

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

IN RE:

THE VILLAGE AT KNAPP'S
CROSSING, LLC.

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 AT COURTROOM 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 November 10, 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 Steven L. Rayman, Esq. for service with motion court upon the matrix. Court to serve Buyer's List.

October 5, 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) 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,

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

Debtor.

_____ / /

**MOTION FOR SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS
PURSUANT TO 11 U.S.C. § 363 AT COURT ROOM 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 at Court Room 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. §1409(a).
3. This matter is a core proceeding within the meaning of 28 U.S.C. §157(b)(2)(A),(B)(E)(N)(O).
4. Venue is proper before this Court pursuant to 28 U.S.C. §§1408 and 1409.
5. The basis for the relief requested herein are §§105(a), 363, 365, of Title 11 of the Bankruptcy Code.

BACKGROUND

6. 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.

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

8. The Trustee's Motion is for the parcel of real estate commonly known as 2300 East Beltline Avenue, NE, the so-called "Northern Parcel", which GRR Capital Funding, LLC, successor to Comerica Bank, holds a mortgage as more fully described below:

That part of the North 200 feet of the Southwest 1/4 lying West of the West line of Doland Plat, Section 11, Town 7 North, Range 11 West, Grand Rapids Township, Kent County, Michigan, according to the recorded plat thereof as recorded in Liber 43 of Plats, Page 42, Kent County Records, except the West 322 feet, also that part of the Southwest 1/4, except the North 200 feet and except the South 2,068 feet lying West of the West line of Doland Plat and East of a line which is 70 feet East from (and measured perpendicular to) and parallel with the following described line: Commencing 72.34 feet East along the East and West 1/4 line from the West 1/4 corner and extended South 01 degree 07 minutes 48 seconds West 1,900 feet to the point of ending, also the North 200 feet of the South 2,068 feet of that part of the Southwest 1/4 lying West of the West line of Doland Plat, except the West 300 feet thereof.

2300 East Beltline Avenue, NE; PP# 41-14-11-301-063 (referred to either as the "Comerica Parcel" or the "Real Property").

9. The Trustee has previously effectuated the sale of the so-called "Southern Parcel" to one Pioneer Ventures, LLC. The Trustee has also effectuated the sale of a portion of the Northern Parcel to Pioneer Ventures, LLC. This Motion addresses the sale of the substantial portion of the Northern Parcel. It 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 above property from GRR Capital Funding, LLC ("Proposed Buyer").

11. The Proposed Buyer is a third-party entity not related to the Debtor although the Proposed Buyer is the first mortgage holder on the Real Property.

12. The Proposed Buyer's offer for the Real Property is \$1,550,000.00 ("Purchase Price") payable in part in cash and in part by credit bid, as more fully described below.

13. The Proposed Buyer, as successor to Comerica Bank, holds a first mortgage on the Comerica Parcel and is owed an amount greatly in excess of the Purchase Price.

14. In addition, the following parties 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.

15. 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; and
- e. An Amended and Restated Restrictive Covenant between Proposed Buyer and Family Fair LLC (items a - e are referred to as "Recorded Restrictions").

16. The Real Property shall be sold to the Proposed Buyer or any other successful purchaser "AS IS", subject to the Recorded Restrictions and any other interest

superior to the Proposed Buyer's mortgage interest.

17. The Proposed Buyer has made an offer to purchase the Real Property for the sum of \$1,550,000.00, \$50,000.00 of which shall be paid in cash to the estate as a "carve out" and the balance shall be a credit bid pursuant to 11 U.S.C. §363(k). To the extent that there are bids in excess of \$1,550,000.00, the estate will be entitled to all additional amounts up to a maximum of 10% of the total sale price. However, in no event will the estate's "carve out" be less than \$50,000.00.

18. That the Proposed Buyer's will execute a Purchase Agreement ("Agreement") consistent with this Motion including the following terms:

- a. The Proposed Buyer shall pay the estate the so-called "carve out" amount at closing;
- b. In the event of additional bids, which shall be in increments of not less than \$10,000.00, the estate shall be entitled to all additional amounts up to a maximum of 10% of the total sale price.; and
- c. The Proposed Buyer shall assume all real estate taxes and/or liens against the Real Property that are superior to its position. The sale shall be free and clear of all liens that are junior to the Proposed Buyer's position.

19. The Real Property has been under development for quite some time and has had considerable exposure to the market.

20. Multiple parties have expressed interest in the Real Property and the Trustee believes that, to the extent there is a higher and better bid, same will be developed through the process utilized in this Motion, which shall be subject to competitive bidding.

SUMMARY OF RELIEF REQUESTED

21. 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. § 363.

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

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

24. The Trustee seeks authority to conduct an auction in open Court on the date and time scheduled for the hearing on this Motion to confirm a sale to either the Proposed Buyer or such other buyer as is the high bidder and to make findings for 11 U.S.C. §363(m) protection with respect to such successful bidder.

PROPOSED BUYER'S GOOD FAITH

25. The Proposed Buyer is an unrelated entity except as noted herein.

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

27. The Proposed Buyer has no connection with the Debtor, S.D. Benner, LLC, S.D. Benner, III, LLC or its principal, Steven D. Benner, except that it is the holder of the Comerica mortgage.

28. The initial purchase price is a fair value for the Real Property.

BIDDING PROCEDURES

29. 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. The Trustee intends to utilize the following bidding procedures:

- a. All prospective bidders must be willing to sign a purchase agreement consistent with the terms of this Motion;
- b. The successful bidder must be prepared (at the date of the auction) to provide a deposit of \$50,000.00 and provide sufficient evidence of ability to close in the sole discretion of the Trustee;

- c. Other than being subject to Bankruptcy Court approval, no contingent bids will be accepted;
- d. The sale shall be on a cash basis;
- e. The opening bid must be at least \$1,560,000.00; and
- f. The Trustee reserves the right to accept a back-up bidder or bidders.

30. The Real Property shall be sold and/or 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

31. 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.”

32. 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 provides for a dividend to the bankruptcy estate in the amount of \$50,000.00 (at least);
- b. The Motion provides for a process which may increase the dividend to the bankruptcy estate; and

c. The price offered is fair.

33. 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.

34. That the sale is in the best interests in the estate for the reasons stated above.

WHEREFORE, your Trustee prays:

A. That this Court enter an Order granting the Motion;

B. That this Court enter an Order approving the Bid Procedures;

C. 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 the Initial Purchase Price.

D. That this Court authorize the Trustee to accept a back-up bidder for a sum equal to or greater than the Initial Purchase Price.

E. 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 junior to the lien of the Proposed Buyer but subject to all liens and encumbrances superior to said Proposed Buyer.

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

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 as is consistent with this Motion; and

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

RAYMAN & KNIGHT
Attorneys for Trustee

Dated: October 2, 2015

By: _____/s/_____
Steven L. Rayman (P64811)

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