

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

In re: ) Chapter 11  
)  
JLT HOLDINGS, LLC, ) Case No. 18-33604  
)  
Debtor. ) Honorable A. Benjamin Goldgar  
)  
) **Hearing Date: April 10, 2019**  
) **Hearing Time: 9:30 a.m.**  
\_\_\_\_\_)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **Wednesday, April 10, 2019, at 9:30 a.m.**, we shall appear before the Honorable A. Benjamin Goldgar of the United States Bankruptcy Court for the Northern District of Illinois, or any other judge sitting in his place and stead, at Courtroom 642 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, and then and there present the Debtor's **MOTION TO APPROVE SALE OF 220 GARDEN STREET TO JK PROPERTY HOLDINGS, LLC FREE AND CLEAR OF LIENS AND OTHER INTERESTS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**, a copy of which is hereby served upon you.

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**Counsel for JLT Holdings, LLC**

**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that true and correct copies of this notice and the documents referred to therein were served upon the parties listed on the below service list via CM/ECF, facsimile and/or First Class Mail as indicated on Friday, March 20, 2019.

By: /s/ Alexander F. Berk  
Alexander F. Berk, Esq.

**SERVICE LIST**

**VIA CM/ECF**

*Office of the United States Trustee*

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Yorkville, IL 60560

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Dolan & Murphy, Inc.  
765 Orchard Avenue  
Aurora, IL 60506

Broward County Tax Collector  
c/o Records, Taxes, and Treasury  
Division  
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Yorkville, IL 60560

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Agency  
c/o Robert A. Williams, Esq.  
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Tallahassee, FL 32399

Illinois Department of Revenue  
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Chicago, IL 60601

Illinois Environmental Protection  
Agency  
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Springfield, IL 62794

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101

Keystrokes Transcription Service, Inc.  
220 Garden Street  
Yorkville, IL 60560

Speechcheck, Inc.  
200 Garden Street  
Yorkville, IL 60560

Lakewood Springs Homeowner's  
Association  
c/o Foster Premier Inc.  
PO Box 7676  
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**IN THE UNITED STATES BANKRUPTCY COURT  
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In re:	)	Chapter 11
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JLT HOLDINGS, LLC,	)	Case No. 18-33604
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Debtor.	)	Honorable A. Benjamin Goldgar
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**MOTION TO APPROVE SALE OF 220 GARDEN STREET TO JK PROPERTY HOLDINGS, LLC FREE AND CLEAR OF LIENS AND OTHER INTERESTS PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE**

NOW COMES JLT Holdings, LLC, debtor and debtor in possession (the "**Debtor**"), by and through its undersigned counsel, and hereby moves this Court for the entry of an order pursuant to sections 105 and 363 of title 11 of the United States Code (the "**Code**") and Rules 2002, 6004, 9006, and 9007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") authorizing the Debtor to sell the real estate commonly known as 220 Garden Street. Building C, Yorkville, Illinois 60560 (the "**Motion**"). In support of the Motion, the Debtor respectfully states as follows:

**I. JURISDICTION AND VENUE**

1. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. § 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (M).

2. The statutory predicates for the relief requested herein are sections 105 and 363 of the Code, and the applicable rules are Bankruptcy Rules 2002, 6004, 9006, and 9007.

## II. FACTUAL BACKGROUND

### A. Chapter 11 Filing Background

3. On December 3, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Code, commencing the above-captioned Chapter 11 case (the "**Chapter 11 Case**"). Since the Petition Date, the Debtor has remained in possession of its assets and has continued to operate its businesses as a debtor in possession in accordance with sections 1107(a) and 1108 of the Code.

4. No Trustee or committee of unsecured creditors has been appointed in the Chapter 11 Case.

5. The Debtor is a real estate holding company that holds interests in three (3) properties (two (2) in Illinois and one (1) in Florida). The property at issue in this Motion is a 5,400 square foot commercial office building located at 220 Garden Street, Building C, Yorkville, IL 60560 ("**220 Garden**").

### B. Underlying State Court Litigation

6. The Debtor's sole secured lender, McCormick 101, LLC ("**McCormick**") sought to foreclose on 220 Garden in a mortgage foreclosure lawsuit in Kendall County, Illinois—Case No. 2017CH000290 (the "**Illinois Foreclosure Case**"). The Illinois Foreclosure Case remains pending, but was stayed on the Petition Date.

7. Following the Petition Date, the Debtor authorized McCormick to conduct an appraisal of 220 Garden along with the Debtor's other properties in order to facilitate a consensual resolution of the disputes between the Debtor and McCormick.

8. McCormick's appraisal of 220 Garden (the "**220 Garden Appraisal**") occurred

on December 19, 2018. The 220 Garden Appraisal was completed on January 24, 2019 and tendered to the Debtor by McCormick on February 26, 2019.

9. On or about February 8, 2019, the Debtor and McCormick agreed to a term sheet (the "**Term Sheet**") that set forth a resolution of the dispute between the Debtor and McCormick to be memorialized in a settlement agreement (the "**Settlement Agreement**"), which is subject to the approval of the Court at a hearing set for March 20, 2019, or such other continued date.

10. The Debtor and McCormick agreed to the terms of the Settlement Agreement on or about February 25, 2019. The resolution set forth in the Term Sheet and finalized by the Settlement Agreement provides for the disposition of 220 Garden to reduce the Debtor's balance owing to McCormick.

**C. Pre- and Post-Petition Marketing and Sale Efforts as to 220 Garden**

11. The Debtor currently rents 220 Garden to its affiliated entity, Keystrokes Transcription Service, Inc. ("**Keystrokes**"). 220 Garden is currently Keystrokes' main office.

12. Since 2007, Keystrokes has used 220 Garden as workspace for its transcription professionals, sales team, information technology team, customer service team, and executives as necessary.

13. However, beginning in 2011, Keystrokes has seen a downturn in gross revenue as a result of increased digitization and automation in the medical device transcription business. As such, Keystrokes has substantially reduced the number of transcription professionals it employs to remain competitive and profitable. Digitization and automation have also resulted in a substantial reduction in Keystrokes' sales and information technology teams.

14. As a result of Keystrokes' downsizing measures, it no longer needs to rent 220

Garden and wishes to move to a smaller office space.

15. Following Keystrokes' decision to downsize, the Debtor determined—in its business judgment—that its best course of action was to sell 220 Garden instead of seeking a new tenant for 220 Garden and continuing to serve as the landlord of commercial property.

16. On February 1, 2018, the Debtor and Dolan and Murphy, Inc. ("**D&M**") entered that certain *Exclusive Right to Sell Contract* (the "**Listing Agreement**") whereby the Debtor agreed to give D&M the exclusive right to sell 220 Garden from February 1, 2018 to September 1, 2018. On August 24, 2018, the Debtor agreed to a second listing agreement (the "**Second Listing Agreement**"). The term of the Second Listing Agreement was August 24, 2018, to February 24, 2019. Brian Dolan ("**Brian**"), a principal of D&M, led D&M's efforts to market and sell 220 Garden. An affidavit setting forth Brian's qualifications, the marketing efforts he made as to 220 Garden, and his professional opinion with respect to the Sale Contract (defined below) is attached hereto as **Exhibit A**.

17. On March 15, 2019, the Debtor moved this Court for authorization to retain Brian until April 30, 2019, retroactive to February 24, 2019.

18. In both the Listing Agreement and Second Listing Agreement, the Debtor agreed to pay D&M a six percent (6%) commission. Such commission is one percent (1%) lower than D&M's standard commission for the marketing and sale of comparable property.

19. D&M initially listed 220 Garden at \$995,000.00 (the "**Listing Price**"). Concurrently with the execution of the Second Listing Agreement, D&M reduced the Listing Price to \$895,000.00 (the "**Second Listing Price**"). Finally, on February 11, 2019, D&M, with the Debtor's authority, reduced the Listing Price to \$700,000.00 (the "**Third Listing Price**").

20. During the term of the First Listing Agreement and Second Listing Agreement, D&M conducted the following efforts to market and sell 220 Garden:
- a. Listed 220 Garden on the Multiple Listing Service, LoopNet, and CoStar;
  - b. Made appropriate price changes to the above-referenced digital listings to reflect changes as they occurred;
  - c. Advertised 220 Garden via an email list service dedicated to commercial property and maintained by D&M that reaches approximately one hundred and twenty (120) commercial real estate brokers;
  - d. Included 220 Garden as one (1) of approximately twenty (20) properties advertised in a weekly full-color ad in the Sunday Edition (both print and digital) of the Aurora Beacon;
  - e. Prepared, printed, and distributed informational brochures for 220 Garden;
  - f. Regularly corresponded with Lynn Dubajic ("**Lynn**"), who serves as a consultant to the Yorkville Economic Development Corporation, regarding a marketing strategy for 220 Garden;
  - g. Regularly corresponded with Jason Pesola, an affiliate of Century 21 Affiliated ("**Jason**"), and Roger Blomgren ("**Roger**") of Inland Real Estate Brokerage Inc., both of whom focus their practice in marketing and selling commercial property in Yorkville regarding a marketing strategy for 220 Garden; and
  - h. Placed signs advertising 220 Garden for sale in appropriate areas in and around Yorkville.

21. During the terms of the Listing Agreement and Second Listing Agreement, Brian conducted five (5) showings, only one of which resulted in a second showing.

**D. Offer to Purchase 220 Garden**

22. Following the reduction of 220 Garden's listing price to \$700,000.00, D&M was contacted by JK Property Holdings, LLC, ("**JK**") to schedule a showing of 220 Garden.

23. D&M subsequently conducted a showing of 220 Garden with JK. Following the



showing, JK made a verbal offer of \$550,000.00 for 220 Garden. The Debtor's principal, Lee M. Tkachuk ("**Lee**"), made a verbal counter offer in the amount of \$610,000.00.

24. On March 11, 2011, the Debtor received a written offer (the "**Sale Contract**") from JK for \$570,000.00, which is consistent with the 220 Garden Appraisal. The Sale Contract is attached hereto as **Exhibit B** and summarized below.

25. The principal terms of the Sale Contract are summarized as follows:

- a. **Purchase Price** - JK shall pay the sum of five hundred and seventy thousand dollars (\$570,000.00) (the "**Purchase Price**") for 220 Garden in cash or by drawing on a line of credit with an existing lender after providing said lender with an appraisal sufficient for closing.
- b. **Earnest Money and Payment of Purchase Price** - An earnest money deposit of \$10,000.00 is contemplated under the 220 Garden Offer. The Purchase Price (net of earnest money deposited) will be paid in full at closing.
- c. **Due Diligence** - JK, at its option and expense, may conduct inspections of 220 Garden that is deems necessary.
- d. **Title** - The Debtor shall deliver or cause to be delivered to JK or its attorney a title commitment for an ALTA title insurance policy in the amount of the purchase price and shall cause a title policy to be issued with an effective date as of the date of closing.
- e. **Condition of 220 Garden** - 220 Garden shall be conveyed to JK "as is, where is" as of March 11, 2019.
- f. **Closing Date** - The closing shall occur on or before April 30, 2019 following receipt of approval by the Court.

26. JK and its principals are unaffiliated third-parties and negotiated the Sale Contract at arm's length with the Debtor.

27. The terms of the Sale Contract are fair and reasonable in the Debtor's business judgment and accepting it will benefit the Debtor's estate, its creditors, and all parties in interest.

An affidavit setting forth the opinion of Lee M. Tkachuk, one of the Debtor's principals, as to the propriety of the Sale Contract and the negotiations that led to it are set forth in **Exhibit C**.

### **III. RELIEF REQUESTED**

28. In accordance with sections 105 and 363 and by this Motion, the Debtor seeks an order authorizing the Debtor to sell 220 Garden.

### **IV. BASIS FOR RELIEF REQUESTED**

#### **A. Section 363 Sale**

29. Section 363 of the Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the Estate." 11 U.S.C. § 363(b). To approve the use, sale or lease of property outside the ordinary course of business, there must be "some articulated business justification." *See, e.g., Fulton State Bank v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *Committee of Equity Sec. Holders v. Lionel Corp., (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983).

30. Once a valid business justification is established, "[t]he business judgment rule is a presumption that in making a business decision the directors of a [company] acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992).

31. When applying the "business judgment rule," courts afford the debtor similar decision-making power as "an officer or director of a corporation." *See In re Comm. Mortg. And Fin. Co.*, 414 B.R. 389, 394 (Bankr. D. Ill. 2009). Therefore, the relief requested in this Motion should be granted if the Debtor demonstrates a sound business justification therefore. *See*

*Schipper, supra*, 933 F.2d at 515; *Lionel Corp., supra*, 722 F.2d at 1071.

32. The sale of 220 Garden is in the best interests of the Debtor's estate, its creditors, and all other parties in interest because 220 Garden has been appropriately marketed for sale, resulting in an offer consistent with 220 Garden's market value. Furthermore, as discussed more fully in Exhibit A and as indicated by the results of the thirteen (13) months of marketing that have already occurred, the market for commercial office property similar to 220 Garden is extremely limited and unlikely to yield another comparable offer for 220 Garden. As such, further marketing efforts would likely result in wasting the estate's limited resources and would prejudice the creditors by reducing their eventual recovery. In addition, the Debtor can longer afford the cost of owing 220 Garden.

**B. The Sale Satisfies the Requirements of Section 363(f) for a Sale Free and Clear of Liens, Claims, Encumbrances, and Interests**

33. Under section 363(f) of the Code, a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

34. Because section 363(f) is drafted in the disjunctive, satisfaction of any one of its

five requirements will be sufficient to permit the sale of the Sale Assets free and clear of any and all interests. McCormick, as the only lien holder, will consent to the sale of 220 Garden to JK pursuant to the terms of the Sale Contract. As such, the Debtor has satisfied the requirement of section 363(f) and may sell 220 Garden free and clear of any lien, claim, or interest in 220 Garden.

**C. The Sale Satisfies the Requirements of Code Section 363(m) for a Sale Made in Good Faith**

35. Section 363(m) reflects that the Code strongly favors finality of sale orders and the protection of good-faith purchasers so as to maximize the value of the assets for sale, which benefits both debtors and creditors. *See Hower v. Molding Systems Engineering Corp.*, 445 F.3d 935, 938 (7th Cir. 2006).

36. "The requirement that a purchaser act in good faith, of course, speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Frain Services, Inc.*, 798 F.2d 1113, 1125 (7th Cir. 1986) (citing *In re Rock Industries Machinery Corp.*, 572 F.2d 1995, 1198 (7th Cir. 1978)).

37. In the present case, the Buyer was presented to the Debtor through the independent marketing efforts of D&M and has no relationship with the Debtor, its affiliates, or its insiders. The Sale Contract represents the culmination of arms-length and good faith negotiations by and among, D&M, the Debtor, and the Buyer. Furthermore, the Debtor did not provide JK with a copy of the 220 Garden Appraisal nor share the information contained therein

with JK prior to, during negotiation of, nor after receiving the Sale Contract.

**D. The Debtor and Buyer Seek to Close Immediately**

38. The Debtor requests the relief sought by this Motion be effective immediately upon entry of an order granting this Motion, without the imposition of a stay pursuant to Bankruptcy Rule 6004(h).

39. The purpose of Bankruptcy Rule 6004(h) is to protect the rights of an objecting party and balance a debtor's interest in a protracted sale process with a creditor's or other party in interest's right to object. *See e.g., Hower*, 445 F.3d at 938 (waiving stay imposed by former Bankruptcy Rule 6004(g) in spite of creditor's objection where immediate closing of a sale provided substantial value to the debtor and other parties in interest and the debtor's primary secured creditor and United States Trustee chose not to object). In the event that there are no objections to this Motion, as expected by the Debtor, the Debtor respectfully requests that Bankruptcy Rule 6004(h) be waived, allowing the Debtor to proceed with closing immediately.

**V. NOTICE**

40. Notice of the filing of this Application and the hearing scheduled therefore has been served pursuant to Bankruptcy Rule 2002 on not less than twenty-one (21) days' notice by CM/ECF, U.S. Mail, and/or facsimile to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) counsel to the Debtor's secured lender, McCormick 101, LLC; and (c) all other creditors. In light of the nature of the relief requested, the Debtor submits that no other or further notice is required.

WHEREFORE, JLT Holdings, LLC, debtor and debtor in possession herein, respectfully requests the entry of an order in accordance with the foregoing recommendations in the form

filed herewith and made a part hereof without further notice, and for such other and further relief as is just.

Respectfully submitted,

JLT HOLDINGS, LLC

By: /s/ Alexander F. Berk  
One of its attorneys

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