

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF FLORIDA  
PANAMA CITY DIVISION

IN RE: DONNIE RAY EARNEST, SR  
SUSAN CHRISTINA EARNEST  
Debtors.

Chapter 11  
Case No. 12-50592- KKS

---

**MOTION TO AUTHORIZE DEBTORS TO SELL REAL PROPERTY  
(6529 Beach Drive, Panama City Beach, FL)**

NOW COME the Debtors, DONNIE RAY EARNEST, SR & SUSAN CHRISTINA EARNEST, by and through their undersigned attorney and moves the Court to enter an Order Authorizing the Debtors to Sell Real Property and as grounds the Debtors would show:

1. The Debtor has listed the real property located at 6529 Beach Drive, Panama City Beach, FL 32408 for \$375,000.00.
2. The mortgage holder, Vericrest Financial, filed Claim #11 in the amount of \$402,604.62 on April 26, 2013.
3. The mortgage of Vericrest Financial will be satisfied through the sale of the real property.
4. Any remaining proceeds will be deposited into the debtor-in-possession account.
5. The closing Statement is subject to approval of Vericrest Financial.
6. No party in interest is being adversely affected by the sale.
7. The Debtor in possession desires to proceed to sell the following described real property for \$375,000.00 or best offer, in the manner and form heretofore noticed by the Debtor to all parties in interest.

**Real property subject to the sale:**

HOLIDAY BEACH UNIT #3 LOT 15 BLK IORB 1841 P 2399 ORB 2341 P 68 ORB 2535 P 1241

**Personal property subject to the sale:**

NONE

WHEREFORE, the Debtors pray the Court will enter an Order allowing the Debtor to sell real property; satisfy the mortgage with Vericrest Financial; pay all closing costs and realtor commissions; and deposit all remaining funds in the debtor-in-possession account.

Dated this 25<sup>th</sup> day of April, 2018.

/s/ Charles M. Wynn

Charles M. Wynn, Esq.

FL Bar. # 0241695

4436 Clinton Street

PO Box 146

Marianna, FL 32447

Telephone: (850) 526-3520

Fax: (850) 526-5210

E-Mail: Charles@Wynnlaw-fl.com

Secondary E-Mail: Court@Wynnlaw-fl.com

**Exclusive Right of Sale Listing Agreement**

This Exclusive Right of Sale Listing Agreement ("Agreement") is between

**Donnie and Susan Earnest** ("Seller")

and **MJH Real Estate Brokerage, LLC and Berkshire Hathaway Beach Properties of Florida** ("Broker").

**1. Authority to Sell Property:** Seller gives Broker the EXCLUSIVE RIGHT TO SELL the real and personal property (collectively "Property") described below, at the price and terms described below, beginning 1/10/2018 and terminating at 11:59 p.m. on 12/31/2018 ("Termination Date"). Upon full execution of a contract for sale and purchase of the Property, all rights and obligations of this Agreement will automatically extend through the date of the actual closing of the sales contract. Seller and Broker acknowledge that this Agreement does not guarantee a sale. This Property will be offered to any person without regard to race, color, religion, sex, handicap, familial status, national origin, or any other factor protected by federal, state, or local law. Seller certifies and represents that she/he/it is legally entitled to convey the Property and all improvements.

**2. Description of Property:**

(a) **Street Address:** 6529 Beach Drive, Panama City Beach, FL, 32408

Legal Description: HOLIDAY BEACH UNIT #3 LOT 15 BLK IORB 1841 P 2399 ORB 2341 P 68 ORB 2535 P 1241

☐ See Attachment

(b) **Personal Property, including appliances:**

☐ See Attachment

**(c) Occupancy:**

Property ☐ is ☐ is not currently occupied by a tenant. If occupied, the lease term expires \_\_\_\_\_.

**3. Price and Terms:** The property is offered for sale on the following terms or on other terms acceptable to Seller:

(a) **Price:** \$ 375,000

(b) **Financing Terms:** ☒ Cash ☒ Conventional ☐ VA ☐ FHA ☐ Other (specify) \_\_\_\_\_

☐ **Seller Financing:** Seller will hold a purchase money mortgage in the amount of \$ \_\_\_\_\_

with the following terms: \_\_\_\_\_

☐ **Assumption of Existing Mortgage:** Buyer may assume existing mortgage for \$ \_\_\_\_\_ plus an assumption fee of \$ \_\_\_\_\_. The mortgage is for a term of \_\_\_\_\_ years beginning in \_\_\_\_\_, at an interest rate of \_\_\_\_\_% ☐ fixed ☐ variable (describe) \_\_\_\_\_.

Lender approval of assumption ☐ is required ☐ is not required ☐ unknown. **Notice to Seller:** (1) You may remain liable for an assumed mortgage for a number of years after the Property is sold. Check with your lender to determine the extent of your liability. Seller will ensure that all mortgage payments and required escrow deposits are current at the time of closing and will convey the escrow deposit to the buyer at closing. (2) Extensive regulations affect Seller financed transactions. It is beyond the scope of a real estate licensee's authority to determine whether the terms of your Seller financing agreement comply with all applicable laws or whether you must be registered and/or licensed as a loan originator before offering Seller financing. You are advised to consult with a legal or mortgage professional to make this determination.

(c) **Seller Expenses:** Seller will pay mortgage discount or other closing costs not to exceed 0% of the purchase price and any other expenses Seller agrees to pay in connection with a transaction.

**4. Broker Obligations:** Broker agrees to make diligent and continued efforts to sell the Property until a sales contract is pending on the Property.**5. Multiple Listing Service:** Placing the Property in a multiple listing service (the "MLS") is beneficial to Seller because the Property will be exposed to a large number of potential buyers. As a MLS participant, Broker is obligated to timely deliver this listing to the MLS. This listing will be promptly published in the MLS unless Seller directs Broker otherwise in writing. Seller authorizes Broker to report to the MLS this listing information and price, terms, and financing information on any resulting sale for use by authorized Board / Association members and MLS participants and subscribers unless Seller directs Broker otherwise in writing.

Seller Donnie and Susan Earnest and Broker/Sales Associate (Signature) acknowledge receipt of a copy of this page, which is Page 1 of 4.

6. **Broker Authority:** Seller authorizes Broker to:

- (a) Advertise the Property as Broker deems advisable including advertising the Property on the Internet unless limited in (6)(a)(i) or (6)(a)(ii) below.

(Seller opt-out) (Check one if applicable)

- (i) ☐ Display the Property on the Internet except the street address.  
 (ii) ☐ Seller does not authorize Broker to display the Property on the Internet.

Seller understands and acknowledges that if Seller selects option (ii), consumers who search for listings on the Internet will not see information about the Property in response to their search.

\_\_\_\_\_/\_\_\_\_\_  
 Initials of Seller

- (b) Place appropriate transaction signs on the Property, including "For Sale" signs and "Sold" signs (once Seller signs a sales contract) and use Seller's name in connection with marketing or advertising the Property.  
 (c) Obtain information relating to the present mortgage(s) on the Property.  
 (d) Provide objective comparative market analysis information to potential buyers.  
 (e) (Check if applicable) ☐ Use a lock box system to show and access the Property. A lock box does not ensure the Property's security. Seller is advised to secure or remove valuables. Seller agrees that the lock box is for Seller's benefit and releases Broker, persons working through Broker, and Broker's local Realtor Board / Association from all liability and responsibility in connection with any damage or loss that occurs.  
☒ Withhold verbal offers. ☐ Withhold all offers once Seller accepts a sales contract for the Property.  
 (f) Act as a transaction broker.  
 (g) **Virtual Office Websites:** Some real estate brokerages offer real estate brokerage services online. These websites are referred to as Virtual Office Websites ("VOWs"). An automated estimate of market value or reviews and comments about a property may be displayed in conjunction with a property on some VOWs. Anyone who registers on a VOW may gain access to such automated valuations or comments and reviews about any property displayed on a VOW. Unless limited below, a VOW may display automated valuations or comments and reviews about this Property.  
☐ Seller does not authorize an automated estimate of the market value of the listing (or a hyperlink to such estimate) to be displayed in immediate conjunction with the listing of this Property.  
☐ Seller does not authorize third parties to write comments or reviews about the listing of the Property (or display a hyperlink to such comments or reviews) in immediate conjunction with the listing of this Property.

7. **Seller Obligations:** In consideration of Broker's obligations, Seller agrees to:

- (a) Cooperate with Broker in carrying out the purpose of this Agreement, including referring immediately to Broker all inquiries regarding the Property's transfer, whether by purchase or any other means of transfer.  
 (b) Provide Broker with keys to the Property and make the Property available for Broker to show during reasonable times.  
 (c) Inform Broker before leasing, mortgaging, or otherwise encumbering the Property.  
 (d) Indemnify Broker and hold Broker harmless from losses, damages, costs, and expenses of any nature, including attorney's fees, and from liability to any person, that Broker incurs because of (1) Seller's negligence, representations, misrepresentations, actions, or inactions; (2) the use of a lock box; (3) the existence of undisclosed material facts about the Property; or (4) a court or arbitration decision that a broker who was not compensated in connection with a transaction is entitled to compensation from Broker. This clause will survive Broker's performance and the transfer of title.  
 (e) Perform any act reasonably necessary to comply with FIRPTA (Section 1445 of the Internal Revenue Code).  
 (f) Make all legally required disclosures, including all facts that materially affect the Property's value and are not readily observable or known by the buyer. Seller certifies and represents that Seller knows of no such material facts (local government building code violations, unobservable defects, etc.) other than the following:

\_\_\_\_\_  
 Seller will immediately inform Broker of any material facts that arise after signing this Agreement.

- (g) Consult appropriate professionals for related legal, tax, property condition, environmental, foreign reporting requirements, and other specialized advice.

8. **Compensation:** Seller will compensate Broker as specified below for procuring a buyer who is ready, willing, and able to purchase the Property or any interest in the Property on the terms of this Agreement or on any other terms acceptable to Seller. Seller will pay Broker as follows (plus applicable sales tax):

- (a) 6 % of the total purchase price plus \$ N/A OR \$ N/A, no later than the date of closing specified in the sales contract. However, closing is not a prerequisite for Broker's fee being earned.  
 (b) N/A (\$ or %) of the consideration paid for an option, at the time an option is created. If the option is exercised, Seller will pay Broker the Paragraph 8(a) fee, less the amount Broker received under this subparagraph.

Seller [Signature] and Broker/Sales Associate [Signature] acknowledge receipt of a copy of this page, which is Page 2 of 4.  
 ERS-17tb Rev 6/17

- (c) N/A (\$ or %) of gross lease value as a leasing fee, on the date **Seller** enters into a lease or agreement to lease, whichever is earlier. This fee is not due if the Property is or becomes the subject of a contract granting an exclusive right to lease the Property.
- (d) **Broker's** fee is due in the following circumstances: (1) If any interest in the Property is transferred, whether by sale, lease, exchange, governmental action, bankruptcy, or any other means of transfer, regardless of whether the buyer is secured by **Seller**, **Broker**, or any other person. (2) If **Seller** refuses or fails to sign an offer at the price and terms stated in this Agreement, defaults on an executed sales contract, or agrees with a buyer to cancel an executed sales contract. (3) If, within 0 days after Termination Date ("Protection Period"), **Seller** transfers or contracts to transfer the Property or any interest in the Property to any prospects with whom **Seller**, **Broker**, or any real estate licensee communicated regarding the Property before Termination Date. However, no fee will be due **Broker** if the Property is relisted after Termination Date and sold through another broker.
- (e) **Retained Deposits:** As consideration for **Broker's** services, **Broker** is entitled to receive 0 % (50% if left blank) of all deposits that **Seller** retains as liquidated damages for a buyer's default in a transaction, not to exceed the Paragraph 8(a) fee.

9. **Cooperation with and Compensation to Other Brokers: Notice to Seller:** The buyer's broker, even if compensated by **Seller** or **Broker**, may represent the interests of the buyer. **Broker's** office policy is to cooperate with all other brokers except when not in **Seller's** best interest and to offer compensation in the amount of ☒ 3 % of the purchase price or \$\_\_\_\_\_ to a single agent for the buyer; ☒ 3 % of the purchase price or \$\_\_\_\_\_ to a transaction broker for the buyer; and ☒ 1 % of the purchase price or \$\_\_\_\_\_ to a broker who has no brokerage relationship with the buyer.  
☐ None of the above. (If this is checked, the Property cannot be placed in the MLS.)
10. **Brokerage Relationship:** **Broker** will act as a transaction broker. **Broker** will deal honestly and fairly; will account for all funds; will use skill, care, and diligence in the transaction; will disclose all known facts that materially affect the value of the residential property which are not readily observable to the buyer; will present all offers and counteroffers in a timely manner unless directed otherwise in writing; and will have limited confidentiality with **Seller** unless waived in writing.
11. **Conditional Termination:** At **Seller's** request, **Broker** may agree to conditionally terminate this Agreement. If **Broker** agrees to conditional termination, **Seller** must sign a withdrawal agreement, reimburse **Broker** for all direct expenses incurred in marketing the Property, and pay a cancellation fee of \$ 0.00 plus applicable sales tax. **Broker** may void the conditional termination, and **Seller** will pay the fee stated in Paragraph 8(a) less the cancellation fee if **Seller** transfers or contracts to transfer the Property or any interest in the Property during the time period from the date of conditional termination to Termination Date and Protection Period, if applicable.
12. **Dispute Resolution:** This Agreement will be construed under Florida law. All controversies, claims, and other matters in question between the parties arising out of or relating to this Agreement or the breach thereof will be settled by first attempting mediation under the rules of the American Mediation Association or other mediator agreed upon by the parties. If litigation arises out of this Agreement, the prevailing party will be entitled to recover reasonable attorney's fees and costs, unless the parties agree that disputes will be settled by arbitration as follows:  
**Arbitration:** By initialing in the space provided, **Seller** (DE), Sales Associate (AD), and **Broker** (DE) agree that disputes not resolved by mediation will be settled by neutral binding arbitration in the county in which the Property is located in accordance with the rules of the American Arbitration Association or other arbitrator agreed upon by the parties. Each party to any arbitration (or litigation to enforce the arbitration provision of this Agreement or an arbitration award) will pay its own fees, costs, and expenses, including attorney's fees, and will equally split the arbitrator's fees and administrative fees of arbitration.
13. **Miscellaneous:** This Agreement is binding on **Seller's** and **Broker's** heirs, personal representatives, administrators, successors, and assigns. **Broker** may assign this Agreement to another listing office. This Agreement is the entire agreement between **Seller** and **Broker**. No prior or present agreements or representations will be binding on **Seller** or **Broker** unless included in this Agreement. Electronic signatures are acceptable and will be binding. Signatures, initials, and modifications communicated by facsimile will be considered as originals. The term "buyer" as used in this Agreement includes buyers, tenants, exchangors, optionees, and other categories of potential or actual transferees.

Seller DE (DE) and Broker/Sales Associate (AD) (AD) acknowledge receipt of a copy of this page, which is Page 3 of 4.  
 ERS-17tb Rev 6/17

157\* **14. Additional Terms:** \_\_\_\_\_  
 158 \_\_\_\_\_  
 159 \_\_\_\_\_  
 160 \_\_\_\_\_  
 161 \_\_\_\_\_  
 162 \_\_\_\_\_  
 163 \_\_\_\_\_  
 164 \_\_\_\_\_  
 165 \_\_\_\_\_  
 166 \_\_\_\_\_  
 167 \_\_\_\_\_  
 168 \_\_\_\_\_  
 169 \_\_\_\_\_  
 170\* **Seller's Signature:** *Donna* **Date:** Jan 13, 2018  
 171\* **Home Telephone:** \_\_\_\_\_ **Work Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_  
 172\* **Address:** \_\_\_\_\_  
 173\* **Email Address:** \_\_\_\_\_  
 174\* **Seller's Signature:** *Sum* **Date:** Jan 13, 2018  
 175\* **Home Telephone:** \_\_\_\_\_ **Work Telephone:** \_\_\_\_\_ **Facsimile:** \_\_\_\_\_  
 176\* **Address:** \_\_\_\_\_  
 177\* **Email Address:** \_\_\_\_\_  
 178\* **Authorized Sales Associate or Broker:** *Craig Duran* **Date:** Jan 10, 2018  
 179\* **Brokerage Firm Name:** MJH Real Estate Brokerage, LLC and Berkshire Hathaway Beach Properties of Florida **Telephone:** \_\_\_\_\_  
 180\* **Address:** \_\_\_\_\_

181\* **Copy returned to Seller on** 1/10/2018 **by** ☒ **email** ☐ **facsimile** ☐ **mail** ☐ **personal delivery.**

Florida REALTORS® makes no representation as to the legal validity or adequacy of any provision of this form in any specific transaction. This standardized form should not be used in complex transactions or with extensive riders or additions. This form is available for use by the entire real estate industry and is not intended to identify the user as REALTOR®. REALTOR® is a registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. The copyright laws of United States (17 U.S. Code) forbid the unauthorized reproduction of this form by any means including facsimile or computerized forms.

Seller *Donna* and Broker/Sales Associate ( *(D)* ) acknowledge receipt of a copy of this page, which is Page 4 of 4.  
 ERS-171b Rev 6/17