

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON DIVISION

IN RE:

JEP REALTY , LLC

CASE NO. 18-51712
CHAPTER 11

DEBTOR IN POSSESSION

**DEBTOR'S EMERGENCY MOTION TO SELL
CERTAIN REAL PROPERTY FREE AND CLEAR OF
ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES ON SHORTENED
NOTICE OF HEARING**

Comes JEP Realty, LLC (the "Debtor" or "Debtor in possession"), by counsel, and pursuant to 11 U.S.C. § 363, hereby moves the Court for entry of an Order granting the Debtor's Emergency Motion to Sell Certain Real Property Free and Clear of all Liens, Claims, Interests, and Encumbrances and on Shortened Notice of Hearing. In support of the Motion, the Debtor states as follows:

JURISDICTION AND VENUE

1. On September 20, 2018 (the "Petition Date"), the Debtor filed a voluntary petition for relief with this Court under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"). The Debtor is operating its business as a debtor and debtor in possession pursuant to 11 U.S.C. §§ 1107(a) and 1108.

2. This Court has jurisdiction over this Chapter 11 case under 28 U.S.C. §§ 157 and 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A).

3. The Debtor is a limited liability company that maintains its principal assets in Jessamine, Boyle and Fayette Counties, Kentucky. Accordingly, venue for the Debtor's Chapter 11 case is proper in this District under 28 U.S.C. § 1408 and 1409.

4. No trustee or examiner has been appointed in this Chapter 11 case, and no creditors' committee or other official committee has been appointed.

PROPOSED SALE

5. Attached hereto as Exhibit A is that certain Offer to Purchase Real Estate Contract (the "Sale Agreement") by and between the Debtor and The Reisig Group LLC (the "Proposed Buyer"). Pursuant to the Sales Agreement, the Debtor would sell (the "Proposed Sale") to the Proposed Buyer the estate's real property and the fixtures/improvements thereon located at 275 Newtown Pike, Lexington, Kentucky 40504 (the "Property"). The Sale Agreement will govern the Proposed Sale, and all parties are encouraged to study the same. As a summary thereof, the purchase price for the Property is \$92,500.00 (the "Purchase Price") and the Proposed Sale will be free and clear of all liens, claims, interests, and encumbrances.

6. The Proposed Buyer is not an insider of the Debtor or otherwise related to the Debtor. The Sale Agreement was negotiated in good faith, in an arm's-length transaction. Accordingly, the Proposed Buyer should be entitled to the fullest "good faith purchaser" protections provided by the Bankruptcy Code.

MARKETING AND SALE EFFORTS

7. Postpetition, the Debtor continued discussions with the Proposed Buyer that were in place a few months prior to filing. Debtor believes it negotiated a fair price for the Property and Debtor engaged in offers and counteroffers with Proposed Buyer to obtain the current maximum price. Debtor has received no other offers or interest in the Property. The Property does not generate income for the estate and the sale of the Property would alleviate the estate of the costs associated with the Property which is not necessary for an effective reorganization.

DISCUSSION

A. Sale Of Property

8. This Court may authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1) (2009). The sale of the assets of a debtor outside the ordinary course of business may be approved by a bankruptcy court when: (i) there is a sound business reason for the sale; (ii) accurate and reasonable notice is provided to interested parties; (iii) the price is fair, reasonable, and adequate; and (iv) the sale is made to the purchaser in good faith. *See e.g., In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991); *In re Stroud Ford, Inc.*, 163 B.R. 730, 732 (Bankr. M.D. Pa. 1993); *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

9. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See e.g., Four B. Corp. v. Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997); *Official Committee of Subordinated Bondholders v. Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“the objective of bankruptcy sales and the debtor’s duty with respect to such sales is to obtain the highest price or overall greatest benefit possible for the estate” (*quoting In re Atlanta Packaging Products, Inc.*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988))).

10. Here, the Purchase Price is the result of extensive negotiations with the Proposed Buyer both prior to and postfiling. That process ensures: (i) the adequacy of the Purchase Price; and (ii) the bona fides and good faith of the Proposed Buyer. Moreover, the Property is not necessary for an effective reorganization as it does not generate any income. The sale is relieving

the Debtor of ongoing (principally tax, maintenance, and insurance) obligations for the Property. For all these reasons, the Debtor submits that approval of the Proposed Sale is in the estate's best interests. Upon information and belief, the secured lienholders are not opposed to the Proposed Sale and were notified of intent to sell the Property and appear to support the Proposed Sale.

B. Authority To Sell Free And Clear

11. Section 363(f) of the Bankruptcy Code authorizes the Debtor to sell property outside of the ordinary course of business "free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy 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."

11 U.S.C. § 363(f).

12. The Debtor may sell property free and clear if any one of these five conditions is satisfied. *See Newport Acquisition Co. No. 1 L.L.C. v. Crossroads Capitals Partners L.L.C. (In re C-Power Prods., Inc.)*, 230 B.R. 800, 803 (Bankr. N.D. Tex. 1998) (Felsenthal, J.). *See also Futuresource LLC v. Reuters Ltd.*, 312 F.3d 281, 285 (7th Cir. 2002); *Citicorp Homeowners Servs., Inc. (In re Elliott)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988). The Proposed Sale satisfies the conditions of 11 U.S.C. § 363(f)(2), in that the lienholders are not opposed to the Proposed Sale.

C. Payments From Proceeds

13. As part of the Proposed Sale, and as would be standard in a sale of real property, the Debtor requests authority to pay all customary seller closing obligations as may come due as part of the sale process.

14. Finally, as time is of the essence to the Proposed Sale, the Debtor requests that the Court waive the automatic stay of any final order granting this Motion and order that the final relief requested in this Motion may be immediately available upon the entry of an order approving the Proposed Sale.

ENCUMBRANCES, LIENS AND INTERESTS

15. Upon information and belief, the Property is subject to or may be subject to liens or interests as follows:

| <u>Name</u> | <u>Nature of Interest</u> | <u>Approximate Amount Of Claim¹</u> |
|--|----------------------------------|--|
| | | |
| Community Trust Bank Inc. | Mortgage lien (See POC No. 1) | \$ 45,418.40 |
| Farm Credit Services of Mid-America FLCA | Judgment lien- Fayette Co. | \$460,000 |
| LFUCG | Abatement liens-Fayette Co. | \$ 5,600 |

Debtor proposes to pay creditors from the Purchase Price in order of priority of liens. If a title search reveals any prior *ad valorem* liens, Debtor requests authority to pay those also. 2018 property taxes will be prorated at closing as customary. Debtor requests that the relief granted herein be without prejudice to a carve-out of the sale proceeds for fees and expenses of Debtor's counsel if negotiated and agreed with applicable liendholders.

¹ The current balance of the claims may be higher or lower.

SHORTENED NOTICE OF HEARING

Debtor requests shortened notice of hearing for the Court's chapter 7 and chapter 12 docket hour on November 8, 2018 at 9:30 a.m. as there have been extensive sale negotiations prior to and after the filing of the bankruptcy and the Proposed Buyer wants to close as soon as feasible and the Proposed Sale is not opposed by lienholders on the Property. The Court's next chapter 11 motion hour is not until November 28, 2018 and such a delay might cause the estate to lose the Proposed Sale. As previously mentioned, the Property does not generate income and is a burden to the estate, so the Proposed Sale is in the best interests of the estate.

RELIEF REQUESTED

WHEREFORE, based on the foregoing, the Debtor respectfully requests that the Court enter an order: (i) granting this Motion on shortened notice of hearing; (ii) authorizing the Debtor to sell the Property to the Proposed Buyer under the terms of the Sale Agreement free and clear of all liens, claims, interests, and encumbrances; (iii) authorizing the Debtor to pay closing costs as a result of the Proposed Sale; (iv) authorizing the Debtor to execute necessary, customary, and appropriate closing and title documents; (v) directing the Debtor to disburse funds to creditors in order of priority and (vi) granting the Debtor such other and further relief as the Court deems just and proper.

NOTICE

Notice is hereby given that the foregoing shall be brought on for hearing before the United States Bankruptcy Court for the Eastern District of Kentucky, 100 East Vine Street, 3rd Floor, Lexington, Kentucky, on Wednesday, November 8, 2018 at the hour of 9:30 a.m. (ET), or as soon thereafter as counsel may be heard.

Respectfully submitted,

DELCOTTO LAW GROUP PLLC

/s/ Jamie L. Harris, Esq.
200 North Upper Street
Lexington, KY 40507
Telephone: (859) 231-5800
Facsimile: (859) 281-1179
jharris@dlgfirm.com
COUNSEL FOR DEBTOR
AND DEBTOR IN POSSESSION

CERTIFICATE OF SERVICE

In addition to the parties who will be served electronically by the court's ECF System, the undersigned certifies that a true and accurate copy of the foregoing was served by electronic mail or first-class U.S. mail, postage prepaid, on October 29, 2018, on all non-ECF creditors and parties in interest in this case.

/s/ Jamie L. Harris, Esq.
COUNSEL FOR DEBTOR
AND DEBTOR IN POSSESSION

EXHIBIT A

Offer to Purchase Real Estate

THIS OFFER TO PURCHASE REAL ESTATE (the "offer") dated this 22 day of Oct, 2018.

IS MADE BY:

Josita Johnson of Bresy Group
(the "Buyer")

OF THE FIRST PART

John Pappas - TO - VEP Realty
(the "Seller")

OF THE SECOND PART

Background

The buyer wishes to submit an offer to purchase a certain completed home from the Seller under the terms stated below.

IN CONSIDERATION OF and as a condition of the Seller selling the Property and the Buyer purchasing the Property (collectively the "Parties") and other valuable consideration the receipt of which is hereby acknowledged, the Parties to this Offer to Purchase Real Estate agree as follows:

Real Property

1. The legal description of the Property is as follows:

275 Newton Pike, Lexington KY 40508
which includes the fixtures and improvements located on the Property that are listed within this Offer. All property included in this Offer is referred to as the "Property."

Sales Price

\$92,500

2. The total purchase price of \$ (the Purchase Price) that is to be paid for the Property by the Buyer is payable as follows:

- a. The initial earnest money deposit (the "Deposit") accompanying this offer is \$ 1. The Deposit will be paid by cash on or before 10/26/18. The deposit will be held in escrow by MAINOUS AND GRANT until the sale is closed, at which time this money will be credited to the Buyer, or until this Offer is otherwise terminated; and
- b. The balance of the Purchase Price will be paid in cash or equivalent in financing at closing unless otherwise provided in this Offer. The balance will be subject to adjustments.

\$1
10/26/18
10/26/18
JP

Buyer Initial

JP Seller Initial

Inspection Period

2a- Buyer has 7 days to inspect property. Buyer can cancel sale for any reason found in the inspection and get a full return of Escrow

Closing and Possession

3. The Closing Date will be on or prior 45 days after acceptance 11/20/2018 or at such other time agreed by the Parties, at which point the Buyer will take possession of the Property.

Notices

4. All notices pursuant to this Offer must be written and signed by the respective party or its agent and all such correspondence will be effective upon it being mailed with return receipt requested, hand-delivered, or transmitted by facsimile as follows:

Buyer

Name: Ficcy Group
Address: 0 Bx 903
Phone: 859-320-9911

Seller

Name: JEP Realty
Address: 1715 Alexander Drive
Phone: 859-312-1186

Severability

5. If any terms or provision of this Offer will, to any extent, be determined to be invalid or unenforceable by a court of competent jurisdiction, the remainder of this Offer will not be affected and each unaffected term and provision of this Offer will remain valid and enforceable to the fullest extent permitted by law.

Interpretation

6. Headings are inserted for the convenience of the Parties only and are not to be considered when interpreting this Offer. Words in the singular mean and include the plural and vice versa. Words importing persons include firms and corporations and vice versa.

Time of Essence

7. Time is of the essence in this Offer. Every calendar day except Saturday, Sunday or U.S. national holiday will be deemed a business day and all relevant time periods in this Offer will be calculated in business days. Performance will be due the next business day, if any deadline falls on a Saturday, Sunday or U.S. national holiday. A business day ends at 5 p.m. local time in the time zone in which the Property is situated.

Buyer Initial

Seller Initial

Buyer's Offer

This is an offer to purchase the Property on the above terms and conditions.

Buyer: PRESY GROUP LLC

Date: 10/26/18 Time: 10:30

Buyer's Signature: [Signature]

Phone: 859-202-0511

Address: PO Box 927 Lexington KY 40508

Marital Status: ☒ Single ☐ Married ☐ Separated ☐ Divorced ☐ Co-Ownership

Seller's Acceptance/ Counter-offer/ Rejection

☒ **Acceptance of offer to purchase:** The Seller accepts the foregoing offer on the terms and conditions specified above, and agrees to convey the Property to the Buyer. Once accepted Seller may not try to sell, lease, rent or otherwise enter into contract regarding the above property.

Seller's Signature: [Signature]

Date: 10/26/18

Time: 1:30 PM

Seller: JOHN PAPPAS, MANAGER JEP REALTY LLC

Date: 10/26/18

Seller's Name: JEP REALTY

Phone: 859 312 4486

Address: 1718 ALEXANDRIA DR STE 101 Lexington KY 40504

Marital Status: ☐ Single ☒ Married ☐ Separated ☐ Divorced ☐ Co-Ownership

UNITED STATES BANKRUPTCY COURT
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LEXINGTON DIVISION

IN RE:

JEP REALTY , LLC

CASE NO. 18-51712
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DEBTOR IN POSSESSION

**ORDER GRANTING DEBTOR'S EMERGENCY MOTION TO SELL
CERTAIN REAL PROPERTY FREE AND CLEAR OF
LIENS, CLAIMS INTERESTS, AND ENCUMBRANCES**

This matter having come before the Court upon the Debtor's Emergency Motion to Sell Certain Real Property Free and Clear of Liens, Claims, Interests, and Encumbrances on Shortened Notice of Hearing (the "Motion"). By the Motion, and pursuant to that certain Offer to Purchase Real Estate Contract attached to the Motion as Exhibit A (the "Sale Agreement"), the Debtor seeks authority (on shortened notice) to sell (the "Proposed Sale") the real property specified in the Sale Agreement and generally described as 275 Newtown Pike, Lexington, Kentucky 40504.

Based on the Motion, the evidence presented at said hearing, the Court HEREBY FINDS AND CONCLUDES as follows:

1. The Debtor commenced its Chapter 11 case on September 20, 2018.
2. The Estate owns good, sufficient, and marketable title to the Property.¹ Pursuant to all applicable bankruptcy law, the Debtor and the Estate have the ability and power to transfer all right, title, and interest of the Debtor and the Estate in and to the Property free and clear of any and all claims, interests, liens, and encumbrances as may otherwise exist (all such claims, interests, liens, and encumbrances are referred to collectively as the "Interests").

¹ All capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

3. Under the Sale Agreement, the Proposed Buyer will pay the Debtor \$92,500.00 for the Property (the "Purchase Price"). The consideration to be paid by the Proposed Buyer under the Sale Agreement is reasonable and fair and constitutes adequate consideration for the Property, and the Debtor has taken sufficient and adequate steps to maximize such consideration.

4. The Proposed Buyer is a bona fide, good faith purchaser for value of the Property. The Debtor and the Proposed Buyer have negotiated the Proposed Sale and the Sale Agreement in good faith, through arm's-length negotiations, free of any collusion. Accordingly, the Proposed Buyer is entitled to the maximum protections available under 11 U.S.C. § 363(m).

5. Approval of the Proposed Sale and the Sale Agreement is in the best interests of the Estate.

6. Due, sufficient, adequate, and appropriate shortened notice of the Motion and the Proposed Sale has been provided to all creditors and to all parties with potential Interests in the Property.

7. Time is of the essence to the Proposed Sale and the Sale Agreement. Accordingly, the waiver of any stay of this Order is appropriate and in the best interests of the Estate.

8. The Court has jurisdiction to enter this Order pursuant to 28 U.S.C. § 1334. The subject matter of this Order is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The Court has the authority to enter this Order pursuant to 11 U.S.C. §§ 105(a), 363(b), and 363(f).

Pursuant to the Court's findings herein relative to the Motion, and it appearing that proper notice of the Motion was given, and it further appearing that no objections having been filed or any timely objections being hereby overruled, IT IS HEREBY ORDERED as follows:

9. The Motion and shortened notice of hearing on the Motion is GRANTED.

10. The Proposed Sale and the Sale Agreement are APPROVED.

11. The Debtor is immediately authorized, but not directed, to sell and transfer the Property, and all right, title and interest therein of the Debtor and the Estate, to the Proposed Buyer under the terms of the Sale Agreement, and, upon payment by the Proposed Buyer of the Purchase Price, the Proposed Buyer shall hold good, clear, and marketable title to the Property.

12. Pursuant to 11 U.S.C. § 363(f), the Proposed Sale shall be free and clear of any and all Interests, whether known or unknown, asserted or unasserted, governmental or nongovernmental.

13. All Interests existing against the Property immediately prior to transfer of the Property to the Proposed Buyer shall attach to the Purchase Price with the same validity, extent, and priority as otherwise existed.

14. This Order may be recorded in any real property record, county record, or other appropriate location or governmental authority, and all persons, including any governmental entity or authority, shall comply with this Order.

15. The Debtor is authorized, but not directed, to undertake such actions as may be necessary or advisable to perform any obligations under the Sale Agreement, including executing any document or instrument to effectuate the same, and the Debtor is specifically authorized to execute, deliver, and record such deeds, bills of sale, closing documents, and other instruments and documents as may be required by the Sale Agreement or advisable in order to effectuate the Proposed Sale and the Sale Agreement.

16. From the Purchase Price, the Debtor is authorized to pay all amounts required by the Sale Agreement or that may be otherwise advisable to effectuate the same, including, without limitation: (i) title and escrow fees and costs; (ii) closing fees and costs; (iii) recording fees; and (iv) transportation, courier, photocopying, notarization, and all other expenses and costs of closing. The Debtor is also authorized to pay from the sale proceeds the abatement lien claims of

LFUCG or any prior *ad valorem* claim if any remain unpaid. 2018 property taxes shall be prorated at closing as customary.

17. After payments set forth in the preceding paragraph, the remainder of the Purchase Price (the “Proceeds”) shall be paid to Community Trust Bank Inc. on account of its mortgage lien and to Farm Credit Services of Mid-America FLCA on account of its judgment lien. Lienholders are directed to comply with this Order and release their liens upon payment in order of priority of liens. This Order is without prejudice to a carve-out of the Proceeds for Debtor’s counsel for services in connection with the Proposed Sale and Debtor is authorized to pay same upon agreement by applicable lienholders.

18. Any title, closing, or escrow agent holding the Proceeds shall comply with this Order and this Court retains full jurisdiction to ensure the same.

19. This Order and the Sale Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtor, all parties in interest in this case, and any holder of an Interest in the Property.

20. The reversal or modification on appeal of this Order shall not affect the validity of the sale and transfer of the Property to the Proposed Buyer, unless such authorization is duly stayed pending such appeal.

21. The Proposed Buyer is entitled to the full protections of 11 U.S.C. § 363(m).

22. This Order shall not be stayed by any provision of the Federal Rules of Bankruptcy Procedure or otherwise, including any stay pursuant to Fed. R. Bankr. P. 6004(g), and this Order shall be immediately effective upon its entry.

23. This Court shall retain jurisdiction to the maximum extent possible to interpret and enforce this Order.

Tendered by:

DELCOTTO LAW GROUP PLLC

/s/Jamie L. Harris

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