

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

In Re: CLEAR LAKE DEVELOPMENT, LLC

CHAPTER 11
NO.: 17-50392-KMS

**APPLICATION TO SELL REAL
PROPERTY FREE AND CLEAR OF LIENS**
(150 Acres, § 9, Beaver Dam Road)

COMES NOW, CLEAR LAKE DEVELOPMENT, LLC, Debtor in the above styled and numbered cause, by and through undersigned counsel, and files this its Application to Sell Real Property Free and Clear of Lien, pursuant to 11 U.S.C. § 363, and would respectfully show unto the Court as follows:

1. The Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on March 6, 2017, in the above styled and numbered cause.

2. This Court has jurisdiction pursuant to 11 U.S.C. § 1334, and this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N).

3. At the time of the filing of the Petition the Debtor was the owner of a parcel of real property located in 0 East McHenry Road, Stone County, Mississippi, consisting of 15 acres, with the exact legal description to be determined by survey (the "**Property**"), said Property being Stone County Tax Parcel No. 092-09-016.000, and part of Stone County Tax Parcel No. 092-10-001.006, and being more particularly described as:

The East ½ of the East ½ of Section 9, T4S-R11W, less that part North of Beaver Dam Road, and less that part lying East of West Rattlesnake Branch; plus 3 acres off of the West side of the SW ¼ of NW ¼ and NW ¼ of SW ¼ of Section 10, T4S- R11W; being 150 acres more or less.

4. The Debtor has entered into a Contract for the Sale and Purchase of Real Estate (the "Contract") as to the Property, with **Penny Vardin Zar** for a sale price of \$245,000.00. A copy of the Contract is attached hereto as **Exhibit "A"** and incorporated herein. Penny Vardin Zar is a good faith purchaser as contemplated by 11 U.S.C. § 363(m).

5. Whitney Bank d/b/a Hancock Bank ("**Hancock Bank**") holds a promissory note (the "**Note**") and first deed of trust (the "**Deed of Trust**") secured by the Property. Said Note and

Deed of Trust are dated November 17, 2015 and the Deed of Trust is recorded in land records of Stone County at Deed of Trust Book 393, Page 296.

6. The Debtor proposes to pay all of the net proceeds of the sale of the Property (as defined above) to Hancock Bank to pay down the amount due on the Note.

7. Property taxes are due to Stone County for tax year 2015 in amount of approximately \$650.00 which will be paid at closing.

8. Property taxes are due to Stone County for tax year 2016 in amount of approximately \$550.00 which will be paid at closing.

9. Property taxes are projected to be due to Stone County for the tax year 2017 for the time prior to closing that the Property is owned by the Debtor during 2017, which are estimated to be in the approximate amount of \$200.00.

10. The Debtor has agreed that the following expenses, charges and fees should be paid from the proceeds of the sale:

a. Proration of the County *ad valorem* taxes for the current year of approximately \$200.00, with the exact amount herein determined immediately prior to closing.

b. Payment of county *ad valorem* taxes for tax year 2016, in the amount of approximately \$550.00, with the exact amount being determined immediately prior to closing.

c. Payment or redemption of county *ad valorem* taxes for tax year 2015, in the amount of approximately \$650.00, with the exact amount being determined immediately prior to closing.

d. Estimated fees due to the U.S. Trustee as quarterly fees pursuant to 28 USC 1930 as a result of completion of this sale of \$3,000.00.

e. Payment to Hancock Bank of 100% of the net proceeds of sale ("**Net Proceeds**"). Net Proceeds shall be defined, for the purpose of this Application to Sell Real Property Free and Clear of Liens to mean: the purchase price, less real estate commissions; *ad valorem* taxes paid by Seller; proration's, title curative costs required by the Contract, cost of survey, any title insurance premium and/or binders required to be paid by the Seller, and an estimated amount that will become due to the U.S. Trustee as quarterly fees pursuant to 28 USC 1930 as a result of completion of the sale.

f. No Real Estate Commissions or brokerage fees will be paid in connection with this transaction.

g. Paydown of the Note in amount of the Net Proceeds to Hancock Bank.

10. Hancock Bank shall be required to execute a partial release of the Deed of Trust describing the property upon receipt of the Net Proceeds as set out above.

11. The sale contemplated by this motion should release the Property from all existing liens and transfer such lien to the proceeds of sale.

WHEREFORE, Debtor prays that this Court will enter the Order authorizing the sale of the above stated real property by the Debtor to Jonathan Adams and Heidi Adams pursuant to the Contract, provided that payment is to be made in the following manner:

a. Proration of the County *ad valorem* taxes for the current year of approximately \$200.00, with the exact amount herein determined immediately prior to closing.

b. Payment of county *ad valorem* taxes for tax year 2016, in the amount of approximately \$550.00, with the exact amount being determined immediately prior to closing.

c. Payment of county *ad valorem* taxes for tax year 2015, in the amount of approximately \$650.00, with the exact amount being determined immediately prior to closing.

d. Reserve to the Debtor the sum of \$3,000.00 to be applied to the quarterly fees that will become due to the U. S. Trustee pursuant to 28 USC 1930, as a result of this transaction, to be deposited in a separate account and to be used only to pay said U. S. Trustee fees absent further order of the Court.

e. Paydown of the Note in amount of the Net Proceeds to Hancock Bank.

The Debtor further prays that the Court authorize that the Property be sold free and clear of all liens; and enter an order that the Net Proceeds of sale be substituted as collateral for the Property (as defined above) pursuant to 11 U.S.C. § 363(f), and that the Property be conveyed free and clear of encumbrances, including but not limited to all taxes due to Stone County and the Deed of Trust to Hancock Bank.

The Debtor further prays that the Court make a finding that the purchaser is a good faith

purchaser as contemplated by 11 U.S.C. §363(m).

The Debtor further prays that it be granted such other, further and general relief to which it may be entitled.

Respectfully submitted this the 4th day of April, 2017.

CLEAR LAKE DEVELOPMENT, LLC., Debtor

/s/ Patrick A. Sheehan

Patrick A. Sheehan, Counsel for Debtor

CERTIFICATE OF SERVICE

I, the undersigned PATRICK A. SHEEHAN, hereby certifies that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which sent notification of such filing to the following: Christopher James Steiskal, Sr., United States Trustee, at christopher.j.steiskal@usdoj.gov and the United States Trustee at USTPRegion05.JA.ECF@usdoj.gov; Cynthia L. Eldridge, cindy.eldridge@usdoj.gov. I further certify that I have this day mailed, postage prepaid, a true and correct copy of the above Motion to the list of creditors attached hereto.

This the 4th day of April, 2017.

/s/ Patrick A. Sheehan

PATRICK A. SHEEHAN

Sheehan Law Firm, PLLC
429 Porter Avenue
Ocean Springs, MS 39564
(228) 875-0572 / fax (228) 875-0895
MS Bar No. 6747

Label Matrix for local noticing
0538-6
Case 17-50392-ee
Southern District of Mississippi
Gulfport-6 Divisional Office
Tue Apr 4 14:46:51 CDT 2017

Alexander Van Loon
9490 Three Rivers Rd.
Gulfport, MS 39503-4248

Brent Gutierrez
211 Caillavet St.
Biloxi, MS 39530-3031

Concrete Bldg Concepts
535 Bayview Ave.
Biloxi, MS 39530

G & G Trading
655 Bayview Ave.
Biloxi, MS 39530-2260

(p) INTERNAL REVENUE SERVICE
CENTRALIZED INSOLVENCY OPERATIONS
PO BOX 7346
PHILADELPHIA PA 19101-7346

Jonathan & Heidi Adams
4 Ivey Cove, Apt. A
McHenry, MS 39561-3701

U.S. Securities and Exchange Commission
Office of Reorganization
950 East Paces Ferry Road, Suite 900
Atlanta, GA 30326-1382

Whitney Bank, a Mississippi state chartered
formerly known as Hancock Bank
Derek A. Henderson
1765-A Lelia Dr., Ste. 103
Jackson, MS 39216-4820

Clear Lake Development, LLC
P.O. Box 1456
Biloxi, MS 39533-1456

Anita Gutierrez
8512 Daisey Vestry Rd.
Biloxi, MS 39532-7319

Chris Barnes
151 Porter Ave.
Biloxi, MS 39530-3721

Derek A. Henderson
Attorney for Whitney Bank
f/k/a Hancock Bank
1765-A Lelia Drive, Suite 103
Jackson, MS 39216-4820

Global Seafood Technol
555 Bayview Ave.
Biloxi, MS 39530-2418

Internal Revenue Service
c/o United States Attorney
1575 20th Avenue, 2nd Floor
Gulfport, MS 39501-2040

(p) MISSISSIPPI STATE TAX COMMISSION
P O BOX 22808
JACKSON MS 39225-2808

U.S. Securities and Exchange Commission
c/o United States U.S. Attorney
1575 20th Avenue, 2nd Floor
Gulfport, MS 39501-2040

Patrick A. Sheehan
429 Porter Avenue
Ocean Springs, MS 39564-3715

U.S. Bankruptcy Court
Dan M. Russell, Jr. U.S. Courthouse
2012 15th Street, Suite 244
Gulfport, MS 39501-2036

Benard Favret
215 East 2nd St., #3
Pass Christian, MS 39571-4476

Clay Gutierrez
8512 Daisey Vestry Rd.
Biloxi, MS 39532-7319

Estate Larry Gollott
c/o Danielle B. Jones
993 Howard Ave.
Biloxi, MS 39530-3756

Gollot Brothers
3208 D Ave.
Gulfport, MS 39507-2358

J. Daniel Schroder
Appraisal Co.
124-N Rue Magnolia
Biloxi, MS 39530

Schwartz Orgler & Jord
2355 Pass Rd.
Biloxi, MS 39531-2344

United States Trustee
501 East Court Street
Suite 6-430
Jackson, MS 39201-5022

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

MS State Tax Commission
Bankruptcy Section
P.O. Box 23338
Jackson, MS 39225

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)Whitney Bank, a Mississippi state chartere	End of Label Matrix	
	Mailable recipients	25
	Bypassed recipients	1
	Total	26

**CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE
VACANT LAND LOCATED IN
STONE COUNTY, MISSISSIPPI**

**THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. YOU MAY WANT
TO OBTAIN LEGAL ADVICE BEFORE SIGNING.**

In consideration of the mutual promises contained herein, the undersigned Seller, Clear Lake Development, LLC, agrees to sell, to the undersigned Buyer, Penny Verdin Zar, who agrees to buy, the herein described property on the terms and conditions stated below and on the reverse hereof.

1. **PROPERTY DESCRIPTION:** Approximately one-hundred Fifty (150) acres of real property located in Stone County, Mississippi, described as Stone County Tax Parcel id Number 092-09-016.000 on the attached map consisting of one page and attached hereto and incorporated herein as Exhibit "A".

The legal description of the property will be prepared by the Seller's surveyor within Ten (10) days of execution of this agreement, and the legal description prepared by the surveyor shall be used for the Warranty Deed described herein. The Buyer will receive and review the survey and approve same. Contract contingent upon Buyer's approval of survey.

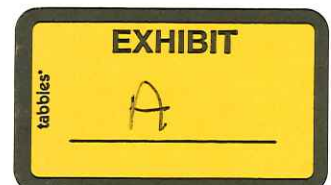
2. **PRICE:** The Purchase price of the property is Two-Hundred Forty Five Thousand (\$245,000.00)

The purchase price shall be payable as follows: The Purchasers shall pay a non-refundable earnest money deposit to Laura F. Paulk, PLLC, in the amount of Five Thousand Dollars (\$5,000.00), upon execution of this agreement which shall be placed in a non-interest bearing trust account. Earnest money shall be applied to purchase price. The balance of the purchase price shall be paid to the Seller from closing attorney's trust account on the date of closing, less any prorations, expenses and closing costs.

If all contingencies are not met to the satisfaction of the Buyer, the earnest money shall be refunded to the Buyer upon its demand.

Buyer Initials PVZ _____

Seller Initials CG _____



3. CLOSING COSTS:

Purchaser will pay for the closing attorneys fee, title examination, owners title insurance premium and any other closing costs incurred by the Purchaser.

Seller will pay for the cost of the Class "B" survey of the subject property and easements, for the preparation and recording of the Warranty Deed, and for any title curative costs. Seller will also pay for courier fees for overnighting any payoffs Seller has on the property.

4. **CLOSING DATE:** Thirty (30) days following the date which the Seller delivers the fully executed and certified survey and legal description to the Purchaser and secures the release allowing the property to transfer to buyer free and clear of any liens and encumbrances.
5. **POSSESSION DATE:** At closing
6. **CONVEY TITLE TO:** Penny Verdin Zar
7. **INSURANCE:** Not applicable as this is vacant land.
8. **PRORATION OF TAXES:** Property taxes will be prorated as of the closing date.
9. **CLOSING:** This transaction is to close at the office of Laura F. Paulk, PLLC. Laura F. Paulk, closing attorney. Address: 16127 Orange Grove Road, Gulfport, Mississippi 39503, Telephone Number 1-228-831-1818, Email: Laura.Paulk@LauraFPaulk.com.
10. **TITLE AND CONVEYANCE:** The Purchasers shall receive a Warranty Deed from the Seller at closing using the legal description prepared by the surveyor.

Seller shall, prior to or at closing, satisfy all outstanding mortgages, deeds of trust and special liens affecting the subject property which are not specifically assumed by Purchasers herein. Title shall be good and marketable, subject only to the following items recorded in the Chancery Clerk's office of said County: easements without encroachments, applicable zoning ordinances, protective covenants, prior oil, gas, and mineral reservations, taxes for the current year not yet due and payable, and all matters reflected by an accurate survey and/or inspection of the property, and the roadway easement to be both granted and reserved by the Seller as described above; otherwise Purchaser, at their option, may proceed as follows: (a) if title defects cannot be cured by designated closing date, cancel this contract, earnest money to be returned (b) accept title as is without a reduction in purchase price, or (c) if the defects are of such character that

Buyer Initials

PVZ

Seller Initials

CV

they can be remedied by legal action within a reasonable time, permit Seller such reasonable time to perform curative work at Seller's expense. In the event that the curative work is performed by Seller, the time specified herein for closing of this sale shall be extended for a reasonable period necessary for such action.

11. **BREACH OF CONTRACT:** Specific performance is the essence of this contract, except that in the event of breach of this contract by Buyer, Seller at his option may either: (1) accept the earnest money deposit as liquidated damages and this contract shall then be null and void, or (2) enter suit in any court of competent jurisdiction for damages, giving credit on said damages for the said earnest money deposit, or (3) enter suit in any court of competent jurisdiction for specific performance. Either party may enter into suit in any court of competent jurisdiction. If it becomes necessary to insure the performance of the conditions of this contract for either party through initiating litigation, then the losing party agrees to pay the reasonable attorney's fees and court costs in connection therewith to the prevailing party.
12. **SURVIVAL OF CONTRACT:** All express representations, warranties and covenants contained herein shall survive delivery of the deed.
13. **CONTINGENCIES:** The parties obligations to complete the closing are contingent upon the following:
 - A. Satisfactory Survey of the Property acceptable to Purchaser;
 - B. Sellers ability to deliver title to the property free and clear of any liens or encumbrances and obtain any approvals or releases necessary to complete the transaction.
14. **ENFORCE ABILITY:** This contract shall be governed by the laws of the State Mississippi. If any provision of this contract is invalid or unenforceable, the other provisions herein shall remain in full force and effect and shall be liberally construed in order to effectuate the purpose and intent of this contract. Each party hereby acknowledges receipt of a duplicate original hereof. The parties hereto agree that in the event of a disagreement concerning this contract or purchase, that the parties will agree to binding arbitration.
15. **AGREEMENT OF PARTIES:** This contract incorporates all prior agreements between the parties, contains the entire and final agreement of the parties, and cannot be changed except by their written consent. Neither party has relied upon any statement or representation made by the other party or the sales representative bringing the parties together not contained herein. Neither party shall be bound by any terms, conditions, oral statements, warranties, or representations not herein contained. Each party acknowledges

Buyer Initials



Seller Initials




that they have read and understand this contract. The provisions of this contract shall apply to and bind the heirs, executors, administrators, successors and assigns of the respective parties hereto. Gender and number, as herein used, shall be changed as the context may require. This contract shall be governed by the laws of the state of Mississippi.

- 15. REPRESENTATION OF SELLER: The seller represents to the Purchasers the following:
 - A. The Seller is the sole owner of the legal and beneficial interest in the subject property.
 - B. The party executing this document on behalf of the Seller has been duly authorized so to do.
 - C. The Seller is not a foreign person as the same is defined in Section 1445 of the Internal Revenue Code.
- 16. BROKERS: The parties acknowledge that neither the Seller nor Purchaser has engaged or been represented by any broker or realtor in this transaction, and no person is owed any real estate commission relating to the same.
- 17. In the event this transaction is mutually terminated by the Purchaser and Seller prior to the June 30, 2017, closing date, the earnest money will only be released as both Purchaser and Seller agree in writing and direct to the escrow agent, Laura F. Paulk, PLLC.

WITNESS OUR SIGNATURES:

Purchaser: Penny Verdin Zar


3/30/17
 by: Penny Verdin Zar Date and time

Purchaser's Address: 4911 Evida Street Lafitte, La 70067

Purchaser's Phone Number: (504) 563-8528

Seller:
Clear Lake Development, LLC


3/29/17
 By: Clayton Gutierrez, Manager Date and time

Seller's Address: 211 Callaway Street Biloxi Ms 38530

Seller's Phone Number: (228) 374-8122