

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW HAMPSHIRE**

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**In re:**

**Susan G. Farah**

**Debtor**

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**Chapter 7  
Case No. 10-10576-JMD**

**Hearing Date: July 13, 2010  
Hearing Time: 9:00 a.m.**

**Objection Deadline: 07/06/10  
Counter Offer Deadline: 07/06/10**

**CHAPTER 7 TRUSTEE’S MOTION TO SELL DEBTORS’ INTEREST IN REAL  
ESTATE KNOWN AS LILAC VALLEY ESTATES, LACONIA, NH FREE AND CLEAR  
OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES PURSUANT TO 11 U.S.C.  
§363(b) and (f)**

**This Motion to Sell is being filed in both *In Re Susan Farah, 10-10576-JMD* and in the case styled *In Re Lawrence Baldi, Docket No. 10-11219-MWV*, and notice is being filed in *In Re Financial Resources Mortgage, Inc. and C L & M, Inc. and other Jointly Administered Cases, Lead Case No. 09-14565-JMD* as sale of this property requires Court approval for all affected bankruptcy estates.**

NOW COME Steven M. Notinger, Chapter 7 Trustee (“Notinger” or “Trustee”) for the estates of Susan G. Farah (“Farah”) and C, L & M, Inc. (“CLM” or “the Debtor”), Financial Resources Mortgage, Inc. (“FRM”), and other Jointly Administered Cases, including SMM 2007 Realty Trust (09-14903-JMD) and Lilac Valley 2007 Investment Trust (10-10573-JMD) by his attorneys Donchess & Notinger, PC and Timothy P. Smith, Chapter 7 Trustee for the estate of Lawrence Baldi (“Smith” or “Trustee”), by his Attorneys Michels & Michels, and request this Court authorize the sale of the real estate known as the Lilac Valley Estates, Laconia, Belknap County, State of New Hampshire, consisting of 49 acres with 55 manufactured housing lots located at 8 Old

Prescott Hill Road, Laconia, NH (“the Property”), pursuant to 11 U.S.C. §363(b) and (f), Fed. R.Bankr.P. 6004 and 6006 and LBR 6004-1, in accordance with the terms and conditions of the certain Purchase and Sales Agreement and Deposit Receipt dated May 8, 2010 (“the P&S”) annexed hereto as Exhibit A.

Pursuant to this Motion, the Trustee seeks to sell the Property to Amazing Views, LLC or its nominee or assignee (“the Buyer”) for the total sum of Three Hundred Ninety Thousand Dollars and No Cents (\$390,000.00). As grounds for this Motion, the Trustee states that in the exercise of his business judgment, the transaction contemplated by the P&S maximizes the value of the Property and thus the proposed sale is in the best interest of the bankruptcy estate. In addition, the Trustee believes that the proposed sale will generate the best return for creditors. Accordingly, the Trustee requests this Court enter an order authorizing him to sell the Property. The Trustee states in support of his Motion, the following:

### **I. GENERAL BACKGROUND**

1. On November 20, 2009 (the “FRM Petition Date”) an involuntary petition for relief pursuant to Chapter 7 of the Bankruptcy Code was filed against CLM and FRM by three unsecured creditors. Notinger was appointed as the gap trustee, and then the trustee for both. Shortly thereafter Notinger, as state court-appointed receiver, filed approximately 97 trusts and other entities related to CLM and FRM into Chapter 7 bankruptcy, including the SMM Realty Trust, the Lilac Valley 2007 Investment Trust (“LVIT”) and Greatland Project Development, Inc. (“Greatland”). CLM, FRM and their related trusts and entities are accused of perpetrating a large Ponzi scheme on investors which has resulted in the loss of multiple millions of dollars.

2. On February 12, 2010 (“the Farah Petition Date”) Susan G. Farah filed for Chapter

7 bankruptcy protection and Notinger was appointed Trustee. Farah is the spouse of Scott D. Farah, also a Chapter 7 Debtor in this Court, one of the principals of FRM and CLM.

3. On March 22, 2010 (“the Baldi Petition Date”) Lawrence Baldi filed for Chapter 7 bankruptcy protection and Smith was appointed Trustee. Prior to the Baldi Petition Date, Baldi was a general contractor who built homes or construction projects under various trusts, LLCs or corporations and was a frequent borrower and/or business partner of FRM, CLM and/or Scott Farah.

4. Since the Petition Date Notinger has begun liquidating assets of the estate of CLM. The Trustee has filed Adv. Pro. No. 09-1184-JMD (“the Adversary”) against investors/lenders in the FRM/CLM scheme, alleging, inter alia, that all of the funds of the scheme went into and were paid out of CLM, and requesting, among other things, that the Court issue a declaratory judgment that all the mortgage interests that are part of the FRM/CLM scheme are property of the CLM bankruptcy estate.

5. One of the assets tied up in the FRM/CLM case, the Farah case and the Baldi case is the Property. On the Baldi Petition Date Baldi was the Trustee and a 50% beneficiary of the Lilac Valley 2007 Real Estate Trust (“LVRET”). On the Farah Petition Date, Farah was the other 50% beneficiary of the LVRET. The LVRET purchased the Property by Warranty Deed from the Trustees of the Snow Family Revocable Trust and the Wilma M. Davis 2004 Trust on or about March 28, 2007 (“the Deed”)(See Deed recorded at the Belknap County Registry of Deeds [“the Registry”], Book 2392, Page 369). Tax stamps on the Deed indicate (and Mr. Baldi confirmed at his Section 341 Meeting) that the Property was purchased for \$950,000.00 using funds that came from CLM.

6. Immediately after the Deed there are four FRM/CLM-related mortgages signed by Baldi as Trustee of LVRET (described in detail below) totaling \$3,255,000.00 on their face recorded

at the Registry. The first of said mortgages was a mortgage to Greatland for \$1,920,000.00 recorded at Book 2392, Page 374, the bulk of which was subsequently assigned to LVIT (see below).

7. Despite the amount of funds loaned on the Property, there are presently only three manufactured housing units located on the Property, two of which have been sold to third parties by Lawrence Baldi, dba Home Sweet Homes, another Baldi and FRM/CLM related entity (funded by CLM) which was a modular home dealer. The remaining modular home unit will be sold separately by one or both of the Trustees at a later date. Notinger's real estate experts have valued the Property "as is" at approximately \$427,000.00.

8. Realtor Ernie Millette of Coldwell Banker Residential Brokerage ("the Realtor") (whom Notinger has employed through the Court to sell other FRM/CLM or Farah related properties in the Meredith/Laconia, NH area) has been able to secure the P&S for \$390,000.00 with a \$100,000.00 deposit, which the Trustee believes will be the highest and best price he can receive for the sale of the Property. There is another potential bidder, however, who has expressed interest in purchasing the Property who has been provided a copy of this Motion and the Notice of Sale and Counteroffer Procedures. Notinger requests that the Realtor be paid its requested 3% commission on sale regardless of who purchases the Property as the Realtor was able to procure the P&S for consideration by the Court and for the benefit of the bankruptcy estates.

9. The principal terms of the P&S are as follows:

- a. Assets to Be Purchased by Buyer: Buyer has offered to purchase the Property, consisting of approximately 49 acres with approvals for 55 manufactured housing units thereon (only 3 of which exist) located at 8 Old Prescott Hill Road, Laconia, NH.

- b. Purchase Price: Buyer has offered to purchase the Property for cash for the sum of \$390,000.00.
- c. Deposit: In connection with submitting the P&S, Buyer has provided the Realtor a deposit in the sum of \$100,000.00.
- d. Closing: The P&S requires that a closing occur on or before July 31, 2010.
- e. Contingencies: The following contingencies are associated with this sale: (1) Buyer's satisfactory review of the following: any lead paint disclosure; restrictive covenants of record; easements/deed of record; park rules and regulations; co-op/PUD/Association documents; availability of property/casualty insurance; (2) Bankruptcy Court approval as soon as possible.

## **II. LIENS AND TAXES ENCUMBERING ASSETS**

10. The following liens have been identified by the Trustees as encumbering the Property (all liens recorded at the Belknap County Registry of Deeds):

A. First mortgage to Greatland Project Development, Inc. dated 03/28/07 in the amount of \$1,920,000.00 recorded at Book 2392, Page 374, along with a Collateral Assignment of Leases and Rents recorded at Book 2392, Page 387.

- a. Partial Assignment of this mortgage by Greatland in the amount of \$255,000.00 to CLM/FRM investor Raymond Kloepper, IRA; dated 03/28/06, but recorded 4/30/07 at Book 2401, Page 22.
- b. Partial Assignment of this mortgage by Greatland in the amount of \$1,665,000.00 to Dodge Financial, Inc. as Trustee of the Lilac Valley Investment Trust of 2007, dated 03/28/06 but recorded 04/30/07 at Book 2401, Page 24 (See Paragraph 11 below for a list of trust

beneficiaries).

B. Second mortgage to Reiko Cheng Revocable Trust dated 03/28/07 in the amount of \$560,000.00; recorded at Book 2392, Page 394.

C. Third mortgage to Terence McKenna dated 03/28/07 in the amount of \$387,500.00; recorded at Book 2392, Page 415. (Notinger is unsure whether this loan is valid as there is no Loan Master Report on this loan in CLM's records indicating monies paid into or out of CLM on this loan).

D. Fourth mortgage to GCX Capital Trust, LLC dated 03/28/07 in the amount of \$387,500.00 recorded at Book 2392, Page 428. (Notinger is also unsure whether this loan is valid as GCX Capital Trust, LLC is owned/controlled by FRM/CLM insider Gary Coyne).

E. Order of the Belknap County Superior Court dated 12/04/09 and recorded at Book 2612, Page 878, appointing Attorney Eaton Tarbell temporary receiver of Lilac Valley 2007 Realty Trust, Lawrence Baldi and others regarding payments from Mark and Lisa Cresci on one of the manufactured housing units on the Property.

F. Mechanic's lien of Rokeh Consulting, LLC in the amount of \$3,445.00 recorded on 12/14/09 at Book 2614, Page 443.

G. Prejudgment attachment of Busby Construction Co., Inc. in the amount of \$75,000.00 recorded on 12/30/09 at Book 2617, Page 742.

H. Property taxes owed to the City of Laconia, NH of approximately \$120,000.00. (The Property was taken out of current use in 2009).

11. Based on the value of the Property, all liens against the Property, except for the first mortgage (which provided acquisition financing) and the property tax liens, are unsecured.

12. The following FRM/CLM lenders are identified in CLM's records as being

beneficiaries of the Lilac Valley 2007 Investment Trust on the FRM/CLM Petition Date: Richard M. Frucci, Trustee of the Richard M. Frucci Trust (26.13%); Stephan Ryll (3.60%); SMM 2007 Realty Trust (2.60%)(beneficiaries believed to be Susan G. Farah her and Scott D. Farah's two children); Stephan O. Simons (3.00%); Frank Armanno, Jr. (8.11%); Harry Bean II and Priscilla Bean (15.02%); Darlyne Shea (9.91%); Gary Funston (4.32%); William R. Lucas and Gracie Becker, Successor Beneficiary - Dallas Lucas (15.02%); Elaine Cote (2.08%); Robert Keating (4.20%); Mark Butler and Eileen O'Neil (5.23%).

**I. APPROVAL OF THE SALE OF THE PROPERTY IS IN THE BEST INTERESTS OF THE ESTATES AND SHOULD BE AUTHORIZED BY THIS COURT**

13. This Court should approve the sale of the Property free and clear of liens, claims and encumbrances on the terms and conditions as set forth in the P&S and this Motion. The transaction provided in the P&S was negotiated at arm's length and in good faith by the Trustees, after consideration of all possible purchasers. The terms of the arrangement are fair and reasonable and the Trustee believes such terms are designed to yield the maximum value to the Estate on account of the disposition of the Property. For disclosure purposes, Notinger notes that the Buyer also purchased a three acre lot on Hatch Corner Road, Meredith, NH in a court-approved sale in the *In Re Scott D. Farah* matter (See Document No. 65 on the 09-14902-JMD docket prior to joint administration as a related case with Lead Case No. 09-14565-JMD).

14. This Court has statutory authority to authorize the sale of the Property free and clear of all liens, claims and encumbrances to any person or entity submitting the highest and best offer. See 11 U.S.C. §§ 363(b)(1), (f)(1)(4) and (5).

15. The Trustees request that they be allowed to sell the Property as contemplated herein,

free and clear of all liens, claims, encumbrances and interests, as set forth herein, with any such liens, claims, encumbrances or interests to attach to the sales proceeds in the same manner and amount as existed prior to the sale, subject in all cases to the Trustees', any party in interest, and/or this Court's right to contest the amount, validity and/or priority of any claim or interest at a later date. Since there is no equity in the Property, the Trustees request that Notinger be allowed to hold the net proceeds of the sale of the Property in the estate of CLM, subject to the terms and conditions listed in the next section.

16. The Trustees request that any auction of the Property which takes place in the Bankruptcy Court be held in conjunction with approval of this Motion to Sell in the Baldi estate.

**IV. DISTRIBUTION OF SALES PROCEEDS - SETTLEMENT BETWEEN THE TRUSTEES**

17. Smith and Notinger propose the following distribution of the \$390,000.00 sales proceeds (or whatever price ends up being accepted by the Court) occur at closing: for its cooperation in liquidating the Property, Trustee Smith and Baldi's estate will be paid Ten Thousand Dollars (\$10,000.00) out of the first \$375,000.00 paid by the Buyer, plus 20% of any amount above that amount paid by the eventual Buyer of the Property. The Trustees believe that this is a fair payment for Smith's assistance in the sale of the Property, and that the FRM/CLM and Baldi estates have disputed claims against each other, making some payment to the Baldi estate from the proceeds of the sale a reasonable settlement to allow the sale of a Property which continues to accrue expensive tax liens in a bad real estate market.

18. The Trustees also propose to pay at closing the Realtor's 3% sales commission; outstanding property taxes, prorated between the Trustee and the Buyer to the closing date; all usual

and regular closing expenses of the seller, including any transfer taxes of the seller; all other net proceeds from the sale to be held by Trustee Notinger in the estate of CLM until further Order of the Court.

**V. NOTICE AND COUNTER-OFFER PROCEDURES**

17. Copies of the Notice of Hearing and Offer Procedures on this Motion have been served, either by ECF or by first class mail, as indicated in the Trustee's Certificate of Service, upon all parties with ECF Appearances in Lead Case 09-14565-JMD, 10-10576-JMD and in 10-11219-MWV, the United States Trustee, secured creditors, the lienholders listed above, the beneficiaries of the Lilac Valley 2007 Investment Trust, the Debtors, the Service Lists created in Lead Case 09-14565-JMD and 10-10576-JMD for creditors requesting notice of all pleadings, as well as anyone who has expressed an interest in purchasing the Property. The Trustee requests that this Court find such service to be appropriate and sufficient notice of this Motion in the particular circumstances. The Trustee also requests the court find the counter-offer procedures in the Notice of Hearing and Counteroffer Procedures are reasonable and appropriate under the circumstances.

WHEREFORE, the Trustee request that this Court enter an Order:

- (A) Authorizing the Trustee to sell the Property to Buyer or the highest bidder, if one exists, on the terms and conditions set forth in the P&S free and clear of liens, claims, encumbrances and interests under 11 U.S.C. §363(b) and (f) with such liens, if any, to attach to the proceeds of the sale to the same extent of their validity, perfection and priority, unless stated otherwise herein;
- (B) Authorize the Trustee to pay the costs outlined in Paragraphs 17 and 18 herein; and
- (C) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,  
Steven M. Notinger, Chapter 7 Trustee for the

Estate of Susan D. Farah and the  
Estate of C L & M, Inc. and other Jointly  
Administered Estates  
By His Attorneys,  
DONCHESS & NOTINGER, P.C.

Date: June 16, 2010

By: /s/ Deborah A. Notinger  
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Respectfully submitted,  
Timothy P. Smith, Chapter 7 Trustee for the  
Estate of Lawrence Baldi  
By His Attorneys,  
MICHELS & MICHELS

Date: June 16, 2010

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