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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

COMMODITY FUTURES TRADING
COMMISSION, and

STATE OF UTAH DIVISION OF
SECURITIES, through Attorney General
Sean D. Reyes

Plaintiffs,
v.

RUST RARE COIN INC., a Utah corporation,
and GAYLEN DEAN RUST, an individual,
DENISE GUNDERSON RUST, an individual,
JOSHUA DANIEL RUST, an individual,

Defendants;

and

ALEESHA RUST FRANKLIN, an individual,
R LEGACY RACING INC, a Utah
corporation, R LEGACY ENTERTAINMENT
LLC, a Utah limited liability company, and R
LEGACY INVESTMENTS LLC, a Utah
limited liability company.

Relief Defendants.

**MOTION FOR EXPEDITED HEARING
TO APPROVE PRIVATE SALE OF
RECEIVERSHIP PROPERTY**

Civil No. 2:18-cv-00892-TC

Judge Tena Campbell

Magistrate Judge Dustin B. Pead

Jonathan O. Hafen, the Court-Appointed Receiver, hereby submits this Motion for a Hearing to Confirm Private Sale of Receivership Property (this “Motion”). Because of the time sensitivity of this sale (arising from, among other things, the short summer season in Homer, Alaska, where the subject property is located), the Receiver respectfully requests that a hearing to approve the sale be scheduled as soon as possible after the statutory notice period has run—on or after Monday, May 27, 2019.

INTRODUCTION

The Receiver is the owner of a leasehold interest in a property located 4025 Homer Spit Road, Unit 27, Homer, Alaska 99603 (the “Leasehold Interest”). The Receiver has entered into a Non-Residential Purchase and Sale Agreement (the “Agreement”) for the sale of the Leasehold Interest with Bear Cove Properties, LLC (the “Buyer”). The Agreement is attached hereto as Exhibit A. The Agreement contemplates a sale price of \$75,000. The Receiver asks the Court for an order setting a hearing at which the Court may consider and confirm the sale. The Receiver has met all the statutory requirements under 28 U.S.C. § 2001 to sell the Leasehold Interest. Specifically, the Receiver has secured three appraisers to value the Leasehold Interest, the sales price exceeds two-thirds of the appraised values, and the Receiver published notice of the sale on May 15, 2019. The ten-day statutory notice period will run prior to Monday, May 27, 2019.

The Receiver is requesting that the hearing to approve this sale be scheduled on an expedited basis on—or as soon as possible after—Monday, May 27, 2019. The time sensitivity of this sale is driven by a variety of factors. As set forth in the letter from the broker, Ashley Churchill, of Kachemak Group Real Estate (attached hereto as Exhibit B), the property subject to the Leasehold Interest is located on the Homer spit, a large land formation that stretches into Kachemak Bay. The Homer spit is the home to a variety of businesses, restaurants and small shops

that are only open for a short summer season from May to September. The businesses on the boardwalk have strict leases to ensure that the tenants maintain their shops open during the summer season to attract customers. The broker has priced the Leasehold Interest aggressively in order to avoid missing an entire summer season and incurring fines and rent that could cost the Receivership Estate as much as \$25,000. The Receiver has been unable to move this Court to approve the sale prior to this date because the Receiver did not receive the final appraisal of the Leasehold Interest until Wednesday, May 15, 2019. The Receiver moved this Court to approve appraisers for this property on February 11, 2019. However, Homer, Alaska is a small community of approximately 5,000 residents. There are no commercial appraisers located in Homer, Alaska, and the property has been especially difficult to value. Each of the appraisers has had to travel a significant distance in order to perform their appraisal. For these reasons, the Receiver is requesting an expedited hearing to approve the sale once the notice period has run.

MEMORANDUM

This Court's November 27, 2018 Order Appointing Receiver and Staying Litigation, Dkt. No. 54 (the "Order"), authorizes and directs the Receiver to take control of Defendants' assets and provides: "Upon further Order of this Court, pursuant to such procedures as may be required by this Court and additional authority such as 28. U.S.C. § 2001 and 2004, the Receiver will be authorized to sell, and transfer clear title to, all real property to the Receivership Estates." (Order, Dkt. No. 54, at 15 ¶ 38). The Order also contemplates that the Receiver would employ professionals to assist him in discharging his duties, including financial and business advisers as well as real estate agents:

To engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, securities traders, registered representatives, financial or business

advisers, liquidating agents, real estate agents, forensic experts, brokers, traders or auctioneers;

(Order, Dkt. No. 54 at 5 ¶ 8(F)).

The Receiver requests that his Court confirm the proposed sale of the Leasehold Interest as required by 28 U.S.C. §§ 2001, *et seq.* Section 2001(b) authorizes a court to order the sale of real property at a private sale if it finds that the sale is in the best interest of the estate after considering the evaluation of three court-appointed appraisers (the sale may not be less than two-thirds of the appraised value) and after providing notice of the sale at least ten (10) days before the hearing confirming the same.

(b) After a hearing, of which notice to all interested parties shall be given by publication or otherwise as the court directs, the court may order the sale of such realty or interest or any part thereof at private sale for cash or other consideration and upon such terms and conditions as the court approves, if it finds that the best interests of the estate will be conserved thereby. Before confirmation of any private sale, the court shall appoint three disinterested persons to appraise such property or different groups of three appraisers each to appraise properties of different classes or situated in different localities. No private sale shall be confirmed at a price less than two-thirds of the appraised value. Before confirmation of any private sale, the terms thereof shall be published in such newspaper or newspapers of general circulation as the court directs at least ten days before confirmation. The private sale shall not be confirmed if a bona fide offer is made, under conditions prescribed by the court, which guarantees at least a 10 per centum increase over the price offered in the private sale.

28 U.S.C. §§ 2001(b).

The Receiver previously requested, and the Court previously approved, the retention of three professional and disinterested appraisers to provide appraisals to assist the Court and the Receiver in evaluating the reasonableness of the private sale. *See* Dkt. No. 110. These appraisals are attached hereto as Exhibits C, D, and E. As reflected in these exhibits, appraiser Barbara Bulluomini of Reliant LLC appraised the value of the Leasehold Interest at \$120,000; Clint Lentfer of Alaska Appraisal & Consulting Group, LLC, appraised the value of the Leasehold Interest at 90,000;

and Lydia Larson of Rikrland Valuation Services, LLC, appraised the value of the Leasehold at \$120,000. The contemplated sale price of \$75,000 exceeds the two-thirds of the average appraised price of \$110,000, thus satisfying the appraised value required by 28 U.S.C. §§ 2001(b). Two thirds of the average appraised price of \$110,000 is \$72,600. While the Receiver would prefer to realize a higher sale price for this property, because of the unusual nature and location of the property, and the prohibitive cost to the Receivership Estate of maintaining the property for another year, the Receiver believes that the immediate sale at the \$75,000 sale price is in the best interests of the Receivership Estate.

On Tuesday, May 15, 2019, the Receiver published a “Notice of Real Property Sale” (the “Notice”) in the Homer News, a newspaper of general circulation in the Kenai Peninsula, Alaska—where the Leasehold Interest is located. The Notice is attached hereto as Exhibit F. The Notice identifies the Leasehold Interest, lists the sales price, and invites any higher or better offers. The Receiver has not received any offer to purchase the Leasehold Interest for an amount above the sales price.

CONCLUSION

Based upon the foregoing, the Receiver believes he has satisfied all of the requirements of 28 U.S.C. § 2001 by obtaining valuations from three disinterested appraisers, publishing notice of the sale, and selling the Leasehold Interest at a price of more than two-thirds the appraised value. Therefore, the Receiver respectfully requests that the Court grant this Motion.

DATED this 21st day of May, 2019.

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that service of the above **MOTION FOR EXPEDITED HEARING TO APPROVE PRIVATE SALE OF RECEIVERSHIP PROPERTY** was (1) electronically filed with the Clerk of the Court through the CM/ECF system on May 21, 2019, which sent notice of the electronic filing to all counsel of record, (2) posted on the Receiver's website (rustrarecoinreceiver.com), and (3) emailed to all those on the Receiver's master mailing matrix.

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