

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
	)	Case No. 17-15844-TBM
ALL-STATE FIRE PROTECTION, INC.,)	
	)	Chapter 11
Debtor.)	
)	
)	
)	
_____)	
IN RE:)	
	)	Case No. 18-10543-TBM
RAYMOND S. GIBLER,)	
	)	Chapter 11
Debtor.)	
	)	Jointly Administered Under
	)	Bankruptcy Case No. 17-15844-TBM

**MOTION TO SELL PROPERTY FREE AND CLEAR OF ALL LIENS,
CLAIMS, AND ENCUMBRANCES PURSUANT TO BANKRUPTCY
CODE SECTIONS 363(b) and 363(f)
(Augusta, Kansas Property)**

Raymond S. Gibler (“Debtor” or “Gibler”), by and through his attorneys, Kutner Brinen, P.C., moves the Court pursuant to 11 U.S.C. § 363, Federal Rules of Bankruptcy Procedure 2002, 6004, and 9014, and Local Rules of Bankruptcy Practice and Procedure 2001-1 and 6004-1, for entry of an Order approving the sale of property located at 1211 SW 110th Street, Augusta, Kansas, and as grounds therefore states as follows:

I. JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Colorado has jurisdiction over this matter and over property of the Debtor and his bankruptcy estate pursuant to 28 U.S.C. §§ 157(a) and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N), and (O).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

3. The Debtor filed for relief under Chapter 11 of the Bankruptcy Code on January 26, 2018, and remains a debtor-in-possession.

4. The Debtor owns a 100% interest in All-State Fire Protection, Inc. (“All-State”), a Chapter 11 Debtor in Case No. 17-15844-TBM. Debtor’s bankruptcy case is being jointly administered with All-State’s bankruptcy case.

5. In this motion, the Debtor seeks approval to effectuate a sale of real property located at 1211 SW 110th Street, Augusta, Kansas (the “Augusta Property”).

6. The Augusta Property consists of approximately 50 acres on which there is a house, two barns, and a garage.

7. In June 2007, the Debtor entered into an Installment Contract for Deed (the “Contract”) with Cleve Smith and Jaime Smith (the “Smiths”). A copy of the Contract is attached hereto and incorporated herein as Exhibit A. The Contract includes a legal description of the Augusta Property.

8. At the time the Contract was executed, an Affidavit of Equitable Interest was recorded with the Butler County, Kansas Register of Deeds office. A copy of such Affidavit is attached hereto as Exhibit B. Additionally, Gibler executed a Joint Tenancy Warranty Deed conveying the Property to the Smiths, and that Warranty Deed was placed in escrow pending full performance under the Contract.

9. The Contract provides for a purchase price of \$258,700 (“Purchase Price”), which included \$161,000 that was owed at that time to the holder of a first mortgage on the Property, CitiMortgage, Inc., plus an additional \$97,700 to the Debtor. CitiMortgage subsequently conveyed the mortgage to Ditech Financial, LLC (“Ditech”), which currently holds the mortgage against the Property.

10. The Smiths were required to pay a monthly amount to Gibler equal to the monthly amounts due on the mortgage which varied based upon the amount of real estate taxes and insurance. The amount owed to Gibler was to be amortized over 30 years with an interest rate of 6.75% per annum. The Smiths paid all real estate taxes and insurance, through monthly installment payments to CitiMortgage/Ditech. The Contract permits the Smiths to prepay Gibler and the mortgage holder at any time in order to take full legal ownership of the Property. As of the date of this Motion, Ditech is owed approximately \$126,019.48. As of the date of this Motion, Gibler and the Smiths agree that Gibler is owed approximately \$85,626.93 under the Contract.

11. The Debtor does not believe the Contract is executory. So long as the Smiths performed, Gibler merely had to accept payments. Upon payment of the Purchase Price, in full, the escrow agent has instructions to record the Warranty Deed that conveys legal title to the Property from Gibler to the Smiths.

12. Disputes have arisen between Debtor and the Smiths as to the true nature of the Contract under Kansas law. Debtor asserts that he still owns the Augusta Property and the Smiths have an equitable interest in the Augusta Property to purchase the property pursuant to the terms of the Contract. The Smiths assert that Debtor conveyed his equitable interest in the Augusta Property to them under the Contract so that the Smiths are the true owners with the Debtor holding an equitable lien against the Augusta Property to secure the Smiths' obligations due under the Contract.

13. Either way, the Smiths wish to prepay the amounts due and owing under the Contract to Debtor and DiTech to finalize the purchase of the Augusta Property.

14. However because Debtor asserts that he still owns the Augusta Property, Debtor is seeking approval to effectuate a sale of the Augusta Property to the Smiths pursuant to the terms of the Contract under 11 U.S.C. §363(b).

III. RELIEF REQUESTED

15. The Debtor is seeking Court authorization to close on the Contract pursuant to 11 U.S.C. §363(b) and at closing pay the outstanding balance on the secured debt owed to DiTech; accept \$85,626.93 as the balance due to Debtor under the Contract; and instruct the escrow agent to record the Warranty Deed held in escrow.

A. Authorization Under 11 U.S.C. § 363 and Sound Business Purpose

16. Section 363(b) of the Bankruptcy Code provides authority for a trustee and, through the application of Bankruptcy Code section 1107(a), a debtor-in-possession, "after notice and a hearing, [to] use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Further, section 105(a) of the Bankruptcy Code allows the Court to "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

17. The Bankruptcy Court's power to authorize a sale under section 363(b) is to be exercised at the Court's discretion. *In re WPRV-TV, Inc.*, 983 F.2d 336, 340 (1st Cir. 1993); *New*

Haven Radio, Inc. v. Meister (In re Martin-Trigona), 760 F.2d 1334, 1346 (2d Cir. 1985); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2d Cir. 1983).

18. Courts have authorized a sale of a debtor's assets pursuant to section 363(b) of the Bankruptcy Code or in the absence of a reorganization plan where there is a "sound business purpose." *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169 (D. Del. 1991); *Titusville Country Club v. Penn Bank (In re Titusville Country Club)*, 128 B.R. 396 (Bankr. W.D.Pa. 1991); *In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc.*, 77 B.R. 15 (Bankr. E.D.Pa. 1987). See also, *Stephens Indus., Inc. v. McClune*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1071 (setting forth the "sound business purpose" test in the context of a sale of assets under section 363(b) of the Bankruptcy Code).

19. There is a sound business reason to complete the sale of the Augusta Property to the Smiths pursuant to the terms of the Contract. First, Debtor and the Smiths agree that the Contract is controlling as to their interests in the Augusta Property and that the Debtor and the Smiths have properly recorded their equitable interests in the Augusta Property under Kansas law. The Smiths have the right to prepay their obligations under the Contract to the Debtor and Ditech and upon payment in full of the Purchase Price, to have the Warranty Deed recorded. More important, the sale will eliminate Gibler's obligation to Ditech and provide him with capital that will assist with his reorganization.

B. Satisfaction of 11 U.S.C. § 363(f)

20. The Debtor requests that any sale of the Augusta Property to the Smiths be free and clear of all liens, claims, and encumbrances. Pursuant to 11 U.S.C. § 363(f), a debtor may sell property "free and clear of any interest in such property of an entity other than the estate, only if – . . . (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property[.]"

21. The recorded liens (DiTech mortgage and arguably Debtor's equitable lien) on the Augusta Property will be paid at closing.

22. The only other known claims to the Augusta Property are Debtor's and the Smith's equitable interests, who both consent to a closing on the Augusta Property pursuant to the terms of the Contract.

C. Good Faith Under 11 U.S.C. § 363(m)

23. Section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

24. Any sale is one done in "good faith" and "for value." Any such sale does not involve any insiders.

25. The Smiths leased the Augusta Property from Debtor prior to entering into the Contract. The Contract was the product of an arms-length negotiation and its terms are fair and reasonable.

WHEREFORE, the Debtor prays that the Court make and enter an Order: a) authorizing the Debtor to close on the Contract and accept payment of \$85,626.93 as amounts owed to Debtor under the Contract; b) authorizing a sale free and clear of all liens, claims, interests, and encumbrances; c) authorizing the Debtor to pay at closing without further order of the Court the secured debt owed to Ditech; d) authorizing Debtor to instruct the escrow agent to record the Warranty Deed held in escrow; and e) for such further and additional relief as the Court deems just and proper.

DATED: October 29, 2018

Respectfully submitted,

By: /s/ Jeffrey S. Brinen

Jeffrey S. Brinen, #20565

KUTNER BRINEN, P.C.

1660 Lincoln St., Suite 1850

Denver, Colorado 80264

Telephone: (303) 832-2400

Telecopy: (303) 832-1510

JUN. 14. 2007 1:14PM

GUARDIAN TITLE 316 684-0802

NO. 9676 P. 1

INSTALLMENT CONTRACT FOR DEED

THIS AGREEMENT, made and entered into this ___ day of June, 2007 by and between Raymond S. Gibler, ~~a single person~~, hereinafter referred to as "Seller" and Cleve Smith (a Kansas licensed Real Estate Broker) and Jaime Smith, husband and wife, hereinafter referred to as "Buyers."

a married person

NOW THEREFORE, in consideration of the payments, mutual promises and covenants hereinafter set forth, the parties hereto do agree as follows:

1. Seller does hereby contract and agree to grant, bargain, sell and convey the following described real property, along with improvements thereon to Buyers by means of a properly drawn, executed and acknowledged Joint Tenancy Warranty Deed. Buyers agree to purchase the following described real property under the terms and conditions hereinafter set forth. Said property is legally described as:

The East Half of the Northeast Quarter of Section Numbered 34, Township Numbered 27 South, Range Numbered 5 East of the 6th P.M., EXCEPT Beginning at The Southeast Corner of said East Half of the Northeast Quarter, thence North along the east line of said Northeast Quarter 870 feet, thence West 20 feet, thence North 300 feet, thence West 294.4 feet, thence South 300 feet, thence East 85.62 feet, thence South 870 feet, thence East 208.71 feet to the beginning of said excepted tract AND EXCEPT Beginning at a point that is 1230 feet North of the Southeast Corner of said East Half of the Northeast Quarter, thence North to the Northeast Corner of said Northeast Quarter, thence West 615.75 feet, thence South parallel to the East line of said Northeast Quarter to a point due East of beginning, thence East 615.75 feet to the beginning of excepted tract, in Butler County, Kansas. Subject to public road, Approximately 54 Acres more or less (commonly known as ~~redacted~~)

2. Seller agrees to sell and Buyers agree to purchase the above-described property for the total purchase price of \$258,700 to be paid as follows:

a. The sum of \$161,000 shall be paid as follows: Seller has an existing first mortgage on the property in the amount of \$161,000 with Mortgage Investment Services Corporation. Buyers are taking the property subject to said mortgage but this shall remain Seller's debt and he shall maintain payment responsibility. Buyers shall pay to Seller a monthly payment that is equal to Seller's monthly principal, interest, real estate taxes and insurance on said first mortgage which is currently \$1,511.84 but is subject to change due to real estate tax and or insurance premium yearly adjustments. Seller shall notify Buyers in writing of any such adjustments as soon as he is notified. The escrow agent named herein is instructed to transmit this monthly payment directly to CitiMortgage, Inc., P.O. Box 689196, Des Moines, IA 50368-9196 on behalf of Seller.

b. Buyer to pay to Seller the remaining principal amount of \$97,700 which shall be amortized for 30 years at 6.75 % per annum with a monthly principal and

interest payment of \$630.16. The escrow agent is instructed to transmit this payment to Seller.

c. The first monthly payments hereunder shall be paid on June 15, 2007 and each payment hereafter shall be due on the fifteenth day of the month. Buyer to pay 1st Payment to CitiMortgage by cashiers check tendered to closing company with copy of same sent to Seller with closing documents. If any monthly payment has not been paid by the 20th day of the month, then a late charge of 5 percent of the late payment shall be added to the payment.

d. Buyers shall be permitted to prepay any or all of said purchase price at any time without penalty.

e. On the anniversary date of the 61st monthly payments, unless paid sooner, the full principal balances, along with any accrued interest, and less principal reduction credits given to Buyers shall become due and payable to Seller. If and in the event the Internal Revenue Code that governs capital gain treatments on installment sales change prior to Buyer paying remaining principle balances in full, then Buyers and Seller agree to negotiate with one another in good faith to resolve any difference that would affect Seller.

f. At such time as Buyers fully pay the purchase price to Seller, Seller shall promptly pay off the aforementioned first mortgage on the subject property and remove it as a lien on the premises. In order to facilitate the first mortgage payoff, at the time Buyers pay off this contract, the escrow agent is instructed to pay the balance owed on the mortgage note to the mortgage lien holder and to pay the balance to Seller.

3. In the event of loss or damage to the improvements by fire or other cause prior to the closing, proceeds of Seller's existing insurance policy coverage shall be used to repair said loss or damage, but if the proceeds are insufficient to repair the same, Buyers at their option may terminate this contract.

4. ~~Seller shall obtain and for the duration of this contract pay for the fire and~~ extended coverage insurance on the subject premises in an amount not less than the replacement cost of the improvements on the real estate. Said insurance shall insure Seller as owner and Buyer as purchaser under contract as well as Mortgage Investment Services Corporation, or its successor, as an additional insured. A copy of said policy shall be deposited with the escrow agent and a copy provided to Buyers. In the event of loss or damage to the improvements during the term hereof, insurance proceeds paying for same shall be used to repair and restore the improvements unless all parties thereto consent in writing to a different use.

5. At closing the Seller shall execute a Joint Tenancy General Warranty Deed to the subject property in which Seller shall be the grantor and Buyers the grantee. Said deed shall be delivered to the escrow agent to be held with all other documents required hereunder. The escrow agent shall hold said documents until the full performance of this contract by the parties, whereupon, the same shall be delivered to the respective parties entitle thereto under the terms of this contract

6. During the term of this contract, Buyers agree to maintain the subject premises in good repair at least comparable to its present condition.

7. All real estate taxes and assessments for 2007 and all future years while the escrow is in effect shall be paid by Seller when they come due and payable. In the year that the contract is fully satisfied and the escrow closed out the real estate taxes and assessments shall be prorated between the Seller and Buyers as of the date the contract is satisfied. Seller shall promptly provide proof to Buyers of all such payments

8. This transaction shall be closed on or before June 15, 2007 and possession will be at time of closing. Closing shall be at Guardian Title, Wichita, Kansas and closing costs shall be paid by Buyers.

9. The parties shall order a purchaser's under contract title insurance policy insuring Buyers as Buyers under contract to the extent of the purchase price against loss or damage resulting from defects in Seller's title. The title binder shall show marketable title vested in Seller subject to the first mortgage held by CitiMortgage Inc, easements, encroachments which would be disclosed by survey, rights of way of record, trees, plantings and fences thereon, restrictions and protective covenants of record, unmatured special assessments, zoning laws, ordinances and regulations, rights of tenants in possession and those exceptions which are standard to American Land Title Form B. Copies of the title binder shall be furnished to Seller and to Buyers as promptly as possible. The cost of the title insurance shall be paid by Buyers.

In the event Seller is unable to furnish marketable title as provided herein, this contract shall be null and void and all papers executed by the parties shall be returned to the respective parties thereto and thereupon all rights of the parties hereunder shall end.

10. Buyers acknowledge that they have thoroughly inspected the premises and Seller agrees to deliver and Buyers agree to accept the property in its present condition at the time of closing.

11. Buyer shall not remove any improvements on the premises without first obtaining written permission of Seller. Buyers shall not make major improvements or structurally alter improvements on the premises without first obtaining the written consent of Seller. Such written consent shall not be unreasonably withheld. Any such alterations or improvements shall be promptly paid for by Buyers.

12. Buyers shall not suffer or permit the subject premises to be encumbered by mortgage, judgment or lien for taxes, labor, and materials or otherwise. Seller does not authorize Buyers to create any lien, charge or encumbrance on the property until the full payment of the purchase price.

13. In the event Buyers fail to punctually pay each of the installments of principal and interest, or any part hereof, required by the terms of this agreement or otherwise fail to keep, observe or perform any of the covenants on Buyers' part herein, then in any such event. Seller may, at Seller's option, at any time, mail written notice to Buyers specifying the nature of such violation, default, or non-compliance, and informing Buyers that

unless the same is remedied, rectified and cured on or before the expiration of thirty days from the date of said notice, Seller may take action against Buyers to reclaim the property under Kansas statutory law based on default of this contract. In the event that Seller prevails in recovering the property based on default of the contract Buyers agree that he is also entitled to recover from them his reasonable attorney fees and court costs in pursuing such action.

14. The parties agree that an Affidavit of Equitable Interest shall be filed of record with the Butler County, Kansas Register of Deeds office. Buyers shall pay any cost associated with this filing. Seller shall furnish to Buyers annual interest statement Form 1098 and Buyers to be entitled to interest credit on said form

15. Kansas Secured Title of Lawrence, Kansas is hereby designated by the parties as the escrow agent under this contract. At the time of closing a copy of this contract, the joint tenancy warranty deed, the title insurance policy and a copy of the fire and extended coverage insurance policy shall be deposited with the escrow agent. All payments for the benefit of Seller shall be made by Buyers through the escrow agent. Upon payment of all amounts to be paid hereunder by Buyers and upon Buyers fully complying with all of the terms and provisions hereof, the escrow agent shall deliver the deed to Buyers along with the title insurance policy and the escrow shall be closed. There shall be no liability upon the escrow agent to collect any payments when due or to enforce any of the terms and conditions hereof and there shall be no liability upon said escrow agent for honest mistake of judgment in carrying out the terms and conditions of this agreement.

16. All notices shall be deemed duly given when sent via the United States Postal Service, Registered Delivery, addressed to

Seller at: Raymond Gibler

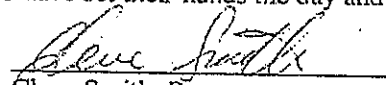
Buyers at: Cleve and Jaime Smith


Variance of the above addresses shall be provided to the other party in writing to be effective.

17. This contract shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.


Raymond S. Gibler, Seller


Cleve Smith, Buyer


Jaime Smith, Buyer

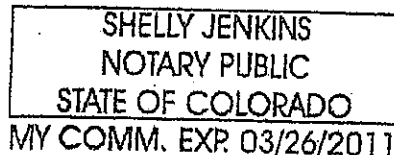
STATE OF COLORADO)
) SS:
Adams COUNTY)

Be it remembered that before me, a notary public in and for Adams County, Colorado, personally appeared Raymond S. Gibler known to me to be the same person who executed the foregoing Installment Contract for Deed and who acknowledged the execution of same as a free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal this
9 day of June, 2007.

Shelly Jenkins
Notary Public

My term expires:



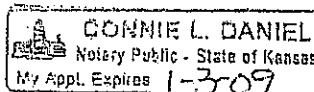
STATE OF KANSAS)
) SS:
Sedgwick COUNTY)

Be it remembered that before me, a notary public in and for Sedgwick County, Kansas, personally appeared Cleve Smith and Jaime Smith known to me to be the same persons who executed the foregoing Installment Contract for Deed and who acknowledged the execution of same as a free act and deed.

In witness whereof, I have hereunto set my hand and affixed my official seal this
19th day of June, 2007.

Connie L. Daniel
Notary Public

My term expires: 1-3-09



BUTLER COUNTY, KS
- MARCIA MCCOY -
REGISTER OF DEEDS
Book: 2008 Page: 161
Receipt #: 40246 Total Fees: \$12.00
Pages Recorded: 2
Date Recorded: 6/26/2007 2:49:06 PM

TN: No Change



5115282 KST

RTN-Kans. Secured Title
Butler County

AFFIDAVIT OF EQUITABLE INTEREST

The undersigned, of lawful age and being first duly sworn, subscribes and states as follows:

1) By Instrument dated June 15, 2007, we are purchasing from Raymond S. Gibler, a single person

property legally described as:

The East Half of the Northeast Quarter of Section Numbered 34, Township Numbered 27 South, Range Numbered 5 East of the 6th P.M., EXCEPT Beginning at the Southeast Corner of said East Half of the Northeast Quarter, thence North along the East line of said Northeast Quarter 870 feet, thence West 20 feet, thence North 300 feet, thence West 294.4 feet, thence South 300 feet, thence East 85.62 feet, thence South 870 feet, thence East 208.71 feet to the beginning of said excepted tract AND EXCEPT Beginning at a point that is 1230 feet North of the Southeast Corner of said East Half of the Northeast Quarter, thence North to the Northeast Corner of said Northeast Quarter, thence West 615.75 feet, thence South Parallel to the East line of said Northeast Quarter to a point due East of beginning, thence East 615.75 feet to the beginning of excepted tract, in Butler County, Kansas. Subject to public road.

2) By virtue of said above-mentioned Instrument, now in escrow, or to be placed in escrow at Kansas Secured Title & Abstract Co., Inc., Lawrence, Kansas the undersigned hereby claim an equitable interest in and to said property from and after the date of said above-mentioned instrument.

3) Further affiant sayeth naught.
Dated June 15, 2007

Rtn to:
Cleve & Jaime Smith

Cleve Smith

Jaime Smith

REC
COMP
NUM

12.00

U.S. Kansas Affidavit of Equitable Interest_Rev.(7/12/04)

File No.: 866393

STATE OF Kansas

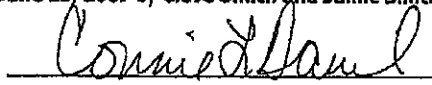
Book: 2008 Page: 161

} ss.

2

COUNTY OF Sedgwick

SUBSCRIBED AND SWORN TO before me on June 15, 2007 by Cleve Smith and Jaime Smith,
husband and wife.



Notary Public

My Appointment Expires: 1-3-09



UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO

IN RE:)	
	)	Case No. 17-15844-TBM
ALL-STATE FIRE PROTECTION, INC.,)	
	)	Chapter 11
Debtor.)	
)	
)	
_____)	
IN RE:)	
	)	Case No. 18-10543-TBM
RAYMOND S. GIBLER,)	
	)	Chapter 11
Debtor.)	
	)	Jointly Administered Under
	)	Bankruptcy Case No. 17-15844-TBM

**ORDER GRANTING MOTION TO SELL PROPERTY FREE AND CLEAR OF ALL
LIENS, CLAIMS, AND ENCUMBRANCES PURSUANT TO BANKRUPTCY CODE
SECTIONS 363(b), (f), and (m)**

THIS MATTER is before the Court on the Debtor's Motion to Sell Property Free and Clear of Liens, Claims, and Encumbrances Pursuant to Bankruptcy Code Sections 363(b) and 363(f) (the "Sale Motion").¹ The Debtor sought Court approval to effectuate a sale of real property situated at 1211 SW 110th Street, Augusta, Kansas (the "Augusta Property") pursuant to an Installment Contract for Deed (the "Contract") between the Debtor, as seller, and Cleve Smith and Jaime Smith, as buyers, entered into in June 2007 (attached to the Sale Motion as Exhibit A). The Debtor asserts that he has provided proper notice to all creditors and parties in interest and no objection was filed.

Pursuant to the Sale Motion, the Debtor requested the Court to enter an order, *inter alia*:

- i. Authorizing Debtor to complete the sale of the Augusta Property to Cleve and Jamie Smith pursuant to the terms of the Contract;
- ii. Authorizing such sale free and clear of all liens, claims, interests, and encumbrances;
- iii. Authorizing Debtor to pay at closing without further Court approval, the secured debt owed to Ditech Financial, LLC ("DiTech") in the approximate

1. Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to such terms in

amount of \$126,019.48;

- iv. Authorizing Debtor to accept \$85,626.93 as the amounts owed to Debtor under the Contract;
- v. Authorizing the escrow agent to record the Warranty Deed held in escrow upon payment in full by Cleve and Jamie Smith of their obligations due under the Contract; and
- vi. Granting such additional relief as the Court deems just and proper.

The Court has considered the Sale Motion, and based upon that consideration,

THE COURT HEREBY FINDS AND DETERMINES THAT:

A. The Court has jurisdiction to hear and determine the Sale Motion and to grant the relief requested in the Sale Motion pursuant to 28 U.S.C. §§ 157(a) and 1334;

B. Venue of this case and the Sale Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (N), and (O);

C. The statutory predicates for the relief requested in the Sale Motion are 11 U.S.C. § 363 and Fed. R. Bankr. P. 6004;

D. As set forth in the Certificate of Service filed with this Court in connection with the Sale Motion, notice of the hearing on the approval of the Sale Motion was duly served on all parties entitled to notice, including each entity known to the Debtor to assert a lien, encumbrance, leasehold, or other interest in the Augusta Property;

E. Notice of the Sale Motion was adequate and appropriate, and no further notice need be given;

F. The legal and factual bases set forth in the Sale Motion and the record in this case establish just cause for the relief requested therein, and such relief is in the best interests of the Debtor's estate, his creditors, and all other parties in interest in this case;

G. The terms of the Contract are fair and reasonable;

H. The Contract was negotiated and was undertaken by the Debtor and the Buyers at arm's length without collusion or fraud, and in good faith within the meaning of 11 U.S.C. § 363(m), and, as a result of the foregoing, the Debtor's estate and the Buyers are entitled to the protections of 11 U.S.C. § 363(m);

the Sale Motion.

I. The total consideration provided by the Buyers for the Augusta Property constitutes fair consideration under any applicable law;

J. With respect to each creditor or other entity asserting a lien, lease, or other interest in the Augusta Property, one or more of the standards set forth in 11 U.S.C. § 363(f) has been satisfied; and

K. The closing on a sale pursuant to the Contract constitutes the exercise by the Debtor of sound business judgment, and such acts are in the best interests of the Debtor's estate, his creditors, and all other parties in interest.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Sale Motion is GRANTED with respect to the Augusta Property;

2. No objections were filed with respect to the Sale Motion.

3. All of the terms in the Contract are reasonable and the closing of a sale of the Augusta Property is approved according to the terms of the Contract.

4. Upon payment in full of the Purchase Price under the Contract, the Debtor is authorized to instruct the escrow agent to record the Warranty Deed held in escrow. The Debtor is authorized to execute any documents necessary or appropriate to effectuate the transfer of the Augusta Property to the Buyers.

5. Subject to closing of the sale and payment of the Purchase Price, in full, as required under the Contract, the sale of the Augusta Property to the Buyers shall be free and clear of any and all liens claims, interests, and encumbrances pursuant to 11 U.S.C. § 363(f), with such liens to attach to the net sale proceeds in the same amount, validity, priority, enforceability, avoidability, and extent as existed prior to the sale.

6. The Debtor is authorized to execute such documents and to undertake such other actions as are reasonably necessary or appropriate to complete the sale of the Augusta Property pursuant to the terms of the Contract.

7. This Court shall and hereby does retain jurisdiction to (i) resolve any disputes, controversies, or claims arising out of or relating to the Contract or the sale contemplated thereby, and (ii) interpret, implement, and enforce the provisions of this Order.

8. The validity of the sale approved hereby shall not be affected by the appointment of a trustee, the dismissal of the above-captioned case, or its conversion to another chapter under the Bankruptcy Code.

9. The Smiths are buyers in good faith and subject to the provisions of 11 U.S.C. § 363(m).

Dated: November __, 2018

Honorable Thomas B. McNamara
United States Bankruptcy Judge