic, computerized matter or other means of preserving thought or expression and all tangible things from which information can be

processed or transcribed including the originals and all non-identical copies, whether by reason of any notation made on such copy or otherwise, whether procured internally or received from some other source including, but not limited to, papers, books, sketches, feasibility studies, objects, surveys, licenses, agreements, ledgers, books of account, computer printouts and other computer materials such as diskettes and CD-ROMS, transcripts, analyses, proposals, suggestions, legal pleadings, deeds, mortgages, bills of sale, security agreements, legal documents, vouchers, records of interbank transfers of funds, bank checks, cashier's checks, invoices, drafts, charge slips, receipts, check stubs, freight bills, bills of lading, working papers or drafts, statistical records, notebooks, calendars, appointment books, time sheets, logs, bids, estimates, job or transaction files, credit reports, notations, notes, sound records of any type, minutes of director's or other meetings, phono-records, notices, instructions, advertisements, work assignments or other articles and treatises, including all attachments and enclosures thereto, correspondence, email, memoranda, notes, messages, letters, telegrams, teletype, telefax, bulletins, notes of meetings or other communications, intraoffice and interoffice telephone calls, diaries, chronological data, minute books, reports, charts, ledgers, invoices, worksheets, receipts, returns, computer printouts, prospectuses, financial statements, schedules, affidavits, contracts, canceled checks, transcripts, statistics, surveys, magazine or newspaper articles, releases, (and any and all drafts, alterations and modifications, changes and amendments of any of the foregoing), graphic or aural records or representations of any kind, including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape recordings, motion pictures and electronic mechanical or electric recordings or representations of any kind (including without



limitation, tapes, cassettes, discs and recordings) and any electronic media including, but not limited to diskettes, hard drives, and CD-ROMS, which contain any of the foregoing.

### **INSTRUCTIONS**

1. In responding to these document requests, each Examinee is required to obtain and furnish all information available to it and any of its employees, agents, representatives, or attorneys and to obtain and furnish all documents, written and/or electronic, that are in its possession or under its control, or in the possession or under the control of any of its employees, agents, representatives, or attorneys,

2. If any privilege is asserted as to any document required to be produced hereby:

- (a) identify each such document by stating
  - (i) the type of document,
  - (ii) its general subject matter,
  - (iii) the date of the document, and
  - (iv) the identity of each person who prepared, signed, or participated in the preparation of the document, as well as each addressee and recipient;
- (b) state the precise nature of the privilege claimed;
- (c) state the basis for the privilege claimed relative to the specific information contained in the document; and
- (d) state all facts contained within the document, deleting only opinions, theories, mental impressions, and non-factual statements.

3. If any document was, but is no longer, in the possession of Examinee, custody or control, provide the following information:

- (a) identify the document;
- (b) state the disposition of the document and the date such disposition was made;
- (c) identify the present custodian of the document and state his address or, if the document no longer exists, so state; and
- (d) identify the person who made the decision regarding the disposition of the document.

4. All documents that exist in electronic format shall be produced in the format in which they are maintained, including all meta-data, unless the parties agree to an alternative means of production,

**DOCUMENTS TO BE PRODUCED**

Jacobson Excavation, LLC requests production of the following:

1. All Documents related to the Sunset Flats Project and the use of funds provided by BRMK to Cedar Corners (including to Brad Jensen or Heath Johnston), RJ Construction, or Tech-Flow, including, but not limited to, the following:

- a. Job cost summaries, budgets, and invoices;
- b. Accounting of how funds were used;
- c. Text messages and emails with attachments to (or from) Debtor, Brad Jensen, or Heath Johnston;
- d. Bank account statements;
- e. Deposits;
- f. Cancelled checks (front and back);
- g. Withdrawals, debits, and credits;
- h. Wire transfers; and
- i. Cashier's checks.

2. All Documents related to any other projects and the use of funds provided by BRMK to Cedar Corners (including to Brad Jensen or Heath Johnston), RJ Construction, or Tech-Flow, including, but not limited to, the following:

- a. Accounting of how funds were used;
- b. Text messages and emails with attachments to (or from) Debtor, Brad Jensen, or Heath Johnston;
- c. Bank account statements;
- d. Deposits;
- e. Cancelled checks (front and back);
- f. Withdrawals, debits, and credits;
- g. Wire transfers; and

h. Cashier's checks.

Jacobson Excavation, LLC requests documents from the date of Each Examinee's becoming affiliated with Sunset Flats or any other Examinee until the present day, to be supplemented regularly.