

## AGREEMENT

This Agreement ("**Agreement**") is made and entered into by and among J. Michael Morris, Trustee for the Bankruptcy Estate of Phillip Eugene Harden Case No. 17-10732 ("**Trustee**"), and Sedgwick County, Kansas ("**County**"). Trustee and County may be referred to collectively as the "**Parties**."

### Recitals

WHEREAS, Phillip Eugene Harden ("**Debtor**") filed a Chapter 7 Bankruptcy on April 26, 2017, Case No. 17-10732;

WHEREAS, J. Michael Morris is the Chapter 7 Bankruptcy Trustee assigned to oversee the bankruptcy estate in Debtor's case;

WHEREAS, at the time the bankruptcy was filed, real property with common addresses of 217 and 221 North Georgie, Derby, Kansas, PIN 00300462 ("**Parcel No. 1**") and 228 North Baltimore, Derby, Kansas PIN 00300458 ("**Parcel No. 2**") were owned by Harden Rentals, LLC, which has been included in the Debtor's bankruptcy estate and subject to the Trustee's administration;

WHEREAS, Parcel No. 1 and Parcel No. 2 have assessed against each of them unpaid delinquent *ad valorem* property taxes;

WHEREAS, by Order of the Bankruptcy Court, Trustee was granted authority to dispose of Parcel No. 1 and Parcel No. 2 (Attached as **Exhibit A**); and upon Trustee's Motion (**Exhibit B**) and by further Order Authorizing Sale Free and Clear of Liens (**Exhibit C**), Parcel No. 1 and Parcel No. 2 were sold under the following terms:

- a. Buyer, Elk Holdings, LLC paid a purchase price of \$25,000 and assumed all liability under a Mortgage Note dated May 10, 2016 between Harden Rentals LLC and Integrated Resources, Inc.
- b. The amount of the Mortgage Note commencing May 10, 2016 was \$360,000 with 5.4% interest for a term of thirty-six (36) months, and at the time of assumption by Elk Holdings, was only paid through July 2017.

WHEREAS, the total of unpaid general taxes, interest and fees for both Parcels as of the date of this agreement is \$28,517.40, which exceeds the purchase price of the parcels, and the Parties desire reach a settlement of all unpaid delinquent *ad valorem* property taxes as authorized by K.S.A. 79-1703.

### Terms

NOW THEREFORE, in consideration of the mutual covenants, promises, and obligations contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties hereby agree as follows:

1. Recitals. The Recitals set forth above are fully incorporated into these Terms.
2. Reduction of Taxes as to Parcel No. 1: For Parcel No. 1, the County shall reduce 2016 and 2017 *ad valorem* property taxes to an amount equal to 50% of the General Taxes and waive all remaining interest and fees as set forth below:

	<u>General Tax</u>	<u>Interest</u>	<u>Fees</u>	<u>Total</u>	<u>Settlement</u> <u>50% of General Tax</u>
2017	\$8,320.24	367.26	0.00	8687.50	\$4,160.12
2016	\$7,853.90	1588.02	16.00	9457.92	<u>\$3,926.95</u>
			Sub Total	\$18,145.42	\$8,087.07

2. Reduction of Taxes as to Parcel No. 2: For Parcel No. 2, the County shall reduce 2016 and 2017 *ad valorem* property taxes to an amount equal to 50% of the General Taxes and waive all remaining interest and fees as set forth below:

	<u>General Tax</u>	<u>Interest</u>	<u>Fees</u>	<u>Total</u>	<u>Settlement</u> <u>50% of General Tax</u>
2017	\$4,855.56	214.33	0.00	5069.89	\$2,427.78
2016	\$4,447.00	839.09	16.00	5302.09	<u>\$2,223.50</u>
			Sub Total	\$10,371.98	\$4,651.28

3. Payment of Taxes: Upon approval of the negotiated reduction of taxes in paragraphs one (1) and two (2) above by the Board of Commissioners of Sedgwick County and the Kansas Board of Tax Appeals, Trustee shall make payment of the taxes to the Sedgwick County Treasurer.

4. Effective Date. The date upon which this Agreement is signed by all Parties shall be referred to and defined in this Agreement as the "**Effective Date**."

5. Releases. Effective upon approval of this Agreement by Board of Commissioners of Sedgwick County and The Kansas Board of Tax Appeals, the County and the Trustee mutually release and discharge each other, Harden Rentals, LLC and the Bankruptcy Estate of Phillip Eugene Harden from any and all claims and causes of action arising from or related to the payment of delinquent unpaid *ad valorem* property taxes as to Parcels No. 1 and No 2.

6. Construction, Interpretation and Severability. This Agreement is the result of negotiations by the Parties and their attorneys and disputes over the interpretation of this Agreement shall not be construed against a Party on the basis that one Party drafted this Agreement. If any provision of this Agreement is determined invalid under applicable law, such invalidity shall be limited to the provision without invalidating the remainder of this Agreement.

7. Advice of Counsel. The Parties warrant and represent that they have utilized the services of legal counsel in negotiating, reaching and entering into this Agreement. The Parties acknowledge that they have had the opportunity to have any questions they have regarding the terms or effect of this Agreement answered by attorneys of their choosing, that they have been advised of the legal consequences of entering into this Agreement, and they have executed it knowingly and voluntarily and without any coercion, undue influence, threat, or intimidation.

8. Choice of Law. This Agreement shall, in all respects, be governed by and interpreted in accordance with the laws of the State of Kansas without regard to its conflicts of law rules or principles.

9. Counterparts and Signatures. This Agreement may be executed in one or more counterparts for the convenience of the Parties hereto, all of which together shall constitute one and the same instrument. Facsimile signatures, or signatures transferred in .pdf format, shall be treated as original signatures for all purposes.

IN WITNESS WHEREOF, the parties have hereunto subscribed their names and caused this Agreement to be executed as of the date last written below.

**BANKRUPTCY ESTATE OF PHILLIP  
EUGENE HARDEN**

  
\_\_\_\_\_  
J. MICHAEL MORRIS, Trustee

Date: 5/17/18

**BOARD OF COUNTY COMMISSIONERS  
OF SEDGWICK COUNTY, KANSAS**

\_\_\_\_\_  
David T. Dennis, Chairman  
Commissioner, Third District

Date: \_\_\_\_\_

**APPROVED BY:**

  
\_\_\_\_\_  
MICHELLE L. BRENWALD  
Attorney for Trustee

Date: 5.17.18

**ATTEST:**

\_\_\_\_\_  
KELLY B. ARNOLD  
County Clerk

Date: \_\_\_\_\_

**APPROVED AS TO FORM ONLY:**

  
\_\_\_\_\_  
PATRICIA J. PARKER  
Assistant County Counselor

Date: May 25, 2018

SO ORDERED.

SIGNED this 5th day of October, 2017.



*Dale L. Somers*

Dale L. Somers  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS

IN RE:	)	
	)	
PHILLIP EUGENE HARDEN,	)	Case No. 17-10732
	)	Chapter 7
Debtor.	)	
_____	)	
	)	
J. MICHAEL MORRIS, Trustee,	)	
Plaintiff,	)	
vs.	)	Adversary No. 17-5131
	)	
HARDEN PROPERTIES, LLC;	)	
HARDEN RENTALS, LLC;	)	
PRIDE AUTO PLAZA OF DERBY	)	
LLC; AND McMILLAN	)	
SEAMLESS GUTTERING, INC.,	)	
	)	
Defendants.	)	
_____	)	

**ORDER GRANTING MOTION TO ESTABLISH WINDING UP PROCEDURES AS TO  
DEFENDANT ENTITIES**

The above matter is before the Court. The trustee appears by J. Michael Morris of Klenda Austerman LLC. There are no other appearances. Thereupon, the Court FINDS:

1. The motion is granted.
2. The procedure for sales will be as follows:



(a) Notice of an Intended Sale will be provided to the debtor and debtor's counsel, the U.S. Trustee, any secured creditor as to such asset, and any party requesting notice in the general bankruptcy case or this adversary action;

(b) The objection time to any such sale will be fourteen (14) days from the date of the Notice. Hearing on any objections to be set by the Court and the Clerk.

(c) Any such sale to otherwise be conducted pursuant to the Bankruptcy Code and Rules.

3. The trustee will also need to employ agents, including realtors and auctioneers, accountants, and (possibly) managers. Employment of such agents will be as provided by the Bankruptcy Code and Rules, with Notice, objection date, and hearing as set out above as to sales.

4. Funds received from the winding up are authorized to be deposited to the bank account for the general bankruptcy estate, subject to further court order.

5. Any other Application or Motion which the trustee, or any other party, may file will also be pursuant to the above procedure as to sales.

6. The trustee may need to file lawsuits as part of the winding up. The trustee is authorized to do so as a separate adversary in the main case, with reference to the entity involved in the action, and to the winding up order in this adversary action.

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KLEND AUSTERMAN LLC  
301 North Main, Suite 1600  
Wichita, Kansas 67202  
Telephone: (316) 267-0331  
Facsimile: (316) 267-0333  
[jmmorris@klendalaw.com](mailto:jmmorris@klendalaw.com)

By: s/ J. Michael Morris  
J. Michael Morris #09292  
Attorney for Trustee

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS

IN RE:	)	
	)	
PHILLIP EUGENE HARDEN,	)	Case No. 17-10732
	)	Chapter 7
Debtor.	)	
	)	
J. MICHAEL MORRIS, Trustee,	)	
Plaintiff,	)	
vs.	)	Adversary No. 17-5131
	)	
HARDEN PROPERTIES, LLC;	)	
HARDEN RENTALS, LLC;	)	
PRIDE AUTO PLAZA OF DERBY	)	
LLC; AND McMILLAN	)	
SEAMLESS GUTTERING, INC.,	)	
	)	
Defendants.	)	
	)	

**COMBINED NOTICE OF INTENDED SALE OF PROPERTY SET FOR NOVEMBER 2, 2017  
WITH MOTION FOR AUTHORITY TO SELL FREE AND CLEAR OF LIENS WITH  
OBJECTION DEADLINE OF OCTOBER 26, 2017 AND HEARING ON ANY OBJECTIONS TO  
BE SET BY THE COURT (SALE NO. 4)**

1. By Order of September 21, 2017 entered in the above captioned adversary action, the trustee was granted authority to wind-up various entities in which the debtor held a 100% ownership interest, including Harden Rentals, LLC ("Rentals").

2. Pursuant to such Order, notice is hereby given of the intended sale of Rental's interest in the following described property 228 North Baltimore, 217 and 221 North Georgie, all in Derby, Kansas and further described as:

**Parcel 1:**

Lots 1 and 2, Odd Fellows Addition to the Town of El Paso, now Derby, Sedgwick County, Kansas, as modified by Agreement Survey recorded September 25, 1964, together with the West Half of the vacated alley adjoining on the East.

**Parcel 2:**

Lots 10, 11, 12, 13, 14 and 15, Odd Fellows Addition to the Town of El Paso, now Derby, Sedgwick  
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County, Kansas, ad modified by Agreement Survey recorded September 25, 1964, together with the East Half of the vacated alley adjoining on the West.

Rentals is the record owner of such property.

3. The sale will be by private treaty on November 2, 2017 at 2:00 p.m. in the office of the trustee, 301 North Main, Suite 1600, Wichita, Kansas.

4. The trustee has received an offer of \$25,000.00 plus assumption of all liability under that certain Mortgage Note of May 10, 2016 between Harden Rentals LLC and Integrated Resources, Inc. (assigned to William G. Roberts). The sale will be further subject to the Mortgage which secures the assumed Mortgage Note. The offer is from Elk Holdings, LLC ("EH"). The sale will be to EH under these terms unless higher bids are received as set out herein.

5. Under the Mortgage Note, Rentals agreed to pay Integrated Resources, Inc. \$360,000.00 with 5.4% interest from May 10, 2016 payable in thirty-six (36) monthly installments of \$2,456.00 commencing June 10, 2016 with a balloon payment due May 10, 2019. The trustee believes the Mortgage Note to be paid through at least July 10, 2017. This is subject to verification.

6. The sale will otherwise be free and clear of liens pursuant to 11 U.S.C. §363(f). The property is subject to the following additional liens: lis pendens of KMA, LLC under Case No. 2017 CV 001095, District Court of Sedgwick Co., Kansas. The trustee moves for authority to sell such the property free and clear of any such liens pursuant to 11 U.S.C. §363(f) and Fed.R.Bankr.P. 6004(c).

7. From the net cash proceeds the trustee intends to pay:

(a) motion fee \$181.00

(b) 2017 property taxes pro-rated to closing

8. Objections to the intended sale shall be made in writing to the Clerk of the United States Bankruptcy Court, Room 167, 401 North Market, Wichita, Kansas 67202, on or before October 26, 2017. Copies of any objections must be served on the trustee at his office, 301 North Main, Suite 1600, Wichita, Kansas 67202. If no objections are made to the sale, the trustee may complete the same without further notice.

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If objections are timely filed, a hearing will be set by the Court. An objection may require that the time of the sale be postponed.

10. Any party in interest may bid more in increments of \$1,000.00 on or before October 26, 2017. Any additional bids will be compliant to the terms set out above (including assumption of the Note and subject to the Mortgage) with any higher bid increments applying to the \$25,000.00 cash portion of the bid. Such bids must be in writing and be received at the office of the trustee on or before such date. If additional bids are received, such party(s) and EH will be allowed to bid, by telephone if requested, at the time of the sale until a high bid is reached.

DATED: October 12, 2017.

KLEND AUSTERMAN LLC  
301 North Main, Suite 1600  
Wichita, Kansas 67202  
(316) 267-0331  
[jmmorris@klendalaw.com](mailto:jmmorris@klendalaw.com)

By: /s/ J. Michael Morris  
J. Michael Morris #9292  
Attorney for Trustee

#### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of October, 2017 a true and accurate copy of the above and foregoing Notice was mailed, first class, postage prepaid, to: (a) Debtor, (b) Debtor's counsel, (c) U.S. Trustee, (d) Integrated Resources, Inc., (d) William G. Roberts, (e) Kurt A. Harper, (f) Patrick D. Toomey, and (g) all parties requesting notice in main case or this adversary.

/s/ Kandance R. Sharp  
Kandance R. Sharp



SO ORDERED.

SIGNED this 16th day of November, 2017.



*Dale L. Somers*

Dale L. Somers  
United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF KANSAS

IN RE:

PHILLIP EUGENE HARDEN,

Debtor.

Case No. 17-10732

Chapter 7

J. MICHAEL MORRIS, Trustee,  
Plaintiff,

vs.

Adversary No. 17-5131

HARDEN PROPERTIES, LLC;  
HARDEN RENTALS, LLC;  
PRIDE AUTO PLAZA OF DERBY  
LLC; AND McMILLAN  
SEAMLESS GUTTERING, INC.,

Defendants.

**ORDER AUTHORIZING SALE FREE AND CLEAR OF LIENS (SALE NO. 4)**

The above matter comes on before the Court on before the Court. The trustee appears by and through J. Michael Morris of Klenda Austerman LLC. There are no other appearances.

Thereupon the Court FINDS:



1. The motion for authority to sell property free and clear of liens was noticed to creditors with an opportunity for objections on or before October 26, 2017. No objections were filed.

2. The motion is granted. The trustee is authorized to sell the property described as:

Parcel 1:

Lots 1 and 2, Odd Fellows Addition to the Town of El Paso, now Derby, Sedgwick County, Kansas, as modified by Agreement Survey recorded September 25, 1964, together with the West Half of the vacated alley adjoining on the East.

Parcel 2:

Lots 10, 11, 12, 13, 14 and 15, Odd Fellows Addition to the Town of El Paso, now Derby, Sedgwick County, Kansas, as modified by Agreement Survey recorded September 25, 1964, together with the East Half of the vacated alley adjoining on the West.

By Order of September 21, 2017 filed in the above adversary, the Court has authorized the Trustee to wind up Harden Properties, LLC and other entities. The sale noticed herein is pursuant and incident to such Order.

3. The sale will be subject to that certain Mortgage Note of May 10, 2016 between Harden Rentals LLC and Integrated Resources, Inc. (assigned to William G. Roberts) and the Mortgage which secures such Mortgage Note.

4. The sale will otherwise be free and clear of liens pursuant to 11 U.S.C. §363(f). The property is subject to *inter alia* the following additional liens: lis pendens of KMA, LLC under Case No. 2017 CV 001095, District Court of Sedgwick Co., Kansas.

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By: s/ J. Michael Morris  
J. Michael Morris #09292  
Attorney for Trustee