

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

In re:
NORTHERN MEADOWS
DEVELOPMENT CO., LLC

Debtor

Case No. 16-13393-TWD
Chapter 11

**MOTION FOR APPROVAL OF SALE
FREE AND CLEAR OF LIENS AND
APPROVAL OF DEBTOR IN
POSSESSION LOAN**

Comes now the debtor-in-possession, Northern Meadows Development Co., LLC (“Northern Meadows”) and moves the Court pursuant to Bankruptcy Code §363 for approval of the sale of real property (the “AFH Lots”) free and clear of liens, and pursuant to Bankruptcy Code §364 for approval of a debtor-in-possession loan (the “DIP Loan”) of up to \$250,000. The proposed purchaser of the AFH Lots is W & N Investment LLC, which is controlled by Stephen W Brisbane, who is also the principal of the debtor. Likewise, the DIP Loan will be provided by W & N Investment. The two transactions are presented as one motion, because W & N Investment intends to use the AFH Lots, along with other property it owns, as collateral for a loan (the “Bridge Loan”) which will provide the funding for both the purchase of the AFH Lots and the DIP Loan. It is anticipated that the sale of the AFH Lots and the closing of the Bridge Loan to will occur simultaneously.

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SALE OF AFH LOTS

The AFH Lots have been referred to in this case as Parcel C, Northern Meadows Adult Family Home Sites: 6 condominium lots (building lots held in condominium form) suitable for construction of 3 adult family homes, at 3993 Gentlebrook Lane, Bellingham, WA. The legal description of the AFH Lots and the terms of sale are contained in the purchase and sale agreement attached hereto as **Exhibit A**.

The proposed sale price is \$320,000, or \$53,333.33 per lot. There is no broker involved in the sale, and no brokerage commission. The debtor will pay real estate excise tax, pro-rated real property tax, and pro-rated utilities out of the proceeds of sale at closing. The purchaser will pay all other closing costs.

An additional condition of the purchaser's offer is that all dues owed to the Northern Meadows Condominium Association with respect to the AFH Lots be brought current out of the sales proceeds, as a cost of sale. The debtor's inability to pay these dues has put a significant strain on the Association, which in turn will impair the ability of this purchaser, or any purchaser, to further develop the property. A functioning condominium association is vital to the value of these properties. Moreover, if the secured creditor R2R were to foreclose, it would be liable for the dues accruing in the six months prior to the foreclosure. The estimated amount of delinquent condominium association dues on the AFH Lots is \$15,000 to \$20,000.

The purchaser, W & N Investment LLC, is an affiliate of the debtor. Therefore, this is not an arm-length sale. Nevertheless, the debtor believes the sales price is fair

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1 and reasonable. This is based on two factors: First, the debtor sold 11 virtually identical
2 lots to an arms-length buyer in August 2016 at a price of \$70,000/lot. However, as was
3 brought out in testimony at the evidentiary hearing on the debtor's proposed use of
4 cash collateral, held on January 25, 2017, these 11 lots had road access, whereas the 6
5 lots that are the subject of this proposed sale do not. Any buyer will have to spend
6 approximately \$100,000 to construct a road. This lowers the effective per-lot value by
7 approximately \$16,666/lot, to the proposed sale price, \$53,333.33/lot.
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10 These properties are encumbered by a first position deed of trust in favor of R2R
11 Capital Bellingham LLC ("R2R"), with an approximate balance (according to the
12 creditor) of \$4.28 million¹, and a second position deed of trust in favor of Paramjit Singh
13 and Harmeet Kaur ("Singh") with an approximate balance of \$1.2 million. These
14 creditors also hold additional collateral, including Parcel A, 4 building lots for view
15 homes on Chuckanut Drive in Bellingham Washington, and Parcel D, land suitable for
16 construction of a 68-unit adult assisted living/independent living facility, in the same
17 development as the AFH Lots. R2R also has a security interest in some \$184,400 of cash
18 collateral held by the debtor in its DIP account, representing the remaining proceeds of
19 the sale of the 11 lots approved by the Court on August 2, 2016 (ECF #23).
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23 Because the sale price of the AFH Lots is not sufficient to pay the liens of R2R
24 and Singh in full, and neither of these creditors has previously agreed to release prices
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27 ¹ This was the figure cited by R2R at the outset of the case. R2R has since been paid \$300,000, and
28 has accrued additional interest and attorney fees.

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1 for the AFH Lots, the debtor asks that the Court order the sale to be free and clear of
2 liens, with liens to attach to the net proceeds of sale, as their validity and priority may
3 appear. The net sales proceeds will constitute cash collateral under Bankruptcy Code
4 §363(c)(2). At the closing of the sale, the net sales proceeds will be distributed to R2R
5 for application to its outstanding indebtedness.
6

7 **DIP LOAN**

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9 Simultaneously with the closing of the sale of the AFH Lots to W & N
10 Investment, W & N Investment will use those lots, along with other property it owns, to
11 collateralize the Bridge Loan. The Bridge Loan will be in a minimum amount sufficient
12 to cover the purchase price of the AHF Lots and a DIP Loan disbursement of at least
13 \$250,000. The Bridge Loan will be an obligation of W & N Investment, and will not be
14 an obligation of the debtor or the bankruptcy estate. W & N Investment will use a
15 portion of the Bridge Loan proceeds to pay the purchase price of the AFH lots, and
16 another portion of the Bridge Loan proceeds to make the DIP Loan to the debtor-in-
17 possession.
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21 The DIP Loan will be an unsecured loan, with priority as an expense of
22 administration pursuant to Bankruptcy Code §503(b)(1). The debtor will use the DIP
23 Loan proceeds to pay administrative expenses of the bankruptcy case, including
24 allowed fees of professionals (including previously allowed and unpaid fees),
25 compensation of \$7500 per month to Stephen W Brisbane as manager of the debtor
26 (retroactive to January 2017), and United States Trustee fees; to prepare a marketing
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1 package for its Assisted Living Site; and to fund development activity for its building
2 lots on Chuckanut Drive in Bellingham, Washington. These proposed expenditures are
3 detailed on **Exhibit B**.
4

5 The DIP Loan will bear interest at 2% over the rate of the Bridge Loan. The
6 debtor will be required to make interest-only payments on the DIP Loan on the same
7 terms and schedule as the Bridge Loan. The debtor believes a 2% interest rate
8 differential is appropriate because the Bridge Loan is secured by real property, whereas
9 the DIP Loan is unsecured. The DIP Loan, therefore, carries a significantly higher risk.
10 The due date of the DIP loan will be the **earliest** of: (i) the effective date of a confirmed
11 plan of reorganization (unless a different treatment of the DIP Loan, agreed to by the
12 DIP lender, is incorporated into the plan); or (ii) the date the bankruptcy case is
13 dismissed or converted to a case under Chapter 7 of the Bankruptcy Code. The form of
14 the DIP Loan note is attached hereto as **Exhibit C**.
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18 CONCLUSION

19 So far in this case, the debtor has been hamstrung by the inability to use cash
20 collateral to further develop and enhance its properties. Based on the testimony and the
21 Court's findings at the evidentiary hearing on use of cash collateral, R2R is barely
22 secured or somewhat undersecured, given the current state of the properties. The
23 second position lien holder, Singh, is substantially undersecured. The unsecured
24 creditors have no hope of payment in this case unless the debtor is able to develop and
25 enhance its properties.
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1 The sale of the AFH Lots is at fair market value, given the lots' current condition
2 and in particular the need to construct an access road. The DIP Loan markup of 2% is
3 appropriate given the difference in risk between the DIP Loan and the Bridge Loan.
4 Thus, W & N Investment is providing the credit enhancement represented by its other
5 property to the debtor for a fair markup. As an unsecured loan with administrative
6 priority, the DIP Loan poses no threat to the secured creditor, and represents the only
7 hope that the undersecured and unsecured creditors can realize anything in this
8 bankruptcy case. Both the sale and the loan should be approved by the Court.
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11 Dated: April 21, 2017

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13 DONALD A BAILEY

14 Attorney at Law

15 /s/ Donald A Bailey

16 WSB#12289

17 Attorney for Debtor
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REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT is made and entered as of this 20th day of April, 2017, by and between NORTHERN MEADOWS DEVELOPMENT CO., LLC, a Washington limited liability company, and debtor-in-possession in Western District of Washington Chapter 11 bankruptcy #16-13393, hereinafter referred to as "Seller"; and W & N INVESTMENT, LLC, a Washington limited liability company, hereinafter referred to as "Buyer".

RECITALS

A. Seller owns real property commonly known as Units 3, 4, 5, 6, 7, 8 of the Northern Meadows Estates Condominium located at 3993 Gentlebrook Lane, Bellingham, WA 98264 and more particularly described on Exhibit "A" attached hereto (the "Property").

B. The Property consists of six detached condominium pads that are due to be consolidated into a configuration allowing for construction of 3 Adult Family Homes comprising memory and long term care units.

C. Seller and Buyer are both controlled by Stephen W Brisbane, and are affiliated entities.

D. Buyer intends to pursue and obtain a loan (the "Bridge Loan") to fund the purchase of the Property, to refinance an existing commercial warehouse property owned by Buyer, and also to finance an unsecured loan of up to \$250,000 to be extended by Buyer to Seller (the "DIP Loan"). It is intended that the Bridge Loan, the sale of the Property, and the Bridge Loan will close simultaneously.

NOW, THEREFORE, the parties agree as follows:

1. **Purchase and Sale.** Buyer agrees to buy and Seller agrees to sell, on the terms and conditions stated herein, the Property.

2. **Price and Terms of Payment.** The total purchase price for the Property is Three Hundred Twenty Thousand Dollars (\$320,000.00), to be paid in cash at closing from proceeds of Buyer financing.

3. **Earnest Money.** Buyer has provided an earnest money deposit of \$1000.00, which shall be held by the closing agent. The earnest money deposit shall become non-refundable upon Bankruptcy Court approval of the sale and related transactions as provided below. In the event the sale is not approved by the Bankruptcy Court, the earnest money shall be refunded to Buyer. Seller's sole remedy for Buyer's failure to

close the transaction following Bankruptcy Court approval shall be forfeiture of the earnest money. In such event, the closing agent is irrevocably authorized by Buyer to transmit the earnest money to Seller.

4. **Financing Contingency.** The obligation of each party to close the sale shall be contingent on Buyer obtaining the Bridge Loan in sufficient amount to fund the purchase of the Property and the DIP Loan, and Buyer's actual funding of the DIP Loan. In the event Buyer is unable to close the Bridge Loan on or before the closing date, or fails to fund the DIP Loan, Seller shall have no obligation to close the sale of the Property, and the earnest money shall be forfeited to Seller.

5. **Bankruptcy Court Approval.** This sale is subject to the prior approval of the Bankruptcy Court in Seller's bankruptcy case. Seller agrees promptly and diligently to seek such approval. Such approval shall specifically include 1) that the sale is free and clear of liens and encumbrances pursuant to Bankruptcy Code section 363(f); 2) that the Bankruptcy Court has also approved the DIP Loan; and 3) that all accrued and unpaid condominium association dues owing with respect to the Property will be paid from the purchase price at closing.

6. **Condition of Title.** The sale shall be free and clear of liens and monetary encumbrances pursuant to Bankruptcy Court order. Title to the Property is to be marketable and free of all financial encumbrances or defects; provided the sale is subject to rights reserved in federal patents or stale deeds; building or use restrictions general to the district, other than governmental platting and subdivision requirements; utility easements; other easements not inconsistent with Buyer's intended use; and oil, gas and mineral right reservations shall not be deemed encumbrances or defects.

7. **Conveyancing.** Title shall be conveyed by deed in form acceptable to counsel for Buyer and counsel for Seller.

8. **Title Insurance.** Buyer may elect to obtain title insurance at Buyer's expense.

9. **Closing.** This sale shall be closed at the convenience of the parties, when Buyer's financing is available, but not later than July 1, 2017. It is intended that the Bridge Loan, the sale of the Property, and the DIP Loan will close simultaneously. The Belcher Swanson Law Firm, PLLC, 900 Dupont, Bellingham, WA 98225 shall act as closing agent for the parties in conjunction with Chicago Title Insurance Company of Whatcom County, which will provide closing services as an accommodation to the parties in connection with Buyer's Bridge Loan financing. Any closing fee charges by Chicago Title shall be Buyer's responsibility.

10. **Status of Closing Agent/Attorney.** Seller acknowledges that the Closing Agent is also the attorney for Buyer. Buyer acknowledges that bankruptcy counsel for Seller does not represent the interests of Buyer or of Mr. Brisbane.

11. **Closing Costs and Prorations.** Buyer shall pay the closing fee and recording fees. Seller shall pay, from the proceeds of sale at closing, the following: i) real estate excise tax; ii) all unpaid real property taxes (prorated for the current year as of the date of closing); and iii) all condominium association fees and dues owing as of the date of closing (prorated for the current year as of the date of closing), whether accrued before or after Seller's bankruptcy filing. The Bankruptcy Court order approving the sale shall expressly authorize these payments from the proceeds of sale. Payment of condominium association fees and dues is a condition of Buyer's obligation to close the transaction.

12. **Possession.** Buyer shall be entitled to possession of the Property immediately following closing.

13. **Seller's Disclaimers of Warranties.** Seller hereby disclaims any warranties concerning the Property. Buyer acknowledges that it has not entered into this transaction in reliance upon any warranties either expressed or implied from Seller, and further acknowledges that it has had an opportunity to fully inspect the Property and accepts the Property in its current condition.

14. **Disclosure Waiver.** The parties hereby expressly WAIVE the right to receive a disclosure statement that would otherwise be required pursuant to RCW Chapter 64.06. This waiver is made pursuant to RCW 64.06.030.

15. **Unpaid Utilities Charges.** The parties hereby expressly WAIVE the right to have the closing agent disperse closing funds necessary to satisfy unpaid utility charges affecting the property pursuant to RCW 60.80.

16. **No Commission.** Seller and Buyer each warrant that they have not dealt with any finder, broker, or realtor in connection with the transaction contemplated by this Agreement. If any person shall assert a claim to a finder's fee or brokerage commission on account of alleged employment as a finder or broker in connection with the transaction contemplated by this Agreement, the party under whom the finder or broker is claiming shall indemnify and hold harmless the other party for, from, and against any such claim and all costs, expenses and liabilities incurred in connection with such claim or any action or proceeding brought on such claim, including, but not limited to, counsel and witness fees and court costs in defending against such claim. The parties' obligations under this provision shall survive the cancellation of this

Agreement or the closing, as applicable.

17. Miscellaneous.

- a. Time of the Essence. Time is of the essence in the performance of this Agreement.
- b. Entire Agreement. This Agreement contains the entire agreement of the parties, and there are no verbal or other agreements which modify or affect this Agreement. In the event of a conflict between the terms of this Agreement and the terms of the Bankruptcy Court order approving the sale, the terms of the court order shall control.
- c. Benefit. The provisions in this Agreement shall inure to the benefit of and be binding upon the successors, assigns and personal representatives of the parties hereto, including any trustee who may be appointed in Seller's bankruptcy case.
- d. Notices. All notices or demands to be given by either party to the other pursuant to this Agreement shall be deposited in the United States mail, first class postage prepaid, and addressed as follows:

Buyer: W & N Investment, LLC
 9490 Weidkamp Road, Lynden, WA 98264

Seller: Northern Meadows Development Co., LLC
 9490 Weidkamp Road, Lynden, WA 98264

Notices and demands sent by mail shall be deemed to have been given and delivered when properly mailed and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

- e. Execution of Documents. The parties agree to execute any documents which may be necessary, appropriate or convenient to carry out the intent of the transaction contemplated by this Agreement.
- f. Attorney's Fees. In the event either Buyer or Seller shall institute suit to enforce any rights hereunder, the successful party shall be entitled to court costs and reasonable attorney's fees against the losing party.

IN WITNESS WHEREOF, the parties have signed this Agreement;

SELLER:
Northern Meadows Development Co., LLC,

By Northern Meadows Management Co., LLC, Its Manager

By _____
STEPHEN W. BRISBANE, Its Manager

Date Signed: _____, 2017

BUYER:
W & N Investment, LLC

By _____
STEPHEN W. BRISBANE, Its Manager

Date Signed: _____, 2017

EXHIBIT A
LEGAL DESCRIPTION

The sites under purchase and sale agreement are legally described as:

First Amended Northern Meadows Estates Condominium Phase II, Unit 3
(Whatcom County Assessor's Parcel Number 380317119396 0043).

First Amended Northern Meadows Estates Condominium Phase II, Unit 4
(Whatcom County Assessor's Parcel Number 380317119396 0044).

First Amended Northern Meadows Estates Condominium Phase II, Unit 5
(Whatcom County Assessor's Parcel Number 380317119396 0045).

First Amended Northern Meadows Estates Condominium Phase II, Unit 6
(Whatcom County Assessor's Parcel Number 380317119396 0046).

First Amended Northern Meadows Estates Condominium Phase II, Unit 7
(Whatcom County Assessor's Parcel Number 380317119396 0047).

First Amended Northern Meadows Estates Condominium Phase II, Unit 8
(Whatcom County Assessor's Parcel Number 380317119396 0048).

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Northern Meadows Development Co., LLC
 DIP Loan Proceeds Projected Uses
 Western District of Washington - Case # 16-13393 - TWD

Exhibit B

Description	Total
Property Improvements	
Tract A - Chuckanut SFH Lots	
Septic System Design Fees	10,000
Arch Design & Engineering Fees	20,000
Lot Clean-up/Marketing prep	10,000
Marketing and Appraisal	15,000
	\$ 55,000
Tract D - Senior Living Site	
Marketing and Appraisal	10,000
Administrative Costs	
Professional Fees	
- Shafer & Bailey / Columbia Consulting	90,000
- Manager Patments	60,000
- US Trustee	5,000
	\$ 155,000
Loan Costs	
- Points	\$ 5,000
- Interest Reserve	\$ 25,000
Total	\$ 250,000

DEBTOR IN POSSESSION NOTE

Lynden, Washington

\$250,000

May 12, 2017

FOR VALUE RECEIVED and SUBJECT TO APPROVAL OF THE COURT (as defined below), Northern Meadows Development Co., LLC ("Borrower"), a Washington limited liability company and debtor-in-possession in a Chapter 11 bankruptcy case pending in the United States Bankruptcy Court for the Western District of Washington (the "Court"), case number 16-13393-TWD (the "Case"), promises to pay to the order of W & N Investment, LLC ("Lender" and, together with the Borrower, the "Parties"), a Washington limited liability company, the maximum principal sum of TWO HUNDRED AND FIFTY THOUSAND AND 0/100 DOLLARS (\$250,000.00) (the "Maximum Loan Amount") or such lesser sum as shall have been advanced by Lender to Borrower, plus interest as hereinafter provided, all in lawful money of the United States of America, in accordance with the terms of this Note and an order of the Court approving the terms of and Borrower's performance of this Note.

This Note shall bear interest at the two percent (2%) over Lender's Cost of Funds on the outstanding principal amount advanced by Lender from time-to-time and unpaid by Borrower. The Lender's Cost of Funds shall be the interest rate paid by Lender for the loan Lender anticipates taking out in order to fund this loan to Borrower (the "Bridge Loan"). If the Lender's Cost of Funds involves a variable interest rate, or if interest is compounded, then the interest rate under this Note shall be calculated in the same way.

Payments of interest only will be due on the same schedule as payments are required by the Bridge Loan. The Due Date of this Note shall be the earliest of: (i) the effective date of a plan of reorganization confirmed by the Court in the Case; or (ii) the date on which the Case is dismissed or converted to a Chapter 7 liquidation case. On the Due Date, the entire unpaid principal balance of this Note, together with all accrued and unpaid interest, shall be due and payable in full. This Note may be prepaid in whole or in part at any time without any penalties being assessed against the Borrower.

Upon request, Lender shall furnish Borrower with a statement of Borrower's loan account, which statement shall have the presumption of being correct, accepted by, and binding upon Borrower, unless Lender receives a written statement of exceptions from the Borrower within thirty (30) days after such statement has been furnished.

This Note is unsecured. In accordance with and to the extent provided by the order of the Court approving this Note, all amounts due to Lender hereunder shall have priority as administrative expenses of the Case as provided in 11 U.S.C. §363(b) and §503(b)(1). If Borrower defaults in making any payment required under this Note, which default is

not cured within 10 business days following notice of default from Lender to Borrower, then Lender may at its option declare the entire balance then owing immediately due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. No default interest shall be charged against the Borrower.

Each Party agrees that it shall bear its own costs, including, without limitation, attorney's fees incurred in preparing the Note and in connection with the Debtor's request for authority from the Court to enter into and otherwise effectuate the Note and its terms and receive the line of credit which is contemplated herein. If either Party deems it necessary to commence a legal action to enforce or interpret the terms of this Note, the prevailing Party in such legal action shall be entitled to recover its reasonable attorney's fees and all of its taxable costs and expenses incurred in connection with such action.

Washington substantive law shall govern the interpretation, terms, obligations, and performance of the loan documents but only to the extent title 11 of the United States Code and other federal law are inapplicable. During the Case, the Court shall maintain jurisdiction and venue. In the event the Court no longer maintains jurisdiction and venue, the Parties agree that Whatcom County, Washington shall be the proper venue.

The Lender hereby acknowledges that counsel for Borrower represents the Borrower only and does not in any way represent the interests of the Lender. While the Parties to this Note are sophisticated, each Party was encouraged and provided ample time to retain an attorney to represent it in connection with the negotiation and preparation of this Note and its terms. Except as expressly stated in this Note, Borrower waives diligence, demand, presentment of payment and protest

If there is any term or provision in this Note that conflicts with a term or provision in the Court's order approving this Note, the terms of the Court's order shall govern.

THIS NOTE AND ANY RELATED DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN OR ORAL AGREEMENTS BETWEEN THE PARTIES.

IN WITNESS WHEREOF, the Parties hereto, through officers with signatory authority, have executed this Debtor In Possession Note.

BORROWER:

NORTHERN MEADOWS DEVELOPMENT CO., LLC

By: NORTHERN MEADOWS MANAGEMENT CO., LLC

By: Stephen W Brisbane, its Manager

Date signed: _____, 2017

LENDER:

W & N INVESTMENT, LLC

By: Stephen W Brisbane, its Manager

Date signed: _____, 2017