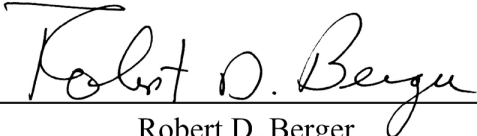




The relief described hereinbelow is SO ORDERED.

SIGNED this 6th day of February, 2018.


Robert D. Berger
United States Bankruptcy Judge

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

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

**ORDER AND FINDINGS OF FACT AND CONCLUSIONS OF LAW GRANTING
DEBTORS' MOTION (No. 9) 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**

This matter came before the Court on the Debtors' Motion (No. 9) 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 No. 1721] (the "Motion"). No objections to the Motion were filed.

Due and appropriate notice of the Motion was provided to all known creditors and parties-in-interest, entities, and persons so entitled thereto, as evidenced by the Certificates of Service separately filed with this Court by BMC Group Inc., noticing agent for the Debtors.

All parties-in-interest had the opportunity to be heard, and the Court, having reviewed the Motion and the record in this case, hereby makes the following Findings of Fact and Conclusions of Law.

JURISDICTION AND VENUE

1. On June 26, 2016 (the "Commencement Date"), the Debtors commenced chapter 11 bankruptcy cases by filing their bankruptcy petitions in this Court.
2. Debtors continue to operate as debtors-in-possession pursuant to 11 U.S.C. § 1107.
3. An official committee of unsecured creditors has not been appointed in this case.
4. The Motion seeks relief pursuant to 11 U.S.C. § 363(b). This proceeding therefore arises under the provisions of title 11 of the United States Code (the "Bankruptcy Code") and arises in the captioned bankruptcy cases. This Court thus has jurisdiction by reason of reference of this proceeding from the United States District Court and venue is proper. *See* 28 U.S.C. §§ 157(a) & 1334(a) and (b), 1408, and 1409. The motion is a core proceeding. *See* 28 U.S.C. §§ 157(b)(2)(M) & (b)(3). This Court may therefore enter a final judgment on the Motion.

FINDINGS OF FACT

Background

5. 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.

6. One of the assets owned by the Trust is approximately 7 acres of vacant land in the Highland Springs development located in Springfield, Missouri and more fully described on

Exhibit A hereto (the "Real Estate").

7. The Trust previously engaged Murney Associates (the "Broker") to solicit offers for the Real Estate. Based on its knowledge of the market and the area, the Broker recommended that the Trust list the Real Estate for sale at a list price of \$1,500,000.00.

8. On January 6, 2018, the Trust received an offer to purchase the Real Estate from J.A. Hagale (the "Purchaser") for list price. After negotiating with the Purchaser, the Trust and the Purchaser entered into a Commercial & Industrial Real Estate Contract, a true and correct copy of which is attached as Exhibit B hereto (the "Purchase Agreement").

9. Under the terms of the Purchase Agreement, the Purchaser agreed to pay \$1,500,000.00 in cash for the Real Estate ("Purchase Price"). The Purchase Agreement provides that the sale is conditioned upon Court approval is set to close by February 28, 2018.

10. Based on the Broker's opinion of the Real Estate's value and the offer received, the Debtors believe that the Purchase Price is equal to the fair market value of the Real Estate and represents the highest and best offer for the Real Estate.

11. The Debtors believe a prompt sale of the Real Estate pursuant to section 363(b) of the Bankruptcy Code is the principal and most viable option in order to maximize the value of the Real Estate for the benefit of its creditors. The Real Estate is unimproved land which does not generate income and the sale enables the Trust to convert the land to cash and thereby enhance its ability to pay claims in its bankruptcy case.

The Purchase Agreement

12. Under the terms of the Purchase Agreement, the Purchaser will pay the Purchase Price for the Real Estate in cash. The Purchase Agreement provides for the transfer and sale to the Purchaser of the Real Estate, free and clear of liens, claims and encumbrances pursuant to § 363(f) of the Bankruptcy Code.

Existing Liens

13. Great Southern Bank asserts a lien on the Real Estate by virtue of its Deed of Trust dated August 21, 1995, recorded August 22, 1995 in the Green County, Missouri Recorder of Deeds Office as Document Number 028071-95 in Book 2397 at Page 73 (as modified from time to time, the "Deed of Trust").

14. By agreement of the parties, Great Southern Bank's lien that encumbers only the Real Estate will be satisfied by payment to Great Southern Bank from the sale of the Real Estate of the greater of (1) 80% of the sale proceeds, less standard closing costs, or (2) \$50,000.00.

15. Moreover, Great Southern Bank's liens on any other assets of the Debtors (including any other tracts of land in the Highland Springs residential development located in Springfield, Missouri) other than the Real Estate are unaffected by this Order and remain in full force and effect.

16. Great Southern Bank has consented to the sale of the Real Estate free and clear of its lien on the terms and conditions set forth herein.

17. Any real estate taxes currently owing with respect to the Real Estate will be paid at closing.

18. There are no other liens on the Real Estate.

19. JDH did not object to the Motion. The Court finds that the Real Estate is not subject to the Sponsor Entity Right of First Refusal Agreement, Dated September 16, 2005 and Agreement and Amendment, Dated December 10, 2008 (collectively, the "ROFR"). As a consequence, for the reasons provided in this Court's prior sale orders, the Court rules that the sale of the Real Estate free and clear of the ROFR, to the extent the ROFR is an interest in the Real Estate, is proper and appropriate.

Competing Bidders

20. No other party attempted to make a bid for the Real Estate. Accordingly, only the Purchaser presented itself as a bidder for the Real Estate and no competitive bids were presented.

Authority to Approve Sale of the Real Estate

21. Section 363 of the Bankruptcy Code provides for the sale of a debtor's assets out of the ordinary course of business.

Good Faith of Purchaser

22. No party objected to the Debtors' averments in the Motion that the Purchaser was a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code. Based on the uncontested averments set forth in the Motion, which the Court accepts as evidence in consideration of the Motion, the Court determines that the Purchaser is purchasing the Real Estate in good faith and is a good faith purchaser, within the meaning of section 363(m) of the Bankruptcy Code, and otherwise has proceeded in good faith in all respects in connection with this proceeding. For these reasons, the Court finds that the Purchaser is entitled to the protection of section 363(m) of the Bankruptcy Code.

Approval of Motion

23. The Purchaser is a third party purchaser unrelated to the Trust or any other Debtors.

24. The purchase terms, as set forth in the Purchase Agreement, are fair and reasonable under the circumstances of this case, including but not limited to the Purchase Price.

25. Based on these Findings of Fact, the Court finds there is a sound business purpose to proceed with the sale as it is proposed, the sale is in the best interests of the estate, all parties to the Purchase Agreement have acted in good faith, and the Motion should be approved.

Purchase Price

26. The Court finds that the fair market value of the Real Estate is no more than

\$1,500,000.00 and, thus, the Purchase Price of \$1,500,000.00 for the Real Estate (less standard closing costs) is fair and reasonable.

CONCLUSIONS OF LAW

In addition to the foregoing findings of fact, the Court makes the following conclusions of law:

27. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a)(1). To the extent necessary under Fed. R. Bankr. P. 9014, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of this Order. Moreover, pursuant to Fed. R. Bankr. P. 6004(h), the Court rules that the fourteen (14) day stay of this Order authorizing the sale of the Real Estate should be, and hereby is, waived.

28. The proposed sale of the Real Estate to the Purchaser constitutes a sale of property of the Trust's estate outside the ordinary course of business within the meaning of section 363(b) of the Bankruptcy Code.

29. For good and valid reasons, this Court may authorize and approve a sale of the assets of a chapter 11 debtor pursuant to section 363(b) of the Bankruptcy Code without the necessity of following the procedures and making the findings required for the confirmation of a plan of reorganization. These legitimate and compelling reasons exist in this case.

30. Under the foregoing circumstances, the proposed sale of the Real Estate, in the absence of a confirmed plan, is both justified and appropriate.

31. A sale of the Real Estate pursuant to section 363(b) of the Bankruptcy Code is not prohibited in the absence of a confirmed chapter 11 plan. The sale of the Real Estate does not constitute a sale of all of the Debtors' assets, and approval of the sale of the Real Estate is within the sound discretion of the Court in light of the existing circumstances of this particular case.

32. The provisions of section 363(f) of the Bankruptcy Code have been satisfied in one

or more of the following ways: (i) the only holder of a lien on the Real Estate – Great Southern Bank – has consented to the sale of the Real Estate free and clear of its lien; (ii) the only other possible lien against the Real Estate is to secure current real estate taxes owed and, as set forth in the Purchase Agreement, section 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; and (iii) there are no other liens, interests, or encumbrances on the Real Estate. Specifically, with respect to the ROFR, JDH has acknowledged and agreed that the Real Estate is not subject to the ROFR. Moreover, even if the Real Estate is subject to the ROFR, the Court has approved rejection of the ROFR by final order. As a result, the provisions of section 363(f) of the Bankruptcy Code are not implicated with respect to the ROFR. Moreover, even if the Real Estate is subject to the ROFR, the Court approval of the sale free and clear of the ROFR is appropriate.

33. The sale of the Real Estate to the Purchaser free and clear of all liens, claims, encumbrances, and other interests in the Real Estate upon the terms and conditions set forth in the Purchase Agreement is in the best interests of the Trust, its creditors, and the bankruptcy estate.

34. Great Southern Bank's liens on any other assets of the Debtors (including any other tracts of land in the Highland Springs residential development located in Springfield, Missouri) other than the Real Estate are unaffected by this Order and remain in full force and effect.

35. The proposed sale of the Real Estate to the Purchaser constitutes a reasonable and sound exercise of the Trust's business judgment and should be approved.

36. For the reasons set forth in the Motion, good cause exists to approve the sale of the Real Estate to the Purchaser.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

37. The relief requested in the Motion is granted and approved in all respects. The Purchase Agreement, and the transactions described and contemplated therein, is hereby approved in all respects.

38. The Trust is hereby authorized and directed to: (a) sell the Real Estate to the Purchaser upon the terms and conditions set forth in the Purchase Agreement; (b) take any and all actions necessary or appropriate to consummate the sale of the Real Estate to the Purchaser and the closing of the transaction, in accordance with the Purchase Agreement and this Order; (c) perform, consummate, implement and close fully the Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, and (d) take all further actions as may be necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement.

39. Upon the closing, the Real Estate shall be transferred, sold and delivered to the Purchaser free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, and, consistent with the terms of the Agreement, the Trust is authorized and directed to execute such transfer documents as are necessary to transfer the Real Estate to the Purchaser, including bills of sale, title transfer documents, deeds, and assignments.

40. At the time of closing, and from the proceeds of the sale, the Trust is authorized and directed to pay its share of the closing costs and all past due and outstanding taxes with respect to the Real Estate. The Trust is further directed to pay to Great Southern Bank in satisfaction of its lien on the Real Estate the greater of (1) 80% of the sale proceeds, less standard closing costs, or (2) \$50,000.00.

41. This Order: (a) is effective as a determination that, upon closing, all liens, claims, encumbrances, and other interests, whether voluntary, involuntary, statutory, tax liens or otherwise, existing in, to and on the Real Estate conveyed to the Purchaser have been, and hereby are adjudged and declared to be, unconditionally released, discharged and terminated, and that the conveyances described herein have been made free and clear of all such liens, claims, encumbrances, and interests, with such liens, claims, encumbrances, and interests to attach to the proceeds of the sale, and (b) shall be binding upon and govern the acts of all entities, including, all creditors of the Trust and other parties in interest, filing agents, filing officers, title agents, title companies, recorders of mortgages or deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county, and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Real Estate conveyed to the Purchaser. All creditors of the Trust are hereby enjoined from commencing any action or proceeding against the Purchaser to recover all or any portion of the Real Estate or to secure payment of claims which were incurred by the Trust prior to closing.

42. The Trust is hereby authorized to take such corporate action as may be necessary to implement the provisions of the Purchase Agreement, to execute and file any necessary document with any appropriate secretary of state, and this Order shall constitute all approvals and consents, if any, required by the laws of any state necessary to file, record and accept such documents.

43. This Court retains jurisdiction to: (a) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of

the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith; (b) protect the Purchaser, or the Real Estate, against and from any of the liabilities of the Trust; and (c) interpret, implement and enforce the provisions of this Order.

44. The failure specifically to include any particular provisions of the Motion or Purchase Agreement in this Order shall not diminish or impair the efficacy of such provision, it being the intent of the Court that the Motion and Purchase Agreement be authorized and approved in their entirety.

IT IS SO ORDERED.

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COUNSEL FOR THE DEBTORS

EXHIBIT A – REAL ESTATE DESCRIPTION

ALL OF TRACT B, FINAL PLAT OF KINGSWOOD ADDITION TO HIGHLAND SPRINGS, A SUBDIVISION IN GREENE COUNTY, MISSOURI, ACCORDING TO THE RECORDED PLAT THEREOF.