

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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| In re: |) | |
| |) | Chapter 11 |
| ESPLANADE HL, LLC, <i>et al.</i> |) | |
| |) | Case No. 16-33008 |
| |) | (Jointly Administered) |
| Debtors. ¹ |) | |
| |) | Honorable Carol A. Doyle |

ORDER GRANTING MOTION FOR ENTRY OF AN ORDER (A) (I) APPROVING PROCEDURES FOR THE SALE OF DEBTOR’S REAL PROPERTY FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) SCHEDULING AN AUCTION; (III) APPROVING FORM AND MANNER OF NOTICES ASSOCIATED WITH THE AUCTION; (IV) SETTING A FINAL SALE HEARING; (B) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF AN UNEXPIRED LEASE; AND (C) GRANTING RELATED RELIEF

Upon the motion (the “*Motion*”) of Esplanade HL, LLC (the “*Debtor*”), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “*Bankruptcy Code*”), and rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedures (the “*Bankruptcy Rules*”) for an Order, *inter alia*, (a) establishing bidding procedures in connection with the sale (the “*Sale*”) of that certain real property located at 2360 South Randall Road, Algonquin, Illinois (the “*Property*”), including certain bidding incentives (the “*Bidding Procedures*”); (b) approving the form and manner of notices of the Sale; (c) setting a hearing date to consider the approval of the Sale (the “*Final Hearing*”); and (d) approving procedures for the assumption and assignment of that certain Lease Agreement dated December 30, 2010 by and between the Debtor and Hobby Lobby Stores, Inc. (“*Hobby Lobby*”); capitalized terms used herein but not defined shall have the

¹ The debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Esplanade HL, LLC (6804); (ii) 2380 Esplanade Drive, LLC (0331); (iii) 171 W. Belvidere Road, LLC (2032); (iv) 9501 W. 144th Place, LLC (7104); (v) Big Rock Ranch, LLC (7248).

meaning ascribed to them in the Motion; the Court having reviewed the Jerbich Declaration; and it appearing to the Court that based upon the representations contained in the Motion, the issuance of this Order is in the best interest of the Debtor, its estate, and its creditors, and after due deliberation and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Bidding Procedures, attached as Exhibit 1 hereto, for conducting a sale by auction (the "*Auction*") of the Property are hereby authorized, approved, and made part of this Order as if fully set forth herein.

2. The Assumption and Assignment Procedures, attached as Exhibit 2 hereto, for the assumption and assignment of the Lease are hereby authorized, approved, and made part of this Order as if fully set forth herein.

3. The Debtor is authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established by this Order.

4. Subject to the final determination of this Court, the Debtor is authorized to (a) determine (after consultation with First Midwest Bank), in its discretion, which of the Qualified Bids submitted for the Auction is the highest or otherwise best offer, and (b) properly reject any and all bids that, in the Debtor's discretion (after consultation with First Midwest Bank), are (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, or the terms and conditions of the Bidding Procedures; or (iii) contrary to the best interests of the Debtor, its estate, and creditors.

5. The Break-up Fee and other bid protections as set forth in the Bidding Procedures are hereby approved and the Debtor is authorized and directed to pay any and all amounts owing

to the Purchaser in accordance with the terms of the Bidding Procedures, including the Break-up Fee, without further order of the Court.

6. If the Purchaser becomes entitled to payment from the Debtor under the Bidding Procedures for the Break-up Fee, the Break-up Fee shall be paid upon consummation, and from the proceeds, of a transaction with a buyer other than the Purchaser.

7. The Auction Notice, in substantially the same form as annexed to the Motion as Exhibit D, is sufficient to provide effective notice of the Bidding Procedures, the Auction, and the Sale to all interested parties, pursuant to Bankruptcy Rules 2002(a)(2) and 6004(a), and is hereby approved.

8. Within three days of the entry of this Order, the Debtor shall serve the Auction Notice by first class mail, postage prepaid, or hand delivery upon: (a) all creditors, (b) all taxing authorities or recording offices which have a reasonably known interest in the relief requested, and (c) all federal, state, and local regulatory authorities with jurisdiction over the Debtor. Additionally, the Debtor will forward courtesy copies of the Auction Notice to all entities known to the Debtor who have expressed an interest in a transaction with respect to the Property during the last twelve months.

9. On **June 7, 2017 at 10:30 a.m. (Central Time)** or as soon thereafter as counsel may be heard, the Sale Hearing will be held before the Honorable Carol A. Doyle, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 742, Chicago, Illinois, to consider the issuance and entry of an Order, *inter alia*, approving the Sale of the Property of the Debtor free and clear of liens, claims, and encumbrances.

10. The Court shall retain jurisdiction with respect to all matters relating to the

interpretation or implementation of this Order.

Dated: May 10, 2017



UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bidding Procedures

1. Assets to be Sold. ESPLANADE HL, LLC, an Illinois limited liability company (the “Seller”) is offering for sale, the real estate more fully described below and in the Purchase and Sale Agreement (the “Stalking Horse Agreement”).¹ Potential purchasers, at their election, may bid on the property located at 2360 South Randall Road, Algonquin, Illinois (the “Property”).

2. Stalking Horse Bid. VEREIT ACQUISITIONS, LLC, a Delaware limited liability company (the “Stalking Horse Bidder”), has submitted to the Seller an initial stalking horse bid of \$6,264,000.00 (the “Stalking Horse Bid”), which will serve as the minimum bid at the Auction, which Stalking Horse Bid is reflected in the Stalking Horse Agreement executed by the Stalking Horse Bidder and Seller and attached hereto as Exhibit 1.

3. Deadline for Bid Submissions. Bids shall be due on or before **June 5, 2017 at 5:00 p.m. CST** (the “Bid Deadline”).

4. Required Submissions for Bidding. In order to submit a Bid, each person (each a “Potential Bidder”) must deliver to the Seller (via overnight mail or courier to Goldstein & McClintock LLLP, 111 W. Washington, Suite 1221, Chicago, Illinois 60602, Attention: Harold Israel, Esq., or via electronic mail to haroldi@goldmclaw.com), with a copy to the (i) Stalking Horse Bidder (via overnight mail or courier to Kutak Rock LLP, 1650 Farnam Street, Omaha, Nebraska 68102, Attention: Lisa Peters, Esq., or via electronic mail to lisa.peters@kutakrock.com) and (ii) counsel to First Midwest Bank (“First Midwest”) (via overnight mail or courier to Foley & Lardner, LLP 321 Clark Street, Suite 2800 Chicago, Illinois 60610, Attention: Michael J. Small, Esq., or via electronic mail to msmall@foley.com) the following, on or before the Bid Deadline:

- a. an executed agreement (the “Purchase Agreement”) (hard copy and electronic Microsoft Word document) for the purchase of the Property upon the same or better terms and conditions than those set forth in the Stalking Horse Agreement, as determined by the Seller in its sole discretion, with such Purchase Agreement substantially in the form attached hereto as Exhibit 1, and an electronic markup of the Potential Bidder’s Purchase Agreement showing any and all amendments and modifications from the Stalking Horse Agreement, including, but not limited to, purchase price and contact information of the purchaser;
- b. the Potential Bidder’s Purchase Agreement provides that the Potential Bidder is (i) willing to purchase the Property for at least the Minimum Overbid (as defined below) and (ii) prepared to consummate the transaction contemplated by the Agreement no later than the Closing Date (as defined below);
- c. an initial deposit (the “Good Faith Deposit”) in the form of a certified check, cash, or otherwise immediately available funds in the amount of \$125,000.00 payable to the Seller, to be submitted along with the bid (funds to be delivered to Seller, with proof of payment delivered to the Stalking Horse Bidder);

¹ Capitalized terms used but not defined herein have the meanings assigned thereto in the Agreement.

- d. written evidence satisfactory to the Seller of the Potential Bidder's chief executive officer's or other appropriate senior executive's approval of the contemplated transaction and that no other consents are required;
- e. financial statements (or other financial information acceptable to the Seller in its sole and absolute discretion, after consulting with First Midwest) showing that the Potential Bidder has the financial ability to close on the Property by the Closing Date (as defined below);
- f. a signed statement indicating that the Purchase Agreement is irrevocable until (i) the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder or Back-up Bidder (as defined below), whether due to the Potential Bidder being not selected by the Seller in its sole discretion or for any other reason whatsoever, in which case the Good Faith Deposit will be refunded unless otherwise forfeited pursuant to paragraph 10 below or (ii) one business day following the closing of the Sale, in the event the Potential Bidder is selected as the Successful Bidder or Back-up Bidder, in which case, the Good Faith Deposit shall not be refunded until the Potential Bidder or another Bidder has consummated the transaction; and
- g. a signed statement acknowledging the prohibition against collusive bidding.

Seller will not consider any offer that requires payment of a Breakup Fee or other "stalking horse" protections or requires due diligence or financing contingencies of any kind.

5. Determination of Qualified Bids. For a Bid to be deemed a "Qualified Bid," it must comply with the requirements of and be accompanied by the information set forth in Paragraph 4 above, as determined in the sole discretion of the Seller, after consulting with First Midwest. A "Qualified Bidder" is a Potential Bidder that submits a Qualified Bid and, in the Seller's sole discretion (after consulting with First Midwest Bank), is determined to demonstrate the financial capability to consummate the purchase of the Property that is the subject of its Qualified Bid.

6. Impact of Bid Rejection. If Seller determines that a Potential Bidder is not a Qualified Bidder, the Seller shall return the Good Faith Deposit to the Potential Bidder promptly upon such determination. At the Auction, only the Stalking Horse Bidder and Qualified Bidders who have submitted Qualified Bids for the Property shall have the right to bid on the Property. If there are no Qualified Bids, the Auction shall be canceled and Seller shall proceed with Closing of the purchase and sale of the Property to the Stalking Horse Bidder on the fifteenth (15th) day following the entry of an order of the Bankruptcy Court having jurisdiction over Seller and the Property (the "Bankruptcy Court") approving the Sale of the Property to the Stalking Horse Bidder on the terms set forth in the Stalking Horse Agreement.

7. Timing and Location of Auction. The Auction shall be conducted on **June 6, 2017** (the "Auction Date") at 10:00 a.m. CST. The Auction will be held at the offices of Goldstein & McClintock LLLP, 111 W. Washington, Suite 1221, Chicago, Illinois 60604 or such other location designed by Seller in advance of the Bid Deadline. In addition to the Seller and its counsel and

other advisors and First Midwest and its counsel, only the Stalking Horse Bidder and Qualified Bidders that submitted a Qualified Bid, along with their respective professionals and advisors, will be permitted to attend the Auction. In the event of a change in time or place of the Auction, the Seller shall use its commercially reasonable efforts to notify the Stalking Horse Bidder and all Qualified Bidders who have timely submitted Qualified Bids on or before the Bid Deadline.

8. Minimum Overbid and Bid Increments. In the event another purchaser bids on the Property, the initial overbid (the "Minimum Overbid") must be equal to the Stalking Horse Bid **plus** the amount of \$288,000.

9. Procedures for the Auction. The Auction shall be conducted in accordance with commercially reasonable procedures as shall be established by Seller and its legal counsel. Seller reserves its right to modify the Auction procedures at any time in its sole and absolute discretion.

10. Determination of Successful Bid. Upon completion of the Auction, the Seller, in its sole discretion (after consulting with First Midwest Bank), shall select the Bid that will maximize the value of the Property and is in the best interest of the Seller's bankruptcy estate (the "Successful Bid"). The Good Faith Deposit for any Qualified Bidder shall be non-refundable until the conclusion of the Auction. If the party submitting the Successful Bid (the "Successful Bidder") fails to close the sale (other than as a result of the Seller's breach), such party's Good Faith Deposit shall be retained by Seller as its sole and exclusive damages resulting from such failure to close.

11. Right to Select Back-Up Bidder(s). At the conclusion of the Auction, the Seller may designate a "Back-Up Bidder" or multiple Back-Up Bidders, if necessary, provided that each Back-Up Bidder is willing to purchase the Property for at least the Stalking Horse Bid. If, for any reason, the party that submits the Successful Bid fails to consummate the purchase of the Property:

- a. the Back-Up Bidder designated by Seller shall be deemed to have submitted the highest and best bid, and shall be deemed the Successful Bid, and the Successful Bidder; and
- b. Seller shall have the right to effectuate the sale of the Property to the Back-Up Bidder as soon as is commercially reasonable. Such Back-Up Bidder's Good Faith Deposit shall be held in escrow until the closing of the transaction with the Successful Bidder.

12. Breakup Fee. If the Stalking Horse Bidder is not the Successful Bidder at the Auction and an alternative transaction is consummated, the Stalking Horse Bidder shall become entitled to a Breakup Fee in accordance with the Agreement.

13. Closing of Sale. Closing of the purchase and sale of the Property to the Successful Bidder shall be on the fifteenth (15th) day following the entry of an order of the Bankruptcy Court approving the Sale to the Successful Bidder (the "Closing Date") unless otherwise agreed to by the parties. The Closing Date may be extended by written agreement of the Seller and the Successful Bidder.

EXHIBIT 2

Assignment Procedures

ESPLANADE HL, LLC, an Illinois limited liability company (“Seller”) has entered into that certain Purchase and Sale Agreement (the “Stalking Horse Agreement”), dated as of April 7, 2017, with VEREIT ACQUISITIONS, LLC, a Delaware limited liability company (the “Stalking Horse Bidder”) for the sale (the “Sale”) of the real estate and personal property located at 2360 South Randall Road, Algonquin, Illinois (the “Property”), and the assignment of certain contracts and leases related thereto. Seller is currently soliciting other higher or better bids for the Sale of the Property. The following procedures (the “Assignment Procedures”) relating to the assumption and assignment to the Stalking Horse Bidder of certain unexpired leases by Seller as contemplated by the Stalking Horse Agreement (the “Assumed Leases”), including procedures for providing notice to tenants to such Assumed Leases (each, a “Tenant”).

1. Assumed Leases. Pursuant to the Stalking Horse Agreement, the Assumed Leases consist of certain unexpired leases for the Property designated to be assumed by Seller and assigned to the Stalking Horse Bidder.¹

2. Initial Notice of Assumed Leases. Within three (3) business days after the entry of the Procedural Approval Order, Seller will serve by overnight delivery an omnibus notice (the “Initial Assignment Notice”) on each Tenant to the Assumed Leases, at the last known address available to Seller. The Initial Assignment Notice shall include an exhibit that (i) identifies the name and address of the Tenant, (ii) identifies the specific Assumed Leases being assumed and assigned, (iii) identifies the premises relating to the Assumed Leases, and (iv) the cure amount asserted by Seller that is necessary to cure any default under the relevant Assumed Leases pursuant to section 365 of the Bankruptcy Code (the “Cure Amount”). Further, the Initial Assignment Notice shall include (i) a description of the Stalking Horse Bidder and a statement as to the Stalking Horse Bidder’s ability to perform the Seller’s obligations under the Assumed Leases (the “Stalking Horse Bidder’s Adequate Assurance”), (ii) the date of the Auction and (iii) the date of the Sale Hearing.

3. Initial Objections. To the extent that any interested party wishes to object to any matter pertaining to the assumption and assignment of an Assumed Leases, including without limitation, the Stalking Horse Bidder’s Adequate Assurance or the Cure Amount designated in the Initial Assignment Notice, then such interested party must file a written objection with the Bankruptcy Court no later than **June 5, 2017 at 5:00 p.m. CST** (the “Initial Objection Deadline”), and simultaneously serve such an Initial Objection on the following parties (the “Notice Parties”): (a) Seller’s counsel; (b) counsel to any of the secured creditors; (c) the Office of the United States Trustee for the Northern District of Illinois; and (d) Stalking Horse Bidder’s Counsel so that it is **actually received** by the Initial Objection Deadline. To the extent that any party in interest does not timely serve an Initial Objection as set forth above, such party will be deemed to have (i) consented to the assumption and assignment of the applicable Assumed Leases; (ii) agreed that the Stalking Horse Bidder has provided adequate assurance of future performance within the meaning of section 365(b)(1)(C) of the Bankruptcy Code; and (iii) consented to the relevant Cure Amount, if any.

¹ Capitalized terms used but not defined herein have the meanings assigned thereto in the Stalking Horse Agreement.

4. Supplemental Notice of Assumed Leases. Promptly after the conclusion of the Auction, Seller will serve by electronic mail and file with the Court an omnibus notice (the "Auction Results Notice") upon each of the Notice Parties (and their attorneys, if an attorney has filed a notice of appearance in the Seller's chapter 11 proceedings) at the last known address available to Seller. The Auction Results Notice shall, *inter alia*, identify the successful bidder (the "Successful Bidder") and the back-up bidder (the "Backup Bidder") chosen at the Auction in accordance with the Bidding Procedures and such other information as hereinafter provided. The Auction Results Notice shall include, to the extent such party is not the Stalking Horse Bidder or with respect to the Additional Assumed Contracts and the Additional Assumed Leases, a description of the Successful Bidder and the Backup Bidder and a statement as to the ability of the Successful Bidder or the Backup Bidder to perform the Seller's obligations under the Assumed Leases (the "Successful Bidder's Adequate Assurance" or the "Backup Bidder's Adequate Assurance").

5. Supplemental Objections. To the extent that any interested party wishes to object to the assumption and assignment of such newly added agreements or the Amended Cure Amount, including, without limitation, the Successful Bidder's Adequate Assurance or the Backup Bidder's Adequate Assurance designated in the Auction Results Notice to the extent the Successful Bidder or Backup Bidder are not the Stalking Horse Bidder, then such party must file a written objection with the Court prior to any hearing on the final hearing on the Sale (the "Supplemental Objection Deadline"), and serve such an objection on the Objection Parties so that it is **actually received** by the Supplemental Objection Deadline. To the extent that any interested party does not timely serve an objection as set forth above, such party will be deemed to have agreed that the Successful Bidder and the Backup Bidder have provided adequate assurance of future performance within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

6. Resolution and Adjudication of Objections. Upon filing of an objection by a Tenant, Seller and/or the Stalking Horse Bidder, or Successful Bidder if objection occurs after the Auction Results Notice, will contact the objecting Tenant to consensually resolve any timely served objection. If Seller and/or the Stalking Horse Bidder or Successful Bidder are unable to resolve an objection in response to the Initial Assignment Notice or the Auction Results Notice, to the extent such objections (each an "Adequate Assurance Objection") relate to the adequate assurance of future performance by the Stalking Horse Bidder or Successful Bidder, such objections will be heard at a hearing to be scheduled by the Court (the "Cure Objection Hearing"). In the event an objection relates solely as to a Cure Amount (a "Cure Objection"), then such objecting Tenant will be deemed to consent to the assumption of unexpired lease and its assignment to the Stalking Horse Bidder or Successful Bidder, as applicable, notwithstanding such objection. In the event Seller and/or the Stalking Horse Bidder or Successful Bidder are unable to resolve the Cure Objection prior to the Cure Objection Hearing, the Stalking Horse Bidder may elect not to request assumption and assignment of the related unexpired lease as part of the Sale. On or as promptly after the Closing as practical, the Cure Amounts to which no objections have been filed, or to which the Stalking Horse Bidder and applicable Tenant has agreed as to the allowed Cure Amount(s), shall be paid by the Stalking Horse Bidder. Payment of the undisputed Cure Amounts shall be deemed to discharge the obligation of Seller and the Stalking Horse Bidder to (i) cure any defaults under the Assumed Leases; and (ii) compensate, or provide adequate

assurance that Seller will promptly compensate, any non-debtor party to the Assumed Leases for any actual pecuniary loss resulting from any default thereunder. Pursuant to section 365(k) of the Bankruptcy Code, Seller shall have no liabilities for any claims arising or relating to or accruing post-closing under any of the Assumed Leases.

7. Reservation of Rights. Seller's decision to assume and assign any of the Assumed Leases is subject to Court approval and consummation of the Sale. Accordingly, the Stalking Horse Bidder shall be deemed to have assumed and assigned the Assumed Leases ultimately identified under the Stalking Horse Agreement as of and effective only upon the Closing (as defined in the Stalking Horse Agreement). Absent a Closing that includes such Assumed Leases, each of the Assumed Leases shall be deemed neither assumed nor assigned/subleased and shall in all respects be subject to subsequent assumption or rejection by Seller under the Bankruptcy Code. The Stalking Horse Bidder shall have no rights in and to a particular unexpired lease until such time as the particular unexpired lease is assumed and assigned in accordance with the procedures set forth herein. In the event that the Stalking Horse Bidder is not a Successful Bidder at the Auction, Seller reserves the right to modify these Assignment Procedures. Under no circumstances will Seller be deemed to have assumed an unexpired lease without a corresponding assignment of such an unexpired lease to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse Agreement.