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UNITED STATES BANKRUPTCY COURT
DISTRICT OF IDAHO

In Re:	Case No. [redacted]
HATHAWAY HOMES GROUP, LLC,	Chapter 7
Debtor.	

MOTION TO APPROVE RULE 9019 COMPROMISE WITH [redacted]

Notice of Motion to Approve Rule 9019 Compromise with [redacted] and Opportunity to Object and for a Hearing

Notice is hereby given that the chapter 7 trustee in the above-captioned case has filed the above-referenced motion with the Court requesting relief as set forth therein.

No Objection. The Court may consider this request for an order without further notice or hearing unless a party in interest files an objection within twenty-one (21) days of the date of this notice.

If an objection is not filed within the time permitted, the Court may consider that there is no opposition to the granting of the requested relief and may grant the relief without further notice or hearing.

Objection. Any objection shall set out the legal and/or factual basis for the objection. A copy of the objection shall be served on the movant.

Hearing on Objection. The objecting party shall also contact the Court's calendar clerk to schedule a hearing on the objection and file a separate notice of hearing.

COMES NOW [redacted] ("Trustee"), the chapter 7 trustee in the above-captioned bankruptcy case, by and through counsel Jason R. Naess, and hereby requests approval of the Settlement Agreement attached as Exhibit A (the "Agreement") pursuant to Rule 9019,

upon the grounds the compromise contained in the Agreement is in the best interest of the bankruptcy estate, avoids further costs and expenses, and maximizes the available return to creditors. In support of this Motion, the Trustee asserts as follows:

1. Pre-petition, [redacted] borrowed money from [redacted] [redacted] in order to floor plan its inventory.

2. Initially, [redacted] would provide [redacted] a security interest in the inventory that was being financed as collateral for such loans.

3. In or about April 2016, [redacted] sought additional funds from [redacted] and [redacted] determined it needed total collateral for the transaction in an amount of $100,000.00. A portion of the required collateral was to be provided via the establishment of a collateral fund, with an initial cash investment of $50,000.00. The other portion of the required collateral was to be provided via a Mortgage (the "Mortgage") on real property commonly known as 13388 Martinez Loop NW, Williston, North Dakota 58801 (the Real Property").

4. On or about April 27, 2016, the Parties entered the Mortgage.

5. The Mortgage states "Borrower [redacted] is providing collateral to the Lender [redacted] in the amount of Fifty Thousand Dollars and 00/100 (U.S. $50,000.00)."

6. The Mortgage also contained other language, including that the Mortgage secured to [redacted] repayment of a certain, specified Note, and that, if [redacted] was required to protect its interest in the Real Property and incurred attorneys' fees in doing so, such fees would become "additional debt of [redacted] secured by [the Mortgage]."

7. [redacted] filed for chapter 11 bankruptcy in November 2017. The chapter 11 case was converted to chapter 7 in March 2018, Trustee is the duly appointed chapter 7 trustee in the [redacted] bankruptcy case.

8. In December 2018, Trustee sold the Real Property to third party purchasers (the "Purchaser") for a gross sales price of $208,000.00. *See* Dkt. No. 380. The Real Property was sold and transferred to the Purchaser free and clear of any and all liens, claims, encumbrances, and other interests, with any such interests attaching to the proceeds of the sale to the same extent, priority, and validity as they attached to the Real Property subject to any rights, claims, and defenses the bankruptcy estate has thereto. *Id.* Trustee was to pay any claimants against the Real Property at his discretion, with the Parties to bring any disputes regarding the same to the Court for resolution. *Id.*

9. Aside from real property taxes, [redacted] was the only potential creditor with an identified interest in the Real Property. *See* Dkt. No. 338.

10. Prior to and since the sale of the Real Property, Trustee and [redacted] have been in discussions regarding the interpretation of the language of the Mortgage. Primarily, that discussion has revolved around whether the language of the Mortgage comports with the Trustee's interpretation and restricts the security interest in the Real Property and its proceeds to $50,000.00; or, whether the Mortgage language is as [redacted] interprets it to be, and additional expenses, such as interest and attorneys' fees and costs, are to be assessed against and collected from the Real Property and its proceeds. [redacted] and Trustee do not agree on the interpretation of the language of the Mortgage and each party contends the language should be interpreted such that it favors that Party's position.

11. The Parties have engaged in negotiations, recognize there is risk involved in their respective positions, and agree that resolution of the disagreement between them via a stipulation is the most efficient and effective way to resolve their dispute while mitigating the risk associated with litigation. To settle any dispute between them with minimal cost and expense to

each Party, the Parties propose to resolve the issues by determining [redacted] interest in the Real Property or its proceeds is $75,000.00. The Parties have determined it to be in their mutual best interest to amicably settle between them any and all disputes in this manner.

12. The Parties' Agreement is attached hereto as Exhibit A.

13. Trustee believes the litigation costs and the likelihood of success associated with litigating the interpretation of the language of the Mortgage justify the proposed settlement and the Agreement is beneficial to the estate. Trustee believes the proposed compromise is a reasonable exercise of his business judgment and, upon analysis of the factors identified in *In re A & C Properties*, 784 F.2d 1377 (9th Cir. 1986), is fair and equitable.

ANALYSIS OF SETTLEMENT

a. Probability of Success in Litigation:

Trustee believes his interpretation of the Mortgage's language is correct and that, in the event parole evidence is necessary to aid in a determination of [redacted] and [redacted] intent due to ambiguity in the contract language, such evidence would support his interpretation of the Mortgage's language. Trustee believes $50,000.00 is a cap to what would be recoverable by [redacted] from proceeds of the Real Property's sale.

At the same time, Trustee recognizes there is some risk the Court would agree with [redacted] [redacted] suggested interpretation and allow for all accrued interest, fees, and costs to be paid from the Real Property's proceeds. While Trustee believes the probabilities and evidence favor his interpretation of the contract's language, he recognizes that, if the language of the Mortgage is interpreted as suggested by [redacted] much, if not all, of any benefit to be had by the estate from the sale of the Real Property would be lost. In other words, while Trustee is fairly confident in the probability of his success in the litigation, the potential costs in the event he is

not successful weigh in favor of resolving this matter via a compromise given there is some chance his interpretation may be found to be incorrect.

b. Difficulties Encountered in Collection if Successful:

The proceeds from the sale of the Real Property are in the estate's possession. It is not expected there would be any difficulties encountered in collection if the estate were successful in any litigation with [redacted]

c. Complexity of the Litigation; Litigation Expense, Inconvenience, and Delay:

It is not anticipated the litigation in this case would be terribly complex. Ultimately, the question is one of contract language interpretation. If the contract language is found to be ambiguous, the complexity of the litigation will increase slightly, though is still not anticipated to be a very complex case. From Trustee's perspective most, if not all, of the parole evidence that would be relied upon by the estate would be documentary in nature. In other words, extensive witness testimony would likely not be needed.

At the same time, while the litigation would not be complex, the expense, inconvenience, and delay caused by litigation all favor the settlement identified in the Agreement. Regardless of whether the estate is successful in the litigation, the costs and expenses associated with litigating the issues will reduce the amounts available to the estate. Resolving the issues by fixing a known amount that will be provided to [redacted] will stop the estate from incurring any additional costs, will result in a speedy resolution of the matters related to the Real Property sale, and will eliminate any inconvenience resulting from the litigation.

d. Paramount Interest of Creditors:

Trustee believes the resolution of the dispute between the Parties included in the Agreement fairly resolves the issues between the Parties while eliminating the costs and risks of

litigation. The primary benefit seen to the estate through the Agreement is that it eliminates the risk of losing all benefits of the liquidation of the sale of the Real Property. Given the costs and expense of litigation, it is likely the amount of proceeds reserved for the estate through this resolution approximate what would be available for the estate in the event it was completely successful in the litigation. Considering the additional time savings that are realized through this resolution, Trustee believes the Agreement is in the best interests of the estate's creditors.

THEREFORE, the Trustee recommends and seeks approval of the proposed compromise as a reasonable exercise of his business judgment and a fair and equitable resolution for creditors.

DATED this 22nd day of July, 2019.

PARSON, SMITH, STONE, LOVELAND & SHIRLEY, LLP

By _____
Jason R. Naess
Attorneys for [redacted], Trustee