

UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

THE VILLAGE AT KNAPP'S CROSSING, L.L.C.

CASE NO.: DG13-06094

Debtor/

**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

**TRUSTEE'S MOTION FOR SALE OF REAL PROPERTY FREE  
AND CLEAR OF LIENS PURSUANT TO 11 U.S.C. §363  
PURSUANT TO PUBLIC AUCTION**

Please take notice that the above-referenced motion has been filed with the Bankruptcy Court. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

If you want the court to consider your views on this matter, attend the hearing scheduled for July 29, 2015 at 10:00 a.m. at the United States Bankruptcy Court, **COURTROOM A, ONE DIVISION N.W., GRAND RAPIDS, MICHIGAN.**

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least seven days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion and to his/her attorney.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Notice returned to Cody Knight, Esq. for service upon the matrix. Court to serve Buyer's List.  
(June 24, 2015-kt)

June 24, 2015

DANIEL M. LAVILLE  
CLERK OF BANKRUPTCY COURT



/s/  
BY: Kathleen M. Trapp, Deputy Clerk

NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the new hearing date. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be accessed through the Bankruptcy Court's web site ([www.miwb.uscourts.gov](http://www.miwb.uscourts.gov)) provided the person has a PACER login and password, or by visiting the Clerk's Office of the United States Bankruptcy Court located at One Division Avenue North, 2nd Floor, Grand Rapids, Michigan 49503. Information about a PACER login and password may be obtained by either calling PACER service center between 8:00 a.m. and 5:00 p.m. Monday through Friday, CST at (800) 676-6856 or via its web site at <http://pacer.pcs.uscourts.gov>.

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN**

IN THE MATTER OF:

THE VILLAGE AT KNAPP'S  
CROSSING, LLC,

Debtor.

Case No.: 13-06094  
Chapter 11 – Filed: 07/30/2013  
Converted – Ch. 7 – 06/09/2014

**MOTION FOR SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS  
PURSUANT TO 11 U.S.C. § 363 PURSUANT TO PUBLIC AUCTION**

NOW COMES Lisa E. Gocha, Trustee (“Trustee”), by and through her attorneys, Rayman & Knight, and for her Motion for Sale of Real Property Free and Clear of Liens Pursuant to 11 U.S.C. §363 Pursuant to Public Auction (“Motion”), says as follows:

**JURISDICTION AND VENUE**

1. That jurisdiction over this case and proceeding exist in this Court under 28 U.S.C. §1334(a) and (b) and by reference from the District Court in accordance with 28 U.S.C. §157(a). Determination of this Motion is a core proceeding, as defined in 28 U.S.C. §157(b), arising under the United States Bankruptcy Code (11 U.S.C. §101 *et seq.*, “Bankruptcy Code”).
2. Venue of this Motion is properly placed in this Court pursuant to 28 U.S.C. §§1408 and 1409.
3. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A),(B)(E)(N)(O).
4. The basis for the relief requested herein are §§105(a), 363, 365, of Title 11 of the Bankruptcy Code.

**BACKGROUND**

5. This Motion pertains to the above-captioned Chapter 7 proceeding of The Village

at Knapp's Crossing, LLC ("Debtor") which was originally filed as a Chapter 11 proceeding on July 30, 2013 ("Petition Date") and which case was converted to a case under Chapter 7 of the Bankruptcy Code on June 9, 2014.

6. Your Trustee is the duly appointed and acting Trustee in this cause.

7. This sale Motion is for real estate which First Community Bank claims a mortgage commonly known as 2284 East Beltline Ave., NE, and is legally described below:

#### **The First Community Parcel**

That part of the Southwest 1/4 commencing at the Southwest corner of Section 11, Town 7 North, Range 11 West, Grand Rapids Township, Kent County, Michigan, thence South 89 degrees 47 minutes 25 seconds East 93.65 feet, thence North 00 degrees 23 minutes 02 seconds West 278.08 feet; thence North 01 degrees 04 minutes 45 seconds West 149.99 feet; thence North 00 degrees 01 minutes 31.5 seconds East 441.81 feet, thence North 01 degrees 07 minutes 48 seconds East to the North line of the South 1,868 feet of the Southwest 1/4 to the beginning of this description, thence Easterly along said North line to the East line of the West 300 feet of the Southwest 1/4, thence North along the said East line to the North line of the South 2,068 feet of the Southwest 1/4, thence West along the said North line to a line bearing North 01 degrees 07 minutes 48 seconds East from the point of beginning, thence South 01 degrees 07 minutes 48 seconds West to the beginning of this description, except the West 60.0 feet thereof.

2284 East Beltline Ave., NE; PP# 41-14-11-301-064 ("Real Property")

8. The Trustee has previously effectuated the sale of the so-called "Southern Parcel" to one Pioneer Ventures, LLC. This Motion addresses the sale of one of the two commercial properties located on the so-called "Northern Parcel".

9. This Motion does not address the sale of residential properties located on Dunnigan Avenue, NE.

10. Consistent with your Trustee's duties pursuant to 11 U.S.C. § 701 *et seq.*, your Trustee has received an offer to purchase the Real Property from First Community Bank ("Proposed Buyer").

11. The Proposed Buyer holds a mortgage on the Real Property, with a balance in excess of \$240,000.00.

12. The Proposed Buyer's offer for the Real Property is \$150,000.00 credit bid pursuant to 11 U.S. C. 363(k), it shall also pay all superior liens against the Real Property and provide a carve-out to the estate of \$15,000.00.

13. In addition to the mortgage of the Proposed Buyer the following parties may claim a lien on the Real Property:

- a. Township of Grand Rapids for unpaid real estate taxes;
- b. Kent County Treasurer for unpaid real estate taxes; and
- c. Township of Grand Rapids for unpaid utility bills and improvements.

14. The Real Property may also be subject to various rights of way, easements and restrictions including, but not limited to, the following:

- a. Various rights of way to Michigan Bell Telephone Company;
- b. Grand Rapids Planning Commission Resolution North East Beltline Joint Development Master Plan Amendment;
- c. The North East Beltline Joint Development Plan;
- d. A Drainage and Overflow Easement;
- e. An Amended and Restated Restrictive Covenant between Proposed Buyer and Family Fair LLC ("Recorded Restrictions").

**15. The Real Property shall be sold, assigned or otherwise transferred to the Proposed Buyer or other successful purchaser "AS IS" and subject to the Recorded Restrictions unless specifically delineated in this Motion and the Order approving the same.**

16. The Real Property has been under development for quite some time and has had

considerable exposure to the market.

17. Multiple parties have expressed interest in the Real Property and the Trustee has received multiple inquiries and offers. While unknown, the Trustee believes that through this Motion, others may make higher and better offers. As such, the sale to the Proposed Buyer shall be subject to competitive bidding.

#### **SUMMARY OF RELIEF REQUESTED**

18. The Trustee seeks approval of this Motion to sell, pursuant to 11 U.S.C. § 363(b), the Real Property to the Proposed Buyer or to such other higher bidder as may be successful, pursuant to 11 U.S.C. § 365.

19. The Trustee seeks the sale of the Real Property free and clear of liens, pursuant to 11 U.S.C. § 363(f).

20. The Trustee seeks a finding that the Proposed Buyer is a good faith purchaser pursuant to 11 U.S.C. §363(m).

#### **PROPOSED BUYER'S GOOD FAITH**

21. The Proposed Buyer is an unrelated entity.

22. The proposed purchase is arm's-length and in good faith.

23. The offer by the Proposed Buyer is a fair value for the Real Property and is subject to competitive bidding.

#### **BIDDING PROCEDURES**

24. The above offer is subject to competitive bidding **any party interested in purchasing the Real Property must appear at the hearing scheduled for this Motion** and be prepared to bid in increments of \$1,000.00 with the opening bid at \$151,000.00 and provide sufficient evidence of ability to close.

25. The Real Property shall be sold and assigned "As is, Where is", without representation or warranty, expressed or implied, of any kind or nature, or description, including, without limitation, any warranty of marketability, usability or fitness for any purpose. The Trustee shall not be required to inspect, test or report on the condition of the Real Property, the operability of any system(s) contained therein or the existence of any defects of any kind, including, environmental defects, as to the Real Property.

**RELIEF REQUESTED**

26. Your Trustee seeks approval of the sale of the Real Property as set forth in the Agreement to the Proposed Buyer or to such other higher bidder, pursuant to 11 U.S.C. § 363(b), which provides, in relevant part, that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate."

27. The sale was negotiated at arm's-length through the Trustee's counsel and the Proposed Buyer after consultation with others including prospective bidders, real estate brokers and creditors and other parties in interest and is in the best interest of the Estate and should be approved for the following non-exclusive reasons:

- a. The Motion has the support of First Community Bank, the chief secured creditor;
- b. The Motion allows for the payment of all real estate taxes and liens in full or based upon agreed treatment;
- c. The Motion provides for a dividend to the bankruptcy estate;
- d. The Motion provides for a process which may increase the dividend to the bankruptcy estate; and
- e. After completion of the sale of the Real Property, the Debtor retains some additional property which may also be sold to provide a dividend to unsecured creditors..

28. The Trustee seeks to sell the Real Property free and clear of liens, pursuant to 11

U.S.C. § 363(f), which provides that:

the Trustee “may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in *bona fide* dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

29. The Trustee seeks to sell free and clear of the following liens:

- a. The mortgage in favor of First Community Bank;
- b. All liens with respect to unpaid real estate taxes owed to the Kent County Treasurer;
- c. All liens with respect to unpaid real estate taxes owed to the Township of Grand Rapids;
- d. All liens with respect to unpaid utilities owed to Township of Grand Rapids for unpaid utility bills including repairs or improvements (collectively, “Secured Creditors”); and
- e. Any and all claimed liens which are not of public record as of the Petition Date.

30. Your Trustee has obtained the affirmative consent of the First Community Bank and, further, to the extent other Secured Creditors do not object to the sale, each should be deemed to have consented to the sale. *See, FutureSource LLC v. Reuters Ltd.*, C.A.7 (Ill.) 2002, 312 F.3d 281, certiorari denied 123 S.Ct. 1769, 538 U.S. 962, 155 L.Ed.2d 513; *see also, Veltman v. Whetzal*, 93 F.3d 517, 520 (8th Cir.1996); *contra, see In re Roberts*, 249 B.R. 152,

154-57 (Bankr.W.D.Mich.2000). As such, the Trustee may sell the Real Property, pursuant to 11 U.S.C. § 363(f)(2).

31. The Real Property may be sold free and clear of the claims of Secured Creditors, pursuant to 11 U.S.C. § 363(f)(3). Pursuant to 11 U.S.C. § 506(a), the value of the Secured Creditors' liens is limited to the value of its collateral. As the value of the collateral is determined by the Sale, the Trustee may sell the Real Property, pursuant to 11 U.S.C. § 363(f)(3). (*See generally, In re Becker Indus., Inc.*, 63 B.R. 474 (Bankr. S.D.N.Y. 1986) and *In re Terrance Gardens park P'ship*, 96 B.R. 707 (Bankr. W.D. Tex. 1989).

32. Each of the Secured Creditors could be compelled to accept a money satisfaction of their lien rights, such as in a Chapter 11 Proceeding. As such, the Trustee may sell the Real Property, pursuant to 11 U.S.C. § 363(f)(5).

33. The Real Property may be sold free and clear of the claims of the Kent County Treasurer and the Township of Grand Rapids as their claims will be paid in full. As such the property may be sold free and clear of their liens, pursuant to 11 U.S.C. § 363(f)(3).

34. The Real Property may be sold free and clear of the claims of any other party not appearing of record as of the Petition Date as such claims would be in *bona fide* dispute. *See*, 11 U.S.C. § 363(f)(4).

35. The Real Property may be sold free and clear of the claims of Secured Creditors pursuant to 11 U.S.C. § 363(f)(2)(3)(4)&(5) with liens attaching to proceeds in the same rank, validity and priority as existed prior to the Petition.

**WHEREFORE**, your Trustee prays:

A. That this Court enter an Order<sup>1</sup> granting the Motion;

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<sup>1</sup> A proposed Order is attached as Exhibit "A".

B. That this Court enter an Order authorizing the sale of the Real Property as set forth herein at public auction, pursuant to 11 U.S.C. § 363(b), to the Proposed Buyer or to such other higher bidder after public auction, for a sum equal to or greater than \$150,000.00.

C. That this Court authorize the Trustee to accept a back-up bidder for a sum equal to or greater than \$150,000.00.

D. That this Court enter an Order, pursuant to 11 U.S.C. § 363(f), authorizing the sale of the Real Property free and clear of all liens including but not limited to: (1) First Community Bank; (2) Kent County, Michigan (3) Township of Grand Rapids, Michigan.

E. That this Court enter an Order finding that the Proposed Buyer is in good faith pursuant to 11 U.S.C. §363(m);

F. That this Court enter an Order scheduling a Subsequent Hearing to confirm the sale to other successful bidder or bidders, if necessary;

G. That this Court order and/or authorize the Trustee to execute such conveyance documents as are necessary to effectuate this transaction and make such payment(s) at closing as are appropriate and consistent with this Motion;

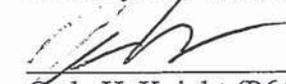
H. That the Court authorize the Trustee to make payments to Secured Creditors consistent with the Motion; and

I. That this Court order such other relief that it finds just and equitable.

**RAYMAN & KNIGHT**  
Attorneys for Trustee

Dated: June 23 2015

By:

  
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