

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

United States Securities and Exchange
Commission,

Court File No. 4:15-cv-053

Plaintiff,

vs.

North Dakota Developments, LLC,
Robert L. Gavin, and Daniel Hogan,

Defendants,

and

North Dakota Developments Property
Management LLC, Great American Lodge
LLC, NDD Holdings 1 LLC, NDD Holdings 2
LLC, NDD Modular LLC, Augusta
Exploration, LLC, and Ames Engineering &
Development Services LLC,

Relief Defendants.

**RECEIVER'S MOTION TO AUTHORIZE AND CONFIRM SALE OF PROPERTY
LOCATED AT GAL WATFORD WEST**

Receiver Gary Hansen (the "Receiver") respectfully moves this Court for an Order granting his motion to approve the sale of certain Receivership assets. Receiver seeks the entry of an Order approving the sale, in the form attached as Exhibit 1, and the Court's authorization to consummate the transaction with the Purchaser on substantively the same terms as set forth in the Purchase Agreement dated April 12, 2016, as amended, (the "Purchase Agreement"), attached as Exhibit A to the Affidavit of Ranelle Leier, filed herewith. For the reasons stated in

the Receiver's Memorandum in Support, the Receiver believes the sale is in the best interests of the Receivership, its creditors, and other parties-in-interest, and that just cause exists for the Court to approve the sale.

WHEREFORE, the Receiver respectfully requests the Court:

- A. Approve the sale of certain Receivership assets and enter an Order in the form attached as Exhibit 1;
- B. Authorize the Receiver to close the transaction on substantively the same terms as set forth in the Purchase Agreement; and
- C. Grant such other and further relief as is just and proper.

Dated: October 18, 2016

FOX ROTHSCHILD LLP

By: s/ Ranelle Leier
Gary Hansen (MN #40617) admitted *pro hac vice*
Ranelle Leier (MN #277587) admitted *pro hac vice*

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**RECEIVER AND ATTORNEY FOR RECEIVER FOR
DEFENDANT NORTH DAKOTA DEVELOPMENTS,
LLC AND RELIEF DEFENDANTS**

Exhibit 1

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LLC, NDD Modular LLC, Augusta
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Development Services LLC,

Relief Defendants.

**[PROPOSED] ORDER GRANTING RECEIVER'S MOTION
TO AUTHORIZE AND CONFIRM SALE OF PROPERTY
LOCATED AT GAL WATFORD WEST**

This Court has considered the Receiver's Motion to Authorize and Confirm Sale of Property Located at GAL Watford West (Dkt. No. ____) ("Motion") and any objections thereto. The Court finds that entry of this Order is in the best interests of the Receivership, its creditors, and other parties-in-interest, and the legal and factual bases set forth in the Motion and

Memorandum in Support (Dkt. No. ____) establish just cause for the relief granted herein; and it is therefore found and determined that:¹

A. Jurisdiction and Venue: This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1332(a)(2). Venue is appropriate in the Court pursuant to 28 U.S.C. § 1391(b)(1) and (b)(2).

B. Statutory Predicates: This Court has authority to approve the Asset Purchase Agreement (“Purchase Agreement”) and transactions contemplated therein pursuant to 28 U.S.C. §§ 754, 959, 2001, and 2004 and Rule 66 of the Federal Rules of Civil Procedure.

C. Notice: Proper, timely, adequate and sufficient notice of the Motion has been provided. No other or further notice is required.

D. Opportunity to be Heard: A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the transactions pursuant thereto has been afforded to all interested persons and entities, including, without limitation, the following: (i) each party who has filed an appearance in this matter; and (ii) all parties who are known to assert any lien, claim, interest or encumbrance in or upon any of the Sale Assets.² Objections, if any, to the Motion have been withdrawn or resolved and, to the extent not withdrawn or resolved, are hereby overruled.

¹ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Civ. P. 52.

² The Sale Assets are defined in the Purchase Agreement as all improvements, fixtures and personal property of North Dakota Developments, LLC and the Relief Defendants located at the man-camp facility known as Great American Lodge- Watford West. The Sale Assets are specifically identified in Exhibits A – D of the Bill of Sale, included as part of the Purchase Agreement, Exhibit A to the Affidavit of Ranelle Leier, filed with the Motion.

E. Sales Efforts Process: As stated in the Memorandum in Support, the Receiver has marketed the Sale Assets and attempted to solicit bids. The Purchaser submitted the highest and best offer. The Receiver and Scotty D. Fain (“the Purchaser”) have negotiated the Purchase Agreement, dated April 12, 2016, as amended and attached as Exhibit A to the Affidavit of Ranelle Leier, (the “Purchase Agreement”) in a diligent, non-collusive, and good faith manner.

F. Highest and Best Offer: The Purchase Agreement including the form and total consideration to be realized pursuant to the Purchase Agreement, (i) is the highest and best offer received by the Receiver for the Sale Assets, (ii) is fair and reasonable, and (iii) is in the best interests of the Receivership Estate, its creditors, and all other parties in interest. There is no legal or equitable reason to delay the consummation of the Purchase Agreement, and the transactions contemplated therein, including, without limitation, the sale.

G. Time is of the Essence: Time is of the essence in effectuating the Purchase Agreement and proceeding with the sale contemplated therein. The net value of the Sale Assets continues to decline. The sale under the Purchase Agreement is authorized to close beginning on the first business day following entry of this Order, to maximize the value that the Receiver may realize from the Sale Assets. Accordingly, cause exists to permit this Order to be a final order immediately upon entry.

H. Sale Free and Clear: A sale of the Sale Assets other than one free and clear of liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, liens, encumbrances, assignments, preferences, or debts (collectively, “Encumbrances”) and without the protections of this Order would hinder the Receiver’s ability

to obtain the consideration provided for in the Purchase Agreement, and, would thus impact materially and adversely the value of the Sale Assets. But for the protections afforded to the Purchaser under this Order, the Purchaser would not have offered to pay the consideration contemplated in the Purchase Agreement. The approval of the Purchase Agreement and the consummation of the sale free and clear of Encumbrances is appropriate pursuant to 28 U.S.C. §§ 2001 and 2004, the Receivership Order, and equity, and is in the best interests of the Receivership, creditors, and other parties-in-interest.

I. Arms-Length Sale: The consideration to be paid by the Purchaser under the Purchase Agreement constitutes reasonably equivalent value and fair and adequate consideration for the Assets. The terms and conditions set forth in the Purchase Agreement are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying, or defrauding the Receivership or its creditors under any applicable laws.

J. Receiver Authority: Pursuant to the Receivership Order and this Order, the Receiver (i) has full power and authority to execute, deliver, and perform the obligations under the Purchase Agreement, and entry into the Purchase Agreement is hereby approved and authorized, and (ii) has full power and authority necessary to consummate the transaction contemplated by the Purchase Agreement pursuant to this Order. No consents or approvals, other than those expressly provided for herein or in the Purchase Agreement, are required for the Receiver to consummate such transactions.

K. No Successor Liability: No sale, transfer or other disposition of the Sale Assets pursuant to the Purchase Agreement or entry into the Purchase Agreement will subject the Receiver, Defendant North Dakota Development, LLC or the Relief Defendants (collectively, the

“Receivership Defendants”) or the Purchaser to any liability for claims, obligations or encumbrances asserted against the Receivership Defendants or the Receivership Defendants’ interests in the Sale Assets by reason of such transfer under any laws. The Purchaser is not a successor to the Receivership Defendants or the Receivership Estate.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

A. Motion Granted, Objections Overruled

1. The relief requested in the Motion is granted as set forth herein.
2. Any objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled in all respects and denied.

B. Purchase Agreement Approved and Authorized

3. The execution of the Purchase Agreement and all further documentation required thereby, including the ancillary documents identified in the Purchase Agreement, are authorized, approved, and confirmed. The Receiver is hereby authorized and empowered to enter into and perform under the Purchase Agreement and consummate the sale of the Sale Assets without further order of the Court. The Purchaser is authorized to sever, as applicable, and remove all Sale Assets from the real property on which they are located. The failure to include specifically any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the Purchase Agreement and all of its provisions, referenced therein, be authorized and approved in their entirety.
4. The Receiver is specifically authorized to act on behalf of the Receivership Defendants in connection with the sale and no other consents or approvals are

necessary or required for the Receiver to carry out the sale, and to effectuate the Purchase Agreement.

C. Order Binding

5. This Order shall be binding upon and shall govern the act of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, records of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Sale Assets.

6. This Order and the terms and provisions of the Purchase Agreement shall be binding on all of the Receivership Defendants' creditors (whether known or unknown), the Receivership Defendants, the Purchaser, and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Receivership Assets. The provisions of this Order and the terms and provisions of the Purchase Agreement, and any actions taken pursuant hereto or thereto shall survive the entry of an order for relief under the United States Bankruptcy Code.

D. Sale Assets are Conveyed Free and Clear of Encumbrances

7. The Receiver is authorized to sell the Sale Assets and any related property free and clear of any and encumbrances except as explicitly set forth in the Purchase Agreement. Upon consummation of the sale, the Sale Assets shall be conveyed to the Purchaser free and clear of all encumbrances.

8. If any person or entity that has filed financing statements, mortgages, construction or mechanic's liens, or other documents or agreements evidencing liens on or interests in the Sale Assets shall not have delivered to the Receivership Defendants or Receiver, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of any encumbrances which the person or entity has with respect to the Sale Assets, each such person or entity is hereby directed to deliver all such statements, instruments and releases and the Purchaser is hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity asserting the same, and the Purchaser is also authorized to file a copy of this Order, which, upon filing, shall be conclusive evidence of the release and termination of any such encumbrances. Each and every federal, state and local governmental unit is hereby directed to accept any and all documents and instruments necessary or appropriate to give effect to the Sale and related transaction.

E. No Successor Liability

9. The Purchaser shall not be liable for any claims against the Receivership Defendants, the Receiver, or the Receivership Estate, and the Receivership Defendants, the Receiver, and the Receivership Estate shall not be liable for any claims against the Purchaser, in each case, other than as expressly provided for in the Purchase Agreement. The Purchaser shall not have any successor liability whatsoever with respect to any encumbrances or claims of any nature that may exist against the Receiver, the Receivership Defendants, or the Receivership Estate.

F. No Warranties

10. Except as explicitly set forth in the Purchase Agreement, the Sale Assets are being sold to the Purchaser and are assigned, conveyed and transferred to the Purchaser without any express or implied representations or warranties of any kind whatsoever, AS IS, WHERE IS, WITH ALL FAULTS, AND WITHOUT RECOURSE.

G. General Provisions

11. To the extent anything contained in this Order explicitly conflicts with a provision in the Purchase Agreement, this Order shall govern and control.

12. This Order shall be exempt from compliance with the requirements of 28 U.S.C. §§ 2001(a) and (b) and 2004, which are expressly waived.

13. The Purchase Agreement may be modified, amended, or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court provided only that the sale is on substantively the same terms as those set forth in the Purchase Agreement.

14. Nothing contained in any subsequent order of this Court in these proceedings shall alter, conflict with, or derogate from, the provisions of the Purchase Agreement or the terms of this Order.

15. This Court shall retain exclusive jurisdiction with regard to all issues or disputes relating to this Order or the Purchase Agreement, including, but not limited to, protecting the Receiver, the Receivership Defendants, the Receivership Estate, and/or the Purchaser against any assertions of encumbrances.

16. There being no reason for delay, and time being of the essence, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-

executing. In the absence of any person or entity obtaining a stay pending appeal, the Receivership Defendants, the Receiver, and the Purchaser are free to perform under the Purchase Agreement at any time, subject to the terms of the Purchase Agreement and this Order.

17. Unless and until the Receivership has been terminated by order of the Court, the Receiver and the Receivership Defendants shall remain subject to the terms of the Receivership Order.

IT IS SO ORDERED.

Dated: _____

Daniel L. Hovland, District Judge
United States District Court