

**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 LOT 81 IN THE EDISTO SECTION AND LOT 105 IN THE AARON  
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 Lot 81 in the Edisto Section and Lot 105 in the Aaron 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 \$590.00 for the sale of Lot 81 and \$500.00 for the sale of Lot 105, 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 these two 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 these two sales.

**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](http://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 3, 2020, at 10:00 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: October 28, 2020

/s/ Julio E. Mendoza, Jr.  
*(Signature of Attorney)*  
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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.

Case No. 20-02092-hb

Chapter 11

**MOTION AND MEMORANDUM FOR AN ORDER AUTHORIZING THE SALE OF  
LOT 81 IN THE EDISTO SECTION AND LOT 105 IN THE AARON 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 Lot 81 in the Edisto Section (“**Lot 81**”) and Lot 105 in the Aaron Section (“**Lot 105**”) 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 **Lot 81 to Travis Herron for the sale price of \$5,900.00** and **Lot 105 to John M. Macklen, Jr. for the sale price of \$2,000.00**. As part of the transaction, Susan Mangubat, the Realtor for the POA (the “**Realtor**”), will receive a sale commission on each sale 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 sales; for these two sales, the commissions will be \$590.00 for Lot 81 and \$500.00 for Lot 105. Lot 81 and Lot 105 are not subject to any mortgages or liens.

The POA also moves for a provision in the Order authorizing these 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 these sales. The buyers have already extended the time for closing through December 11, 2020. If authorization is granted under an Order entered November 27, 2020 or later, absent the waiver of the stay, the POA may lose the sales. For this reason, the fourteen day stay should not apply to them.

In support of these proposed sales, 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 are subject to mortgages, liens or any other encumbrances.<sup>1</sup>

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 two contracts for the sale of lots for which it seeks authorization.

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<sup>1</sup> 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 SALES**

10. The POA has a proposed sale of Lot 81 in the Edisto Section of the Community to Travis Herron for the sale price of \$5,900.00. Lot 81 has the street address of 414 Kenwood Drive, Westminster, South Carolina. It is identified more particularly as TMS 315-11-01-081. The POA will pay the Realtor a commission of \$590.00<sup>2</sup> at the closing of the sale. This property is not subject to any mortgage or lien.

11. The POA has a proposed sale of Lot 105 in the Aaron Section of the Community to John M. Macklen, Jr. for the sale price of \$2,000.00. Lot 105 has a street address of Wood Bluff Circle, Westminster, South Carolina. It is identified more particularly as TMS 307-01-01-10. The POA will pay the Realtor a commission of \$500.00<sup>3</sup> at the closing of the sale. This property is not subject to any mortgage or lien.

12. Neither Mr. Herron nor Mr. Macklen are members of the POA Board, and, upon information and belief, they have no special connection or relationship with the POA.

13. The POA is informed and believes that these two proposed sales are in the best interest of the POA and the creditors of the estate.

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<sup>2</sup> The POA is filing an application for authorization to employ Susan Mangubat of Red Hot Homes @ Keller Williams Upstate, as its realtor for the sale of lots. The stated commission will not be paid to the Realtor unless and until the Court has authorized the employment. However, for notice purposes, the POA provides the estimated commission to be paid as part of the approval and authorization of the sales.

<sup>3</sup> See footnote 2 above.

### **JURISDICTION**

14. 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.

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

### **RELIEF REQUESTED AND BASIS FOR RELIEF**

16. 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.<sup>4</sup> In this case, good and proper cause exists for authorization of the sale of Lot 81 and Lot 105.

17. 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

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<sup>4</sup> 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).

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.

18. 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 estate in this case. Accordingly, the above test is not truly applicable to these proposed sales.

19. 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 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 of the sale 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 prices of the Lot 81 and Lot 105 are fair, reasonable and appropriate prices for them.

20. As stated above, the POA is informed and believes that these two sales are in the best interest of the POA and the creditors of the estate.

21. Authorization for the sales of Lot 81 and Lot 105 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 Lot 81 to Travis Herron for the sale price of \$5,900.00 pursuant to 11 U.S.C. § 363(b)(1);

B. Granting the POA authorization to sell Lot 105 to John M. Macklen, Jr. for the sale price of \$2,000.00 pursuant to 11 U.S.C. § 363(b)(1);

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

D. 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

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

/s/ Julio E. Mendoza, Jr.  
Julio E. Mendoza, Jr., Ct. ID. No. 3365  
Kyle A. Brannon, Ct. ID. No. 11509  
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October 28, 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.

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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 Lot 81 in the Edisto Section and Lot 105 in the Aaron Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1); Motion and Memorandum for an Order Authorizing the Sale of Lot 81 in the Edisto Section and Lot 105 in the Aaron Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1);** and proposed **Order Authorizing the Debtor to Sell Lot 81 in the Edisto Section and Lot 105 in the Aaron Section of Foxwood Hills Pursuant to 11 U.S.C. § 363(b)(1)** were 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 28<sup>th</sup> day of October 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
Tona Renee Busbee 608 Loop Circle Westminster, SC 29693	Candice C. Jordan 1707 Old Hoods Mill Rd Commerce, GA 30529

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James W. Logan, Jr., Esquire Logan & Jolly, LLP PO Box 259 Anderson, SC 29622 <i>Attorneys for Oconee County FLC</i>	Jih M. Wang 647 Polo Rd, Apt 101 Columbia, SC 29223
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/s/ Jane E. Brown

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 Association, Inc.

October 28, 2020  
 Columbia, South Carolina

**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

**ORDER AUTHORIZING THE DEBTOR TO SELL LOT 81 OF THE EDISTO SECTION  
AND LOT 105 OF THE AARON 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 Lot 81 in the Edisto Section and Lot 105 in the Aaron 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 **Lot 81 in the Edisto Section (TMS 315-11-01-081)** and **Lot 105 in the Aaron Section (TMS 307-01-01-10)** 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 contracts for the two proposed sales.

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 sales are 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 Lot 81 of the Edisto Section of the Community to Travis Herron for the sale price of \$5,900.00, and to sell Lot 105 in the Aaron Section of the Community to John M. Macklen, Jr. for the sale price of \$2,000.00, pursuant to 11 U.S.C. § 363(b)(1); and

**IT IS FURTHER ORDERED** that the realtor's commissions on the two sales, in the amount of \$590.00 for the sale of Lot 81 and in the amount of \$500.00 for the sale of Lot 105, may be paid at the closing of the sales, provided that the Court has approved the employment of the realtor prior to such payments; 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.