

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF KANSAS AT KANSAS CITY**

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In re	:	Chapter 11
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JOHN Q. HAMMONS FALL 2006, LLC, <i>et al.</i> ,	:	Case No. 16-21142 (RDB)
	:	<i>Jointly administered</i>
Debtors.	:	
	x	Related to Doc. Nos. 1971, 2001, 2044

**JOINT RESPONSE OF DEBTORS AND JD HOLDINGS, L.L.C. IN OPPOSITION TO  
MOTION OF AJJ HOTEL HOLDINGS INC. (n/k/a/ JWJ HOTEL HOLDINGS, INC.)  
FOR RELIEF FROM STAY TO PROCEED WITH ARBITRATION  
REGARDING ALL MATTERS RELATING TO W&H REALTY, LLC**

The above-captioned Debtors (“Debtors”) and JD Holdings, L.L.C. (“JD Holdings”) hereby object to AJJ Hotel Holdings, Inc.’s (“AJJ”) Motion for Relief from Stay to Proceed with Arbitration Regarding all Matters Relating to W&H Realty, LLC [ECF No. 2044] (the “Motion”). The grounds for Debtors’ and JD Holdings’ objection are set forth below.

**PRELIMINARY STATEMENT**

The Court should deny AJJ’s request to compel arbitration pursuant to the arbitration clause in W&H Realty, LLC’s (“WHR”) Operating Agreement. AJJ seeks arbitration of various issues that, to the extent they are justiciable, properly should be decided by this Court. AJJ’s Motion is merely its latest attempt to prevent the Debtor JQH Trust from selling or transferring its 50% interest in WHR (the “JQH WHR Interest”), pursuant to section 363 of the Bankruptcy Code or in conjunction with confirmation of JD Holdings’ pending plan.

As an initial matter, AJJ’s arbitration demand is procedurally improper, and the issues AJJ seeks to arbitrate are either moot or not ripe. The Court should deny the Motion on these grounds alone.

Alternatively, this Court can and should exercise its discretion to decline enforcement of the arbitration clause. First, arbitration here would conflict with the Bankruptcy Court's statutorily-provided exclusive jurisdiction over property of the estate. Although AJJ concedes that the JQH WHR Interest is property of the estate, it argues that arbitration concerning the JQH WHR Interest would only minimally implicate the Bankruptcy Code and, therefore, the Court is required to compel arbitration. But AJJ has failed to demonstrate the requisite "exceptional circumstances" that might justify arbitration. And in any event, as explained further below, AJJ is wrong. Debtors' ongoing efforts to sell or transfer the JQH WHR Interest pursuant to section 363 or in conjunction with confirmation of a Chapter 11 plan of reorganization directly implicate the Bankruptcy Code, and an arbitrator would have no authority to rule on any sale motion or decide any issues that implicate any plan of reorganization. AJJ should not be permitted to circumvent the Bankruptcy Court's jurisdiction over the disposition of estate property.

Second, arbitration here would implicate core proceedings, interfere with administration of the estate, inherently conflict with the Bankruptcy Code's underlying purposes of centralizing disputes, and would prejudice JD Holdings. Not only does AJJ seek to compel arbitration on core issues—including the sale of estate property under section 363 and plan confirmation—but it also seeks to stay confirmation of JD Holdings' Plan and any sale pursuant to section 363 until AJJ can initiate and conclude arbitration. AJJ's Motion is nothing more than an attempt to interfere with administration of the estate, usurp the Bankruptcy Court's core jurisdiction, and obtain possession of estate property. Furthermore, arbitration would inherently conflict with the Bankruptcy Code's purpose of centralizing disputes concerning the debtor's property and legal obligations. Arbitration would result in piecemeal litigation that will prejudice JD Holdings (Debtors' potential successor-in-interest), which may not have standing to participate. The resulting harm to JD Holdings, as a potential buyer of the JQH WHR Interest pursuant to section 363 of the Bankruptcy

Code, is significant and weighs heavily against enforcement of the arbitration clause. At the same time, AJJ—represented by counsel in Kansas City, Missouri as well as in Ohio—*does not plead that it will suffer any harm* if it is required to litigate issues concerning estate property here in the Bankruptcy Court.

As discussed further below, the Court should deny the Motion and decline to enforce the arbitration clause in the WHR Operating Agreement.

### **ARGUMENT**

#### **I. THE COURT SHOULD DENY AJJ'S MOTION BECAUSE AJJ'S ARBITRATION DEMAND IS PROCEDURALLY IMPROPER AND THE ISSUES IT SEEKS TO ARBITRATE ARE MOOT OR ARE NOT RIPE FOR RESOLUTION.**

AJJ's arbitration demand is procedurally defective because it has not provided the required notice under the Operating Agreement (Section 11.1). Section 11.1 incorporates the rules of the American Arbitration Association ("AAA"), which require AJJ to include in its demand, *inter alia*, "a statement setting forth the nature of the claim including the relief sought and the amount involved." *See* AAA Rule R-4(e)(iv). Here, it is unclear what claims AJJ even seeks to arbitrate. Assuming that AJJ seeks to arbitrate the issues set forth on pages 12-13 of the Motion, AJJ fails to provide the requisite level of specificity. AJJ requests permission to arbitrate unspecified claims for breach of contract and indemnification, and unspecified "damages and costs to AJJ and/or WHR as a result of Debtors' actions," but AJJ does not provide any further information about these purported claims or damages and it is not possible to discern what they are from the face of the document.

The other issues AJJ seeks to arbitrate fare no better because they are moot or otherwise not ripe for adjudication at this time. Debtors have withdrawn their motion to assume and assign the WHR Operating Agreement, and the only remaining issues—whether AJJ may exercise its right to purchase the JQH WHR Interest, and the value of the JQH WHR Interest—are not ripe for

adjudication because no formal sale of the JQH WHR Interest has been commenced and AJJ's purported purchase right, even if it were valid, has not been triggered.<sup>1</sup> The Court should deny AJJ's Motion on these bases alone.

**II. ASSUMING AJJ'S DEMAND WAS PROPER AND THAT THE ISSUES IT SEEKS TO ARBITRATE ARE RIPE, THE COURT SHOULD NEVERTHELESS DENY AJJ'S MOTION BECAUSE COMPELLING ARBITRATION WOULD UNDERMINE CONGRESSIONAL INTENT AND PREJUDICE JD HOLDINGS**

The Supreme Court is clear that an arbitration clause should *not* be enforced where Congress intended to limit or prohibit arbitration of a particular claim in a judicial forum. *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 227 (1987) ("Like any statutory directive, the Arbitration Act's mandate may be overridden by a contrary congressional command."). "If Congress did intend to limit [the] judicial forum for a particular claim, such an intent will be deducible from [the statute's] text or legislative history, or from an inherent conflict between arbitration and the statute's underlying purposes." *Id.* (internal quotations and citations omitted).

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<sup>1</sup> The fact is, however, that AJJ has no right of first refusal. AJJ's alleged purchase right does not apply to a sale by the JQH Trust. Section 6.5 of the Operating Agreement, which contains the purported purchase right, applies only to sales by a person who is an "*Assignee or [ ] a substitute Member.*" First Amended and Restated Operating Agreement of W&H Realty, LLC (the "WHR Operating Agreement") (ECF No. 1971), Ex. E (emphasis added). The JQH Trust is neither an Assignee nor a substitute Member of WHR. Thus, the Purchase Right does not apply to a sale by the JQH Trust. AJJ's argument that the Purchase Right "applies to *any Person* who holds a Membership Interest, whether or not they are an Assignee or substitute Member" contradicts the clear language of the WHR Operating Agreement, a document that was drafted by AJJ. See Response of AJJ Hotel Holdings, LLC (n/k/a JWJ Holdings, Inc.) to Memorandum of JD Holdings and Omnibus Response (ECF No. 2073), at 2-4. The WHR Operating Agreement states:

Notwithstanding anything to the contrary contained in this Agreement, if a Person holding, *whether as an Assignee or as a substitute Member*, all or any part of a Membership Interest (herein "Seller") receives a written offer . . . .

§ 6.5 (emphasis added). If the WHR Operating Agreement intended for this provision to apply to any person, "whether or not" they are an Assignee or a substitute Member, it would so state. But it does not.

As explained below, the Bankruptcy Court should deny AJJ's Motion because Congress did not intend for the FAA to override the Bankruptcy Code where, as here, the issues that AJJ seeks to arbitrate affect the Debtors' estate and fall within the Court's exclusive jurisdiction. Nor did Congress intend for the FAA to override the Bankruptcy Code where, as here, arbitration would undermine the underlying purposes of the Bankruptcy Code, *i.e.*, administration of the estate and the centralization of disputes affecting the estate, and prejudice important parties-in-interest.

**A. The plain language of 28 U.S.C. § 1334(e) and the legislative history of the Bankruptcy Code reflect that Congress did not intend for the issues AJJ seeks to arbitrate to be adjudicated by a non-bankruptcy court absent "exceptional circumstances" that are not present here.**

Congress made a deliberate decision to vest the District Court with *exclusive* jurisdiction over "all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate," regardless of whether the automatic stay applies.<sup>2</sup> 28 U.S.C. § 1334(e)(1). As one Court explains, "Congress could have chosen to provide exceptions, perhaps even an arbitration exception, to the bankruptcy courts' exclusive jurisdiction under 28 U.S.C. §

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<sup>2</sup> AJJ does not seriously dispute that the automatic stay applies here, arguing only that it does not apply because the "disputes relate to a post-petition agreement." Motion at 3. But the property at issue—the JQH WHR Interest—was property of the estate as of the Commencement Date, and continues to remain property of the estate. On the Commencement Date, the JQH Trust was a 50% owner of WHI, Inc. WHI's organization documents provided for arbitration of disputes and purported to provide AJJ's predecessor-in-interest a right of first refusal. WHI owned ownership interests, directly or indirectly, in the same assets as WHR. Only because of certain tax laws was it imperative that the corporate form of WHR be changed from an S corporation to a limited liability company. Thus, the JQH Trust's ownership interest in the entity that owns the hotel assets was and remains property of the estate, and the change in corporate form should not be viewed as somehow changing property of the estate into an asset the JQH Trust acquired after the Commencement Date. The JQH Trust's ownership interest was property of the estate as of the Commencement Date and should continue to be viewed as such. It is irrelevant that the JQH WHR Interest, in its current form, is subject to a post-petition operating agreement. To hold otherwise would elevate form over substance—particularly where, as here, the post-petition operating agreement did not substantively alter the Debtor's pre-petition interest—and would essentially mean that the post-petition WHR Operating Agreement divested the Debtor JQH Trust of its pre-petition property for no consideration.

1334(e)(1), but it clearly did not.” *In re Wade*, 523 B.R. 594, 604 (Bankr. W.D. Tenn. 2014). Rather, the “the clear and express language of 28 U.S.C. § 1334(e)(1) was intended by Congress to exclude any adjudicators other than the bankruptcy court from exercising control over property of the estate and resolving claims against property of the estate absent the bankruptcy court’s approval.” *Id.*

Thus, a bankruptcy court should not surrender its exclusive jurisdiction over property of the debtor to an arbitrator except under “*exceptional circumstances*.” *In re Muskegon Motor Specialties Co.*, 313 F.2d 841, 842 (6th Cir. 1963) (emphasis added); *see also In re Wade*, 523 B.R. at 604 (“[A]lthough *Muskegon* was decided under the former Bankruptcy Act of 1898, the exclusive jurisdiction of the bankruptcy court remains applicable under current 28 U.S.C. § 1334(e)(1).”). For this reason, Courts routinely deny arbitration demands and/or refuse to permit adjudication of claims in another forum where doing so would affect property of the estate. *See, e.g., Neves v. Great Am. Capital*, 291 F. App’x 36, 37 (9th Cir. 2008) (forum selection clause in company’s operating agreement did not undermine bankruptcy court’s jurisdiction, pursuant to § 1334(e)(1), over subject matter of its order implicating membership interest in company, which was property of the bankruptcy estate); *In re Walker*, 551 B.R. 679, 691-92 (M.D. Ga. 2016) (adjudication of stay violation regarding estate property falls within bankruptcy court’s exclusive jurisdiction under § 1334(e)(1)); *Wade*, 523 B.R. at 605; *Borger Properties, Inc. v. Auer Corp.*, 2010 WL 3932393, at \*9 (Bankr. S.D. Tex. Oct. 4, 2010) (“[I]mportant countervailing factors outweigh the forum selection clause. First, 28 U.S.C. § 1334(e)—which places exclusive jurisdiction over property of the estate in the ‘home’ bankruptcy court—provides strong support for transfer to the Northern District . . .”).

Here, AJJ fails to plead any “exceptional circumstances” that warrant this Court abdicating its exclusive jurisdiction over the JQH WHR Interest and any claims that may affect that interest

despite conceding that the JQH WHR Interest is property of the estate. *See* Motion at 10 (“Debtor Trust’s WHR Interest is property of the estate”). Instead, AJJ argues only that the issues it seeks to arbitrate implicate the Bankruptcy Code “even less” than the issues arbitrated in two wholly factually distinguishable cases that purportedly permitted arbitration.<sup>3</sup> But that is not the applicable standard AJJ must satisfy. Nor can AJJ satisfy the proper standard because there can be no exceptional circumstances where, as explained in *infra* section I.B, compelling arbitration would compromise the underlying purposes of the Bankruptcy Code, interfere with this Court’s administration of the estate, and prejudice other parties such as JD Holdings.

Accordingly, the Court should retain its exclusive jurisdiction over the JQH WHR Interest and deny AJJ’s attempt to have an arbitrator, unversed in the Bankruptcy Code and without the power to make decisions concerning sale or plan confirmation, potentially exercise control over the JQH WHR Interest where, as here, AJJ has not—and cannot—show any exceptional circumstance warranting such deference.

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<sup>3</sup> Both cases relied upon by AJJ involve claims initiated by the debtor. In *MBNA America Bank, N.A. v. Hill*, the court held that arbitration of the debtor’s purported class action claim against a creditor would not seriously jeopardize the objectives of the Bankruptcy Code. 436 F.3d 104, 109 (2d Cir. 2006). As support, the court listed, among other reasons, the fact that the debtor’s estate had “been fully administered and her debts have been discharged” so that the debtor “no longer requires protection of the automatic stay and resolution of the claim would have no effect on her bankruptcy estate.” *Id.* Similarly, in *In re Mintze*, the court held that arbitration was permissible where an individual debtor brought an action seeking to enforce a pre-petition rescission of her home equity loan. 434 F.3d 222, 231-32 (3d Cir. 2006). The court reasoned that arbitration of issues stemming from consumer protection laws did not inherently conflict with the underlying purposes of the Bankruptcy Code and, in fact, there was “no bankruptcy issue to be decided by the Bankruptcy Court.” *Id.* In another case cited by AJJ, the dispute sought to be arbitrated did not involve property of the estate. *See Whiting-Turner Contracting Co. v. Elec. Mach. Enters. (In re Elec. Mach. Enters.)*, 479 F.3d 791, 797 (11th Cir. 2007) (“[T]he disputed assets are not held by the debtor. Rather, they are held by a third party (Whiting-Turner), and the proceeding between [the debtor] and Whiting-Turner does not involve a claim by a bankruptcy creditor against funds held by the bankruptcy debtor’s estate.”). Here, on the other hand, AJJ seeks to stay plan confirmation and initiate arbitration against the Debtor JQH Trust to dispute a future disposition of property of the estate.



**B. The Court should not compel arbitration because doing so would inherently conflict with the purposes of the Bankruptcy Code.**

A bankruptcy court has discretion to deny an arbitration demand where enforcement would inherently conflict with the Bankruptcy Code.<sup>4</sup> *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006). To determine if such a conflict exists, courts must consider the Bankruptcy Code's objectives, including centralization of disputes concerning the debtor's property and legal obligations, protection of debtors and creditors from piecemeal litigation, and whether the issues a party seeks to arbitrate implicate a bankruptcy court's core or "substantially" core jurisdiction. *Wade*, 523 B.R. at 607 ("In determining whether an inherent conflict exists, the nature of the proceeding and whether it is a core or non-core proceeding will impact the court's ultimate determination."). "[C]ore proceedings concerning administration of property of the estate, the claims allowance process . . . [and] dischargeability issues are so fundamental to the bankruptcy case that *they should be deemed "hard core" and clearly not subject to [arbitration].*" *Id.* (emphasis added).

As set forth below, AJJ seeks to have an arbitrator resolve core issues that have the potential to affect estate property and otherwise determine parties' rights vis-à-vis estate property. Permitting arbitration of these issues would interfere with the administration of the estate, undermine the Bankruptcy Code's goal of centralizing disputes, and prejudice important parties in interest. For these reasons, in addition to other factors that counsel against compelling arbitration, the Court should deny AJJ's Motion.

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<sup>4</sup> "If the bankruptcy court has properly considered the conflicting policies in accordance with law, we acknowledge its exercise of discretion and show due deference to its determination that arbitration will seriously jeopardize a particular core bankruptcy proceeding." *Hill*, 436 F.3d at 108 (internal quotations omitted).



**1. The issues that AJJ seeks to arbitrate and the relief AJJ requests implicate core matters such that arbitration would inherently conflict with the Bankruptcy Code's purposes.**

The issues that AJJ seeks to arbitrate and the relief it requests implicate or otherwise fall within with this Court's core jurisdiction. The decision of whether to enforce an arbitration clause as to a core proceeding "requires a particularized inquiry into the nature of the claim and the facts of the specific bankruptcy." *Hill*, 436 F.3d at 108. Here, arbitration of such core issues would inherently conflict with the underlying purposes of Bankruptcy Code.

*First*, AJJ explicitly requests that the Court "[s]tay any action or ruling on . . . the Plan and APA as to the proposed sale/transfer of Debtor Trust WHR's Interest to JDH, until the arbitration is concluded." Motion at 12. This request belies any claim that the issues AJJ seeks to arbitrate do not implicate matters within the Court's core jurisdiction, or else any such stay would be entirely unnecessary. *See* 28 U.S.C. § 157(b)(2)(N), (L). But even if the issues did not implicate core matters, granting AJJ's motion would implicate and/or interfere with other core matters pending before this Court.

*Second*, AJJ seeks to arbitrate whether it may exercise its right to purchase the JQH WHR Interest and, relatedly, the value of the JQH WHR Interest. Although not ripe for resolution at this time, these issues implicate Debtors' statutory rights under section 363 of the Bankruptcy Code, clearly a core matter over which an arbitrator has no authority or power to order relief. *See, e.g., In re Mr. Grocer, Inc.*, 77 B.R. 349, 355 (Bankr. D.N.H. 1987) (refusing to enforce purchase right where underlying asset being sold or otherwise transferred was part of a multi-asset sale pursuant to section 363 of the Bankruptcy Code); 28 U.S.C. § 157(b)(2)(N).

All of these issues or requests for relief raised by AJJ are properly resolved by the Court because they implicate the Court's core jurisdiction. Granting AJJ's requested relief and permitting an arbitrator to decide core issues or issues closely intertwined with core issues, as is

the case here, would interfere with administration of the estate, confirmation of the plan, and sale of Debtors' assets, thereby conflicting with the underlying purposes of the Bankruptcy Code. Indeed, the Bankruptcy Court could be barred from deciding issues related to sale of estate property and plan confirmation as a result of collateral estoppel depending on the arbitrator's findings. *See In re Eber*, 687 F.3d 1123, 1127 (9th Cir. 2012) (affirming denial of motion to compel arbitration).

**2. Compelling arbitration would inherently conflict with the Bankruptcy Code's policy of centralizing disputes and, consequently, prejudice JD Holdings.**

Arbitration would also undermine the Bankruptcy Code's important policy of centralizing disputes, and instead lead to piecemeal litigation in which only Debtor JQH Trust and AJJ may participate. "Centralization of disputes concerning a debtor's legal obligations is especially critical in chapter 11 cases. . . . To protect reorganizing debtors and their creditors from piecemeal litigation, the bankruptcy laws centralize all disputes concerning [a debtor's legal obligations] so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *In re White Mountain Mining Co., L.L.C.*, 403 F.3d 164, 170 (4th Cir. 2005) (internal quotations omitted) (declining to enforce arbitration clause); *see also In re Eber*, 687 F.3d at 1131 (same).

JD Holdings is not bound by, or subject to, the arbitration provision in question, and therefore has no right to participate in any arbitration. Permitting arbitration of issues concerning the transferability and ownership of the JQH WHR Interest would particularly prejudice JD Holdings as the prospective acquirer of the JQH WHR Interest. Permitting arbitration would thus conflict with the Bankruptcy Code's important policy of centralizing proceedings affecting a

debtor or the debtor's estate.<sup>5</sup> Courts routinely deny motions to compel arbitration in such cases, as this Court should here. *See* Memorandum Opinion and Order Granting Debtors' Motion for Summary Judgment and Denying Creditor's Motions for Summary Judgment and Relief From Stay (ECF No. 1379), at 18 ("Retaining core proceedings in a bankruptcy court 'promotes the well-defined policy goals of centralizing all bankruptcy matters in a specialized forum to ensure the expeditious reorganization of debtors.'") (quoting *N. Parent, Inc. v. Cotter & Co. (In re N. Parent, Inc.)*, 221 B.R. 609, 622 (Bankr. D. Mass. 1998)); *see also In re White Mountain Mining Co., L.L.C.*, 403 F.3d at 170 (affirming bankruptcy court's refusal to order arbitration where, *inter alia*, arbitration would "impose additional costs on the estate and divert the attention and time of the debtor's management," whereas allowing the adversary proceeding to go forward in the bankruptcy forum would "allow all creditors, owners and parties in interest to participate [in a centralized proceeding] at a minimum of cost"); *In re Eber*, 687 F.3d at 1131 (affirming denial of motion to compel arbitration); *In re Patriot Solar Grp., LLC*, 569 B.R. 451, 460 (Bankr. W.D. Mich. 2017) (denying arbitration and finding persuasive debtor's argument that arbitration would "deprive the Debtor of the relief that Chapter 11 is intended to provide, including modification of rights between debtors and creditors by centralizing disputes in the bankruptcy court").

### **3. Other factors weigh against the Court compelling arbitration.**

A bankruptcy court's determination that arbitration would inherently conflict with the underlying purposes of the Bankruptcy Code, such as is the case here, is generally outcome determinative of its decision to deny arbitration. Some bankruptcy courts, however, occasionally

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<sup>5</sup> In this sense, Congress' grant of exclusive jurisdiction to the Bankruptcy Court over all matters affecting property of the estate is consistent with, and furthers, the Bankruptcy Code's policy of centralizing disputes.

consider other factors based on the particular facts and circumstances of a particular case. *Wade*, 523 B.R. at 612. These factors include:

- 1) Whether the arbitration proceeding was commenced prepetition;
- 2) Whether the party seeking arbitration has formally appeared in the bankruptcy case;
- 3) Whether the arbitrator has special knowledge or expertise which would be helpful to the resolution of the disputed issues;
- 4) Whether there is a strong likelihood that the debtor will confirm a plan;
- 5) Whether there is an international arbitration provision;
- 6) The likelihood of piecemeal litigation;
- 7) Whether the issue to be arbitrated is core or noncore; and
- 8) What impact resolution of the issue will have on the bankruptcy estate?

*Id.* (citing *In re Nu-Kote Holding, Inc.*, 257 B.R. 855, 863 (Bankr. M.D. Tenn. 2001) (gathering factors from six other courts)). Although the Court need not consider these factors in order to deny AJJ's motion to compel arbitration, if the Court does consider them, it is clear that they do not justify a different outcome.

*As to the first factor*, no arbitration has been commenced.

*As to the second factor*, AJJ previously has appeared voluntarily in this Court with respect to related issues. AJJ first voluntarily appeared in these Bankruptcy Cases to file a response to Debtors' Motion for Authority to Enter into Plan Support Agreement with JD Holdings, L.L.C. and Compromise of Claims (ECF No. 1848). AJJ has since voluntarily participated in a number of other matters before the Court in these cases, such as by filing an objection to JD Holdings' Amended Disclosure Statement (ECF No. 1916), filing an objection to Debtors' motion to assume and assign the WHR Operating Agreement to JD Holdings (ECF No. 2001), and filing an objection

to JD Holdings' Modified Amended Joint and Consolidated Chapter 11 Plans of Reorganization for All Debtors (ECF No. 2015), among others. *This factor "weighs heavily" in favor of denying arbitration.* *Wade*, 523 B.R. at 612 (emphasis added).

*As to the third factor*, there is no evidence that an arbitrator would have special knowledge or expertise helpful to the resolution of the disputed issues of the ability to sell property of the estate pursuant to section 363 of the Bankruptcy Code or in conjunction with plan confirmation. To the contrary, an arbitrator would lack the jurisdiction to decide important issues concerning the WHR Interest, such as plan confirmation and the sale of Debtors' assets pursuant to section 363. *See supra* Section II.B.1.

*As to the fourth and eighth factors*, there is a strong likelihood that JD Holdings, with Debtors' cooperation, will confirm a plan. Granting AJJ's Motion and the relief it requests, however, has the potential to interfere with this Plan to the detriment of all other creditors and parties in interest. Indeed, AJJ specifically requests that the Court "[s]tay any action or ruling on the . . . Plan and APA as to the proposed sale/transfer of Debtor Trust WHR's Interest to JDH, until the arbitration is concluded." Motion at 10. Arbitration at this time on AJJ's requested terms would only serve to delay confirmation and implementation of the plan. These factors thus weigh in favor of denying AJJ's Motion, particularly where AJJ has failed to articulate any countervailing "exceptional circumstances," *see supra* Argument II.A, and where, as here, the issues that AJJ seeks to arbitrate can easily be decided by the Bankruptcy Court without prejudicing other interested parties such as JD Holdings.

*As to the sixth factor*, arbitration will result in piecemeal litigation that will prejudice JD Holdings (Debtors' potential successor-in-interest) and other creditors, none of whom will have standing to participate. *See supra* Argument II.B.2. Although AJJ recognizes that JD Holdings has an interest in the outcome of the issues AJJ seeks to arbitrate, *see* Motion at 11, as a result of

AJJ's own actions, JD Holdings is not a party to the WHR Operating Agreement. Therefore, JD Holdings may not have standing to participate in any potential arbitration proceeding commenced pursuant to the Operating Agreement. The resulting harm to JD Holdings, as the imminent buyer of the JQH WHR Interest, is significant and weighs heavily against enforcement of the arbitration clause. At the same time, *AJJ does not plead that it will suffer any harm* if it is required to litigate these issues here in the Bankruptcy Court.

*As to the seventh factor*, as explained *supra*, II.A-B.1, the issues to be arbitrated are core matters or otherwise affect other pending core matters.

### **CONCLUSION**

For the foregoing reasons, the Court should deny the Motion.

# # #

Dated: May 7, 2018

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