

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Foxwood Hills Property Owners
Association, Inc.,

Debtor.

Case No. 20-02092-hb

Chapter 11

**NOTICE OF MOTION AND MEMORANDUM FOR AN ORDER AUTHORIZING THE
SALE OF LOTS 219 AND 220 IN THE KINSTON SECTION OF FOXWOOD HILLS
PURSUANT TO 11 U.S.C. § 363(b)(1)**

Foxwood Hills Property Owners Association, Inc. (the “**POA**”) has filed papers with the Court in this case seeking the Court’s authorization under 11 U.S.C. § 363(b)(1) to sell certain lots it owns in the Foxwood Hills community. Specifically, the POA filed its Motion and Memorandum for an Order Authorizing the Sale of Lots 219 and 220 in the Kinston Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1) (the “**Motion**”) simultaneously with this Notice.

As part of the proposed sales, in the Motion the POA seeks approval and authorization for the payment of realtor’s commissions to Susan Mangubat in the greater amount of ten percent (10%) of the lot sale price or \$500.00, which is \$1,600.00 for the sale of Lots 219 and 220 collectively, to be paid at the closing of the sales, provided that the Court must first authorize Ms. Mangubat’s employment as Realtor prior to such payments.

Furthermore, the POA also moves for a provision in the Order authorizing the sale (if authorization is granted) directing that the fourteen (14) day stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure shall not apply to this sale.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to grant the relief sought, or you want the court to consider your views on the Motion, then **within (21) days of service of this notice**, you or your attorney must:

File with the court a written response, return, or objection at:

1100 Laurel Street
Columbia, SC 29201

Responses, returns, or objections filed by an attorney must be electronically filed in ecf.scb.uscourts.gov.

If you mail your response, return, or objection to the court for filing, you must mail it early enough so the Court will **receive** it on or before the date stated above.

You must also send a copy to:

Julio E. Mendoza, Jr., Esquire
Nexsen Pruet, LLC
P.O. Box 2426
Columbia, SC 29202

If you file a response, return or objection to the Motion, you or your attorney should **attend the hearing scheduled to be heard on December 15, 2020, at 9:30 a.m. at the United States Bankruptcy Court, Donald Stuart Russell Federal Courthouse, 201 Magnolia Street, Spartanburg, South Carolina 29306.**

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the Motion and may enter an order granting that relief.

Date: November 10, 2020

/s/ Julio E. Mendoza, Jr.
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Kyle A. Brannon (#11509)
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Association, Inc., Debtor-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Foxwood Hills Property Owners
Association, Inc.,

Debtor.

Case No. 20-02092-hb

Chapter 11

**MOTION AND MEMORANDUM FOR AN ORDER AUTHORIZING THE SALE OF
LOTS 219 AND 220 IN THE KINSTON SECTION OF FOXWOOD HILLS PURSUANT
TO 11 U.S.C. § 363(b)(1)**

Foxwood Hills Property Owners Association, Inc. (the “**POA**”), as the debtor and debtor-in-possession, hereby moves the Court for authorization to sell Lots 219 and 220 in the Kinston Section of Foxwood Hills pursuant to 11 U.S.C. § 363(b)(1) and Rule 6004 of the Federal Rules of Bankruptcy Procedure and SC LBR 6004-1. The POA proposes to sell **Lots 219 and 220 to Jamie Clark Crowe and Candace Marie Crowe for the sale price of \$16,000.00**. As part of the transaction, Susan Mangubat, the Realtor for the POA (the “**Realtor**”), will receive a sale commission in the amount of the greater of ten percent (10%) of the sale price, or \$500.00, to be paid at the closing of the sale; the commission will total \$1,600.00 for Lots 219 and 220. Lots 219 and 220 are not subject to any mortgages or liens.

The POA also moves for a provision in the Order authorizing the sales (if authorization is granted) directing that the fourteen (14) day stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure shall not apply to the sale. The buyers have already extended the time for closing through January 14, 2021. If authorization is granted under an Order entered December 31, 2020 or later, absent the waiver of the stay, the POA may lose the sale. For this reason, the fourteen day stay should not apply to them.

In support of this proposed sale, the POA respectfully would show to the Court that:

BACKGROUND

1. On May 8, 2020 (the “**Petition Date**”), the POA filed a petition for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*, the “**Bankruptcy Code**”), commencing this case. The POA is in possession and control of its property and managing its business as a Chapter 11 debtor-in-possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. The POA is the property owners association responsible for the maintenance, operation and management of roadways, certain real estate and amenities for the Foxwood Hills community (the “**Community**”), a development located on Lake Hartwell in Oconee County, South Carolina, comprised of approximately 4,100 lots currently owned by approximately 3,300 lot owners. The real property owned by the POA includes a clubhouse, a pool, tennis courts, a parking area, other improvements, substantial common areas and certain residential lots.

3. On the Petition Date, the POA owned approximately six hundred five (605) lots in the Community. Also on the Petition Date, the POA had approximately four hundred eighty-four (484) of these lots available for sale.

4. Some of these lots have been owned by the POA since 1993, when the last developer of the Community, Foxwood Corporation, deeded all remaining unsold lots to the POA. Other lots were purchased by the POA at tax sales, foreclosure sales and from the Oconee County Forfeited Land Commission, or deeded back to the POA by owners delinquent on their annual fees, dues and assessments.

5. The vast majority of the residential lots owned by the POA are vacant and slow or difficult to sell for various reasons, including the location of the lots and some of the issues that

led to the filing of this Chapter 11 case. The POA would like to sell most of these lots. The sale proceeds would be income to the POA, usable by the POA to meet its annual approved budget. However, perhaps most importantly, the change from POA ownership to new owners both saves the POA continued costs of ownership (*ad valorem* taxes, maintenance, utility minimum charges, and other costs) and improves collection of assessments and dues by the POA, as the new owners become responsible for payment of assessments like other lot owners in the Community. Accordingly, the POA rarely turns down a reasonable offer made by a prospective purchaser.

6. To the best of the POA's knowledge, none of the lots it owns is subject to mortgages, liens or any other encumbrances.¹

7. Heretofore, on July 30, 2020, the POA filed its Motion and Memorandum for Order Confirming Debtor's Authority to Sell Certain Lots in the Debtor's Ordinary Course of Business Pursuant to 11 U.S.C. § 363(c)(1), or, In the Alternative, for an Order Authorizing the Debtor to Sell Certain Lots Pursuant to 11 U.S.C. § 363(b)(1), *Nunc Pro Tunc* (the "**First Sales Authorization Motion**"). The Court conducted a hearing on the First Sales Authorization Motion on September 22, 2020, at which time the POA withdrew its request that the Court confirm that the proposed sale of lots under such motion was in the ordinary course of business, and, instead, the POA opted to proceed with the request for authorization under 11 U.S.C. § 363(b)(1). On October 6, 2020, the Court entered its Order Authorizing the Sale of Certain Lots Pursuant to 11 U.S.C. § 363(b)(1), and Stating the Process for Prospective Sales (the "**Sale Process Order**"), authorizing the four sales proposed in the First Sales Authorization Motion, and stating the process to be used for future proposed sales of lots by the POA.

8. The POA now has one contract for the sale of lots for which it seeks authorization.

¹ For this reason, the POA does not seek relief from the Court under 11 U.S.C. 363(f).

9. The POA uses the realtor services of Susan Mangubat of Red Hot Homes @ Keller Williams Upstate for the listing and sale of the lots the POA owns. Ms. Mangubat is to receive a commission on the sale of lots in the greater amount of ten percent (10%) of the sale price of the lot or \$500.00. The POA has not yet obtained an order for Ms. Mangubat's employment as the POA's realtor, but the POA hopes to do so shortly hereafter.

THE PROPOSED SALE

10. The POA has a proposed sale of Lots 219 and 220 in the Kinston Section of the Community to Jamie Clark Crowe and Candace Marie Crowe for the sale price of \$16,000.00. Lot 219 and 220 have the street address of 528 Kinston Loop Drive, Westminster, South Carolina 29693.

11. Neither Mr. Crowe nor Ms. Crowe are members of the POA Board, and, upon information and belief, they have no special connection or relationship with the POA.

12. The POA is informed and believes that this proposed sale is in the best interest of the POA and the creditors of the estate.

JURISDICTION

13. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Local Civil Rule 83.IX.01, DSC. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A). Venue of these proceedings is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

14. The POA seeks relief herein under 11 U.S.C. § 363(b)(1).

RELIEF REQUESTED AND BASIS FOR RELIEF

15. Pursuant to 11 U.S.C. § 363(b)(1), the POA, as a Chapter 11 debtor-in-possession, may be authorized to sell property other than in the ordinary course of business, after notice and

a hearing.² In this case, good and proper cause exists for authorization of the sale of Lots 219 and 220.

16. It is noted that in a sale of *substantially all assets of a Chapter 11 estate* other than in the ordinary course of business, under 11 U.S.C. § 363(b)(1), prior to confirmation of a confirmed plan, the standard for authorization would be the “sound business purpose test.” See *In re Taylor*, 198 B.R. 142, 156-157 (Bankr. D.S.C. 1996); and *In re Daufuskie Island Properties, LLC*, 431 B.R. 626, 638 (Bankr. D.S.C. 2010). See also *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re WBQ Partnership*, 189 B.R. 97 (Bankr. E.D.Va. 1995); and *In re The Lady H. Coal Company, Inc.*, 193 B.R. 233, 234 (Bankr. S.D.W.Va. 1996). Under the sound business purpose test, the trustee (or Chapter 11 debtor-in-possession) has the burden of proving the following: (1) a sound business reason or emergency justifies the pre-confirmation sale; (2) the sale has been proposed in good faith; (3) adequate and reasonable notice of the sale has been provided to interested parties; and (4) the purchase price is fair and reasonable. *In re Taylor*, 198 B.R. at 157; *In re Daufuskie Island Properties, LLC*, 431 B.R. at 638.

17. While the sale of assets proposed in this motion is prior to confirmation of a Chapter 11 plan, the sale of lots proposed in this motion do not comprise “substantially all assets,” or even a significant portion of the assets of the estate in this case. Accordingly, the above test is not truly applicable to these proposed sales.

18. Nonetheless, the factors considered under the sound business test would support the sales for which authorization is sought in this motion: (1) the pre-confirmation sale of lots is justified by the sound business reasons of accepting reasonable offers received from proposed buyers, in order to realize value (the sale proceeds) and income (the payment of assessments

² The phrase “after notice and a hearing” authorizes an act, such as a sale, without an actual hearing if notice is properly given and a hearing is not requested timely by a party in interest. 11 U.S.C. § 102(1).

prospectively), as well as reduce and eliminate costs associated with ownership of the lots; (2) the sales have been proposed in good faith, based upon the POA's belief that the proposed sales are for the highest and best price reasonably obtainable for the lots within the foreseeable future; (3) by service of this motion and notice of the sale by mail or by the Court's ECF system, as appropriate, upon the POA's creditors and parties who have filed notices of appearance, and by posting the motion and notice of the sale upon the ALCS website for service upon the other parties in interest, consisting of the owners of record of lots in the Community, who number over 3,300 persons, in accordance with the Sale Process Order, the POA has given adequate and reasonable notice to all interested parties of the sales proposed in this motion; and (4) given the current market conditions and level of interest in the POA's lots, the POA contends that the sale price of Lots 219 and 220 is fair, reasonable and appropriate prices for them.

19. As stated above, the POA is informed and believes that this sale is in the best interest of the POA and the creditors of the estate.

20. Authorization for the sale of Lots 219 and 220 is proper and should be authorized pursuant to 11 U.S.C. § 363(b)(1).

WHEREFORE, the POA prays that the Court enter its Order:

A. Granting the POA authorization to sell Lots 219 and 220 to Jamie Clark Crowe and Candace Marie Crowe for the sale price of \$16,000.00 pursuant to 11 U.S.C. § 363(b)(1);

B. Approving and authorizing payment of the Realtor's commission on the sale at the closing of such sale, provided that the Realtor's employment must first be approved by the Court prior to such payment;

C. Directing that the fourteen (14) day stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure shall not apply to such Order authorizing the sales; and

D. Granting such other and further relief as is just and proper in this matter.

/s/ Julio E. Mendoza, Jr.

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Kyle A. Brannon, Ct. ID. No. 11509

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November 10, 2020
Columbia, South Carolina

Attorneys for Foxwood Hills Property Owners
Association, Inc., Debtor-in-Possession

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Foxwood Hills Property Owners Association,
Inc.,

Debtor.

Foxwood Hills Property Owners Association,
Inc.,

Plaintiff.

v.

783-C LLC; *et al.*,

Defendants.

Case No. 20-02092-hb

Chapter 11

Adv. Pro. No. 20-80049-hb

CERTIFICATE OF SERVICE

I, Jane E. Brown of Nexsen Pruet, LLC, do hereby certify that a copy of the filed **Notice of Motion and Memorandum for an Order Authorizing the Sale of Lots 219 and 220 in the Kinston Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1); Motion and Memorandum for an Order Authorizing the Sale of Lots 219 and 220 in the Kinston Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1);** and proposed **Order Authorizing the Debtor to Sell Lot 219 and 220 in the Kinston Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1)** was served upon the parties below, by electronic notification through the Court's ECF/NEF System at the time of filing, and/or by U.S. Mail, postage prepaid on the 10th day of November 2020, at Columbia, South Carolina.

Linda K. Barr, Esquire Office of the United States Trustee 1835 Assembly Street, Suite 953 Columbia, SC 29201 <i>(by ECF/NEF System notification)</i>	Christopher A. Pierce 605 White Owl Ln. Seneca, SC 29678
Michael B. Dodd, Esquire The Dodd Law Firm, LLC 13 Sevier Street Greenville, SC 29605	Robin L. Jordan 1707 Old Hoods Mill Rd Commerce, GA 30529
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/s/ Jane E. Brown

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November 10, 2020
Columbia, South Carolina

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:

Foxwood Hills Property Owners
Association, Inc.,

Debtor.

Case No. 20-02092-hb

Chapter 11

**ORDER AUTHORIZING THE DEBTOR TO SELL LOTS 219 AND 220 OF THE
KINSTON SECTION PURSUANT TO 11 U.S.C. § 363(b)(1)**

THIS MATTER came before the Court upon the Motion and Memorandum for an Order Authorizing the Sale of Lots 219 and 220 in the Kinston Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1) (the “**Motion**”) of Foxwood Hills Property Owners Association, Inc. (the “**POA**”), as the debtor-in-possession in this case, seeking authorization for the POA to sell **Lots 219 and 220 in the Kinston Section** of the Foxwood Hills community in Oconee County, South Carolina (the “**Community**”), pursuant to 11 U.S.C. § 363(b)(1). As part of the Motion, the POA seeks approval and authorization for payment of the realtor’s commission at the closing of the sale, provided that the realtor’s employment must be approved by the Court prior to such payment. In addition, the POA requests that the Court order that the fourteen day stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure shall not apply to this Order, to enable the POA to meet the closing deadline in the contract for the proposed sale.

The Court has been informed that all parties in interest have been notified of the intention to sell the property and that no objection to the proposed sales has been received or filed by any party with the Court. The POA has represented to the Court that such sale is in the best interest of creditors of the estate. The POA also has informed the Court that there are no liens against the

property. It is therefore,

ORDERED, ADJUDGED AND DECREED that the POA, as debtor-in-possession, is hereby authorized to sell Lots 219 and 220 to Jamie Clark Crowe and Candace Marie Crowe for the sale price of \$16,000.00, pursuant to 11 U.S.C. § 363(b)(1); and

IT IS FURTHER ORDERED that the realtor's commission on the sale, in the amount of \$1,600.00, may be paid at the closing of the sale, provided that the Court has approved the employment of the realtor prior to such payment; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the stay provided by Fed. R. Bankr. P 6004(h) does not apply to these two sales.