

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF LOUISIANA**

**IN RE:**

**CASE NO.**

**DEBORAH ANN VINSON**

**16-12818  
SECTION "B"  
(Small Business)**

**DEBTOR**

**CHAPTER 11**

**MOTION FOR AUTHORITY TO SELL PROPERTY OF THE ESTATE AT PRIVATE  
SALE FREE AND CLEAR OF ALL LIENS, MORTGAGES, PRIVILEGES,  
ENCUMBRANCES AND OTHER INTERESTS**

NOW INTO COURT, comes Deborah Vinson ("Ms. Vinson"), debtor-in-possession, and herein seeks the entry of an order, pursuant to Section 363 of the Bankruptcy Code, authorizing the said debtor to sell a certain tract of real (immovable) property bearing municipal address 2503 St. Charles Avenue, New Orleans, Louisiana, free and clear of all liens, claims, mortgages, privileges, encumbrances and interests. In support of this motion, Ms. Vinson respectfully avers as follows:

**Jurisdiction**

1.

This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334.

2.

This matter is a core proceeding pursuant to 28 U.S.C. §157(b).

**Procedure**

3.

Procedurally, this motion is governed by Bankruptcy Rules 2002 and 6004.

**Background**

4.

On November 17, 2016, Ms. Vinson filed a voluntary petition for relief under Chapter 11 of Title 11, United States Code.

5.

At the time of the filing of the debtor's voluntary petition, said debtor was the owner of a certain tract of real (immovable) property situated in the Parish of Orleans, State of Louisiana, and bearing municipal address 2503 St. Charles Avenue, New Orleans, Louisiana 70130 (hereinafter the "St. Charles Property"). A full legal description of the St. Charles Property is as follows:

A CERTAIN PIECE OR PORTION OF GROUND, together with all the buildings and improvements thereon, and all of the rights, ways, privileges, servitudes, appurtenances and thereunto belonging or in anywise appertaining, situated in the **FOURTH DISTRICT** of this City in **SQUARE NO.232**, bounded by St. Charles Avenue, Second, Third and Carondelet Streets, designated by the **LETTER "A"** on a plan of L.H. Pilie, Surveyor, dated June 16, 1883, annexed to an act before William H. Seymour, Notary Public, on July 13, 1883, and measuring sixty-three feet, ten inches and six lines (title), 63'.11" (actual), same width in rear, front on St. Charles Avenue, by one hundred and twenty -five feet in depth between equal and parallel lines and front on Second Street forming the corner of said two streets; said portion of ground is designated by the letter "A" and has the same measurements as above, all in accordance with a survey by Gilbert, Kelly & Couturie, Inc., Surveyors, dated June 5, 2001.

Being the same property acquired by William R. McAllister and Deborah A. Vinson from Akosua, LLC by Act of Cash Sale before Lawrence J. Genin, Notary Public, on June 19, 2001 and recorded in CIN 220008, Notarial No. 2001-29236 of the records of the Parish of Orleans, State of Louisiana.

6.

Also at the time of the filing of the debtor's voluntary petition, the St. Charles Property was subject to certain acts of mortgage executed by the debtor in favor of Fifth District Savings

& Loan Association (“Fifth District”), the U. S. Small Business Administration (“SBA”) and Regions Bank (“Regions”). More specifically, reference is made to the following notes and mortgages currently known to be inscribed against the St. Charles Property, to-wit:

(i) Promissory Note, dated October 7, 2003, executed by Deborah Vinson, made payable to the order of Fifth District in the principal amount of \$550,000.00, which amount, plus interest at the rate of 5.6259% per annum thereon, is payable in monthly installments of principal and interest of \$3,116.11 each commencing December 1, 2003, and the balance payable on November 1, 2033, which Promissory Note is paraphed “Ne Varietur” for identification with a Mortgage of even date therewith encumbering the St. Charles Property, a copy of which is attached hereto as Exhibit “1”.

(ii) Mortgage dated October 7, 2003, executed by Deborah Vinson, as mortgagor, in favor of Fifth District, as mortgagee, encumbering the St. Charles Property, recorded on October 15, 2003, under Instrument No. 734672 of the Orleans Parish Mortgage records, a copy of which is attached hereto as Exhibit “2”.

(iii) Note, dated March 13, 2006, executed by Deborah Vinson, made payable to the order of the SBA in the principal amount of \$208,900.00, which amount, plus interest thereon at the rate of 2.687% per annum, is payable in monthly installments of \$885.00 each commencing March, 13, 2012, and the remaining principal and accrued interest being due 30 years from the date of the Note, a copy of which is attached hereto as Exhibit “3”.

(iv) Mortgage dated March 13, 2006, executed by Deborah Vinson, as mortgagor in favor of the SBA, as mortgagee, encumbering the St. Charles Property, recorded on August 30, 2007, under instrument No. 911207 of the Orleans Parish Mortgage records, a copy of which is attached hereto as Exhibit “4”.<sup>1</sup>

(v) Credit Agreement and Disclosure dated September 28, 2009, executed by Deborah Vinson, with a credit limit in the amount of \$500,000.00, a copy of which is attached hereto as Exhibit “5”.

(vi) Home Equity Mortgage, dated September 28, 2009, executed by Deborah Vinson, as mortgagor, in favor of Regions, as mortgagee, encumbering the St. Charles Property, recorded on October 16, 2009, under Instrument No. 989394 of the Orleans Parish Mortgage records, a copy of which is attached hereto as Exhibit “6”.

(vii) Promissory Note dated September 5, 2013, in the principal amount of \$1,157,800.00 executed by DAVLTD, LLC, a copy of which is attached hereto as Exhibit “7”.

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<sup>1</sup> This inscription was obtained from the mortgage indices of the Clerk of Court and Ex-Officio Recorder of Mortgages for the Parish of Orleans, and a copy of the referenced Mortgage will be provided via a supplemental motion and marked as Exhibit 4 as soon as one has been obtained.

(viii) Multiple Indebtedness Mortgage dated September 5, 2013, executed by Deborah Vinson, as mortgagor, in favor of Regions, as mortgagee, encumbering the St. Charles Property, recorded on September 6, 2013, under Instrument No. 1136092 of the Orleans Parish Mortgage records, a copy of which is attached hereto as Exhibit “8”.

7.

According to Fifth District, the total balance due on the Promissory Note dated October 7, 2003, as of December 8, 2016, is \$420,166.52.

8.

According to the SBA, the total balance due on the Promissory Note dated March 13, 2006, as of December 12, 2016, is \$160,587.41.

9.

According to Regions, the balance due on the Promissory Note dated September 5, 2013, as of November 11, 2016, is \$611,997.15

10.

According to Regions, the total balance due on the Credit Agreement and Disclosure as of November 17, 2016, is \$526,984.66.

11.

Prior to the filing of the debtor’s voluntary petition, debtor entered into a Marketing Agreement for Residential Property (“Marketing Agreement”) with Eleanor Farnsworth of Gardner Realtors, for the purpose of retaining Ms. Farnsworth’s services to list and market the St. Charles Property for sale.<sup>2</sup>

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<sup>2</sup> An Application of Debtor-in-Possession for Authority to Employ Realtor was filed by Ms. Vinson on December 7, 2016, and a hearing on that motion is currently set for January 4, 2016, at 9:00 a.m.

12.

Under the terms and provisions of the Marketing Agreement, Ms. Farnsworth was to list and market for sale the St. Charles Property and for which services she is to be paid a commission of 6% of the total sales price obtained for the property.

13.

Debtor has received, subject to the approval of this Court, an offer from John Mers and Candrea Mers (hereinafter the “Mers”) to purchase the St. Charles Property for the price and sum of \$1,900,000.00, free and clear of all liens, claims, mortgages, privileges, encumbrances and interests, all as more fully reflected in the Louisiana Residential Agreement to Buy or Sell and the Counter Offer (hereinafter, *in globo*, the “Purchase Agreement”), a copy of which is attached hereto and marked as Exhibit “9”.

**Authorization Requested**

14.

Pursuant to this motion and Sections 363(b)(1) and/or (f) of the Bankruptcy Code, the debtor seeks the entry of an order therein authorizing her to sell the St. Charles Property to the Mers for the price and sum of \$1,900,000.00, free and clear of all liens, claims, mortgages, privileges, encumbrances and interests.

15.

Sections 363 and 1107 of the Bankruptcy Code delineate the rights and powers of the debtor with respect to the use, sale, or lease of property of the estate and the rights of other

parties that have interests in the property involved.<sup>3</sup> Subsection (b) of Section 363 of the Bankruptcy Code permits the debtor to sell, other than in the ordinary course of business, property of the estate. More particularly, Section 363(b)(1) of the Bankruptcy Code states, in relevant part, that the debtor “after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. §363(b).

16.

Pursuant to Section 363(f) of the Bankruptcy Code, the debtor may sell property of the estate free and clear of any lien, claim or interest in such property if applicable non-bankruptcy law permits it, the other entity consents, the interest is a lien and the sale price of the property is greater than the amount secured by the lien, the interest is in bona fide dispute, or the other entity could be compelled to accept a money satisfaction of the interest in a legal or equitable proceeding. More specifically, Section 363(f) of the Bankruptcy Code specifically states as follows:

- (f) The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate only if –
  - (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
  - (2) such entity consents;
  - (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;

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<sup>3</sup> 11 U.S.C. § 1107(a) provides as follows:

- (a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights, other than the right to compensation under section 330 of this title, and powers, and shall perform all the functions and duties, except the duties specified in sections 1106(a)(2), (3) and (4) of this title, of a trustee serving in a case under this chapter.

(4) such interest in a bona fida dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

17.

The requirements of Section 363(f) are stated in the disjunctive, therefore satisfaction of any one of its five requirements is sufficient to permit the property to be sold free and clear of all liens, claims, mortgages, privileges, encumbrances and interests. *In re Bygaph, Inc.*, 56 B.R. 596, 606 n. 8 (Bankr. S.D.N.Y. 1986).

18.

Acting on the premise or standard of what is in the best interest of this estate and its creditors, the debtor has determined that the sale of the St. Charles Property to the Mers for the price and sum of \$1,900,000.00 represents the best price obtainable for this property on the current market.

19.

Debtor has requested a Mortgage Certificate from the Clerk of Court and Ex-Officio Recorder of Mortgages for the Parish of Orleans, State of Louisiana, and this motion will be supplemented in the event that any additional encumbrances appear of record on the St. Charles Property other than the mortgages held by Fifth District, the SBA and Regions.

20.

Pursuant to this motion, the debtor intends to sell the St. Charles Property free and clear of all liens, claims, privileges, encumbrances and interests, including those that may appear of record in the Orleans Parish Mortgage Office, with all valid liens, claims and interests to attach to the sales proceeds of this property in their rank and order as provided by law, subject to the

rights, claims, defenses and objections, if any, of the debtor and all parties-in-interest with respect to such liens, claims, interests and/or encumbrances.

21.

Debtor submits that a sale “free and clear” is warranted because one or more of the standards set forth in Section 363(f)(1) through (5) of the Bankruptcy Code has been met. Those holders of liens, claims and interests who do not object to the sale will be deemed to have consented to the sale of such property free and clear of their liens or interests pursuant to 363(f)(2). As to all other holders of interests on the St. Charles Property, they could be compelled to accept a money satisfaction of their interests in legal or equitable proceedings in accordance with section 363(f)(5) of the Bankruptcy Code to the extent such interests are sought to be discharged in the order approving the relief sought in this motion. Moreover, the holders of the liens and interests in the St. Charles Property will have their liens and/or security interests attach to and will be paid from the proceeds of the sale in their rank and order of priority as determined under applicable non-bankruptcy law. Given such, the rights of these creditors are both preserved and adequately protected, and St. Charles Property may be sold free and clear of such liens and interests pursuant to Section 363(f)(5) of the Bankruptcy Code.

22.

Accordingly, the St. Charles Property will be sold free and clear of the following, but not limited to, encumbrances, to-wit:

- (i) Instrument #: 2003-56229  
Date Filed: 10/15/2003  
Document Type: MORTGAGE  
Amount: \$550,000.00  
Mortgage Instrument Number (MIN): 734672  
Granted By/Rendered Against: DEBORAH ANN VINSON;



- (ii) Instrument #: 2007-60557  
Date filed: 08/30/2007  
Document Type: MULTIPLE INDEBTEDNESS MORTGAGE  
Amount: \$208,900.00  
Mortgage Instrument Number (MIN): 911207  
Granted By/Rendered Against: DEBORAH ANN VINSON;
  
- (iii) Instrument #: 2009-41531  
Date Filed: 10/16/2009  
Document Type: HOME EQUITY MORTGAGE  
Amount: \$500,000.00  
Mortgage Instrument Number (MIN): 989394  
Granted By/Rendered Against: DEBORAH ANN VINSON; and
  
- (iii) Instrument #: 2013-33649  
Date Filed: 09/06/2013  
Document Type: MULTIPLE INDEBTEDNESS MORTGAGE  
Amount: \$1,157,800.00  
Mortgage Instrument Number (MIN): 1136092  
Granted By/Rendered Against: DEBORAH ANN VINSON.

23.

Based on the debtor's calculations, and after allocating for the agent's commission of 6% of the sales proceeds or \$114,000.00, there will remain some \$1,786,000.00 to satisfy the mortgages/liens of Fifth District, the SBA and Regions, whose claims total approximately \$1,720,145.48.

24.

The sale of the St. Charles Property is necessary to implement the debtor's anticipated Plan of Reorganization to be filed of record in the within Chapter 11 proceeding.

**Notice**

25.

Notice of this motion is being given to (i) the U.S Trustee; (ii) the City of New Orleans; (iii) the Internal Revenue Service; (iii) the Clerk of Court and Ex-Officio Recorder of Mortgages

for the Parish of Orleans, State of Louisiana; (iv) Fifth District Savings & Loan Association; (v) the SBA; (vi) Regions Bank; and (vii) all creditors of the debtor appearing on the mailing-matrix maintained by the Clerk of Court in this proceeding.

WHEREFORE, Debtor Ann Vinson, debtor-in-possession, respectfully request that, after notice and a hearing, the Court enter an order as follows:

(a) authorizing said debtor to sell the St. Charles Property to John Mers and Candrea Mers for the price and sum of \$1,900,000.00, free and clear of all liens, claims, mortgages, privileges, security interests, all in accordance with the terms and provisions of the Purchase Agreement attached hereto as Exhibit "9";

(b) directing the Clerk of Court and Ex-Officio Recorder of Mortgages for the Parish of Orleans, State of Louisiana, to cancel and erase the inscriptions of all liens, mortgages, privileges and encumbrances affecting or which appear of record on the St. Charles Property from its office and/or from the Orleans Parish mortgage records;

(c) at the closing of the sale of the St. Charles Property, directing the debtor and the closing title company to pay (i) the real estate agent's commission of 6% of the gross sales proceeds to Eleanor Farnsworth of Gardner Realtors; (ii) those sums necessary to pay, in full, the claims of Fifth District Savings & Loan Associates, the SBA and Regions Bank, to the extent such claims are secured by a valid and subsisting mortgage on the St. Charles Property; and (iii) the remainder of the sales proceeds to the debtor for distribution in connection with an anticipated plan of reorganization to be filed of record in this proceeding;

(d) after the closing of the sale of the St. Charles Property to John Mers and Candrea Mers, directing each of the debtor's creditors or other persons holding or claiming any lien on or interest in the St. Charles Property to execute and deliver to John Mers and Candrea Mers a release

of any and all such liens on or interests in the St. Charles Property and to the extent that such liens have been recorded in the Orleans Parish mortgage records;

(e) authorizing and empowering the debtor to execute any and all documents on behalf of the estate to transfer a good and a merchantable title of the St. Charles Property to John Mers and Candrea Mers; and

(f) for such other and further relief as may be equitable in the premises.

Respectfully submitted,

/s/ Darryl T. Landwehr

DARRYL T. LANDWEHR (#17677)

LANDWEHR LAW FIRM

1010 Common St., Suite 1710

New Orleans, Louisiana 70112

Telephone: (504) 561-8086

Attorneys for Debtor-in-possession

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Motion for Authority to Sell Property of the Estate at Private Sale Free and Clear of All Liens, Mortgages, Privileges, Encumbrances and other Interests has been served upon Office of the U.S. Trustee, via the CM/ECF system, on the 13<sup>th</sup> day of December, 2016.

/s/ Darryl T. Landwehr

Darryl T. Landwehr (17677)

DocuSign Envelope ID: D23C8CF4-6495-4692-AD3F-CD2DB1E61876

COUNTER OFFER/  
RESPONSE  
C-441 (R/15)



GBS Properties, LLC dba  
GARDNER REALTORS  
HOME OFFICE  
3332 N. Woodlawn Ave., Metairie, LA 70003

For exclusive use of GARDNER REALTORS® & its Affiliated Licensees, GARDNER REALTORS® assumes no responsibility for any unauthorized use of this form.

COUNTER OFFER

1 3:15 PM (A.M.)(P.M.) December 6, 2016 (Date)  
2 The undersigned hereby makes the following Counter Offer to the Residential Agreement to Buy or  
3 Sell (the "Agreement") dated December 5, 2016 concerning  
4 Property at: 2503 St Charles Avenue  
5 in New Orleans City; Orleans (Parish/County); LA (State)  
6 between Deborah Ann Vinson as Seller(s) and  
7 John Mers and Candrea Mers as Buyer(s).  
8  
9 REFERENCE LINE NUMBERS FOR EACH COUNTER POINT FROM AGREEMENT  
10 Lines 20-21: 2 Refrigerators, 2 Ranges, Dishwasher, 2 Washers and Dryers, Microwave, Wine Cooler, Custom made  
11 carpet in living room  
12 Line 36: Purchase price to be one million, nine hundred thousand dollars (\$1,900,000)  
13 Line 38: Act of Sale is on January 27, 2017  
14 Lines 288-291: Subject to approval via reorganization from the Eastern District Bankruptcy Court. Appraisal to be  
15 completed during inspection period and loan to be completed by January 6, 2017.  
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30

31 All other terms and conditions of the Agreement shall remain in effect except as modified by this  
32 Counter Offer.

33  
34  
35 This Counter Offer is void if not accepted in writing on or before 5:00 (A.M.)(P.M.)  
36 (Noon) (Midnight) on December 7, 2016 (Date).

37  
38  
39 X Deborah Ann Vinson X \_\_\_\_\_  
40 (Seller) (Buyer) Signature (First, Middle, Last) (Seller) (Buyer) Signature (First, Middle, Last)

41    
42 Print (Seller) (Buyer) Full Name Print (Seller) (Buyer) Full Name

43  
44  
45 Received by: [Signature] at 3:30 (A.M.)(P.M.) on 12/6/16 (Date).  
46 Designated Agent Signature via email

RESPONSE OF COUNTER OFFER

50  
51 The above Counter Offer is hereby:  ACCEPTED  REJECTED  NEW COUNTER  
52 at 12:00 (A.M.)(P.M.) on 12/7/16 (Date).  
53 DocuSigned by: \_\_\_\_\_ DocuSigned by: \_\_\_\_\_

54  
55 X John Mers X Candrea Mers  
56 (Seller) (Buyer) Signature (First, Middle, Last) (Seller) (Buyer) Signature (First, Middle, Last)

57 John Mers Candrea Mers  
58 Print (Seller) (Buyer) Full Name Print (Seller) (Buyer) Full Name

DocuSign Envelope ID: D23C8CF4-6495-4692-AD3F-CD2DB1E61876

COUNTER OFFER



www.latter-blum.com

CORPORATE HEADQUARTERS: 430 Notre Dame St. New Orleans LA 70130 - 1-504-525-1311

LATTER & BLUM ASSUMES NO RESPONSIBILITY FOR ANY UNAUTHORIZED USE OF THIS FORM. THIS FORM IS FOR THE USE OF LATTER & BLUM EXCLUSIVELY

1 At 12:00 A.M.  P.M. 12/7/16 (Date)  
2 The undersigned hereby makes the following Counter Offer to the Louisiana Residential Agreement to Buy or  
3 Sell (the "Agreement") dated 12/5/16 concerning Property at:  
4 2503 ST CHARLES Avenue  
5 in New Orleans City; New Orleans Parish; Louisiana between  
6 Deborah Vinson as Seller  
7 and John Mers Candrea Mers as Buyer.

8  
9 REFERENCE LINE NUMBERS FOR EACH COUNTER POINT FROM AGREEMENT

10 -Lines 20-21: 2 Refrigerators, 2 Ranges, Dishwasher, 2 Washers and Dryers, Microwave, Wine Cooler, Custom made Carpet in  
11 Living Room.  
12 - Line 36: Purchase Price to be One Million, Nine Hundred Thousand Dollars ( \$1,900,000 ).  
13 - Line 39: Act of Sale is on January 27, 2017 or before if mutually agreed upon.  
14 - Lines 288-291: Subject to approval via reorganization from Eastern District Bankruptcy Court. Appraisal to be ordered during  
15 Inspection Period.  
16 -Lines 288-290: Purchasers will be doing a like-kind exchange under Section 1031 of Internal Revenue Service Code  
17 ("Exchange"). Seller shall cooperate in all reasonable respects to effectuate the Exchange.

18  
19  
20 All other terms and conditions of the Agreement shall remain in effect except as modified by this Counter Offer.

21  
22 This Counter Offer is binding & irrevocable through 6:00 AM  PM Noon on  
23 12/8/16 (Date).

24 DocuSigned by: John Mers DocuSigned by: Candrea Mers  
25 X John Mers Candrea Mers  
26 Sign 9A4DC9E9D9B487... Purchaser - Full Name (First, Middle, Last) Sign D1B66F478C664F2... Seller Purchaser - Full Name (First, Middle, Last)

27 John Mers Candrea Mers  
28 Print Seller Purchaser - Full Name Print Seller Purchaser Full Name

29  
30  
31 Received by: \_\_\_\_\_  
32 Designated Agent Signature  
33 at \_\_\_\_\_ A.M. P.M. on \_\_\_\_\_ (Date).

34  
35 RESPONSE TO COUNTER OFFER

36 The above Counter Offer is hereby: Accepted Rejected Replaced with new Counter Offer Form  
37  
38 at 3:30 AM  PM Noon on 12-7-16 (Date).

39 Deborah Vinson  
40 X \_\_\_\_\_  
41 Sign Seller Purchaser - Full Name (First, Middle, Last) Sign Seller Purchaser - Full Name (First, Middle, Last)

42  
43  
44 Print Seller Purchaser - Full Name Print Seller Purchaser - Full Name

"#1 REAL ESTATE COMPANY IN THE GULF SOUTH"