

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS AT KANSAS CITY**

In re:)
)
JOHN Q. HAMMONS FALL 2006, LLC, et al.,) **Case No. 16-21142-11**
)
Debtors.) **(Jointly Administered)**
)

**DEBTORS' MOTION (No. 3) TO APPROVE (A) SALE OF
CERTAIN REAL PROPERTY FREE AND CLEAR OF ALL LIENS,
INTERESTS, CLAIMS AND ENCUMBRANCES, AND
(B) RELATED RELIEF PURSUANT TO 11 U.S.C. §§102, 105 AND 363**

COMES NOW the Debtors, and submit this motion (No. 3) (the "Motion") for an order (the "Order"), pursuant to 11 U.S.C. §§ 102, 105, and 363, and Fed. R. Bankr. P. 2002, 6004, and 9014 to approve (a) a sale of certain real property free and clear of all liens, interests, claims and encumbrances, and (b) related relief. In support of this Motion, the Debtors represent as follows:

BACKGROUND

1. On June 26, 2016 (the "Commencement Date"), the Debtors commenced chapter 11 bankruptcy cases by filing their bankruptcy petitions in this Court.
2. Since the Commencement Date, the Debtors have continued in possession of their property and control of their operations pursuant to §§ 1107 and 1108 of the Bankruptcy Code.
3. The Court has jurisdiction of this motion pursuant to 28 U.S.C. § 1334(b). This is a core proceeding pursuant to 28 U.S.C. § 157(b) in that this motion seeks sale of property of the estate and affects the administration of these bankruptcy cases. Venue is proper in this Court. 28 U.S.C. § 1409(a).
4. The Debtors in these chapter 11 cases consist of the Revocable Trust of John Q. Hammons, Dated December 28, 1989 as Amended and Restated (the "Trust") and 75 of its directly or indirectly wholly owned subsidiaries and affiliates.

SALE ASSET

5. One of the assets owned by the Trust is approximately 40.32 acres of undeveloped land located in Lindon, Utah and more fully described on Exhibit A hereto (the "Real Estate").

POTENTIAL ASSERTED INTERESTS IN THE REAL ESTATE

6. By order entered December 13, 2016 (ECF Doc. 694) the Court granted the Debtors' motion to reject a "Sponsor Entity Right of First Refusal Agreement, Dated September 16, 2005 and Agreement and Amendment, Dated December 10, 2008" executed by and among JD Holdings, LLC ("JDH") and Debtors (the "ROFR").

7. JDH may assert, incorrectly, that the ROFR is an interest in the Real Estate. Other than the ROFR and any real estate taxes currently owing to Utah County, Utah, there are no liens or other encumbrances on the Real Estate. Because the Real Estate has been designated as agricultural property, real estate taxes have historically ranged from \$250.00-\$300.00 per year.

THE PROPOSED SALE

8. On February 28, 2017, the Trust received an offer to purchase the Real Estate from WICP West Orem, LLC and/or its assigns (the "Purchaser"). After negotiating with the Purchaser, the Trust and the Purchaser entered into a Real Estate Purchase Contract for Land, a true and correct copy of which is attached as Exhibit B hereto (the "Purchase Agreement").

9. Under the terms of the Purchase Agreement, the Purchaser will pay \$9.85 million in cash for the Real Estate and will pay the fee earned by the Purchaser's real estate broker so that the Trust will receive \$9.85 million less the rollback taxes discussed below and other standard closing costs (the "Purchase Price"). The sale will close within 60 days following the conclusion of the Purchaser's due diligence and the sale is conditioned upon approval by this Court.

10. Under Utah law, upon conversion of real estate from agricultural to some other purpose, the owner of the real estate must pay the difference between the taxes actually paid on

the agricultural property and what the owner would have paid had the real estate been taxed at its fair market value (the "Rollback Tax"). The Purchase Agreement provides that the Trust will pay up to, but no more than, \$500,000 of the Rollback Tax, which shall be deducted the proceeds due to the Trust under the sale. Any Rollback Tax in excess of \$500,000 will be paid by the Purchaser. Accordingly, the Trust will receive at least \$9.35 million for the Real Estate, less standard closing costs (the "Sale Proceeds").

11. The Trust will escrow the Sale Proceeds pending further order of the Court.

12. The Real Estate is unencumbered by a mortgage or deed of trust.

13. The Purchase Price is equal to or more than the fair market value of the Real Estate.

14. In addition, upon approval by the Court, the sale will occur without the engagement by the Trust of a real estate broker. As a result, the typical broker's fee of 6% (approximately \$591,000.00) will be saved, and consequently, the Trust will receive greater net proceeds than if a broker was involved.

15. In short, the Purchase Price represents the highest and best offer for the Real Estate. For this reason, the Trust has not engaged, and does not propose to engage, a broker to market the Real Estate and thereby will avoid the additional cost associated with paying a broker's commission and closing will not be delayed.

BASIS FOR RELIEF

I. Sale of Property under § 363 of the Bankruptcy Code

16. Section 363(b)(1) of the Bankruptcy Code provides: "The Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Section 105(a) of the Bankruptcy Code provides in relevant part: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry

out the provisions of this title." 11 U.S.C. § 105(a).

17. A sale of assets of a debtor should be authorized pursuant to Section 363 of the Bankruptcy Code if a sound business purpose exists for doing so, the proposed sale price is reasonable, and the proposed buyer is proceeding in good faith. *See, e.g., In re WK Lang Holdings, LLC*, Case No. 13-11934, 2013 WL 6579172, at *6 (Bankr. D. Kan. Dec. 12, 2013); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1993). The business judgment rule shields a debtor's management from judicial second-guessing. ("[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor's management decisions.") *In re Farmland Indus., Inc.*, 294 B.R. 903, 913 (Bankr. W.D. Mo. 2003) (quoting *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986)). Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that, in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.'" *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

18. As explained above, the Trust has determined that the proposed sale of the Real Estate to the Purchaser is the best way to maximize the value of the Real Estate for these bankruptcy cases. Maximization of asset value is a sound business purpose, warranting authorization of the sale. In addition, the sale price is reasonable and, as set forth herein, the Purchaser is acting in good faith and is entitled to the protections of § 363(m) of the Bankruptcy Code.

II. Treatment of Potential Tax Lien

19. The only possible lien against the Real Estate is to secure current real estate taxes

owed. As set forth above, those taxes are significantly less than the sale price. Moreover, the taxes will be paid at closing, thus extinguishing any such lien. Therefore, as to any tax lien, § 363(f) of the Bankruptcy Code is not implicated because the sale will not be free and clear of any such tax lien, but rather will result in the payment thereof at closing.

III. The ROFR

20. The ROFR is not filed of record with respect to the Real Estate. The Court has approved rejection of the ROFR. As a result, the provisions of § 363(f) are not implicated with respect to the ROFR. In an abundance of caution, however, the Trust requests an order that approves the sale of the Real Estate free and clear of claims and interests, to include the ROFR.

IV. Good Faith Purchaser Under § 363(m) of the Bankruptcy Code

21. The Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define "good faith," the Seventh Circuit has held that:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

In re Andy Frain Services, Inc., 798 F.2d 1113, 1125 (7th Cir. 1986) (emphasis omitted) (quoting *In re Rock Industries Machinery Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978) (interpreting Bankruptcy Rule 805, the precursor of § 363(m)).

22. The Purchaser is a third party buyer unrelated to the Trust or any of the Debtors and

the terms of the Purchase Agreement are fair and reasonable. The Court previously found that this Purchaser was entitled to the protections of a good faith purchaser under § 363(m) of the Bankruptcy Code in its sale order approving the sale to this same Purchaser of 10 acres owned by the Trust in Lindon, Utah. *See* Order and Findings of Fact and Conclusions of Law Granting Motion (No.1) to Approve (A) Sale of Certain Real Property Free and Clear of All Liens, Interest, Claims and Encumbrances, and (B) Related Relief Pursuant to 11 U.S.C. 102, 105 and 363 [doc. no. 981] at ¶ 17.

23. The Trust submits that the Purchase Agreement is an arm-length transaction entitled to the protections of § 363(m) of the Bankruptcy Code. *See In re Trism*, 328 F.3d 1003, 1006 (8th Cir. 2003).

V. Waiver of Fourteen-Day Stay Under Bankruptcy Rule 6004

24. Finally, pursuant to Bankruptcy Rule 6004(h), cause exists for the fourteen-day stay set forth in Bankruptcy Rule 6004 to be waived. The Purchase Agreement expressly states that time is of the essence in completing the sale transaction. *See* Exhibit B at § 21. In addition, no party will be prejudiced by elimination of the stay because the Motion sufficiently protects the interests of all parties-in-interest. Under the terms of the sale, the net proceeds will be held by the Debtors in a segregated account pending further order of the Court. Therefore, the Debtors request that in the order approving the sale, that the Court waive the 14-day waiting requirement of Rule 6004 so that, in reliance on the order approving this Motion, the Debtors and the Purchaser can immediately close the sale transaction.

CONCLUSION

25. Based on the forgoing, the Trust submits that the sale of the Real Estate is in the best interests of the Trust's bankruptcy estate and should be approved. In conjunction therewith, the

Trust requests the Court approve the sale of the Real Estate to the Purchaser under the terms of the Purchase Agreement free and clear of all claims and interests to include the ROFR, and find that the Purchaser is a good faith purchaser and entitled to the protections of § 363(m) of the Bankruptcy Code. Approval of these requests is in the best interests of their creditors and other interested parties and will maintain, preserve and maximize the value of the Real Estate for the benefit of all creditors in this case.

WHEREFORE, for the reasons set forth herein, the Trust requests that the Court grant this Motion consistent with the averments set forth herein, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

STINSON LEONARD STREET LLP

By: /s/ Mark Shaiken _____

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COUNSEL FOR THE DEBTORS

EXHIBIT A – REAL ESTATE DESCRIPTION

BEGINNING AT A POINT IN AN EXISTING FENCE LINE, SAID POINT BEING NORTH 89°30'42" EAST 944.41 FEET ALONG THE SECTION LINE FROM THE NORTHWEST CORNER OF SECTION 31, TOWNSHIP 5 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, UTAH COUNTY, UTAH, SAID CORNER BEING A UTAH COUNTY BRASS CAP AS SHOWN ON THE SECTION TIE SHEET RECORDED IN BOOK 3392 AT PAGE 573 OF THE UTAH COUNTY RECORDER'S OFFICE, AND RUNNING THENCE SOUTH 0°16'40" EAST 362.69 FEET ALONG SAID FENCE; THENCE SOUTH 0°26'02" WEST 168.09 FEET ALONG SAID FENCE; THENCE SOUTH 0°28'03" WEST 834.19 FEET ALONG A FENCE TO A FENCE LINE ON THE NORTH SIDE OF A COUNTY ROAD; THENCE NORTH 89°27'41" WEST 1356.97 FEET ALONG SAID FENCE ON SAID NORTH LINE OF ROAD; THENCE NORTHWESTERLY 47.11 FEET ALONG THE ARC OF A 30.00 FOOT RADIUS CURVE TO THE RIGHT, (CENTER BEARS NORTH 0°32'19" EAST AND LONG CHORD BEARS NORTH 44°28'44" WEST 42.41 FEET, WITH A CENTRAL ANGLE OF 89°57'56") ALONG THE NORTH LINE OF A ROAD TO THE EAST LINE OF A ROAD; THENCE NORTH 0°30'15" EAST 1138.66 FEET ALONG A FENCE ON THE EAST LINE OF A COUNTY ROAD TO THE SOUTH LINE OF SAM WHITE LANE; THENCE EAST 31.46 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 45°00'00" EAST 42.22 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE EAST 435.11 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE EASTERLY 79.04 FEET ALONG THE ARC OF A 979.33 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH AND LONG CHORD BEARS NORTH 87°41'16" EAST 79.02 FEET, WITH A CENTRAL ANGLE OF 4°37'27") ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE SOUTH 50°00'52" EAST 39.37 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE SOUTH 12°27'21" EAST 26.25 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 81°20'56" EAST 82.02 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 37°24'35" EAST 42.71 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 76°24'46" EAST 144.35 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 67°12'00" EAST 219.19 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 149.74 FEET ALONG THE SOUTH LINE OF SAM WHITE LANE; THENCE NORTH 60°14'08" EAST ALONG THE SOUTH LINE OF SAM WHITE LANE TO A FENCE LINE; THENCE NORTH 46°20'54" EAST 264.35 FEET ALONG SAID FENCE LINE TO THE POINT OF BEGINNING; THENCE SOUTH 0°16'40" EAST 220.73 FEET

**REAL ESTATE PURCHASE CONTRACT
FOR LAND**

This is a legally binding contract. If you desire legal or tax advice, consult your attorney or tax advisor.

EARNEST MONEY RECEIPT

On this day February 26, 2017, (Offer Reference Date") WICP West Orem LLC and/or assigns ("Buyer") offers to purchase from Jacqueline A. Dowdy ("Seller") the Property described below and hereby delivers to the Brokerage or Title/Escrow Company, as Earnest Money, the amount of \$ 100,000.00 in the form of Check which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

Received by: North American Title - Crystal Bond on _____ (Date)
(Signature of agent/broker acknowledges receipt of Earnest Money)

Brokerage: _____ Phone Number: _____

OFFER TO PURCHASE

1. PROPERTY: Approximately 2800 W 600 N Lindon Utah 84042, 40.32 Acres

also described as Tax Identification Number 14:059:0040

City of Lindon County of Lindon State of UT, ZIP 84042

(the "Property").

1.1 Included Items. (specify) _____

1.2 Water Rights/Water Shares. The following water rights and/or water shares are included in the Purchase Price.

_____ Shares of Stock in the _____ (Name of Water Company)

Other (specify) All appurtenant to the property

2. PURCHASE PRICE The purchase price for the Property is \$ 8,781,696.00

The purchase price will be paid as follows:

\$ 100,000.00 (a) **Earnest Money Deposit.** Under certain conditions described in this Contract THIS DEPOSIT MAY BECOME TOTALLY NON-REFUNDABLE.

\$ _____ (b) **New Loan.** Buyer agrees to apply for one or more of the following loans:
 CONVENTIONAL OTHER (specify) _____

If the loan is to include any particular terms, then check below and give details:

SPECIFIC LOAN TERMS _____

\$ _____ (c) **Seller Financing.** (see attached Seller Financing Addendum, if applicable)

\$ _____ (d) **Other (specify).** _____

\$ 8,681,696.00 (e) **Balance of Purchase Price in Cash at Settlement.**

\$ 8,781,696.00 **PURCHASE PRICE. Total of lines (a) through (e)**

3. SETTLEMENT AND CLOSING. Settlement shall take place on the Settlement Deadline referenced in Section 24(c), or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when all of the following have been completed: (a) Buyer and Seller have signed and delivered to each other or to the escrow/closing office all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the escrow/closing office in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the escrow/closing office in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (1/2) of the fee charged by the escrow/closing office for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest

Page 1 of 6 Seller Initials _____ Date _____ Buyer's Initials MDW Date _____

on assumed obligations shall be prorated at Settlement as set forth in this Section. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in Section 24(c), unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. The transaction will be considered closed when Settlement has been completed, and when all of the following have been completed: (i) the proceeds of any new loan have been delivered by the Lender to Seller or to the escrow/closing office; and (ii) the applicable Closing documents have been recorded in the office of the county recorder. The actions described in parts (i) and (ii) of the preceding sentence shall be completed within four calendar days of Settlement.

4. POSSESSION. Seller shall deliver physical possession to Buyer within: Upon Closing Other (specify) _____

5. CONFIRMATION OF AGENCY DISCLOSURE. At the signing of this contract: [_____] Seller's Initials [_____]
Buyer's Initials

Listing Agent _____, represents Seller Buyer both Buyer and Seller
as a Limited Agent;
Listing Broker for _____, represents Seller Buyer both Buyer and
Seller
(Company Name) as a Limited Agent;
Buyer's Agent Ben Richardson, represents Seller Buyer both Buyer and Seller
as a Limited Agent;
Buyer's Broker for Coldwell Banker Commercial Advisors, represents Seller
Buyer both Buyer and Seller
(Company Name) as a Limited Agent;

6. TITLE TO THE PROPERTY & TITLE INSURANCE.

(a) Seller represents that Seller has fee simple title to the *Property* and will convey good and marketable title to Buyer at Closing by: GENERAL WARRANTY DEED SPECIAL WARRANTY DEED, free of financial encumbrances except as provided under *Section 10.1*.

(b) At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. The title policy shall conform with Seller's obligations under *Section 10.1* and with the *Commitment for Title Insurance* as agreed to by Buyer under *Section 8*.

(c) BUYER ELECTS TO OBTAIN A FULL-COVERAGE EXTENDED ALTA POLICY OF TITLE INSURANCE. The cost of this coverage (including the ALTA survey), above that of the standard-coverage Owner's policy, shall be paid for at Settlement by: BUYER SELLER OTHER _____.

7. SELLER DISCLOSURES. No later than the Seller Disclosure Deadline referenced in Section 24(a), Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":

- (a) a Seller property condition disclosure for the Property, signed and dated by Seller;
- (b) a commitment for the policy of title insurance;
- (c) a copy of any leases affecting the Property not expiring prior to Closing;
- (d) written notice of any claims and/or conditions known to Seller relating to environmental problems;
- (e) evidence of any water rights and/or water shares referenced in Section 1.2 above; and
- (f) Other (specify) _____

8. BUYER'S RIGHT TO CANCEL BASED ON BUYER'S DUE DILIGENCE. Buyer's obligation to purchase under this Contract (check applicable boxes):

- (a) IS IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;
- (b) IS IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;
- (c) IS IS NOT conditioned upon Buyer's approval of a survey of the Property by a licensed surveyor;
- (d) IS IS NOT conditioned upon Buyer's approval of applicable federal, state and local governmental laws, ordinances and regulations affecting the Property; and any applicable deed restrictions and/or CC&R's (covenants, conditions and restrictions) affecting the Property;
- (e) IS IS NOT conditioned upon the Property appraising for not less than the Purchase Price;
- (f) IS IS NOT conditioned upon Buyer's approval of the terms and conditions of any mortgage financing referenced in Section 2 above;
- (g) IS IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the Property:

Page 2 of 6 Seller Initials _____ Date _____ Buyer's Initials BR Date _____

(specify) Any buyer deems necessary

If any of items 8(a) through 8(g) are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as Buyer's "Due Diligence." Unless otherwise provided in this Contract, Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Seller agrees to cooperate with Buyer's Due Diligence and with a final pre-closing inspection under Section 11.

8.1 Due Diligence Deadline. No later than the Due Diligence Deadline referenced in Section 24(b) Buyer shall: (a) complete all of Buyer's Due Diligence; and (b) determine if the results of Buyer's Due Diligence are acceptable to Buyer.

8.2 Right to Cancel or Object. If Buyer determines that the results of Buyer's Due Diligence are unacceptable, Buyer may, no later than the Due Diligence Deadline, either: (a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

8.3 Failure to Respond. If by the expiration of the Due Diligence Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Buyer's Due Diligence, The Buyer's Due Diligence shall be deemed approved by Buyer; and the contingencies referenced in Sections 8(a) through 8(g), including but not limited to, any financing contingency, shall be deemed waived by Buyer.

8.4 Response by Seller. If Buyer provides written objections to Seller, Buyer and Seller shall have seven calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Except as provided in Section 10.2, Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the Response Period; whereupon the Earnest Money Deposit shall be released to Buyer. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.

9. ADDITIONAL TERMS. There ARE ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference: Addenda 1.
 Seller Financing Addendum Other (specify) _____

10. SELLER WARRANTIES AND REPRESENTATIONS.

10.1 Condition of Title. Seller represents that Seller has fee title to the Property and will convey good and marketable title to Buyer at Closing by general warranty deed. Buyer agrees, however, to accept title to the Property subject to the following matters of record: easements, deed restrictions, CC&R's (meaning covenants, conditions and restrictions), and rights-of-way; and subject to the contents of the Commitment for Title Insurance as agreed to by Buyer under Section 8. Buyer also agrees to take the Property subject to existing leases affecting the Property and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, homeowners association dues, utilities, and other services provided to the Property after Closing. Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause to be paid current by Closing all assessments and homeowners association dues.

IF ANY PORTION OF THE PROPERTY IS PRESENTLY ASSESSED AS "GREENBELT" (CHECK APPLICABLE BOX):

SELLER BUYER SHALL BE RESPONSIBLE FOR PAYMENT OF ANY ROLL-BACK TAXES ASSESSED AGAINST THE PROPERTY.

10.2 Condition of Property. Seller warrants that the Property will be in the following condition **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER:**

- (a) the Property shall be free of debris and personal property;
- (b) the Property will be in the same general condition as it was on the date of Acceptance.

11. FINAL PRE-CLOSING INSPECTION. Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a final pre-closing inspection of the Property to determine only that the Property is "as represented," meaning that the Property has been repaired/corrected as agreed to in Section 8.4, and is in the condition warranted in Section 10.2. If the Property is not as represented, Seller will, prior to Settlement, repair/correct the Property, and place

Page 3 of 6 Seller Initials _____ Date _____ Buyer's Initials *MS* Date _____

the Property in the warranted condition or with the consent of Buyer (and Lender if applicable), escrow an amount at Settlement sufficient to provide for the same. The failure to conduct a final pre-closing inspection or to claim that the Property is not as represented, shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the Property as represented.

12. CHANGES DURING TRANSACTION. Seller agrees that from the date of Acceptance until the date of Closing, none of the following shall occur without the prior written consent of Buyer: (a) no changes in any existing leases shall be made; (b) no new leases shall be entered into; (c) no substantial alterations or improvements to the Property shall be made or undertaken; and (d) no further financial encumbrances affecting the Property shall be made.

13. AUTHORITY OF SIGNERS. If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller.

14. COMPLETE CONTRACT. This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties.

15. DISPUTE RESOLUTION. The parties agree that any dispute, arising prior to or after Closing, related to this Contract (check applicable box)

SHALL

MAY AT THE OPTION OF THE PARTIES

first be submitted to mediation. If the parties agree to mediation, the dispute shall be submitted to mediation through a mediation provider mutually agreed upon by the parties. Each party agrees to bear its own costs of mediation. If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this Section 15 shall prohibit any party from seeking emergency equitable relief pending mediation.

16. DEFAULT. If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law. If Buyer elects to accept liquidated damages, Seller agrees to pay the liquidated damages to Buyer upon demand.

17. ATTORNEY FEES AND COSTS. In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under Section 15.

18. NOTICES. Except as provided in Section 23, all notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

19. ABROGATION. Except for the provisions of Sections 10.1, 10.2, 15 and 17 and express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

20. RISK OF LOSS. All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until the transaction is closed.

21. TIME IS OF THE ESSENCE. Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (Le., Acceptance, etc.). Performance dates and times referenced herein shall not

Page 4 of 6 Seller Initials _____ Date _____ Buyer's Initials MC Date _____

be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

22. FAX TRANSMISSION AND COUNTERPARTS. Facsimile (fax) transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission of any signed fax shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in counterparts.

23. ACCEPTANCE. "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

24. CONTRACT DEADLINES. Buyer and Seller agree that the following deadlines shall apply to this Contract:

- (a) Seller Disclosure Deadline 10 DAYS FROM ACCEPTED OFFER (Date)
- (b) Due Diligence Deadline 150 DAYS FROM ACCEPTED OFFER (Date)
- (c) Settlement Deadline 60 DAYS FROM ACCEPTED OFFER (Date) *Completion of (b) due PLS sign 1*

25. OFFER AND TIME FOR ACCEPTANCE. Buyer offers to purchase the Property on the above terms and conditions. If Seller does not accept this offer by 5:00 [] AM [x] PM Mountain Time on 03/ /2017 (Date), this offer shall lapse; and the Brokerage shall return the Earnest Money Deposit to Buyer.

[Signature] /2017 (Buyer's Signature) (Offer Date) _____ (Buyer's Signature) (Offer Date)

The later of the above Offer Dates shall be referred to as the "Offer Reference Date"

(Buyers' Names) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE OF OFFER TO PURCHASE: Seller Accepts the foregoing offer on the terms and conditions specified above.

COUNTEROFFER: Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO. _____.

(Seller's Signature) (Date) (Time) _____ (Seller's Signature) (Date) (Time)

(Sellers' Names) (PLEASE PRINT) (Notice Address) (Zip Code) (Phone)

REJECTION: Seller rejects the foregoing offer.

Page 5 of 6 Seller Initials _____ Date _____ Buyer's Initials MM Date _____

(Seller's Signature)

(Date) (Time)

(Seller's Signature)

(Date) (Time)

Page 6 of 6 Seller Initials _____ Date _____ Buyer's Initials MMH Date _____

Real Estate Purchase Contract for Land 2016

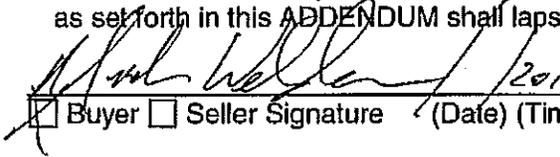
**ADDENDUM NO. 1
TO
COMMERCIAL REAL ESTATE PURCHASE CONTRACT**

THIS IS AN ADDENDUM COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of February 28th , 2016, including all prior addenda and counteroffers, between **WICP West Orem, LLC and/or assigns** as Buyer, and **Jacqueline A. Dowdy** as Seller, regarding the Property located **Approximately 2600 W 600 N Lindon Utah 84042 40.32 Acres, Tax Identification Number 14:059:0040**The following terms are hereby incorporated as part of the REPC.

1. Seller Disclosure Deadline: Seller shall provide Buyer with all Seller Disclosures listed in Section 7 of the Purchase Contract within ten (10) days from mutual execution of the Real Estate Purchase Contract.
2. Buyer shall have one hundred and fifty (150) days from mutual execution of the Real Estate Purchase Contract to conduct its Due Diligence regarding the property.
3. The Earnest Money Deposit shall be fully refundable to Buyer on or before the expiration of the Due Diligence Period, Section 24. (b) of REPC, if the Buyer provides written notice of cancellation; with no further signature or signatures required from Seller.
4. Section 24 (c) of REPC will mean Buyer will close the furthest east twenty (20) acres which shall be determined by an ALTA survey, and no later than three hundred and sixty-five (365) days or one (1) year the buyer will close escrow on the remaining twenty (20) acres or the remaining balance of the subject property determined by the ALTA survey.
5. Initial Closing shall occur sixty (60) days following the conclusion of the Due Diligence Period or the first business day following the tenth day.
6. The Earnest Money Deposit shall be the Seller's sole remedy against Buyer.
7. Final acreage will be determined by Alta Survey prior to closing and final purchase price will be confirmed or adjusted accordingly based upon \$5.00 per square foot.
8. Seller shall pay Buyer's agents brokerage Coldwell Banker Commercial Advisors a three percent (3%) commission of the total purchase at closing.
9. Seller shall provide buyer information regarding all water rights, shares or other water appurtenant and applicable to the property or sell of the property, no later than ten (10) days after mutual execution of the REPC.
10. Buyer and Seller agree that the REPC and all amendments shall survive the initial closing of the twenty (20) acres; all pricing, provisions and terms will remain enforce until the final closing of the remaining twenty (20) acres or balance of land determined by ALTA survey.
11. Buyer Agrees to not build a hotel on subject property.



accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

 2017
 Buyer Seller Signature (Date) (Time)

Buyer Seller Signature (Date)(Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE: Seller Buyer hereby accepts the terms of this ADDENDUM.

COUNTEROFFER: Seller Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

(Signature)

(Date) (Time)

(Signature)

(Date) (Time)

REJECTION: Seller Buyer rejects the foregoing ADDENDUM.

(Signature)

(Date) (Time)

(Signature)

(Date) (Time)

**ADDENDUM NO. 2
TO
COMMERCIAL REAL ESTATE PURCHASE CONTRACT**

THIS IS AN X ADDENDUM COUNTEROFFER to that REAL ESTATE PURCHASE CONTRACT (the "REPC") with an Offer Reference Date of February 26th, 2017, including all prior addenda and counteroffers, between WICP West Orem, LLC and/or assigns as Buyer, and Jacqueline Dowdy as Seller, regarding the Property located Approximately 2600 W 600 N Lindon Utah 84042 10.42 Acres, Tax Identification Number 14:059:0040 (sic). The following terms are hereby incorporated as part of the REPC.

1. Sellers are Jacqueline A. Dowdy and Gregory D. Groves, Successor Trustees of the John Q. Hammons Revocable Trust dated December 28, 1989, as Amended and Restated

2. Purchase Price shall be Nine Million, Eight Hundred and Fifty Thousand and no/100 Dollars (\$9,850,000.00)

3. Buyer shall pay the cost of any coverage (including cost of survey) for an ATLA policy of title insurance.

4. Buyer's right to cancel is not conditioned upon the Property appraising at or more than Purchase Price.

5. Any commission for Buyer's agent shall be paid by Buyer over and above the Purchase Price so that amount received by Seller is not decreased by amount of commission. Buyer shall pay the Buyer's agent/broker 2.5% commission.

6. This Contract is contingent upon approval of the United States Bankruptcy Court for the District of Kansas and all disclosure and due diligence deadlines shall commence from the date the United State Bankruptcy Court for the District of Kansas approves this agreement. Seller agrees to present this contract for approval to the aforementioned court on June 19, 2017 or at the next regularly scheduled omnibus court hearing after that date. In the event this Contract is not approved, then the agreement shall be deemed to be mutually cancelled and Seller shall return to Buyer its deposit.

7. Seller to be responsible for rollback taxes not to exceed Five Hundred Thousand Dollars (\$500,000.00). Buyer agrees to be responsible for any rollback taxes exceeding Five Hundred Thousand Dollars (\$500,000.00).

8. There shall be one transaction on the entire 40 acres instead of two separate transactions and Buyer shall have one hundred and fifty (150) days to conduct due diligence on all 40 acres with closing on all 40 acres to be sixty (60) days following conclusion of the due diligence.

9. The correct Tax Identification Number is 14:059:0049 not 14:059:0040.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the REPC, including all prior addenda and counteroffers, these terms shall control. All other terms of the REPC, including all prior addenda and counteroffers, not modified by this ADDENDUM shall remain the same. Seller Buyer shall have until 5:00 AM PM Mountain Time on May 19 (Date), to accept the terms of this ADDENDUM in accordance with the provisions of Section 23 of the REPC. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

Buyer Seller Signature (Date) (Time) 5-8-17
 Buyer Seller Signature (Date)(Time)
(Handwritten signature and date 5-8-17)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

ACCEPTANCE: Seller Buyer hereby accepts the terms of this ADDENDUM.

COUNTEROFFER: Seller Buyer presents as a counteroffer the terms of attached ADDENDUM NO. Make Offer.

5/9/2017
 (Signature) (Date) (Time) (Signature) (Date) (Time)

REJECTION: Seller Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)