

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

IN RE: §
LACK’S STORES, INCORPORATED, § CASE NO. 10-60149
ET AL.,¹ § (Chapter 11)
DEBTORS. § (Jointly Administered)
§

**NOTICE OF SALE PROCEDURES, AUCTION DATE, AND SALE HEARING OF
DEBTOR’S STORE NO. 106 (OWNED REAL PROPERTY)**

5802 North Navarro, Victoria, Texas 77904

On January 12, 2011, the Court entered its *Order Approving Procedures and Bid Protections for the Sales of Real Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Owned Real Property)* [Docket No. 365] (the “Sale Procedures Order”) in which it approved, among other things, a procedure for the sale of certain real property and improvements owned by Lack Properties, Inc. (“Lack Properties”).

Lack Properties and Tim LaQuay and Linda LaQuay have executed that certain Purchase and Sale Agreement dated effective as of February 9, 2011 (as amended by the First Amendment to Purchase and Sale Agreement (Store #106, Victoria, Texas) entered into on February 21, 2011 and the Second Amendment to Purchase and Sale Agreement (Store #106, Victoria Texas) entered into on March 17, 2011, the “PSA”), relating to the real property and improvements located at 5802 North Navarro, Victoria, Texas 77904, (the “Owned Real Property”). A copy of the PSA is available free of charge at www.kccllc.net/lacks by clicking on the link titled “Real Property Interests – Sales and Assignments.” Lack Properties, Lack’s Stores, Incorporated, Merchandise Acceptance Corporation, and Lack’s Furniture Centers, Inc. (collectively, the “Debtors”) seek Court approval of the PSA pursuant to, among other provisions, Bankruptcy Code § 363, subject to higher or better offers as more particularly set forth in the Sale Procedures that are attached hereto as **Exhibit A**. The Debtors propose that the sale be free and clear of all liens, claims, encumbrances, and other interests, with any holder’s lien, claim, encumbrance, or other interest attaching to the proceeds of the sale with the same nature, validity, and priority of that interest prior to the proposed sale. The Owned Real Property will be sold on such other terms set forth in the *Debtors’ Expedited Motion to Approve Procedures and Bid Protections for the Sales of Real Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Owned Real Property)* [Docket No. 234].

¹ The Debtors and the last four digits of their tax identification numbers are Lack’s Stores, Incorporated (6528), Merchandise Acceptance Corporation (0972), Lack’s Furniture Centers, Inc. (9468), and Lack Properties, Inc. (8961).



The following dates and deadlines apply to the sale of the Owned Real Property, as contemplated under the PSA and the Sale Procedures:

- Bid Deadline: April 1, 2011, at 4:00 p.m., prevailing Central Time
- Objection Deadline: April 1, 2011, at 4:00 p.m., prevailing Central Time
- Auction Date: April 6, 2011, at 2:30 p.m. prevailing Central Time at the United States Courthouse, Courtroom of the Honorable Jeff Bohm, 515 Rusk Avenue, Houston, Texas, 77002
- Hearing Date: April 6, 2011, at 2:30 p.m. prevailing Central Time at the United States Courthouse, Courtroom of the Honorable Jeff Bohm, 515 Rusk Avenue, Houston, Texas, 77002

If you oppose the sale of the Owned Real Property you must timely file and serve an objection. Other important information, including dates and deadlines, are set forth in the Sale Procedures. You should read the *Debtors' Expedited Motion to Approve Procedures and Bid Protections for the Sales of Real Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Owned Real Property)* [Docket No. 234], the Sale Procedures Order, the Sale Procedures, and this Notice carefully as your rights may be affected.

All requests for information concerning the Owned Real Property should be directed in writing to DJM Realty Services, LLC, Attn: Jim Avallone, 445 Broadhollow Road, Suite 225, Melville, New York, 11747, (o) 631.927.0024, (f) 631.752.1231, javallone@djmrealty.com.

Dated: March 17, 2011

Respectfully submitted,

VINSON & ELKINS LLP

By: /s/ Michaela C. Crocker

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ATTORNEYS FOR THE DEBTORS

EXHIBIT A**SALE PROCEDURES FOR OWNED REAL PROPERTY****A. Owned Real Property to be Sold**

The property to be sold consists of the real property and improvements located at **5802 North Navarro, Victoria, Texas 77904** and any other assets (the "Owned Real Property") as more particularly set forth in that certain Purchase and Sale Agreement dated effective as of February 9, 2011 (as amended by the First Amendment to Purchase and Sale Agreement (Store #106, Victoria, Texas) entered into on February 21, 2011 and the Second Amendment to Purchase and Sale Agreement (Store #106, Victoria, Texas) entered into on March 17, 2011, the "PSA") by and between Lack Properties, Inc. ("Lack Properties") and Tim LaQuay and Linda LaQuay (together, the "Proposed Purchaser"). The Proposed Purchaser has agreed to purchase the Owned Real Property for **\$2,210,000** cash at Closing (as defined in the PSA) plus other consideration, all of which is subject to these Sale Procedures. The Owned Real Property will be sold free and clear of all liens, claims, encumbrances, and other interests and on such other terms set forth in the *Debtors' Expedited Motion to Approve Procedures and Bid Protections for the Sales of Real Property Free and Clear of Liens, Claims, Encumbrances, and Other Interests (Owned Real Property)* [Docket No. 234].

B. Selection of Qualified Bidders

Of the parties willing to submit a cash bid subject to the minimum overbid requirement set forth below (each a "Potential Purchaser"), the Debtors will select the parties who possess the necessary qualifications to bid. In order to qualify as a Potential Purchaser, a bidder must demonstrate its willingness to bid in accordance with these Sale Procedures. The Debtors may require any Potential Purchaser to execute a confidentiality agreement in form and substance satisfactory to the Debtors.

To be a "Qualified Bid," it must be a bid:

- A. that is an all cash bid that consists of an executed version of the PSA acceptable to the Debtors (with any alterations clearly marked) except for the purchase price, which is subject to the overbid requirement set forth below (the "Bidder Agreement");
- B. that expressly states that such bid is irrevocable until the earlier to occur of (i) the Closing (as defined herein), and (ii) forty-five days following the Auction (as defined below);
- C. the cash amount of which (with respect to the initial round of bidding) is not less than **\$55,000** in excess of the consideration payable by the Proposed Purchaser under the PSA, and with respect to each subsequent round of bidding at the Auction is in excess of the aggregate consideration contained in the highest standing Qualified Bid by an amount determined to be appropriate by the Debtors prior to, at, or during the Auction;

- D. that is accompanied by reasonably satisfactory evidence of committed financing or other ability to perform the transaction and provides an earnest money deposit of **10% of the proposed purchase price** (the "Earnest Money Deposit") in the form of a certified check or wire transfer to the Debtors in care of Chicago Title Insurance Company for the sale of the Owned Real Property, such Earnest Money Deposit being refundable (subject to the other terms of this Sale Procedures) if the bid is not approved by the Bankruptcy Court as the highest bid;
- E. that (i) provides sufficient indicia that such potential bidder or its representative is legally empowered, by power of attorney or otherwise, and financially capable to (A) bid on behalf of such bidder; and (B) complete and sign, on behalf of such bidder, a binding and enforceable purchase and sale agreement; and (ii) does not contain any contingencies as to the validity, effectiveness, and/or binding nature of the offer including, without limitation, contingencies for financing, due diligence, or inspection, and is irrevocable;
- F. that states that the Potential Purchaser is not acquiring any intercompany lease or any claims with respect to such lease, including, but not limited to, claims pursuant to section 502(b)(6) of the Bankruptcy Code; and
- G. that meets all other requirements of the Sale Procedures.

In order for a Potential Purchaser to qualify as a "Qualified Bidder" and be permitted to bid on the Owned Real Property, in the Debtors' sole discretion, such Potential Purchaser:

- A. must have been deemed "financially qualified" by the Debtors which at a minimum will require any such Potential Purchaser to (i) provide documentation establishing that such person has sufficient cash on hand or a binding financial commitment from an established and financially sound financial institution to ensure such Potential Purchaser's ability to meet its commitment pursuant to its bid and close the transaction within the time frame established; and (ii) demonstrate to the Debtors' satisfaction that it has the legal capacity to complete the sale it is proposing and to satisfy the conditions under the Bidder Agreement;
- B. must have delivered to the Debtors a Qualified Bid; and
- C. must meet all other requirements of the Sale Procedures.

No Potential Purchaser will be a Qualified Bidder and have its bid considered by the Debtors unless such person has met the above requirements. The Debtors will promptly notify any Potential Purchaser who is selected as a Qualified Bidder of such selection.

C. The PSA and Due Diligence

The Debtors will send to each Potential Purchaser a copy of the PSA. The Debtors will provide reasonable cooperation with respect to any requested due diligence. The Debtors are not

required to provide confidential or proprietary information to a competitor if the competitor has not executed a confidentiality agreement or the Debtors reasonably believe that such disclosure would be detrimental to the interests and operations of Lack Properties or any of the other Debtors.

D. Submission of Bids

Any Potential Purchaser desiring to submit a Qualified Bid for the Owned Real Property (a "**Bid**") and to participate in the Auction must deliver its Bid in writing to Vinson & Elkins LLP, Attn: Paul E. Heath, 2001 Ross Avenue, Suite 3700, Dallas, Texas, 75201, (f) 214.999.7976, pheath@velaw.com and DJM Realty Services, LLC, Attn: Jim Avallone, 445 Broadhollow Road, Suite 225, Melville, New York, 11747, (f) 631.927.0024, javallone@djmrealty.com, so that the Bid is actually received not later than **April 1, 2011 at 4:00 p.m., prevailing Central Time**. The Debtors will promptly provide copies of those Bids to the Official Committee of Unsecured Creditors (the "Committee") and to The CIT Group / Business Credit, Inc., as agent (in such capacity, the "Agent").

No Bid received at or prior to the Auction will under any circumstances (i) be deemed to be a higher and better cash bid than the cash bid of the Proposed Purchaser or (ii) be accepted by the Debtors, unless, among other things, such Bid would, if accepted by the Debtors, result in Lack Properties receiving aggregate cash consideration for the Owned Real Property of not less than **\$55,000 in excess** of the consideration payable by the Proposed Purchaser under the PSA.

E. The Auction and Selection of the Successful Bid

The auction will be conducted at the **United States Courthouse, Courtroom of the Honorable Jeff Bohm, 515 Rusk Avenue, Houston, Texas, 77002** or at another location as may be timely disclosed by the Debtors to Qualified Bidders, and will commence on **April 6, 2011, at 2:30 p.m., prevailing Central time** (the "Auction"). All Qualified Bidders must appear in person at the Auction, or through a duly authorized representative. The Debtors will consider Qualified Bids at the Auction in a single bid from a single bidder (or from two or more persons acting together pursuant to a non-collusive agreement between them). If multiple Qualified Bids satisfying all Auction requirements are received, each party will have the right to continue to improve its bid at the Auction. Bidding increments for the Owned Real Property at the Auction will be in aggregate minimum monetary increments in an amount determined to be appropriate by the Debtors prior to, at, or during the Auction.

The Auction will conclude as determined by the Debtors, after consultation with the Committee and the Agent, after consideration of the bids received. At the conclusion of the Auction, and subject to Court approval following the Auction, the successful bid will be selected by the Debtors (the "Successful Bid").

Within six hours after the conclusion of the Auction or such later time as may be agreed to by the Debtors after consultation with the Committee and the Agent, the entity that made the highest or best Qualified Bid or the entities that together (non-collusively) made the highest or best Qualified Bid (the "Successful Bidder") will complete and sign the purchase and sale agreement, and all contracts, instruments or other documents evidencing and containing the

terms and conditions upon which such Bid was made. If the Earnest Money Deposit is less than 10% of the cash consideration payable under the Successful Bid, then, within twenty-four hours after the conclusion of the Auction, the Successful Bidder will increase its Earnest Money Deposit so that it equals 10% of the cash consideration payable under the Successful Bid.

F. Objections

Objections to the proposed sale of the Owned Real Property will be set forth in writing and will specify with particularity the grounds for such objections or other statements of position and will be filed with the Court by **April 1, 2011, at 4:00 p.m., prevailing Central Time**, and will be served so as to be received by that same date and time on (a) Lack Properties: Lack Properties, Inc., Attn: Melvin Lack, 200 South Ben Jordan, Victoria, Texas, 77901; (b) Lack Properties' counsel: Vinson & Elkins LLP, Attn: Paul E. Heath, 2001 Ross Avenue, Suite 3700, Dallas, Texas, 75201; (c) DJM Realty Services, LLC, Attn: Jim Avallone, 445 Broad Hollow Road, Suite 225, Melville, New York, 11747; (d) counsel for The CIT Group / Business Credit, Inc.: Patton Boggs LLP, Attn: Robert W. Jones and Brent McIlwain, 2000 McKinney, Suite 1700, Dallas, Texas, 75201; and (e) counsel for the Official Committee of Unsecured Creditors: Platzer Swergold Karlin Levine Goldberg & Jaslow, LLP, Attn: Clifford Katz, 1065 Avenue of the Americas, 18th Floor, New York, New York, 10018.

G. Court Approval

A hearing to consider the sale of the Owned Real Property (the "Sale Hearing") will be held before the Honorable Jeff Bohm, United States Bankruptcy Judge on **April 6, 2011, at 2:30 p.m., prevailing Central Time**. The sale of the Owned Real Property will be subject to the entry of an order of the Bankruptcy Court approving the sale (the "Sale Order").

H. Closing

The closing of the sale of the Owned Real Property will occur five business days after the Court enters the Sale Order. If the Court does not enter the Sale Order on or before May 10, 2011, the purchase and sale agreement may be terminated.

I. Failure to Consummate Purchase and Back-Up Bid

If the Successful Bidder fails to consummate the purchase of the Owned Real Property, and such failure to consummate the purchase is the result of a breach by such Successful Bidder, the Earnest Money Deposit of such Successful Bidder will be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available damages from such defaulting Successful Bidder.

If the Successful Bidder fails to consummate the purchase of the Owned Real Property, the Qualified Bidder that had submitted the next highest or otherwise best Qualified Bid at the Auction (the "Back-Up Bidder") will be deemed to be the Successful Bidder and the Debtors will be authorized to consummate the sale of the Owned Real Property with such Back-Up Bidder without further order of the Court and such Qualified Bid will thereupon be deemed the Successful Bid; provided that upon being notified that its Qualified Bid has become the

Successful Bid, the Qualified Bidder submitting such Qualified Bid will within three business days after such notification provide an Earnest Money Deposit (unless such Qualified Bidder had provided an Earnest Money Deposit that had not been returned as described below) and, upon providing such Earnest Money Deposit such Qualified Bidder will be deemed the Successful Bidder. If any Back-Up Bidder fails to consummate the sale of the Owned Real Property because of a breach or failure to perform on the part of such Back-Up Bidder (including without limitation the failure to timely deposit the Earnest Money Deposit), the process described above may continue as determined by the Debtors until a Qualified Bidder consummates the sale of the Owned Real Property.

J. Return of Earnest Money Deposit

If a Successful Bid has been selected and the sale of the Owned Real Property to a Successful Bidder has been approved by the Court, the Earnest Money Deposit of the other Qualified Bidder(s), who are not successful bidders will be returned within five business days (except as otherwise provided herein). The Earnest Money Deposit of the Successful Bidder will be applied to the purchase price at the closing of the transaction contemplated by its purchase and sale agreement.

K. Modifications

At any time prior to Court approval of the sale of the Owned Real Property, the Debtors may modify the Sale Procedures as they determine appropriate, including imposing such other terms and conditions upon parties submitting Bids as they determine to be in the best interests of the Debtors' estates; provided, however, that the Debtors must consult with the Committee and the Agent prior to making any material modifications to the Sale Procedures. Further, the Debtors will be authorized to package the Owned Real Property with other real property owned by Lack Properties. In the event that multiple sets of real property are packaged together, the Debtors will be afforded discretion in evaluating bids for all or a portion of the packaged real property.