

SO ORDERED



Paul Mannes

PAUL MANNES
U. S. BANKRUPTCY JUDGE

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)**

In re: FPD, LLC,

Debtor.

Case No. 10-30424 (PM)
(Chapter 11)

In re: Acorn Land, LLC,
Breezewood Homes, LLC,
First Development Group, LLC,
MD Homes, LLC,
NC Homes, LLC,
Tidewater Land, LLC,
NC Development, LLC,
Shadow Brook Farm, LLC,
7800 Philadelphia Road, LLC

Debtors.

Case No. 10-30437 (PM)
Case No. 10-30441 (PM)
Case No. 10-30443 (PM)
Case No. 10-30444 (PM)
Case No. 10-30445 (PM)
Case No. 10-30446 (PM)
Case No: 11-13720 (PM)
Case No: 11-13726 (PM)
Case No: 11-13729 (PM)

(Jointly Administered under Case No.
10-30424 (PM))

**ORDER APPROVING THE DEBTORS' SALE OF THE REAL PROPERTIES
SUBJECT TO THE LIENS OF WELLS FARGO BANK, N.A. FREE AND CLEAR
OF LIENS, CLAIMS AND INTERESTS**

Upon the Motion of Debtors for Entry of Orders: (I) Approving Sale Procedures Related to the Sale of the Real Properties Subject to the Liens of Wells Fargo Bank, N.A. Free and Clear of Liens, Claims and Interests, and Scheduling An Auction and Hearing, and (II) Approving Sale of the Such Properties Free and Clear of Liens, Claims and Interests (the "Sale Motion");¹ and this Court having conducted the Sale Hearing on May 23, 2011, and the parties listed in

¹ Capitalized terms not otherwise defined in this Order shall have the meaning ascribed to them in the Sale Motion.

Exhibit A hereto as the Winning Buyers, including, but not limited to, Wells Fargo as Buyer by credit bid (the “Buyers”), having made the highest and best offer for the Properties referenced for each such Buyer on Exhibit A; and upon the record set forth at the Sale Hearing; and the Court having considered the evidence and the arguments of all parties-in-interest at the Sale Hearing; and the Court having reviewed and considered the Sale Motion and all objections filed thereto or, no objections having been filed or otherwise asserted; and good cause having been shown for the relief requested;

THE COURT HEREBY FINDS THAT:

A. The sale of the portion of Debtor Properties described in each of Buyers’ purchase agreements filed with the Court on May 23, 2011 (Docket No. 406) (the “APA’s” or an “APA”) to the Buyers is fair, reasonable and in the best interests of the Debtors, their creditors and their estates.

B. The offers of the Buyers to purchase the portion of Debtor Properties covered by their respective bids, whether cash bids or credit bids, being the highest and best offers to the Debtors for Debtor Properties to be purchased by each such Buyer, approval of each of the APA’s is in the best interests of the Debtors, their creditor sand their estates.

C. Fair, reasonable and sufficient notice under the Bankruptcy Code and the Bankruptcy Rules of the proposed sale of Debtor Properties has been given to the creditors and parties-in-interest by the Debtors, including a separate notice to the holders of Recorded Junior Liens, and the requirements of Rules 6004 and 2002 have been fully satisfied. Additionally, all aspects of the sale transactions related to any of the Debtor Properties have been adequately disclosed.

D. The record establishes that there are good, valid and sound business purposes for the sale of the Debtor Properties.

E. The consideration to be paid under each APA is fair and reasonable, and the Buyer's offer is the highest and best offer for each of the Debtor Properties.

F. Any entity that claims any interest in Debtor Properties has had an opportunity to object to the sale of each of the Debtor Properties on the terms set forth in the Sale Motion, and either has failed to object or its objection has been overruled, or could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest.

G. Each of the Debtors listed in the APA's as the sellers of each portion of the Debtor Properties to be sold to each Buyer ("Seller") is the lawful owner of the Debtor Properties.

H. The sale of each of the Debtor Properties has been conducted pursuant to a fair and equitable process.

I. The Debtors and the Buyers have at all times acted in good faith and in accordance with applicable law and without intent to hinder, delay or defraud creditors or interest holders. The Buyers are each a buyer in good faith within the meaning of section 363(m) of the Bankruptcy Code. The sale of the Debtor Properties to the Buyers pursuant to a cash bid or a credit bid is a sale in good faith within the meaning of section 363(m) of the Bankruptcy Code, and the Buyers are entitled to the protections of such section 363(m). There has been no evidence presented to this Court that the sale price was controlled by any agreement among potential bidders or that any activity prohibited by section 363(n) of the Bankruptcy Code has occurred.

J. The Debtors have the full authority and power to execute and deliver each APA and related agreements and all other documents contemplated by each APA for each of the Buyers, to perform their obligations thereunder, to consummate the transactions contemplated thereby and the execution, delivery and performance of each of the APA's and the documents to be executed pursuant thereto, and the sale of the Debtor Properties, pursuant to the APA's, have been duly and validly authorized by all necessary action. No other consent or approvals are necessary or required for Debtors to enter into the APA, perform their obligations thereunder and consummate the transactions contemplated thereby.

K. The allocation of marketing funds for the sale of the Affiliate Properties from Wells Fargo's Cash Collateral, and the pro rata share of additional marketing expenses outlined in the Debtor's Application for Authority to Employ Sheldon Good (Doc. No. 283) between the Debtor Properties and the Affiliate Properties, as approved by Order Approving the Retention of Sheldon Good (Doc. No. 315) has sound business justification and is specifically approved by this Court.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the Sale Motion pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) and (O). Venue of this proceeding and this Motion is proper in this judicial district pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief sought herein are sections 105(a) and 363(b), (f), (k), (l) and (m), Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007, and Local Rule 6004-1.

2. The Sale Motion is GRANTED pursuant to sections 105 and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006 and 9007, and Local Rule 6004-1.

All objections to the Sale Motion that were not withdrawn have been settled or are hereby overruled.

3. The Sellers are authorized and directed to sell the applicable portions of the Debtor Properties to cash Buyers who agreed to buy such portions of the Debtor Properties, without further application to or Order of this Court and upon the terms and conditions of the APA's and any related agreements, as applicable. Closing on the sale of Debtor Properties ("Closing") to cash buyers shall take place within two weeks of the date that this Order, as entered, shall have become a final order not subject to stay or appeal.

4. By Final Order (A) Authorizing the Debtor Use of Cash Collateral of Wells Fargo Bank, National Association pursuant to 11 U.S.C. §§361, 363 and 552, and (B) Granting Adequate Protection (Doc. No. 222), entered November 19, 2010 (the "Cash Collateral Order"), the Court provided a period of time within which the Committee, or any other party in interest, could assert an objection ("Objection") the validity, extent, perfection and priority of the Pre-Petition Obligations and the Pre-Petition Liens. The time to file an Objection having expired without the filing of an Objection, the Cash Collateral Order constitutes a determination that the Pre-Petition Obligations are allowed in full, without setoff, recoupment, counterclaim, deduction or claim of any kind, and that the Pre-Petition Liens are deemed legal, valid, perfected, enforceable, and unavoidable, with first and senior priority subject only to liens expressly permitted pursuant to the Existing Loan Documents.

5. Except as otherwise provided in this Order, any liens on Debtor Properties to be sold to cash Buyers shall attach to the proceeds of each such sale and shall retain the same validity and priority as they had (if any) prior to such sale as first lien holder; provided, however

(i) Wells Fargo shall be paid all Net Proceeds from the sale of completed residential units sold to cash Buyer(s) at the closing of such sales; and

(ii) Wells Fargo shall be paid all Net Proceeds from the sales of finished building lots, raw land, and other Wells Fargo Collateral sold to cash Buyer(s) at the closing of such sales.

6. Sellers are authorized and directed to sell the applicable portion of Debtor Properties to Wells Fargo, or to any special purpose entity designated by Wells Fargo to take title, for such portions of the Debtor Properties for which Wells Fargo's credit bid is the highest bid, without further application to or order of this Court and upon the terms and conditions of the APA and related agreements, as applicable. Closing of the sale of Debtor Properties pursuant to credit bid shall take place within two (2) weeks of the date that this Order, as entered, shall have become a final order not subject to stay or appeal; provided, however, Wells Fargo shall have the right to delay closing or to decline acceptance of delivery of a deed for a successful credit bid (i) for which Wells Fargo cannot get an acceptable commitment for owner's title insurance to take title pursuant to a deed on account of a successful credit bid or (ii) for which identified environmental or other issues preclude Wells Fargo from taking title immediately following the Auction. If such issues cannot be resolved to Wells Fargo's satisfaction, then Wells Fargo may at any time thereafter, in its sole discretion, foreclose on such Wells Fargo Collateral as and when it elects. The foregoing notwithstanding, (a) Wells Fargo shall pay the specified auctioneer's commission on account of a successful credit bid whether or not Wells Fargo accepts a deed from a seller for such Wells Fargo Collateral, (b) the Pre-Petition Obligations will be credited with the amount of the successful Wells Fargo credit bid if Wells Fargo accepts delivery of a deed from a seller on account of such credit bid, and (c) if Wells Fargo elects to

foreclose on such Wells Fargo Collateral, the Pre-Petition Obligations will be credited as determined by applicable law for the successful bid at the foreclosure sale. If, prior to closing, a cash buyer offers to purchase a Debtor Property being sold to Wells Fargo through a credit bid for a price that exceeds the credit bid amount and on terms and conditions acceptable to Wells Fargo and the Debtors, then the Debtors are authorized to sell such Debtor Property to that buyer without further Order of the Court, and such sale shall be deemed approved under the terms of this Order, with the buyer of such Debtor Property being considered a "Buyer" as defined in this Order.

7. The transfer of the Debtor Properties to the Buyer(s) will be a legal, valid and effective transfer. Title to all of the Sellers' right, title and interest in and to Debtor Properties shall pass to the Buyer at the closing, free and clear of all prepetition and postpetition liens, claims (including, but not limited to, any "claim" as defined in section 101(5) of the Bankruptcy Code) and encumbrances, including, but not limited to, holders of Junior Liens, any claim for successor liability against each of the Debtors or Wells Fargo, or their successors or assigns, any lien (statutory or otherwise), any hypothecation, encumbrance, liability, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, tax (including foreign, federal, state and local tax), governmental order, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that the Buyer are successors, transferees or continuation of the Sellers, and (iv) any leasehold interest, license or other right, in favor of a third party or the Sellers, to use any portion of the Debtor Properties, whether secured or

unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non contingent, material or non material, known or unknown), that are junior in priority or subordinate in priority to the Wells Fargo Pre-Petition Liens (all of which are referred to collectively hereinafter as the "Liens and Claims"). Further, any deed on account of a successful credit bid will be expressly subject to unpaid real property taxes that are senior in priority to the Wells Fargo Pre-Petition Liens. At the time of closing of each sale of the Debtor Properties on account of a successful cash bid, Baltimore County (as well as any other jurisdiction to which the Debtors owe real property taxes on account of one of the Debtor Properties to be sold that are senior in priority to the Wells Fargo Pre-Petition Liens) shall be paid from the sale proceeds of each property for which real property taxes are owed the amount of such taxes due with respect to the property being sold before the Net Proceeds from the sales are disbursed to Wells Fargo. In the event of any dispute as to the amount of real property taxes owed at the time of each such closing, the disputed amount of the real property tax claim shall be held in escrow pending resolution by agreement of the Debtors, Wells Fargo and the tax authority or Order of the Court.

8. The APA for each of the Debtor Properties sold pursuant to this Order, and each of the terms thereof, and the transaction contemplated thereby, are APPROVED. The Debtors are authorized and directed to execute and deliver such other documents and take such other actions as may be necessary, desirable or appropriate to effect, implement, and/or consummate each such APA, the sale of Debtor Properties and all other transactions described in the APA, without further application to or Order of this Court.

9. Effective upon closing, all parties and/or entities asserting, or who may assert Liens and Claims and contract rights against each of the Debtors, including holders of Junior

Liens, are hereby permanently enjoined and precluded, with respect to such Liens and Claims, from: (i) asserting, commencing or continuing in any manner any action against the Buyer with respect to any of the Debtor Properties; and (ii) attempting to enforce any lien or encumbrance of any kind against any of the Debtor Properties.

10. The provisions of this Order authorizing the sale of Debtor Properties free and clear of Liens and Claims to the extent hereinafter provided (with such Liens and Claims to attached to the proceeds of the sale of Debtor Properties) shall be self-executing, and neither the Debtors, the Buyer nor any other party shall be required to execute or file releases, termination statements, assignments, cancellations, consents or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale; provided, however, that this paragraph shall not excuse such parties from performing any and all of their respective obligations under the APA. Without in any way limiting the foregoing, the Buyer is empowered to execute and file releases, termination statements, assignments, consents, cancellations or other instruments to effectuate, consummate and/or implement the provisions hereof with respect to such sale.

11. Sales of Debtor Properties pursuant to this Order are not avoidable and shall not be avoided pursuant to the Bankruptcy Code, the applicable Uniform Fraudulent Conveyance Act or the applicable Uniform Fraudulent Transfer Act.

12. The quarterly United States Trustee fees to be paid from the proceeds of all sales approved by this Order, including Debtor Properties purchased by Wells Fargo through credit bids (the "Credit Bid Properties"), are estimated to be no greater than \$47,450.00 ("UST Fees"). The Debtors shall retain \$30,200.00 from cash sales (the "Retained Amount") of the Debtor Properties under this Order that, when coupled with the \$17,250.00 budgeted for payment of

2011 UST Fees in Exhibit A of the Debtors' Notice of Second Extension of Usage Period and Termination Date Pursuant to Final Order (A) Authorizing the Debtors' Use of Cash Collateral of Wells Fargo Bank, National Association Pursuant to 11 U.S.C. §§ 361, 363, and 552, and (B) Granting Adequate Protection [Docket No. 400], equals the estimated UST Fees. The Debtors and Wells Fargo, on the one hand, and the United States Trustee, on the other hand, disagree as to whether UST Fees are payable on the Credit Bid Properties. In resolution of the Sale Motion, the Debtors and Wells Fargo have agreed to include sufficient funds in the Retained Amount to pay estimated UST Fees on the Credit Bid Properties, in the event the Court rules at a subsequent hearing that the Debtors are required to pay such UST Fees. Nothing in this paragraph shall constitute an admission as to the amount of UST Fees owed.

13. This Order shall be binding upon, and shall inure to the benefit of, the Debtors and the Buyer and their respective successors and assigns. The failure specifically to include any particular provisions of the APA in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the APA and each and every provision, term, and condition thereof be and therefore is, authorized and approved in its entirety.

14. The Court shall retain exclusive jurisdiction over the Debtors, the Buyer(s), and all parties asserting Liens and Claims and contract rights on or in the Debtor Properties, to implement, interpret, consummate and/or effectuate the provisions of this Order, the APA and all agreements arising out of, related to, or approved pursuant to this Order.

15. Nothing in this Order is intended to, or should be construed to, interfere or affect the sale process of the Non-Debtor parties under applicable law.

16. Any Plan of Reorganization filed by each of the Debtors shall fully adopt the sale transactions covered by this Order for the Debtor Parties and all Buyers, whether cash Buyers or

credit bid Buyers for any or all of the Debtor Properties, shall received the benefit of the § 1141 discharge.

17. Any and all governmental recording offices and all other parties, persons or entities are directed to accept this Order for recordation on or after the Closing as conclusive evidence of the free and clear, unencumbered transfer of title to Debtor Properties conveyed to the Buyer at Closing.

18. Pursuant to section 363(m) of the Bankruptcy Code, the reversal or modification of this Order on appeal shall not affect the validity of the transfer of Debtor Properties to the Buyer unless the transfer is stayed pending appeal prior to closing.

19. This Order shall be effective immediately upon entry pursuant to Rule 7062 and 9014 of the Federal Rules of Bankruptcy Procedure, and no automatic stay of execution, pursuant to Rule 62(a) of the Federal Rules of Civil Procedure or Rule 6004(h) the Federal Rules of Bankruptcy Procedures applies with respect to this Order.

cc: Irving E. Walker, Esq.
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End of Order

Exhibit A

(List of Winning Buyers)

| Property | Buyer | Seller | High Bid Price |
|--|---|---------------------------------|-----------------------|
| Weatherfield, Cary, NC | Ranson, Inc.; Russell Ranson | NC Development, LLC | \$2,300,000 |
| Kingston at Wakefield, Raleigh, NC | Wells Fargo (Credit Bid) | Tidewater Land, LLC | \$360,000 |
| Breezewood, Raleigh, NC | RRE Ventures, LLC; Todd Clark | Breezewood Homes, LLC | \$500,000 |
| Kingston, 11731 Mezzanine Drive #114, Raleigh, NC | Mary Elizabeth McNall | Tidewater Land, LLC | \$104,000 |
| Kingston, 11731 Mezzanine Drive #112, Raleigh, NC | James Harold Maynor | Tidewater Land, LLC | \$97,000 |
| Breezewood, 11130 Gwynn Oaks Drive #100 Raleigh, NC | RRE Ventures, LLC; Todd Clark | Breezewood Homes, LLC | \$89,500 |
| Breezewood, 11130 Gwynn Oaks Drive #101 Raleigh, NC | RRE Ventures, LLC; Todd Clark | Breezewood Homes, LLC | \$87,000 |
| Kingston, 11700 Coppergate Drive #106 Raleigh, NC | James Harold Maynor | Tidewater Land, LLC | \$84,500 |
| Kingston, 11700 Coppergate Drive #107 Raleigh, NC | James Harold Maynor | Tidewater Land, LLC | \$83,000 |
| Kingston, 11700 Coppergate Drive #109 Raleigh, NC | Steven Andrew Hubrich, David Thomas Stefan | Tidewater Land, LLC | \$85,500 |
| Breezewood, 2201-102 Raven Road Raleigh, NC | Steven Andrew Hubrich, David Thomas Stefan | Breezewood Homes, LLC | \$83,000 |
| Clearview Meadow, Dover, DE | Ian Cohen | First Development Group, LLC | \$2,100,000 |
| Rose Hill Estates, Rosedale, MD | Wells Fargo (Credit Bid) | 7800 Philadelphia Road, LLC | \$225,000 |
| Arbor Ridge, Arbutus, MD | Chetan Bharat Mehta | Acorn Land, LLC | \$550,000 |
| Shadow Brook Downs, Elkridge, MD | Chetan Bharat Mehta | Shadow Brook Farm, LLC | \$900,000 |
| Oak Tree Landing, Prince Frederick, MD | Wells Fargo (Credit Bid) | FPD, LLC | \$1,000,000 |
| Clearview, 101 Lady Bug Drive Dover, DE | Dorcas & Michael Larbi | First Development Group, LLC | \$130,000 |
| Clearview, 105 Lady Bug Drive Dover, DE | Marland Abstracts, LLC; Todd Clark | First Development Group, LLC | \$115,000 |
| Clearview, 131 Nob Hill Road Dover, DE | Marland Abstracts, LLC; Todd Clark | First Development Group, LLC | \$191,530 |
| Oak Tree, 659 Burr Oak Court Prince Frederick, MD | Karla Garrett, Donald Garrett, Teresa Ward | FPD, LLC | \$176,550 |