

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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 UNEXPIRED LEASES; AND (C) GRANTING RELATED RELIEF

Upon the motion (the "*Motion*") of 2380 Esplanade Drive, 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 (the "*Bidding Procedures*") in connection with the sale (the "*Sale*") of the real properties located at 2380 Esplanade Drive in Algonquin, Illinois (the "*2380 Property*"), Unit 100, 2390 Esplanade Drive, in Algonquin, Illinois (the "*2390 – 100 Property*"), and Unit 300, 2390 Esplanade Drive, in Algonquin, Illinois (the "*2390 – 300 Property*," and collectively with the 2380 Property and the 2390 – 100 Property, the "*Property*"); (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

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).

(d) approving procedures for the assumption and assignment of certain Leases by and between the Debtor and the Lease Counterparties; capitalized terms used herein but not defined shall have the 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 Properties 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. In connection with the Sale of the Properties, First Midwest Bank may credit bid its claim pursuant to Section 363(k) of the Bankruptcy Code, provided, however, that such credit bid shall be capped at the amount of principal and contractual interest owed to First Midwest Bank by 2380 Esplanade.

5. 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.

6. 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.

7. 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.

8. On October 5, 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 Properties free and clear of liens, claims, and encumbrances.

9. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: August 2, 2017


UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bidding Procedures

1. Assets to be Sold. 2380 Esplanade Drive, LLC (the “Seller”) is offering for sale, the real estate more fully described below and in the Real Estate Purchase Agreement (the “Agreement”).¹ Potential purchasers, at their election, may bid on any one or more of the below properties, provided that such election is clearly marked in accordance with paragraph 3(i) of these Bid Procedures (the “Purchased Properties”):

PROPERTY
2380 Esplanade Drive, Algonquin, Illinois 60102
Unit 100, 2390 Esplanade Drive, Algonquin, Illinois 60102
Unit 300, 2390 Esplanade Drive, Algonquin, Illinois 60102

2. Timing and Location of Auction. The Auction shall be conducted on **October 3, 2017** (the “Auction Date”) at 10:00 a.m. CST. The Auction will be held at the offices of Goldstein & McClintock LLP, 111 W. Washington Street, Suite 1221, Chicago, Illinois 60602. In the event of a change in time or place of the Auction, the Seller shall use its commercially reasonable efforts to notify all Qualified Bidders (as defined below) who have timely submitted Qualified Bids (as defined below) on or before **September 27, 2017 at 5:00 p.m. CST** (the “Bid Deadline”).

3. Required Submissions for Bidding. In order to participate in the Auction, each person (each a “Potential Bidder”) must deliver to the Seller (via overnight mail or courier to A&G Realty Partners, 525 W Monroe St Suite 2330, Chicago, IL 60661, with a copy to Goldstein & McClintock LLP, 111 W. Washington Street, Suite 1221, Chicago, Illinois 60602, or via electronic mail to michael@agrealtypartners.com and haroldi@goldmclaw.com, and a copy to counsel for First Midwest Bank via electronic mail to msmall@foley.com) the following, on or before the Bid Deadline:

(i) an executed Agreement (hard copy and electronic Microsoft Word document) for the Purchased Property substantially in the form of the Agreement (clearly identifying each Purchased Property that the Potential Bidder is bidding on) and an electronic markup of the Agreement showing the revisions to the form of the Agreement;

(ii) an initial deposit (the “Good Faith Deposit”) in the form of a certified check, cash, or otherwise immediately available funds payable to the Seller in an amount equal to 10 percent (10%) of the Purchase Price, to be submitted along with the bid;

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

(iii) 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;

(iv) financial statements (or other financial information acceptable to the Seller in its sole and absolute discretion) showing that the Potential Bidder has the financial ability to close on the Purchased Properties by the Closing Date (as defined below).

(v) a signed statement indicating that the Agreement is irrevocable until one business day following the closing of the Sale; and

(vi) a signed statement acknowledging the prohibition against collusive bidding.

Seller will not consider any offer that requires due diligence or financing contingencies of any kind.

4. Impact of Bid Submission. A "Bid" is an Agreement from a Potential Bidder stating that:

(i) the Potential Bidder offers to purchase the Purchased Properties upon the terms and conditions set forth in the Agreement (or better) as determined by the Seller in its sole discretion, with the Potential Bidder's Agreement marked to show any and all amendments and modifications from the Agreement, including, but not limited to, purchase price, which of the Purchased Properties the Potential Bidder is bidding on, and contact information of the purchaser;

(ii) the Potential Bidder is prepared to consummate the transaction contemplated by the Agreement no later than the Closing Date; and

(iii) the offer is irrevocable until 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 9 below. In the event the Potential Bidder is selected as the Successful Bidder or Back-up Bidder, the Good Faith Deposit shall not be refunded until the Potential Bidder or another Bidder has consummated the transaction.

5. Deadline for Bid Submissions. Bids shall be due on or before **September 27, 2017 at 5:00 p.m. CST.**

6. 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 3 above, as determined in the sole discretion of the Seller. 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 Purchased Properties that is the subject of its Qualified Bid.

7. 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 Qualified Bidders who have submitted Qualified Bids for the Purchased Properties shall have the right to bid on the Purchased Properties.

8. 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 (i) sell all three Purchased Properties together, individually or any combination thereof and (ii) modify the Auction procedures at any time in its sole and absolute discretion.

9. 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 Purchased Properties 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.

10. Right to Credit Bid. First Midwest Bank shall have the right to credit bid pursuant to section 363(k) of the Bankruptcy Code, provided, however, First Midwest Bank's right to credit bid shall be capped at the amount of principal and contractual interest owed to First Midwest Bank by 2380 Esplanade.

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, in Seller's sole discretion. If, for any reason, the party that submits the Successful Bid fails to consummate the purchase of the Purchased Properties:

(i) 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

(ii) Seller shall have the right to effectuate the sale of the Purchased Properties 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. Closing of Sale. Closing of the purchase and sale of the Purchased Properties to the Successful Bidder shall occur no later than fifteen days following the entry of an order of the Bankruptcy Court having jurisdiction over Seller and the Purchased Property approving this Agreement (the "Closing Date") unless otherwise agreed to by the parties.

EXHIBIT 2

Assignment Procedures

2380 Esplanade Drive, LLC (“**Seller**”) seeks to sell its commercial real properties located at 2380 Esplanade Drive in Algonquin, Illinois (the “**2380 Property**”), Unit 100, 2390 Esplanade Drive, in Algonquin, Illinois (the “**2390 – 100 Property**”), and Unit 300, 2390 Esplanade Drive, in Algonquin, Illinois (the “**2390 – 300 Property**,” and collectively with the 2380 Property and the 2390 – 100 Property, the “**Properties**”) via a sale motion (the “**Motion**”) filed with the United States Bankruptcy for the Northern District of Illinois, and assign certain contracts and leases related to the Properties. 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 party/parties with the highest or best bid at auction (the “**Purchaser**”) of certain unexpired leases by Seller as contemplated by the form Agreement (the “**Assumed Leases**”), including procedures for providing notice to tenants to such Assumed Leases (each, a “**Tenant**”).

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

2. Initial Notice of Assumed Leases. On or prior to July 28, 2017, Seller shall serve by first class mail 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) 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 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 **September 27, 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; and (c) the Office of the United States Trustee for the Northern District of Illinois 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; and (ii) consented to the relevant Cure Amount, if any.

4. Supplemental Notice of Assumed Leases. Within one (1) business day after the conclusion of the Auction, Seller will serve by overnight 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

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

address available to Seller. The Auction Results Notice shall, *inter alia*, identify the successful bidder(s) (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, 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 “**Purchaser’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 the Purchaser’s Adequate Assurance or the Backup Bidder’s Adequate Assurance designated in the Auction Results Notice, then such party must file a written objection with the Court no later than **October 4, 2017 at 5:00 p.m. CST** (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 Successful Bidder (if the objection occurs after the Auction Results Notice) will contact the objecting Tenant to consensually resolve any timely served objection. If Seller and/or Successful Bidder are unable to resolve an objection in response to the Assignment Notice, to the extent such objections (each an “**Adequate Assurance Objection**”) relate to the adequate assurance of future performance by Purchaser, such objections will be heard at the hearing on the Motion (the “**Sale 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 Purchaser, notwithstanding such objection. In the event Seller and/or Successful Bidder are unable to resolve an Adequate Assurance Objection or a Cure Objection prior to the Sale Hearing, Successful 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 Successful Bidder and applicable Tenant have agreed as to the allowed Cure Amount(s), shall be paid by Purchaser. Payment of the undisputed Cure Amounts shall be deemed to discharge the obligation of Seller and Purchaser 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, Seller shall be deemed to have assumed and assigned the Assumed Leases ultimately identified under the Agreement as of and effective only upon the Closing (as defined in the 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. Successful 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. Under no circumstances will Seller be deemed to have assumed an unexpired lease without a corresponding assignment of such an unexpired lease to Successful Bidder pursuant to the terms of the Agreement.