

**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 AND TO ASSUME AND ASSIGN A LEASE
PURSUANT TO 11 U.S.C. § 365 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 and to Assume and Assign a Lease Pursuant to 11 U.S.C. § 365 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 United States 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. Among the assets of this estate there exists certain real property located at 2335 Dunnigan more particularly described as land: situated in the Township of Grand Rapids, County of Kent, State of Michigan: Lots 7 and 8, Doland Plat, according to the plat thereof as recorded in Liber 43 of Plats, Page 42, Kent County Record ("Property").

9. In addition to being the owner of the Real Property, the Debtor is the lessee of the Real Property to one Floyd Mae Franklin, pursuant to a certain lease agreement¹ ("Lease").

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 \$136,000.00.

12. The Proposed Buyer's offer for the Real Property is \$135,000.00 as a credit bid pursuant to 11 U.S. C. 363(k) ("Initial Bid"), it shall also pay all superior liens against the Real Property and provide a carve-out to the estate of \$2,500.00, plus 25% of any over bid.

13. **The sale shall be on an "AS IS" basis with no representations or warranties from the Trustee of any kind or nature.**

¹ A copy of the lease is attached as Exhibit "A".

14. The sale of the Real Property shall be sold free and clear of all liens, encumbrances, and/or claims therein in accordance with 11 U.S.C. §363(f), with said liens, encumbrances, and/or claims attaching to the sale proceeds in the same order of validity, rank, and priority as now exists.

15. That *ad valorem* taxing authorities have liens for unpaid real estate taxes, these creditors shall be paid in full at closing and, as such, the sale may be free and clear of their liens pursuant to 11 U.S.C. § 363(f)(3).

16. The Trustee estimates the *ad valorem* taxes to be \$15,000.00.

17. In addition to the *ad valorem* taxing authorities, there is a mortgage on the Real Property, held by the Proposed Buyer which has consented to the sale and, as such, the sale may be free and clear of their liens pursuant to 11 U.S.C. § 363(f)(2).

SUMMARY OF RELIEF REQUESTED

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

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 to assign the lease pursuant to 11 U.S.C. § 365 to the Proposed Buyer.

BIDDING PROCEDURES

21. 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 \$140,000.00 and provide

sufficient evidence of ability to close.

22. 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

23. 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.”

24. 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..

25. 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.

26. 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.

27. 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).

28. 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).

29. 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).

30. 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).

31. 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).

32. 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 granting the Motion;
- 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 the Initial Bid.
- C. That this Court authorize the Trustee to accept a back-up bidder for a sum equal to or greater than the Initial Bid.
- D. That this Court enter an Order authorizing, pursuant to 11 U.S.C. § 365, the assignment of the Lease to the Proposed Buyer or to such other higher bidder after public auction, for a sum equal to or greater than the Initial Bid.
- 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 including but not limited to: (1) First Community Bank; (2) Kent County, Michigan (3) Township of Grand Rapids, Michigan.
- F. 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;
- G. That the Court authorize the Trustee to make payments to Secured Creditors consistent with the Motion; and
- H. That this Court order such other relief that it finds just and equitable.

Respectfully submitted,

RAYMAN & KNIGHT
Attorneys for Trustee

Dated: September 18, 2015

By: _____/s/_____
Cody H. Knight (P64811)

BUSINESS ADDRESS:
141 E. Michigan Avenue, Suite 301
Kalamazoo, MI 49007
Telephone: (269) 345-5156

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

Respectfully submitted,

RAYMAN & KNIGHT
Attorneys for Trustee

Dated: September 18, 2015

By: _____/s/_____
Cody H. Knight (P64811)

BUSINESS ADDRESS:
141 E. Michigan Avenue, Suite 301
Kalamazoo, MI 49007
Telephone: (269) 345-5156