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

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

MANAGEMENT SOLUTIONS, INC., a
Texas Corporation; WENDELL A.
JACOBSON; ALLEN R. JACOBSON,

Defendants.

**STIPULATION IN PARTIAL
RESOLUTION OF OPPOSITION TO
RECEIVER’S MOTION TO CONFIRM A
PRIVATE SALE OF MULTIFAMILY
PROPERTIES AND TO APPROVE SALE
FREE AND CLEAR OF LIENS WITH
VALID LIENS TO ATTACH TO
PROCEEDS**

Civil Action No. 2:11-cv-01165
Judge Bruce S. Jenkins

Intervenor plaintiffs Holbrook Farms, LC; Scott and Michelle Beeville, LLC; and Holbrook J3, LLC (collectively, “Intervenors”) have objected to the Motion to Confirm a Private Sale of Multifamily Properties and to Approve Sale Free and Clear of Liens With Valid Liens to Attach to Proceeds (CM/ECF No. 1645) (the “Motion”). In their Memorandum in Partial Opposition to Receiver’s Motion to Confirm a Private Sale of Multifamily Properties and to Approve Sale Free and Clear of Liens With Valid Liens to Attach to Proceeds (the Opposition”), Intervenors specifically objected to the sale of the “Oak Hill,” “Stonebrook Phase I & II,” and

“The Reserve at Abbie Lakes” Properties, as they are described in the Motion. (*See* Opp. (CM/ECF No. 1774).) Gil A. Miller, the Court-appointed receiver in this matter (the Receiver”),¹ and Intervenor were able to resolve some of Intervenor’s concerns and submitted a Stipulation in Partial Resolution of Memorandum in Partial Opposition to Receiver’s Motion to Confirm a Private Sale of Multifamily Properties and to Approve Sale Free and Clear of Liens With Valid Liens to Attach to Proceeds (the “Stipulation”) by which Intervenor consented to the sale of The Reserve at Abbie Lakes. (*See* Stip. (CM/ECF No. 1792).)² Thereafter, Intervenor submitted a Memorandum in Opposition to Receiver’s Supplement to Motion to Confirm a Private Sale of Multifamily Properties and to Approve Sale Free and Clear of Liens With Valid Liens to Attach to Proceeds (the “Supplemental Opposition”) setting out additional objections. (*See* Supp. Opp. (CM/ECF No. 1870).) The Motion and Intervenor’s related objections have been briefed to the Court.

The Receiver and Intervenor have resolved certain of Intervenor’s remaining concerns and stipulate as follows:

1. Intervenor consent to the Court’s approving the sale of Oak Hill and Stonebrook Phase I & II as proposed in the Receiver’s Motion. Based upon the foregoing consent, Intervenor withdraw their objection to the Receiver’s sale of Oak Hill and Stonebrook Phase I & II as proposed in the Receiver’s Motion, subject to the reservations and exceptions expressly set forth herein.

¹ All references to the Receiver herein include any and all predecessors or successors to the Receiver.

² With this consent from Intervenor, the Court confirmed the sale of The Reserve at Abbie Lakes. (*See* Order Confirming a Private Sale of Portion of Multifamily Properties & Approving Sale Free & Clear of Liens with Valid Liens to Attach to Proceeds (CM/ECF No. 1927).)

2. The Receiver agrees and stipulates that Holbrook Farms, LC has a valid recorded 24.386% tenant-in-common interest in Stonebrook Phase I. Holbrook Farms, LC represents and warrants that it did not purchase this 24.386% tenant-in-common interest in Stonebrook Phase I using funds from any prior investment with either Wendell Jacobson or any entity affiliated with him. The Receiver agrees to treat Holbrook Farms, LC accordingly and distribute to Holbrook Farms, LC its share (based on percentage tenant-in-common ownership interests in the property) of the proceeds of the sale, including its proportionate share of the net rents collected by the Receiver since his appointment, as soon as practical after closing.³ The parties understand that, in determining the net proceeds from the sale of Stonebrook Phase I, the parties will first need to reconcile amounts that each claims or might claim may be owed to the other (*e.g.*, Holbrook Farms, LC's share of income or receivership expenses attributable to Stonebrook Phase I); that the parties will need to determine whether payments, if any, from other investors or receivership entities may have benefitted Holbrook Farms, LC or vice versa; or whether payments from the Receiver are owed to Holbrook Farms, LC (*e.g.*, Holbrook Farms, LC's share of excess rents collected) and that this reconciliation must be approved by the Court after the parties have been afforded the appropriate measures of due process, including discovery and a trial, if necessary. The parties reserve all rights and defenses related to such an accounting and reconciliation. The parties agree that any recovery obtained pursuant to this process constitutes their entire compensation vis-à-vis one another regarding Stonebrook Phase I and waive any additional claims they may have related to Holbrook Farms, LC's investment or ownership in Stonebrook Phase I that are not asserted through this process.

³ The term "net rents" generally means gross rents produced by the property, less usual and customary operating and management expenses incurred in the operation and management of the property.

3. Intervenor claim that they own a combined 49% tenant-in-common interest in Oak Hill as follows:

- Holbrook Farms, LC: 24.614%;
- Holbrook J3, LLC: 12.193%; and
- Scott & Michelle Beeville, LLC: 12.193%.

As part of a 1031 exchange, Holbrook Farms, LC sold its interest in the receivership property Abbie Lakes⁴ and purchased a 49% tenant-in-common interest in Oak Hill. Holbrook Farms, LC later assigned portions of its interest to Holbrook J3, LLC and Scott & Michelle Beeville, LLC as set out above. Intervenor's interests have been recorded and appear on the commitment for title insurance obtained by the Receiver. Holbrook Farms, LC entered into a Tenancy-in-Common Agreement and also participated in the financing related to Oak Hill, co-signing with the receivership entity Beeville Apartments, LLC on a \$4.2 million loan that is secured by Oak Hill. Given that background, the Receiver believes that Intervenor's tenant-in-common interests in Oak Hill should be recognized. Subject to the Court's approval of this Stipulation, the Receiver agrees to treat Intervenor as tenant-in-common owners of Oak Hill and distribute to Intervenor their share (based on percentage tenant-in-common ownership interests in the property) of the proceeds of the sale, including their proportionate share of the net rents collected by the Receiver since his appointment, as soon as practical after closing. The parties understand that, in determining the net proceeds due to the Intervenor from the sale of Oak Hill, the parties will first need to reconcile amounts that each claims or might claim may be owed to the other (*e.g.*, Intervenor's share of income or receivership expenses attributable to Oak Hill); that the parties

⁴ Holbrook Farms, LC represents and warrants that it did not purchase its tenant-in-common interest in Abbie Lakes using funds from any prior investment with either Wendell Jacobson or any entity affiliated with him.

will need to determine whether payments, if any, from other investors or receivership entities may have benefitted Intervenor or vice versa; or whether payments from the Receiver are owed to Intervenor (*e.g.*, Intervenor's share of excess net rents collected from Oak Hill since the time of the appointment of the predecessor receiver in this matter) and that this reconciliation must be approved by the Court after the parties have been afforded the appropriate measures of due process, including discovery and a trial, if necessary. The parties reserve all rights and defenses related to such an accounting and reconciliation. The parties agree that any recovery obtained pursuant to this process constitutes their entire compensation vis-à-vis one another regarding Oak Hill and waive any additional claims they may have related to Intervenor's investment or ownership in Oak Hill that are not asserted through this process.

4. Intervenor do not withdraw their claims that Holbrook Farms, LC is the owner of a 24.386% tenant-in-common interest in Stonebrook Phase II. Notwithstanding this claim, Intervenor agree that Stonebrook Phase II may be sold free and clear of such claim, with the claim attaching to the proceeds of the sale subject to the ruling of the Court as to the validity of the claim.

5. Intervenor will cooperate with the Receiver in the sale of Oak Hill and Stonebrook Phase I & II, including, if required by the Buyer (as defined in the Motion) or the title company providing title insurance in connection with the sale, by providing a quit claim deed to Oak Hill and Stonebrook Phase I & II to the Buyer.

6. If the sale of Stonebrook Phase II is consummated before the validity and effect of Intervenor's claim to a tenant-in-common interest in Stonebrook Phase II is determined by the Court, the Receiver will segregate and preserve a sufficient amount of the sales proceeds from Stonebrook Phase II to pay Intervenor based on their percentage tenant-in-common ownership

in Stonebrook Phase II in the event Intervenor's prevail on their claim with regard to Stonebrook Phase II.

7. If the Court determines that Intervenor's claimed tenant-in-common interests are valid interests in Stonebrook Phase II and also determines that Intervenor's are entitled to their proportionate share of the net sales proceeds from the sale of Stonebrook Phase II, then the Receiver will pay forthwith to Intervenor's their adjudicated proportionate share (based on percentage tenant-in-common ownership interests in the property) of the net sales proceeds from the sale of Stonebrook Phase II to the extent of those interests as determined by the Court. Said proceeds will be paid to Intervenor's from and at the closing of the sale of Stonebrook Phase II if the sale occurs after the Court's determination, or, if the sale takes place before the Court's ruling on the matter, from the proceeds held by the Receiver under paragraph 6 above. The parties understand that, in determining the net proceeds from the sale of Stonebrook Phase II, the parties will first need to reconcile amounts that each claims or might claim may be owed to the other (*e.g.*, Intervenor's share of income or receivership expenses attributable to Stonebrook Phase II); that the parties will need to determine whether payments, if any, from other investors or receivership entities may have benefitted Intervenor's or vice versa; or whether payments from the Receiver are owed to Intervenor's (*e.g.*, Intervenor's share of excess net rents collected from Stonebrook Phase II since the time of the appointment of the Receiver in this matter) and that this reconciliation must be approved by the Court after the parties have been afforded the appropriate measures of due process, including discovery and a trial, if necessary. The parties reserve all rights and defenses related to such an accounting and reconciliation. The parties agree that any recovery obtained pursuant to this process constitutes their entire compensation vis-à-vis one another regarding Stonebrook Phase II and waive any additional claims they may have

related to Intervenor's investment or ownership in Stonebrook Phase II that are not asserted through this process.

8. If the Court rules that Intervenor's do not have a valid tenant-in-common interest in Stonebrook Phase II, then the Receiver will not be required to pay any proceeds from the sale of Stonebrook Phase II to Intervenor's, except as otherwise ordered by the Court, and/or as otherwise provided for in the claims distribution process of the receivership estate.

9. Intervenor's expressly reserve all other rights, including, without limitation, their rights as claimants against the receivership estate, their right to assert their interest in the proceeds of the sale of Stonebrook Phase II, and their right to assert an interest in the past income from Stonebrook Phase II.

10. Intervenor's expressly reserve their objection to the Receiver's proposed allocation of sales proceeds (*i.e.*, the median appraisal allocation) instead of the Buyer Allocation set forth in the Receiver's agreement with Cortland, which Intervenor's claim is the proper allocation of the sales price. As the Receiver and Intervenor's agreed with regard to the sales proceeds from the sale of The Reserve at Abbie Lakes, the Receiver shall segregate a sufficient amount of the net sales proceeds from the sale of Oak Hill and Stonebrook Phase I & II to pay Intervenor's their proportionate share under the Buyer Allocation in the event they prevail on their objection to the Receiver's proposed allocation of net sales proceeds. The Receiver reiterates his position that the Court has already determined that the Receiver's proposed allocation of sales proceeds is appropriate.

11. To the extent that sufficient proceeds are available from the sale of Oak Hill, the Receiver shall also segregate an additional portion of the net sales proceeds from the sale of Oak Hill sufficient to pay Fannie Mae's claimed prepayment penalty on the loan secured by the Oak

Hill property (the “Fannie Mae Prepayment Penalty”). The Receiver and Intervenors agree to cooperate and work together to dispute the validity and payment of the Fannie Mae Prepayment Penalty, and the Receiver agrees that it will not pay the Fannie Mae Payment Penalty or release the segregated monies unless the Court specifically instructs the Receiver to do so.

12. The Receiver expressly reserves all other rights, including, without limitation, its right to contest Intervenors’ interest in the proceeds of the sale of Stonebrook Phase II.

13. Solely as it relates to Oak Hill, this stipulation is conditional upon Fannie Mae agreeing, in a stipulation filed with this Court by August 15, 2014, to fully release Holbrook Farms, L.C., from all liabilities and obligations of any kind under the loan secured by the Oak Hill property and held by Fannie Mae. If such a stipulation is not filed with this Court by August 15, 2014, then this stipulation, solely as it relates to Oak Hill, shall be ineffective. Nothing in this Section 13 affects this stipulation with regard to Stonebrook Phase I and Stonebrook Phase II.

RESPECTFULLY SUBMITTED this 1st day of August, 2014.

HOLLAND & HART LLP

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MCDONALD FIELDING, PLLC

/s/ Kyle C. Fielding
Daniel J. McDonald
Kyle C. Fielding
(Signed by filing attorney with permission)
Attorneys for Intervenor Plaintiffs Holbrook Farms, LC; Scott and Michelle Beeville, LLC; and Holbrook J3, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2014, I caused to be electronically filed the foregoing with the Court by CM/ECF, and the Court will send electronic notification to all counsel.

I also certify that I caused the foregoing to be served via first-class mail, postage prepaid, on the following:

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/s/ Doyle S. Byers

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