

**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' SECOND AMENDED MOTION (No. 4) 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 amended motion (No. 4) (the "Amended 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 Amended 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(a) and (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. §§ 1408 and 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 3.7 acres of vacant land located in the southwest quadrant of John Q. Hammons Drive and Holiday Drive, City of Middleton, Dane County, Wisconsin and more fully described on Exhibit A hereto (the "Real Estate").

USE OF THE REAL ESTATE

6. The Real Estate is currently used by Atrium Holding Company or one its subsidiaries ("Atrium") as an additional parking lot and/or a place for holding storage containers.

7. The Real Estate is adjacent to a hotel owned and operated by Atrium. Atrium has previously used the Real Estate for parking at its hotel with the permission of the Trust (the "Potential Atrium Interest").

8. No written agreement exists between Atrium and the Trust that governs or sets forth the terms of Atrium's use of the Real Estate, Atrium pays no periodic fee to the Trust for the use of the Real Estate, and Atrium has filed nothing of record in the Dane County, Wisconsin Register of Deeds of Office with respect to the Potential Atrium Interest.

POTENTIAL INTERESTS IN THE REAL ESTATE

9. 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").

10. JDH asserts, incorrectly, that the ROFR is an interest in the Real Estate.

11. The ROFR is not recorded against the Real Estate.

12. Atrium failed to object to the Motion and, accordingly, the Real Estate may be sold free and clear of the Potential Atrium Interest.

THE BIDDING PROCESS AND THE PROPOSED SALE

13. On May 26, 2017, the Trust entered into a Purchase Agreement, attached as Exhibit B hereto (the "Original Purchase Agreement"), with Kraemer Development, LLC (the "Purchaser") to sell the Real Estate to Purchaser on the terms and conditions set forth therein.

14. Under the terms of the Original Purchase Agreement, the Purchaser would pay \$1.38 million in cash for the Real Estate (the "Original Purchase Price"). The Original Purchase Agreement included, *inter alia*, the following other terms and conditions:

- a. Purchaser to make earnest money deposit of \$20,000;
- b. Purchaser had 120 days to complete its due diligence and the sale would close within 30 days of due diligence being completed; and
- c. Purchaser had the right to terminate the Original Purchase Agreement prior to completion of due diligence.

15. On June 26, 2017, the Debtors filed the Motion requesting authority to sell the Real Estate to the Purchaser on the terms and conditions set forth in the Original Purchase Agreement (as amended, the "Motion").

16. On July 6, 2017, the Trust received a competing offer from JDH, the only party to object to the Motion (the "Original JDH Offer"). The Original JDH Offer did not increase the Original Purchase Price, but instead offered what JDH contended were better non-economic terms, including, but not limited to, increasing the earnest money deposit from \$20,000 to \$100,000 and reducing the due diligence period from 120 days to 90 days.

17. Between July 6, 2017 and July 17, 2017, the Trust continued discussions with the Purchaser and JDH, which resulted in an increase of the Original Purchase Price from \$1.38 million to \$1.4 million, the earnest money deposit to \$200,000, removal of the due diligence period, and a commitment to close the sale transaction 30 days after Court approval.

18. At the Hearing, the Trust requested an additional seven to ten days to complete bidding between the Purchaser and JDH with respect to the economic terms of their offers for the Real Estate. The Court granted that request, asked that the bidding be completed within seven to ten days and, if the bidding was not resolved, the Court would set it for auction. If the bidding was resolved, then the Court would set the Motion for hearing at a special setting.

19. Between July 18, 2017 and July 28, 2017, the Trust conducted a competitive bidding process between the Purchaser and JDH, which included several offers and counteroffers by both parties. A chronology of the bids is attached hereto and marked Exhibit C.

20. As set forth in the chronology, the Trust requested that the parties make bids in \$50,000 increments only. JDH's next bid declined to do so.

21. At another point in the process, the Debtors sent to JDH an order memorializing the Hearing, and JDH sent back an edited order providing terms that the Debtors do not believe were part of the Court's comments at the Hearing, including that the sale process between JDH and the Purchaser must be concluded by July 27, 2017. A true and correct copy of JDH's edited order is attached hereto as Exhibit D. While that date was not feasible for counsel for the Debtors, nevertheless the Trust made every effort to accommodate JDH's wishes to bring the bidding to a conclusion on July 28, 2017.

22. To that end, on July 27, 2017, the Debtors' counsel sent an email to counsel for both the Purchaser and JDH asking each of them to make one final bid by Friday, July 28, 2017 at 5:00 p.m. central time. The text of the email is set out as follows: "The Debtors have decided in their business judgment to proceed to conclude the bidding for the Middleton property in the following manner:

- The Debtors will accept one further bid from each of your clients.

- Your clients may bid more than their most recent bid or stand pat on their most recent bid.
- These final bids shall only address price and no other terms.
- Sale proceeds would be escrowed as in prior sale orders, pending further order of the Bankruptcy Court.
- These final bid shall be delivered to me by each of you as counsel for your respective clients by email to be received by me no later than Friday, July 27, 2017 at 5 p.m. Central Time.

Based on these final bids, the Debtors will select the highest and best bid, file a revised motion to approve that sale, and obtain a hearing. You will of course be provided notice of the revised motion and of the setting of the hearing. At that sale hearing, you are each encouraged to have a representative present as the Court may or may not conduct an auction at the hearing. Thanks to both of you and your clients for participating in this process." A copy of the July 27 email is attached hereto as Exhibit E.

23. Both parties timely submitted final bids and, on July 28, 2017. The bids are attached hereto as Exhibits F and G respectively.

24. Based on the bids, the Purchaser's offer in the amount of \$1.5 million is \$50,000 higher than JDH's bid of \$1.45 million. As a result, the Trust selected the Purchaser as the highest and best bidder for the Real Estate. Thus, under the terms of the revised offer from the Purchaser (the "Revised Offer"), the Purchaser will pay \$1.5 million for the Real Estate (the "Purchase Price").

25. The Revised Offer includes, but is not limited to, the following terms and conditions:

- a. Elimination of the due diligence period;
- b. No obligation for the Trust to obtain a title commitment or policy;
- c. No contingencies; and
- d. Closing will occur within 30 days after entry of an order approving the sale (collectively, the "Revised Sale Terms").

26. While, prior to the close of bidding, JDH pointed out to the Debtors non-economic reasons why its offers were better than the Purchaser, the Debtors have determined in their business judgment that those differences are not sufficient to overcome the higher purchase price offered by the Purchaser. In part, the Debtors based this decision on their familiarity with the Purchaser and based on that familiarity, their belief that the Purchaser's offer is genuine and that the Purchaser both has the capacity and the intent to close on this sale.

27. As in prior sales approved by the Court, the Trust will escrow the net sale proceeds pending further order of the Court.

28. While JDH sent another offer over the weekend following the close of the sale after bidding closed and after JDH learned it was not the high bidder, the Debtors believe that the offer of \$1.5 million under the terms of the final bid process is the highest offer as of the close of the bidding on July 28, 2017. The Debtors have repeatedly advised JDH that it would have the right to raise any sale process issues with this Court at a final hearing, including advising the Court of JDH's desire, now that the bidding has closed, to offer more money. Thus, it is the Debtors' view that post close-of-bidding issues should be resolved by the Court with the opportunity to hear from both bidders.

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

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

31. 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 \$90,000.00) will be saved, and consequently, the Trust will receive greater net proceeds than if a broker was involved.

32. The Trust has completed a competitive bidding process between the Purchaser and

JDH and, as a result of that process, it is clear that 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

33. 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).

34. A sale of assets of a debtor should be authorized pursuant to § 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)).

35. 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

36. 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

37. The ROFR is not filed of record against the Real Estate. The Court has approved rejection of the ROFR and the rejection order is a final order. As a result, the provisions of § 363(f) of the Bankruptcy Code 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. The Potential Atrium Interest

38. The Potential Atrium Interest is not filed of record with respect to the Real Estate.

39. Under Wisconsin law, "every conveyance that is not recorded as provided by law shall be void as against any subsequent purchaser, in good faith and for a valuable consideration,

of the same real estate or any portion of the same real estate whose conveyance is recorded first."
Wisc. Stat. Ann. § 706.08(1)(a).

40. Thus, the sale of the Real Estate can be approved free and clear of the Potential Atrium Interest pursuant to § 363(f)(1) of the Bankruptcy Code because it can be sold under Wisconsin law free of whatever claim unrecorded claim Atrium might assert.

41. In addition, a sale free and clear of the Potential Atrium Interest is proper under § 363(f)(4) of the Bankruptcy Code. The Potential Atrium Interest is not recorded in the Dane County, Wisconsin Register of Deeds Office and is therefore avoidable by the Trust as a bona fide purchaser under § 544(a)(3) of the Bankruptcy Code.

42. Courts will permit the sale free and clear of unrecorded real property interests. *See, e.g., In re Spanish Peaks Holdings II, LLC*, 2014 WL 929701, at *18 (Bankr. D. Mont. Mar. 10, 2014); *In re Bella Vista Assocs., LLC*, 2007 WL 4555891, at *8-10 (Bankr. D. N.J. Dec. 18, 2007); *accord In re Thulis*, 474 B.R. 668, (Bankr. W.D. Wisc. 2012). In *Thulis*, the trustee brought an action to avoid a mortgage under § 544(a)(3) of the Bankruptcy Code because the mortgage inadvertently omitted a description of Lot 1. The bankruptcy court, applying Wisconsin law, held that the trustee's status as a bona fide purchaser allowing the avoidance of the mortgage as to Lot 1 since Wisconsin law renders void any conveyance not filed of record. Here, any interest that Atrium may claim under the Potential Atrium Interest is neither in writing nor of record. Moreover, the Debtors served the Motion on Atrium and Atrium did not object to the Motion by the deadline of July 10, 2017. Thus, the Real Estate may be sold free and clear of the Potential Atrium Interest.

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

43. 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)).

44. 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.

45. 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

46. Finally, pursuant to Bankruptcy Rule 6004(h), cause exists for the fourteen-day stay set forth in Bankruptcy Rule 6004 to be waived. The Original Purchase Agreement expressly states that time is of the essence in completing the sale transaction. *See Exhibit B at § 7.7*. 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 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

47. Based on the forgoing, the Trust submits that the sale of the Real Estate to the Purchaser is in the best interests of the Trust's bankruptcy estate, is a proper exercise of the Trust's business judgment, 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 Original Purchase Agreement, as modified by the Revised Sale Terms, free and clear of all claims and interests including the ROFR and the Potential Atrium Interest, 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 Amended 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

Lot Two (2) of Certified Survey Map No. 10932 recorded in the County Register of Deeds Office in Volume 65 of Certified Survey Maps, page 22, as Document No. 3848059, in the City of Middleton, Dane County, Wisconsin.

PURCHASE AGREEMENT

THIS PURCHASE AGREEMENT (the "Agreement") is entered into on this 26 day of May, 2017, by and between Kraemer Development, LLC or its assigns ("Buyer") and The John Q. Hammons Revocable Trust dated December 28, 1989, as amended and restated ("Seller"). The Effective Date of this Agreement shall be the date on which the last party has signed this Agreement.

RECITALS

Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, the Property (as defined below), subject to and in accordance with the terms, conditions and other provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. PURCHASE OF THE PROPERTY

1.1. Agreement to Sell and Purchase. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, all of Seller's right, title and interest in and to the real property (including without limitation all easements, rights of way, and other rights appurtenant thereto) and improvements (including without limitation all building, structures, fixtures and equipment attached to or located in the buildings or on the land) described as follows: approximately 3.7 acres of vacant land located in the southwest quadrant of John Q Hammons Drive and Holiday Drive, City of Middleton, Dane County, Wisconsin; Parcel Number 255/0708-151-0225-2 (collectively, the "Property"), subject to and in accordance with the terms and conditions of this Agreement. A legal description for the transfer of the Property shall be obtained from First American Title Insurance Company, who will act as the title company and closing agent for the transfer of the Property (the "Title Company").

1.2. Purchase Price. Subject to the adjustments and prorations described in this Agreement, Buyer shall purchase the Property from Seller for a total purchase price of One Million Three Hundred Eighty Thousand and no/100 Dollars (\$1,380,000.00) (the "Purchase Price").

1.3. Payment. The Purchase Price shall be paid in the following manner:

a. Earnest Money. Within seven (7) days after the Court Approval Date, Buyer shall deposit Twenty Thousand and no/100 Dollars (\$20,000.00) with the Title Company as earnest money ("Earnest Money") to be applied against the Purchase Price at Closing.

If either party provides notice of termination to the other pursuant to a right provided in this Agreement, or if this transaction fails to close for any reason other than Buyer's default, Buyer shall be entitled to a refund of all Earnest Money. If, however, this transaction fails to close as a result of a default by Buyer, then the Earnest Money shall be paid to Seller as liquidated damages and Buyer shall have no further obligations or liabilities relating to the Offer to Purchase.

b. Balance. At Closing, Buyer shall pay Seller the remaining amount of the Purchase Price in cash, which shall be determined by taking into account the amounts paid as Earnest Money and the adjustments and prorations set forth below.

SECTION 2. DUE DILIGENCE

2.1. Seller's Deliveries. Within ten (10) days after the Court Approval Date, Seller shall provide Buyer with a copy of all of the following records relating to the Property that are in Seller's possession or control: (i) environmental reports and test results; (ii) documentation relating to storage tanks, hazardous materials, clean up activities or remediation; (iii) surveys; (iv) easements; (v) documents relating to zoning and use; (vi) current leases and amendments/extensions;(vii) title commitments and recorded easements, restrictions, declarations and covenants;; and (viii) communications to/from the governing municipality. Seller shall not be required to furnish to Buyer any documents that Seller has provided to Buyer prior to the Court Approval Date.

2.2. Buyer's Due Diligence.

a. Buyer would be purchasing the Property for the purpose of developing it for commercial use ("Intended Use").

b. Buyer shall have one hundred twenty (120) days after the Court Approval Date within which to complete those due diligence activities that Buyer deems necessary to satisfy itself that the Property can be used for Buyer's Intended Use, including without limitation performing any actions necessary with respect to inspections and testing of the Property, zoning and use, financing, governmental approvals, and evaluations of the feasibility of Buyer's planned purchase and operation of the Property and the feasibility and suitability of the Property for Buyer's Intended Use ("Due Diligence Period").

c. Buyer shall have the right to conduct any desired tests on the Property, including without limitation radon, lead, mold, asbestos, subsurface testing of soil and groundwater, and testing for environmental pollution. Buyer and its agents and representatives shall have the right to enter upon the Property to perform any and all inspections or testing of the Property; however, Buyer shall provide Seller with at least forty-eight (48) hours notice of entry onto the Property. Buyer shall repair at its cost any damage to the Property caused by the testing conducted by Buyer or its agents or representatives, and shall indemnify and hold Seller harmless from and against any

damages that Buyer or its agents or representatives caused to the person or property of third parties during the course of inspections or tests permitted under this Agreement.

d. As part of its due diligence, Buyer may obtain, at Buyer's expense, a current ALTA survey prepared by a Wisconsin licensed surveyor selected by Buyer. The survey shall identify the legal description of the Property, the boundaries and dimensions, visible encroachments, the location of any improvements, easements and rights of way. To be acceptable to Buyer, the survey shall show no significant encroachments or any information materially inconsistent with any information previously provided to Buyer. If the survey is not acceptable to Buyer for any reason, Buyer shall have the right to terminate this Agreement in accordance with Section 2.3 below.

2.3. Termination. One Hundred Dollars (\$100) of the Earnest Money shall be considered a "Termination Fee" paid by Buyer in exchange for the right to terminate this Agreement, which may be done by providing written notice to Seller of the same at any time prior to the expiration of the Due Diligence Period, for any reason relating to the feasibility of Buyer's planned purchase and operation of the Property or the suitability, feasibility, approval, condition or use of the Property for Buyer's Intended Use, in which case all Earnest Money shall be returned to Buyer and the parties shall have no further obligations under this Agreement. If Buyer elects not to terminate, the Termination Fee shall be credited against the Purchase Price at Closing. The parties acknowledge that Buyer will spend a significant amount of money conducting its Due Diligence, that such Due Diligence is essential to Buyer's ability to proceed with this transaction and that the Termination Fee is sufficient consideration for Buyer's right to terminate this Agreement as set forth in this paragraph. Buyer and Seller each agree that the Termination Fee constitutes good and valuable consideration, that a contract has been formed, and that they will not challenge the validity or enforceability of the Agreement on the basis that it is an illusory contract and both parties hereby waive such arguments, claims, and defenses.

2.4. Title Evidence. Within 10 days after the Court Approval Date, Seller shall provide Buyer with an ALTA commitment for marketable title insurance on the Property issued by the Title Company, committing said title insurance company to issue title insurance to the Property by an owner's standard form ALTA policy in the amount of the Purchase Price, showing all liens, encumbrances and other matters of record, together with legible copies of all documents that appear as exceptions to title. Municipal and zoning ordinances, public utility easements, and recorded building and use restrictions shall be considered Permitted Exceptions, provided that none of the foregoing would interfere with Buyer's Intended Use of the Property.

If the title is not acceptable for closing, Buyer shall provide written notice to Seller of any objections to title within the Due Diligence Period or within fifteen (15) days after Buyer's receipt of the relevant commitment, whichever is later. Seller shall have five (5) days to remove the objections. If Seller refuses or fails to resolve Buyer's objections by that deadline, Buyer shall have the right to terminate this transaction by providing Seller with written notice and in such case, Buyer's Earnest Money shall be returned and neither party shall have any further obligations under this Agreement. If Buyer fails to deliver such notice within the deadline set forth herein then Buyer shall be deemed to have approved of the condition of title as shown by such commitment. Exceptions to title approved by Buyer shall become part of the Permitted Exceptions.

Buyer shall pay for the issuance of a standard title insurance policy in the amount of the Purchase Price. Buyer shall also provide a GAP endorsement to the title insurance policy, at Buyer's cost. Buyer may request any additional endorsements to the title policy, at Buyer's expense.

SECTION 3. CLOSING

3.1. Time and Place. The Closing on the transaction shall take place at the Title Company no later than thirty (30) days after the expiration of the Due Diligence Period, unless another date or location is mutually agreed upon by the parties ("Closing").

3.2. Seller's Obligations. At the Closing, Seller shall do the following:

a. Deed. Execute, acknowledge and deliver to Buyer a warranty deed conveying title to the Property subject only to the Permitted Exceptions. The Property shall be conveyed as a single parcel free and clear of all leases, mortgages and other security interests.

b. Affidavits. If requested by the Title Company, execute, acknowledge and deliver affidavits, in a form acceptable to the Title Company, which are sufficient to cause the Title Company to delete the standard exceptions to title relating to construction liens and tenants, and to issue a gap endorsement to the title insurance policy.

c. Delivery of Possession. Deliver possession of the Property to Buyer.

d. Transfer Tax Return. Execute and deliver to the Title Company any documents necessary relating to the transfer tax return filing.

e. Closing Statement. Execute and deliver to the Title Company a closing statement setting forth all payments and adjustments thereto at Closing.

f. Certificate of Non-Foreign Status. Execute and deliver to Title Company a certificate of non-foreign status meeting the requirements of Section 1445 of the Internal Revenue Code.

g. Form W-9. Complete, execute, and deliver to Title Company the Department of the Treasury-Internal Revenue Service Form W-9 ("Request for Taxpayer Identification Number and Certificate").

h. Other. Provide other documents required by this Agreement or reasonably necessary to consummate the transactions contemplated by this Agreement.

3.3. Buyer's Obligations. At the Closing, Buyer shall do the following:

a. Closing Statement. Execute and deliver to Title Company a counterpart of the agreement described at Section 3.2(e).

b. 1099 Report. Execute and deliver to Seller for filing with the Internal Revenue Service a 1099 reporting form describing this transaction.

c. Other. Provide other documents required by this Agreement or reasonably necessary to consummate the transactions contemplated by this Agreement.

3.4. Prorations. All expenses relating to the Property shall be paid, prorated or adjusted as of the day prior to the Closing Date, including without limitation any real estate taxes, private and municipal charges, fuel and the like.

a. Property Taxes. Seller shall pay all property taxes for the years preceding Closing. Real property taxes levied for the year of Closing shall be prorated on a daily basis to the Closing Date using the actual real property taxes levied for the year of Closing, and Buyer shall receive a credit to the Purchase Price at Closing for Seller's pro rata share. If the actual tax levy is not known at the time of Closing, Buyer and Seller shall prorate the real property taxes at the time of Closing on a daily basis based on the net real property taxes for the previous year.

b. Special and Area Assessments. Seller shall pay all special and area assessments for work actually commenced, completed, or levied prior to the Court Approval Date. All special and area assessments against the Property which are payable in annual installments, including installments falling due after the Closing, shall be charged to Seller, and shall be paid at Closing, or at Buyer's election, Buyer shall receive a credit at Closing to the Purchase Price for the amount of such assessments. If any installment is not payable at Closing for any reason, the amount thereof, including interest to be paid thereon at due date, shall be charged to the account of Seller and credited to Buyer.

c. Utilities. Seller shall pay all metered utility charges, including charges for sewer, electricity, gas and water on the basis of the meter readings taken as of the Closing Date or as soon thereafter as such meters are read.

d. Recording Fees. Buyer shall pay all recording fees, except that Seller shall pay the recording fees for such documents as are required to be recorded in order to cause title to the Property to be in the condition called for by this Agreement.

e. Transfer Taxes. Seller shall pay any Wisconsin Real Estate Transfer Taxes due and owing as a result of the transfer of the Property.

SECTION 4. REPRESENTATIONS AND WARRANTIES

4.1. Seller's Representations. Seller warrants and represents that to the best of Seller's knowledge, without any obligation to engage in due diligence in connection therewith:

a. The Property is currently in compliance with all applicable zoning requirements, building codes and municipal ordinances;

b. There are no pending or outstanding violations, citations, or legal actions relating to the Property;

c. No person or entity has any right, title or interest in the Property other than Seller, and Seller's lender, if any, and there are no tenants on the Property;

d. (i) Seller is not aware of the presence, either now, or at any other time, in, on or under the Property any above-ground or underground storage tank(s) used for the storage of petroleum, petroleum by-products or other Hazardous Substances and (ii) Seller is not aware of any Hazardous Substances present in, on, or under the Property in violation of any applicable federal, state, or local environmental law. For purposes of this Agreement, Hazardous Substances shall mean: any substance discharged, spilled or otherwise released which is designated, defined, classified or regulated as a hazardous substance, hazardous material, hazardous waste, pollutant or contaminant under any applicable law currently in effect as of the Court Approval Date; petroleum hydrocarbon, including crude oil or any fraction thereof and all petroleum products; PCBs; lead; friable asbestos; flammable explosives; infectious materials; or radioactive materials;

e. Seller is in compliance with (i) all environmental permits, licenses, approvals and any other authorizations which are required in connection with Seller's ownership or operation of the Property, and (ii) all governmental laws, regulations, rules, decrees, ordinances, judicial or administrative orders and judgments pertaining to human health or safety or Hazardous Substances;

f. With respect to the Property, Seller has not received any written notification of a release of a Hazardous Substance pursuant to any law or regulation, nor any request for any information, notice of claim, demand or other notification that Seller may be responsible for any investigation or clean-up of a Hazardous Substance at the Property, and Seller has no information or knowledge regarding any such release, request for information, notice of claim, or demand;

g. There are no service contracts or equipment leases which apply to the Property and will be binding on Buyer after the Closing;

h. No demands, claims, or litigation, including but not limited to condemnation, eminent domain, or similar proceedings, have been brought or made against Seller with respect to the Property other than litigation relating to a Right of First Refusal brought by JD Holdings regarding the Property;

- i. Seller shall not commit waste with respect to the Property;
- j. On the Closing Date, the Property shall be subject to no easements, rights-of-way, leases, liens or other encumbrances of any nature excepting the Permitted Easements. All other liens and encumbrances shall be discharged by Seller, at Seller's expense, at or prior to the Closing;
- k. The Property is not located in a flood plain or erosion hazard area; and
- l. Seller has not granted any person or entity a right of first refusal or option to purchase the Property.

These warranties and representations shall be true on the date of Closing and survive that date.

4.2. Seller's Bankruptcy Proceeding. This Agreement is contingent upon Seller obtaining the approval of the United State Bankruptcy Court for the District of Kansas, and all disclosures and due diligence deadlines set forth herein for either party shall commence from the date the United States Bankruptcy Court for the District of Kansas approves this agreement (the "Court Approval Date"). Seller agrees to present this Agreement 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 Agreement is not approved, then the Agreement shall be deemed to be mutually cancelled, Seller shall return to Buyer its Earnest Money deposit, and neither party shall have any further obligations under this Agreement.

4.3. Continued Maintenance and Operation. Until Closing, Seller shall maintain the Property in materially the same condition that the Property is in as of the Effective Date, and further, shall continue to operate the Property in a commercially reasonable manner while the sale of the Property is pending, including but not limited to ensuring that required maintenance is completed timely and in a good and workmanlike manner.

4.4. Seller's Authority. Subject to the approval required by Section 4.2, Seller represents that it has the power and authority to sell, transfer and convey the property to Buyer, and those persons signing below on behalf of Seller personally warrant that they have the authority to act as Seller's agent or agents in the sale for the transfer and conveyance of the property by Warranty Deed to Buyer. Seller shall provide Buyer with documents evidencing that the sale of the Property has been properly authorized by Seller no later than ten (10) days after the Court Approval Date.

4.5. Assignment of Warranties. At Closing, Seller shall execute and deliver to Buyer an assignment of all assignable warranties or guarantees relating to the Property. Buyer acknowledges that this paragraph shall only apply to the extent any such warranties and guarantees exist and are assignable and that Seller makes no express or implied warranty regarding same.

SECTION 5. COMMISSIONS

5.1. Commissions. Neither party has retained the services of a broker for this transaction.

SECTION 6. CONFIDENTIALITY

6.1. Confidentiality. Neither party will disclose the terms or subject matter of this Agreement to any third party without the other party's prior written consent, except that each party may disclose the necessary information to their legal, financial, or accounting advisors and to any municipal or court officials who have a need to know such information.

SECTION 7. GENERAL PROVISIONS

7.1. Entire Agreement. This document contains the entire agreement between Buyer and Seller and all prior negotiations and agreements are merged into and superseded by this Agreement. This Agreement shall inure to the benefit of and shall bind the parties hereto, their respective heirs, executors, successors or assigns.

7.2. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

7.3. Indemnification. Any warranty, representation or agreement herein contained shall survive the Closing, and Seller shall indemnify Buyer from and against any and all costs, expenses, liabilities and damages, including attorney's fees, arising out of the breach of any such warranty, representation or agreement by Seller.

7.4. Modifications. This Agreement may be amended or modified only by written instrument duly executed by both of the parties hereto.

7.5. Notices. Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered, by email, overnight courier, or mailed by certified or registered mail, return receipt requested, to the person and address set forth below:

To Seller: John Q Hammons Revocable Trust dated 12/28/1989
Attn: Gregg Groves/Jacqueline Dowdy, Successor Trustees
300 John Q Hammons Pkwy Ste 900
Springfield MO 65806
Email: Gregg.groves@jqh.com

To Buyer: Kraemer Development, LLC
Attn: Jeff M. Kraemer
7601 University Avenue, Suite 202
Middleton WI 53562

Email: jeff@kraemerdevelopment.com

With a copy to: Jenifer L. Kraemer
von Briesen & Roper, sc
10 East Doty, Suite 900
Madison, WI 53703
Email: jkraemer@vonbriesen.com

Notice shall be deemed delivered (a) in the case of personal delivery, on the date when personally delivered; (b) upon confirmation of email transmission; (c) one business day after deposit with the overnight courier; or (d) in the case of certified or registered mail, on the date when deposited in the United States mail with sufficient postage to effect such delivery. Notices given by any other method of delivery which are actually received by the intended recipient shall be deemed to have been properly delivered and received upon the date of actual receipt. Either party may change the address to which notice must be given by delivery of written notice to the other party in accordance with this Section.

7.6. Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if the invalid, illegal or unenforceable provision had never been contained herein.

7.7. Time of Essence. Time is of the essence with respect to all dates and deadlines in this Agreement.

7.8. Deadlines. Deadlines expressed as a number of days from an event are calculated by excluding the day the event occurred and counting subsequent calendar days. The deadline expires at midnight on the last day. If the last day of any deadline falls on a weekend or holiday, it shall automatically be deemed to occur at midnight on the next business day.

7.9. Cooperation. Seller and Buyer agree to cooperate in the prosecution of applications made by either party for any governmental certificates or approvals appropriate or necessary for the consummation of the transactions contemplated by this Agreement or the use and occupancy of the Property. Seller and Buyer each agree at any time or from time to time at the written request of the other to sign and deliver such other documents as may be reasonably requested or as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Agreement.

7.10. Default. Buyer and Seller each have an obligation to use good faith in performing their obligations under this Agreement. In the event of a breach of this Agreement by one party, the other party shall have the remedies set forth herein, or in the event no such remedy is provided, any remedies available in law or in equity.

7.11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Signatures conveyed by facsimile or electronic means shall be as valid and binding as an original signature.

7.12. Headings. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

7.13. Acceptance. This Agreement is binding upon both parties only if an executed copy of this Agreement is delivered to Buyer on or before May 26, 2017. Buyer may revoke this Agreement at any time prior to acceptance.

IN WITNESS WHEREOF, the persons signing below have executed this Agreement on behalf of their respective parties.

BUYER: KRAEMER DEVELOPMENT, LLC

By: Jeff M. Kraemer
Jeff M. Kraemer, Sole Member

Date: 5-26-17

**SELLER: JOHN Q HAMMONS REVOCABLE TRUST DATED 12/28/89,
AS AMENDED AND RESTATED**

By: Jacqueline A. Dowdy

Name: Jacqueline A. Dowdy

Title: Successor Trustee

Date: 5-25-17

By: Gregory D. Groves

Name: Gregory D. Groves

Title: Successor Trustee

Date: 5-25-17

EXHIBIT C – CHRONOLOGY OF BIDDING PROCESS

- **July 18, 2017:**
 - Kraemer Development, LLC ("Kraemer") sends an email confirming it agrees to match the most recent offer made by JD Holdings, LLC ("JDH"), increasing the purchase price to \$1.4 million, making an earnest money deposit of \$200,000, and closing within 30 days of court approval.
 - The Trust sends an email to JDH, advising JDH of Kraemer's counteroffer matching JDH's most recent offer and requesting that bids continue on the economic terms in purchase price increments of \$50,000.00.

- **July 21, 2017:**
 - JDH sends an email contending that Kraemer must exceed – not match – JDH's revised bid to be the prevailing bidder. JDH makes a counteroffer to the Trust with the following terms:
 - No due diligence period at all;
 - No obligation for the Trust to obtain a title insurance commitment or policy for JDH;
 - No pre-closing period;
 - Closing to occur one business day after entry of the order approving the sale; and
 - Purchase price increased from \$1.4 million to \$1.41 million.
 - The Trust responds to JDH that it will continue to allow Kraemer to match JDH's revised offers subject to final approval by the Court at a hearing. The Trust observes that JDH failed to comply with the Trust's requirement that bids be increased in \$50,000 increments, and asks for confirmation that JDH does not intend to comply with the Trust's bidding requirements.
 - The Trust sends JDH a draft of a proposed order that memorializes the Court's rulings at the July 17, 2017 hearing with respect to the bidding process. The proposed order requires the sale process with Kraemer to be completed by July 27, 2017.

- **July 22, 2017:**
 - JDH confirms that it will only increase its bid by \$10,000 to \$1.41 million and continues to object to Kraemer being permitted to match JDH's bids.

- **July 26, 2017:**
 - JDH provides its edits to the proposed order, including a requirement – one not made by the Court – to require that any auction be held on or before August 3, 2017.

- **July 27, 2017:**
 - Kraemer makes a counteroffer to the Trust with the following terms:
 - No due diligence period;
 - No obligation for the Trust to obtain a title insurance commitment or policy for Kraemer;
 - No pre-closing period or contingencies;
 - Closing to occur 30 days after entry of the order approving the sale; and
 - Purchase price increased to \$1.42 million.
 - The Trust sends an email to both Kraemer and JDH, informing them that the Trust has decided to conclude the bidding process in the following manner:
 - The Trust will accept one further bid from Kraemer and JDH;
 - Kraemer and JDH may increase their bids or stand pat on their most recent bids;
 - The final bids shall only address price and no other terms;
 - The sale proceeds shall be escrowed as in prior sales, pending further order of the Bankruptcy Court; and
 - The final bids shall be delivered to counsel for the Trust by email to be received no later than July 28, 2017 at 5:00 p.m. central time.

- **July 28, 2017:**
 - JDH sends an email asking whether Kraemer has topped JDH's bid of \$1.41 million and asking about the non-economic terms of the sale.
 - The Trust sends an email asking that JDH comply with the rules outlined on July 27, 2017 and submit its cash bid by 5:00 p.m. central time.
 - Kraemer submits its final bid of \$1.5 million.
 - JDH submits its final bid of \$1.45 million.
 - The Trust sends emails to JDH and Kraemer, informing them that the Trust has selected Kraemer as the highest and best bidder at the purchase price of \$1.5 million.

- **July 29, 2017:**
 - JDH sends an email to the Trust attempting to make an additional bid of \$1.6 million and increasing the earnest money deposit to \$400,000.

**IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF KANSAS**

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

**ORDER CONTINUING HEARING ON DEBTORS' MOTION (No. 5) 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**

On the 17th day of July, 2017, the Court held a hearing (the "Hearing") to consider (a) the Debtors' Amended Motion (No. 4) 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 [ECF Doc. 1117] (the "Motion"); and (b) the Objection to Debtors' Motion (No. 4) 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 [ECF Doc. 1123] (the "Objection") filed by JD Holdings LLC ("JDH"). No other objections were filed.

At the hearing, the Debtors reported to the Court that there are two parties bidding on the real estate that is the subject of the Motion (the "Real Estate"): Kraemer Development, LLC ("Kraemer") and JDH. The Debtors requested additional time to solicit revised bids from Kraemer and JDH. Accordingly, based on the foregoing, and for good cause shown, and based on the statements of counsel at the Hearing, the Court hereby ORDERS as follows:

1. The hearing on the Motion is hereby continued subject to call at the request of the Debtor or any other party in interest.

2. Upon the Court's receipt of such a request, the Court will set a hearing on the Motion for a special setting.

3. The Debtors shall select as the proposed winning offer for the Real Estate the highest or otherwise best offer, Kraemer and JDH are encouraged to complete the bidding process as quickly as possible, but in no event later than July 27, 2017. If the Debtors do not select a proposed winning offer by July 27, 2017, then the Real Estate shall be sold at an auction to be held on or before August 3, 2017, and conducted pursuant to bidding procedures that will be entered by this Court.

3.-4. The other statements and rulings made by the Court at the July 17, 2017 hearing on the Motion are incorporated herein.¹

4. Any other issues related to the Motion and the sale transaction set forth therein, including but not limited to the issues raised by JDH in the Objection, shall be addressed at the continued hearing.

IT IS SO ORDERED.

¹ Note to draft: It was unclear to what issues, if any, the prior paragraph 4 was referring.

###

SUBMITTED BY:

STINSON LEONARD STREET LLP

By: /s/ Mark Shaiken _____

Mark Carder KS # 11529

Mark Shaiken KS # 11011

1201 Walnut, Suite 2900

Kansas City, MO 64106

Telephone: (816) 842-8600

Facsimile: (816) 691-3495

mark.carder@stinson.com

mark.shaiken@stinson.com

COUNSEL FOR THE DEBTORS

Zluticky, Nicholas

From: Shaiken, Mark
Sent: Thursday, July 27, 2017 5:54 PM
To: 'Jed Schwartz (jschwartz@milbank.com)'; 'Jenifer L. Kraemer'
Cc: Shinderman, Mark; Jonathan Margolies (jmargolies@mcdowellrice.com)
Subject: Hammons: Sale of Middleton Property

The Debtors have decided in their business judgment to proceed to conclude the bidding for the Middleton property in the following manner:

- The Debtors will accept one further bid from each of your clients.
- Your clients may bid more than their most recent bid or stand pat on their most recent bid.
- These final bids shall only address price and no other terms.
- Sale proceeds would be escrowed as in prior sale orders, pending further order of the Bankruptcy Court.
- These final bid shall be delivered to me by each of you as counsel for your respective clients by email to be received by me no later than Friday, July 27, 2017 at 5 p.m. Central Time.

Based on these final bids, the Debtors will select the highest and best bid, file a revised motion to approve that sale, and obtain a hearing. You will of course be provided notice of the revised motion and of the setting of the hearing.

At that sale hearing, you are each encouraged to have a representative present as the Court may or may not conduct an auction at the hearing.

Thanks to both of you and your clients for participating in this process.

Mark

Zluticky, Nicholas

From: Jenifer L. Kraemer <jkraemer@vonbriesen.com>
Sent: Friday, July 28, 2017 2:25 PM
To: Shaiken, Mark
Cc: Jeff Kraemer (work)
Subject: RE: Hammons: Sale of Middleton Property

Mark,

In response to your email below, Kraemer Development is offering to increase its purchase price to One Million Five Hundred Thousand Dollars (\$1,500,000) for the Middleton property.

Please let me know if you need anything further. Thank you.

Jeni

Jenifer L. Kraemer
von Briesen & Roper, s.c.
10 East Doty Street, Suite 900
Madison, WI 53703

Direct: 608-310-3608
Fax: 608-316-3166
jkraemer@vonbriesen.com | [vcard](#) | [bio](#)
vonbriesen.com

From: Shaiken, Mark [<mailto:mark.shaiken@stinson.com>]
Sent: Thursday, July 27, 2017 5:54 PM
To: 'Jed Schwartz (jschwartz@milbank.com)'; Jenifer L. Kraemer
Cc: Shinderman, Mark; Jonathan Margolies (jmargolies@mcdowellrice.com)
Subject: Hammons: Sale of Middleton Property

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- Your clients may bid more than their most recent bid or stand pat on their most recent bid.
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Mark

Mark Shaiken | Partner | Stinson Leonard Street LLP

6400 S. Fiddlers Green Circle, Suite 1900 | Greenwood Village, CO 80111

T: 303.376.8422 | F: 816.412.8197

mark.shaiken@stinson.com | www.stinson.com

Legal Administrative Assistant: Laura Carlson | 303.376.8420 | laura.carlson@stinson.com

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Zluticky, Nicholas

From: Schwartz, Jed <JSchwartz@milbank.com>
Sent: Friday, July 28, 2017 4:58 PM
To: Shaiken, Mark
Cc: Shinderman, Mark; 'jmargolies@mcdowellrice.com'
Subject: RE: Hammons: Sale of Middleton Property
Attachments: 170721 Purchase and Sale Agreement - Atrium 3rd Counteroffer copy (4819-....pdf)

Mark:

As I mentioned below, the non-price terms matter. For example, is the Kraemer bid contingent? Will Kraemer be required to close if there is a title defect? The Trust's refusal to identify the non-price terms for the sale or even to confirm that Kraemer has matched JD Holdings' non-price terms is inconsistent with the Court's instructions to conduct an auction on an "apples to apples" basis.

Nevertheless, JD Holdings is willing to increase its bid price to \$1,450,000, with all other terms from its prior bid, as reflected in the attached PSA from July 21, remaining the same. To the extent that JD Holdings is not selected as the winning bid, JD Holdings will request that the court hold an auction, at which JD Holdings will be prepared to top a bona fide bid by Kraemer.

As previously indicated, JD Holdings reserves all rights with respect to these cases.

Jed

Jed Schwartz | Milbank

28 Liberty Street | New York, NY 10005-1413
T: +1 212.530.5283 | F: +1 212.822.5283
JSchwartz@milbank.com | www.milbank.com

From: Shaiken, Mark [mailto:mark.shaiken@stinson.com]
Sent: Friday, July 28, 2017 1:42 PM
To: Schwartz, Jed <JSchwartz@milbank.com>
Cc: Shinderman, Mark <mshinderman@milbank.com>; 'jmargolies@mcdowellrice.com'
<jmargolies@mcdowellrice.com>
Subject: RE: Hammons: Sale of Middleton Property

Jed, I have no other information to provide you and the rules set forth below are straightforward. Please either comply with the rules below that we are utilizing and provide the cash bid by 5 central time today, or advise you will not.

Thanks,

Mark

Mark Shaiken | Partner | Stinson Leonard Street LLP
6400 S. Fiddlers Green Circle, Suite 1900 | Greenwood Village, CO 80111
T: 303.376.8422 | F: 816.412.8197

From: Schwartz, Jed [<mailto:JSchwartz@milbank.com>]
Sent: Friday, July 28, 2017 11:27 AM
To: Shaiken, Mark
Cc: Shinderman, Mark; 'jmargolies@mcdowellrice.com'
Subject: RE: Hammons: Sale of Middleton Property

Mark,

Has Kraemer topped JD Holdings' last bid, which was the highest and best the JQH Trust had received?

Separately, price is a function of the non-price terms. If the final bids are to address only price, what are the non-price terms of the sale? For example, how much should we assume for a deposit, is there a due diligence or other contingency, and will the seller provide title insurance?

Jed

Jed Schwartz | Milbank

28 Liberty Street | New York, NY 10005-1413
T: +1 212.530.5283 | F: +1 212.822.5283
JSchwartz@milbank.com | www.milbank.com

From: Shaiken, Mark [<mailto:mark.shaiken@stinson.com>]
Sent: Thursday, July 27, 2017 6:54 PM
To: Schwartz, Jed <JSchwartz@milbank.com>; Jenifer L. Kraemer <jkraemer@vonbriesen.com>
Cc: Shinderman, Mark <mshinderman@milbank.com>; Jonathan Margolies (<jmargolies@mcdowellrice.com> <jmargolies@mcdowellrice.com>)
Subject: Hammons: Sale of Middleton Property

The Debtors have decided in their business judgment to proceed to conclude the bidding for the Middleton property in the following manner:

- The Debtors will accept one further bid from each of your clients.
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- Sale proceeds would be escrowed as in prior sale orders, pending further order of the Bankruptcy Court.
- These final bid shall be delivered to me by each of you as counsel for your respective clients by email to be received by me no later than Friday, July 27, 2017 at 5 p.m. Central Time.

Based on these final bids, the Debtors will select the highest and best bid, file a revised motion to approve that sale, and obtain a hearing. You will of course be provided notice of the revised motion and of the setting of the hearing.

At that sale hearing, you are each encouraged to have a representative present as the Court may or may not conduct an auction at the hearing.

Thanks to both of you and your clients for participating in this process.

Mark

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Legal Administrative Assistant: Laura Carlson | 303.376.8420 | laura.carlson@stinson.com

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