UNITED STATES BANKRUPTCY COURT

DISTRICT OF KANSAS

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

CMBS LENDERS' OBJECTION TO DEBTORS' MOTION FOR AUTHORITY TO ENTER INTO PLAN SUPPORT AGREEMENT AND COMPROMISE OF CLAIM

The CMBS Lenders[1] submit this objection (the "Objection") to the Debtors' Motion for Authority to Enter into Plan Support Agreement and Compromise of Claims [Doc. No. 1791] (the "Plan Support and Settlement Motion"), which purports to settle disputes between JD Holdings, L.L.C. the ("JDH") and the Revocable Trust of John Q. Hammons, dated December 28, 1989, as Amended and Restated (the "JQH Trust") and seventy-five of its subsidiary and affiliated debtor entities in the above-captioned bankruptcy cases (collectively, the "Debtors") and provides for the Debtors' support of the Executed Joint and Consolidated Chapter 11 Plans

[1] The CMBS Lenders include the following secured creditors: (a) U.S. Bank National Association, as Trustee for the Registered Holders of J.P. Morgan Chase Commercial Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-LDP7, by and through LNR Partners, LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Nomura Portfolio Loan"); (b) Wilmington Trust, National Association, as Trustee for the registered holders of Wells Fargo Commercial Mortgage Trust 2015-C26, Commercial Mortgage Pass-Through Certificates, Series 2015-C26 by and through Midland Loan Services, a division of PNC Bank, National Association, solely in its capacity as Special Servicer (holder of the loan known as the "Chateau Lake Loan"); (c) Deutsche Bank Trust Company Americas, as Trustee, on behalf of the Registered Holders of Citigroup Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2015-GC33, by and through LNR Partners, LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Goldman Portfolio Loan"); (d) U.S. Bank National Association, as Trustee for the Registered Holders of Banc of America Commercial Mortgage, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-3, by and through C-III Asset Management LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Euro-Hypo Portfolio Loan"); and (e) Wells Fargo Bank, N.A., as successor to LaSalle Bank National Association, as Trustee for the registered holders of COMM 2006-C8 Commercial Mortgage Pass-Through Certificates, by and through LNR Partners, LLC, solely in its capacity as Special Servicer (holder of the loan known as the "Barclays Portfolio Loan") (collectively, the "CMBS Lenders").

of Reorganization for All Debtors [Doc. No. 1787] (the "JDH Plan") filed on February 12, 2018. In support of the Objection, the CMBS Lenders respectfully state as follows:

PRELIMINARY STATEMENT[2]

The CMBS Lenders are pleased that the Debtors and JDH have decided to stop fighting and settle their differences after twenty months in bankruptcy. The CMBS Lenders have not inserted themselves into their dispute during the course of the bankruptcy case, but aspects of the proposed Plan Support Agreement and Settlement Agreement go beyond a settlement of the differences between JDH and the Debtors and seek impermissibly to fundamentally alter the rights of creditors on shortened notice.

The Settlement Agreement and Plan Support Agreement would award JDH with an allowed claim against all of the Debtors in the amount of $495,938,161, without any evidentiary support and in direct contravention of the facts of these cases. JDH has no allowable claim in these cases, let alone a $496 million claim against every one of the seventy-six Debtor entities. Even if the Court were to accept everything JDH alleges to be true, the result of the proposed settlement would transfer assets to JDH with an aggregate value of $200 million more than JDH's maximum claim.

Even though the JDH Plan purports to subordinate its proposed claim (upon implementation of the Plan) to the claims of all other creditors, allowing any claim to JDH will materially affect the rights of creditors in these bankruptcy cases. On January 30, 2018, the Court rejected the Debtors' Plan for myriad reasons. The plan recently filed by JDH suffers from many of the very same deficiencies as the defective Debtors' Plan and will require substantial amendments, including giving all creditors the right to vote their impaired claims.

[2] Capitalized terms used in this Preliminary Statement have the definitions set forth in this Objection.

JDH should not be permitted to vote an artificially created claim in support of a plan that impairs the rights of other creditors in an effort to further enhance what appears to be $200 million profit resulting from the bankruptcy. This is particularly true for the CMBS Lenders who loaned to bankruptcy remote special purpose entities which were precluded from commingling their assets with any other entity's assets and from becoming liable for any other entity's debts.

Finally, the proposed settlement is improper because it represents a complete abdication of the Debtors' fiduciary duties to creditors and effectively makes JDH the debtor in these bankruptcy cases. This case has been difficult from day one because there has not really been a debtor but instead what appear to be two "trustees" who answer to no one and determine their own duties. Now, having subjected the creditors to a two-year sideshow, they ask the Court to allow them to walk away and sacrifice the creditor classes and the trust they represent to the whims of JDH seeking an even greater windfall than the ROFR amendment it negotiated in 2008.

The Court was correct when it suggested in its January 30, 2018, Order Nunc Pro Tunc Denying Approval of Debtors' Disclosure Statement that new management may be demanded at some point. It is inescapably clear from the Plan Support and Settlement Motion that the "trustees" report to no one but themselves and that left unchecked JDH will steamroll the creditor claims. If JDH and the Debtors want to settle their dispute, the CMBS Lenders have no objection, but the agreement should stop there. There is no basis on the facts before the Court to award JDH any claim and no justification for the Court to allow the "trustees" to abdicate the duties they owe to other creditors all the while vesting ongoing jurisdiction over these cases in a mediator that the creditors are not even in front of.

BACKGROUND FACTS

1. ***Bankruptcy Filing***

On June 26 and July 5, 2016 (the "Petition Date"), the Debtors filed voluntary Chapter 11 petitions initiating the above-captioned bankruptcy cases (the "Bankruptcy Cases"). The Bankruptcy Court entered orders jointly administering the Debtors' bankruptcy estates on June 29, 2016, July 12, 2016, and July 18, 2016 [Doc. Nos. 40, 52, 53, 123, and 197].

2. ***The CMBS Lenders' Claims***

The CMBS Lenders collectively hold prepetition claims against certain of the Debtors (the "Borrowers") totaling at least $783,651,527.89 (the "Secured Claims") secured by, among other things, valid and perfected first priority liens and security interests in 26 of the Debtors' 35 hotels (the "Hotels"). The JQH Trust unconditionally, irrevocably, and absolutely guaranteed the payment and performance of the Borrowers on the loans held by the CMBS Lenders (collectively, the "Guarantee Claims" and, together with the Secured Claims, the "CMBS Claims").

The CMBS Lenders timely filed proofs of claim numbered 614-616 and 624-630 (the "Proofs of Claim") against their respective Borrowers and against the JQH Trust as guarantor. The amounts owed and legal bases for the CMBS Claims are more fully set forth in the respective Proofs of Claim which are hereby incorporated by reference. All of the CMBS Lenders' loans are in default.

In extending credit, the CMBS Lenders expressly bargained for and received in their loan documents special purpose entities ("SPEs") as Borrowers. Each of the SPE Borrowers agreed for the life of the loans to maintain assets and liabilities separate from those of any other entity. Each of the Borrowers is required to be a bankruptcy remote entity and is contractually obligated

among other things not to (i) commingle assets, (ii) incur liability for another entity, or (iii) engage in business beyond the use of the collateral for its intended purpose.

3. ***The Debtors' Plan and Disclosure Statement***

On December 20, 2017, the Debtors filed their plan [Doc. No. 1584] (the "Debtors' Plan") and supporting disclosure statement [Doc No. 1583] (the "Debtors' Disclosure Statement"). The CMBS Lenders and others objected to the Debtors' Disclosure Statement on a variety of grounds and on January 30, 2018 the Court entered an Order Nunc Pro Tunc Denying Approval of Debtors' Disclosure Statement [Doc. No. 1738] for, among other reasons: (i) the Debtors' Plan was patently unconfirmable because it (a) impaired creditors but impermissibly denied them the right to vote in violation of Section 1129(a)(8) of the Bankruptcy Code, and (b) was not feasible given the substantial likelihood that the Debtors materially underestimated their liabilities and that it depended on the outcome of pending litigation regarding the allowed amount of JDH's claims; and (ii) the Debtors' Disclosure Statement did not contain adequate information regarding the Debtors' proposed valuation of assets, omitted capital improvement costs and contained overly-optimistic financial projections that were subject to disagreement, and thus, was materially misleading and inadequate.

4. ***The JDH Plan and Disclosure Statement***

On February 12, 2018, JDH filed the Plan and its Corrected Disclosure Statement with Respect to Joint and Consolidated Chapter 11 Plans of Reorganization for all Debtors [Doc. 1788] (the "JDH Disclosure Statement"). Surprisingly for a case of this complexity, the JDH Plan and the JDH Disclosure Statement describe just four classes of claims, purportedly for "each of the Debtors for all purposes, including Confirmation and Plans Distributions":

- Class 1 – Other Priority Claims

- Class 2 – Secured Claims
- Class 3 – General Unsecured Claims
- Class 4 – Equity Interests

See JDH Disclosure Statement, Section V.B.2.

Like the Debtors' Disclosure Statement, the JDH Disclosure Statement does not provide adequate information for creditors to determine whether to vote to accept or reject the Plan. The JDH Disclosure Statement is also objectionable because the JDH Plan is patently unconfirmable. Most glaringly, the JDH Plan, just like the ill-fated Debtors' Plan, purports to treat all Classes of Claims as unimpaired even though the treatment of secured claims classified as "Class 2 Claims" materially alters the rights of the CMBS Lenders and substantively consolidates the Debtors without making the required showing for such an extraordinary remedy.

5. The Proposed Settlement Between the Debtors and JDH

On February 13, 2018, the Debtors filed the Plan Support and Settlement Motion, requesting Court approval on an expedited basis of the Plan Support Agreement and Claims Allowance (the "Plan Support Agreement") and Settlement Agreement attached as an exhibit to the Plan Support Agreement. No real justification was given for expedited treatment of such a case-dispositive motion.

Pursuant to the Plan Support Agreement and Settlement Agreement, and in exchange solely for $550,275 in severance and benefits for Ms. Dowdy and $328,486 in severance and benefits for Mr. Groves, the Debtors (i) would pledge blind support to the JDH Plan and any amendments JDH later makes thereto, (ii) surrender all estate assets to JDH, (iii) consent to an allowed claim in favor of JDH in the amount of $495,938,161 in contravention of their

previously filed objection, and (iv) seek a going-forward release of their fiduciary duties to creditors. The Court should reject these requests.

ARGUMENT

When determining whether to approve a proposed settlement, a bankruptcy court must "make an informed decision based upon an objective evaluation of the situation before it." Reiss v. Hagmann, 881 F.2d 890, 893 (10th Cir. 1989). The court must determine whether the proposed settlement agreement is fair and equitable and in the best interest of the estate. In re Donohue, 410 B.R. 311, 314 (Bankr. D. Kan. 2009). A four prong test is used to evaluate the factual circumstances of a compromise: "(1) the chance of success on the litigation on the merits; (2) possible problems in collecting the judgment; (3) the expense and complexity of the litigation; and (4) the interest of the creditors. Korngold v. Loyd (In re S. Med. Arts Cos.), 343 B.R. 250, 256 (B.A.P. 10th Cir. 2006) (citing Kopp v. All Am. Life Ins. Co. (In re Kopexa Realty Venture Co.), 213 B.R. 1020, 1022 (10th Cir. BAP 1997)).

The CMBS Lenders object to the Plan Support Agreement and Settlement Agreement because the agreements (i) impermissibly waive the Debtors' fiduciary duties to their creditors and obligate the Debtors to support any plan that JDH files, (ii) support a plan that would impermissibly substantively consolidate all of the Debtors without satisfying the requirements for substantive consolidation, treating each and every one of the seventy-six Debtor entities as joint and several obligors for all of their debts when there is no legal or factual basis for such treatment, and (iii) award JDH a $496 million claim against each of the Debtors without any evidentiary showing when the available facts reflect that a $200 million windfall will inure to JDH if its plan is confirmed. The proposed settlement in the Plan Support Agreement and Settlement Agreement are inconsistent with the facts of the litigation before the Court, are not

fair, equitable or in the best interest of creditors and cannot satisfy the balancing test. The proposed settlement should be rejected by the Court.[3]

I. *The Settlement Impermissibly Waives the Debtors' Fiduciary Duties, Exposes the Estates to Unknown Risk and Supplants This Court's Authority with a Mediator Who is Unknown to Creditors*

It is indisputable that a debtor in possession owes fiduciary duties to its creditors. Yet, the Debtors have capitulated to JDH and are willing to abdicate—without any case support at all—their fiduciary duties effectively parachuting JDH into these cases as a replacement debtor. The Settlement Agreement and Plan Support Agreement nonetheless seek to waive them as follows:

> from and after the date of this Agreement, Debtors shall not support any alternative to the Plans and shall not have any "fiduciary duty out" to accept any other plan of reorganization, bid, or proposed sale (given that the Plans pay all Allowed Claims in full) as more fully set forth in the Settlement Agreement [Plan Support Agreement at § 6(c) (emphasis added)];
>
> [b]ased on JDH's payment of all allowed claims as set forth in the Plan, the Debtors have no further fiduciary duty to the Estates or their creditors and as a result, will neither seek nor accept higher or better offers for their assets (Settlement Agreement at § 1(i) (emphasis added)).

There is no situation in which the Court should authorize a blanket waiver of debtor fiduciary duties, and the Plan Support and Settlement Motion should be denied on that basis alone. "Because of the unique nature of the bankruptcy estate, the debtor in possession is considered a fiduciary of that estate." Jensen v. U.S. Trustee (In re Smitty's Truck Stop), 210 B.R. 844, 850 (B.A.P. 10th Cir. 1997) (citing Interwest Bus. Equip., Inc. v. U.S. Trustee (In re Interwest Bus., Equip., Inc.), 23 F.3d 311, 317 (10th Cir. 1994)). As such, a debtor in possession has both a duty of care and a duty of loyalty to its estate and creditors. Regarding the duty of

[3] While factors 1 and 4 of the test used to evaluate a compromise weigh in favor of denial of the Plan Support Agreement and Settlement Agreement factors 2 and 3 are inapplicable here.

care, "trustees and managers of debtors in possession, like officers and directors of a corporation outside of bankruptcy, are required to exercise the measure of care, diligence and skill that an ordinarily prudent person would exercise under similar circumstances." 7 Collier on Bankruptcy ¶ 1108.04 (16th ed. 2018) (collecting cases and citing, among other cases, Johnson v. Clark (In re Johnson), 518 F.2d 246 (10th Cir.), cert. denied, 423 U.S. 893 (1975)) (trustee case).[4]

"Chapter 11 trustees and the directors and officers of debtors in possession are also bound by a duty of loyalty. Their duty of loyalty encompasses an obligation to refrain from self-dealing, to avoid conflicts of interest and the appearance of impropriety and to treat all parties to the case fairly." 7 Collier on Bankruptcy ¶ 1108.09 (16th ed. 2018) (collecting cases). Debtors and trustees can be held liable for breaches of fiduciary duties in bankruptcy. See, e.g., Sherr v. Winkler, 552 F.2d 1367 (10th Cir. 1977)) (trustees in bankruptcy can be liable for willful breaches of duty of care; no liability in this particular case).

Among a debtor's fiduciary duties is the duty to maximize the value of the estate ***to all creditors***. See, e.g., In re Big Rivers Elec. Corp., 233 B.R. 739, 751 (W.D. Ky. 1998) (stating that "[a] debtor-in-possession owes a fiduciary duty to maximize the value of the estate to all its creditors" and finding a no-shop clause in a prepetition agreement to be null and void because it would excuse debtor from its fiduciary duty). But here, the Debtors ask to be excused from the very duties that underpin all of their actions with respect to a plan of reorganization, with no possibility of considering an alternative to the JDH Plan, even if the alternative were clearly superior to the JDH Plan and more beneficial to creditors.

This would be bad enough if the JDH Plan were set in stone and could not be changed. But, the JDH Plan can be amended at any time to say anything and binds the Debtors to support

[4] Section 1107(a) requires, with limited exceptions, a debtor in possession to perform the functions and duties of a chapter 11 trustee.

the changes. Section IV(E) of the JDH Plan gives JDH "the right to revoke or withdraw the Plans or any document in the Plans Supplement, subject to and in accordance with the terms of the Plans, at any time prior to Confirmation" and "the right to alter, amend, or modify the Plans, including amending or modifying it to satisfy the requirements of section 1129(b) of the Bankruptcy Code, if necessary, subject to and in accordance with the terms of the Plans, at any time prior to Confirmation." Therefore, while JDH asserts that no creditor has the right to vote on its Plan, it has given itself the right to change any Plan term in any way it wants to or even to submit an entirely new plan, without adequate notice and even after a vote was taken, all of which the Debtors would be required to support.

JDH theoretically could also withdraw the Plan at any time, with no obligation to pursue an alternative. If JDH were to withdraw its Plan, the Debtors still would not be permitted to support or even consider other plans because the Plan Support Agreement expires on the effective date of the Plan, which would never occur. See Plan Support Agreement at § 10.01. Under these circumstances, the Debtors would be in a Catch-22—their cases would be paralyzed or they would be forced to breach the Settlement Agreement and Plan Support Agreement.

The Settlement Agreement also provides the mediator, Judge Somers, with the authority to resolve potential disputes between the Debtors and JDH, impermissibly stripping away the authority of the Court and the voice of the creditors in future disputes. Judge Sommers would resolve "any dispute as to the Plan/JDH Disclosure Statement language modification," and "any disputes with respect to . . . section 6 [requiring Debtors' cooperation and support of the JDH Plan]." See Settlement Agreement § 1(g), Plan Support Agreement § 6(e).

While it appears that Judge Somers was instrumental in bridging the gap between the Debtors and JDH and bringing these cases close to the point where some plan (although not the

JDH Plan) might be confirmed, having the mediator, rather than this Court, resolve disputes about Plan modification and support is improper. All creditors are entitled to due process before the Court and a right to be heard. Plan disputes should not be resolved in a side room without creditors receiving notice and an opportunity for meaningful participation before the Court. Without that, the Settlement Agreement is not really a final agreement about outstanding issues, but an agreement to agree to future rulings by Judge Somers about remaining disputes between the Debtors and JDH. At a minimum, any determination by Judge Somers should be subject to review by this Court. See, e.g., Elder v. Uecker (In re Elder), 325 B.R. 292, 300 (N.D. Cal. 20005) (plan administrator had ability to compromise and settle claims, subject to review and hearing in bankruptcy court for those who were unhappy with the result).

If the JDH Plan is the best plan proposed in these cases, the Debtors can support it without wavier of their fiduciary duties. If the JDH Plan is not the best plan, the Debtors should not be relieved of their fiduciary duties to act in the best interests their estates and creditors, nor should they be handcuffed to a plan that can change in any respect in the future.

The Ninth Circuit Court of Appeals' addressed the inviolability of the fiduciary duty of a chapter X trustee, which is equally applicable here and should preclude the Court from allowing any waiver of the Debtors' duties, particularly in the context of the chameleon-like JDH Plan:

> It is well established that a trustee in a reorganization is required to act in accordance with the highest standards. . . . Almost fifty years ago Chief Judge Cardozo of the New York Court of Appeals expressed the rule thusly:
>
> > Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate.

> Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the "'distinctive erosion' of particular exceptions. . . . Only thus has a level of conduct for fiduciaries been kept at a level higher than trodden by the crowd. It will not consciously be lowered by any judgment of this court." Meinhard v. Salmon, 249 N.Y. 458, 463, 164 N.E. 545, 546 (1928).

Bennitt v. Gemmill (In re Combined Metals Reduction Co.), 557 F.2d 179, 196-97 (9th Cir. 1977). Likewise, this Court should not countenance the lowering of the standard of conduct of the Debtors as fiduciaries in this case.

II. *The Plan Support Agreement Gives JDH a $496 Million Claim Without Any Evidence of Damages; Instead, JDH's Claims Should Be Disallowed in Their Entirety*

As part of the Settlement Agreement, the Debtors and JDH agreed that JDH would have an allowed claim in the amount of $495,938,161. See Settlement Motion at ¶ 17(c), Plan Support Agreement at § 2. JDH has not proven and cannot prove that it is entitled to any claim in the Debtors' bankruptcy cases, let alone a claim for $496 million against each and every Debtor.

JDH filed one hundred fifty-two virtually identical proofs of claim in the Debtors' cases. One set of seventy-six proofs of claim were for damages in the amount of $587,600,000 asserted against each Debtor as a result of the Debtors' breach of JDH's right-of-first-refusal agreement ("ROFR"). A second set of seventy-six proofs of claim (together, both sets of JDH claims, the "JDH Claims") were for damages in the amount of $565,300,000 asserted against each Debtor as a result of the Debtors' rejection of the ROFR. JDH is neither entitled to such claims against each Debtor, nor has it proven that it has damages in the amount of its claims.

When there is an objection to a claim, the burden of proving the validity of the claim shifts to the creditor, and the court must hold a hearing to determine the amount, if any, of the claim. See 11 U.S.C. § 502(b); Wilson v. Broadband Wireless Int'l Corp. (In re Broadband Wireless Int'l Corp.), 295 B.R. 140, 145 (B.A.P. 10th Cir. 2003) (setting forth "well-established burdens of proof" for claims objections, including the claimant has the ultimate burden of proof as to the validity and amount of the claim, once an objecting party has produced evidence or raised legal issues equal to the probative force of the allegations contained in the proof of claim). JDH has the burden of proving its claim. Yet, JDH offers nothing in support of its demand to be awarded a $587,600,000 claim against each and every Debtor. The Debtors' Omnibus Objection to Proofs of Claim Filed by JD Holdings, L.L.C., and Certain of Its Affiliates (the "Claims Objection") [Doc. No. 1251] is correct when it asserts:

- JDH has no right to enforce its remedies under the ROFR because JDH did not obtain the prior written consent of SFI Belmont, LLC, before JDH sought to enforce the ROFR, as required by the applicable loan documents
- JDH asserts the full amount of its claims against each Debtor, even though the ROFR does not include a cross-default or guaranty; rather, the ROFR provides that JDH only has rights against a particular Debtor for that Debtor's breach of the ROFR
- JDH has not identified the specific claim amount against each particular Debtor resulting solely from that specific Debtor's breach of the ROFR
- JDH cannot have a ROFR claim against any Borrowers when the amount to be paid pursuant to the ROFR provisions would be less than the amounts owing to the applicable CMBS Lenders
- The 80% purchase price/20% discount in the ROFR is an unenforceable penalty
- Damages for the Debtors' failure to provide the 22.5% loan are miscalculated and overstated

- Claims for broker and financing fees are speculative.[5]

Against this backdrop, there is no justification to summarily award JDH a $496 million claim on short notice.

Even if JDH possessed a claim, any claim it could assert is negated by the terms of the JDH Plan it requires the Debtors to support. Under the JDH Plan, JDH will receive all of the Debtors' and non-debtor affiliates' assets and equity interests (there are no equity interests in the JQH Trust), including all of the assets subject to the ROFR agreement. In short, JDH will receive the most favorable price it could have ever received under the ROFR plus all of the Debtors' other assets for no consideration.[6] JDH is receiving all of this in exchange for a $20 million contribution to a newly formed trust, the beneficiaries of which will be determined by Jacqueline Dowdy and Greggory Groves, CEO and general counsel, respectively, of JQH Management, and both trustees of the JQH Trust. See Plan at Arts. V, VII, Settlement Agreement § 1(f).

JDH is receiving a windfall. The value of the Debtors' assets exceeds the amount of all of the claims against the Debtors by more than of $790,000,000. Debtors' Disclosure Statement at Appendix 2. All of that value will now go to JDH. This represents a $200 million windfall over and above even the claim JDH now asks the Court to allow.[7] Once again, JDH bears the burden of proving its claim. The Debtors cannot act in accordance with their fiduciary duties and simply bestow a claim upon JDH to the detriment of the wider creditor body.

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[5] These are not all of the grounds for objection. The CMBS Lenders intend to file their own objection to the JDH Claims and reserve the right to assert the objections identified here, the other objections in the Claims Objection, and any other objections to the JDH Claims.

[6] JDH could now pay less than the cost of the secured debt and existing liabilities for any ROFR property. Pursuant to the ROFR, JDH was purchasing the ownership interests in the entities that owned the properties.

[7] This amount does not account for SFI Belmont's claim in the amount of $183,815,767, but with respect to which SFI Belmont has agreed to accept less than full payment, including a payment of $46 million on the effective date of the JDH Plan, and additional, undisclosed consideration to be paid over time. See JDH Disclosure Statement at 10, n.5. Accounting for SFI Belmont's settled claim, it appears that JDH would still receive a windfall of more than $100 million.

The fact that JDH proposes to subordinate its claim to the claims of other creditors in this case is irrelevant and does not negate the significance to creditors of allowing JDH's claim in any amount. There is no non-consensual path forward in these cases that will not require creditor voting. As a result, allowing any claim to JDH may be case dispositive. By way of example, if the Court were to approve the Plan Support Agreement and award JDH a $496 million claim against each Debtor, it would create a scenario in which JDH would merely allocate portions of its manufactured claim strategically across future proposed plans for each individual Debtor. In a case like this one where aggregate assets exceed liabilities and secured lenders are oversecured, allowing a $496 million a claim would cede control of every case to JDH. This is particularly true for the CMBS Lenders, whose borrowers are bankruptcy remote entities with little or no unsecured debt from which to create an impaired accepting class of creditors to sustain a cramdown plan.

For these reasons, the Court should disallow the JDH Claims in their entirety. Alternatively, if JDH believes it can prove that it has a claim, it must do so on a Debtor by Debtor basis and should only be entitled to a claim against any particular Debtor in the amount and to the extent that it proves that particular Debtor breached the ROFR, is liable to JDH, and in what amount.

CONCLUSION

For the foregoing reasons, and such other reasons as may be raised at a hearing on this matter, the CMBS Lenders respectfully request that the Court enter an order (i) denying approval of the Plan Support and Settlement Motion, (ii) denying authorization and approval of the Plan Support Agreement and Settlement Agreement, (iii) denying authorization and approval of the

proposed compromise and settlement of JDH's claims, and (iv) granting such other and further relief as the Court deems just and proper.

Dated: Kansas City, Kansas
February 21, 2018

Respectfully Submitted,

/s/ Darek S. Bushnaq

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