

**IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF ALABAMA**

JOHN R. DAILEY, SR. and
PEGGY A. DAILEY,

Debtors,

CIVIL ACTION NO.: 17-03033

MOTION TO SELL

Comes now the Debtor, **JOHN R. DAILEY, SR.**, by and through the undersigned counsel, and moves the Court pursuant to 11 USC § 363 to sell certain real property of the Debtor, free and clear of any liens and encumbrances, and in support thereof, states as follows:

1. The Debtor is the owner of a certain tract of real property located in Wilcox County, Alabama of approximately 3 acres commonly identified as Parcel No. 15020400000100330. This property is pledged as collateral securing a debt from the Debtor to Town and Country National Bank.

2. Pursuant to his Adequate Protection Agreement with Town and Country National Bank, the Debtor has listed the above described property for sale.

3. The Debtor currently has an offer to purchase the above described property for the sum of \$150,000.00. A copy of the executed Purchase and Sale Agreement is attached hereto as Exhibit "1". The Debtor believes this offer should be accepted and is in the best interests of the Debtor and the Debtor's estate. Any distribution of debt funds from the sale would go toward the debt of Town and Country National Bank.

WHEREFORE, based upon the foregoing, the Debtor moves this Court to grant its Motion pursuant to 11 USC § 363 to sell the above described property pursuant to the terms of the Purchase and Sale Agreement attached hereto, free of any liens and encumbrances.

s/J. Willis Garrett, III

J. WILLIS GARRETT, III (GARRJ7452)

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Attorneys for John R. Dailey, Sr. and

Peggy A. Dailey

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of October, 2018, I electronically filed the foregoing with the Clerk of the Court using the ECF system, which will send notification of such filing to the following:

George W. Fendley, III, Esq.

Mark Zimlich, Esq.

s/J. Willis Garrett, III

NATIONAL LAND REALTY™

PURCHASE AND SALE AGREEMENT

The undersigned Purchaser, Edgar McGraw or assigns, hereinafter referred to as "Purchaser", offer and agree to purchase from John Dail Sr., hereinafter referred to as "Seller", the following described property located in Wilcox County, State of Alabama, 34 acres commonly known as Parcel Number: 15020400000100330 (Subject Property).

1. **PRICE AND OTHER TERMS:** The price to be paid for the Property shall be \$ 150,000 in lawful money of the United States of America, payable AT CLOSING. Both the Seller and Buyer reserve the right to procure a Tax-free like-kind exchange under the guidelines of IRC Section 1031.

OTHER TERMS:

A: Property is being sold as is where is.

2. **CLOSING:** Closing shall occur as soon as all necessary documents are ready but no later than 30 ⁶⁰ days from acceptance of this agreement by both parties (Acceptance).

3. **EARNEST MONEY DEPOSIT:** Upon acceptance, Purchaser shall deposit earnest money of \$ 5,000 with National Land Realty.

4. **CLOSING COSTS:** Seller shall pay for Deed production and title opinion. Recording costs to be paid for by Purchaser. The closing agent shall be at the discretion of the Seller. Any fees associated with performing closing shall be paid by Purchaser. Any other closing costs not addressed herein shall be paid by the incurring party. These costs are due and payable at closing. Title insurance is at the discretion of Purchaser and payable by the Purchaser.

5. **FORM OF DEED:** Title shall be conveyed by Statutory Warranty Deed, production payable by the party listed in clause #4, duly executed by all parties having an interest therein. The property is to be conveyed subject to existing Zoning Ordinances and Use Regulations. Seller makes no warranties concerning the physical condition of the property including any environmental matters relating to same. The property is being sold "as is" with all faults with respect to its physical condition.

6. **MINERAL RIGHTS:** All subsurface mineral rights owned by Seller will not be transferred to Purchaser at closing.

7. **POSSESSION DATE:** Possession of property shall be delivered to Purchaser at closing.

8. **SURVEY:** New survey is Not required. If required, it shall be payable by Purchaser. Any existing survey in Seller's possession shall be provide to Buyer prior to closing.

Page 1: Initialed & Accepted: EM Purchaser GRD Seller

EXHIBIT

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Desc Exhibit

9. ABSTRACTS OF TITLE AND TITLE INSURANCE: Seller shall furnish a title opinion in accordance with the applicable title insurance company. Purchaser shall notify Seller within ten (10) days after receipt of the title opinion in the event that the title opinion discloses any defects that render the title un-merchantable. In the event Seller is unable to cure such defects within sixty days of written notice by Purchaser, then Purchaser may elect to cancel this agreement and have all earnest money refunded to him. Title insurance will be at the discretion of Purchaser and payable by the Purchaser.

10. AFFIDAVITS AND CORPORATE RESOLUTIONS, ETC.: If necessary, Seller agrees to execute any documents required by the given title insurance company in order to issue Purchaser an owner's policy of title insurance at closing.

11. DISCHARGE OF EXISTING LIENS: Any liens or encumbrances on the properties that Purchaser does not herein agree to assume or pay, which may be fully discharged by the payment of money at the time for the consummation of the purchase, said liens or encumbrances shall not render Seller's title unmerchantable if Seller discharges the same prior to the consummation of the purchase, or if Seller authorizes Purchaser to retain and pay out of the purchase price the amount necessary to discharge the same.

12. PRORATION OF TAXES, RENTS, ETC.: All taxes, rents, and interest on any mortgage or encumbrances which Seller and Purchaser have herein agreed to assume shall be prorated as of the date of consummation of the purchase. The Seller is not and will not be responsible for any "roll back" or other re-determination or property taxes caused by any changes in the ownership or usage of the property at or after closing.

13. LIABILITY FOR LOSS: Any loss or damage to the properties prior to consummation of purchase shall be at Seller's risk and expense. In the event of destruction or substantial damage to the properties prior to consummation of the purchase, Purchaser shall have the option of receiving the proceeds of any insurance payable in connection therewith.

14. PENALTY FOR DEFAULT: Should the purchase and sale of the properties not be consummated through Seller's fault (which shall not include a defect in Seller's title that cannot be cured at a reasonable cost within said sixty days), the deposited money shall forthwith be returned to Purchaser; and if the purchase and sale of the properties not be consummated through Purchaser's fault, the deposited money shall be forfeited to Seller. However, such return or forfeiture of the deposited money shall not deprive either party of any right or cause of action that they may have by reason of failure of the other party to consummate the purchase and sale of the properties, including the right to institute an action for the specific performance of this contract. In the event either party to this contract institutes a legal proceeding to enforce the terms of this contract, the prevailing party in this litigation shall be entitled to recover a reasonable attorney's fee for the prosecution or defense of the litigation.

15. ENTIRE AGREEMENT: It is understood and agreed that this contract constitutes the entire agreement between the parties, and any other statements, covenants, and representations not incorporated herein are void and of no force and effect. This offer shall be null and void and of no further effect unless accepted by Seller & Purchaser in writing and delivering to a copy to both parties on or before

September 14, 2018 @ 6:00 PM, Central Standard Time.

Page 2: Initialed & Accepted: EM Purchaser QF Seller

16. NATURE OF CONTRACT: This agreement is and shall be binding upon and shall inure to the benefit of each of the Parties hereto, and their respective heirs, successors, assigns, executors, administrators, and legal representatives.

17. CHOICE OF LAW: The parties agree that this contract is made and accepted in the State of Alabama, and that it shall be governed and construed under and in accordance with the laws of the State of Alabama.

18. COMMISSION: Seller will pay a real estate commission to National Land Realty at closing as agreed to in the listing agreement.

19. AGENCY DISCLOSURE:

The listing company, National Land Realty is:

(Two blanks may be checked)

- ☒ An agent of the Seller.
☐ An agent of the Purchaser.
☐ An agent of both the Seller and Purchaser and is acting as a limited consensual dual agent.
☐ Assisting the ☐ Purchaser ☐ Seller as a transaction broker.

The selling company, National Land Realty is:

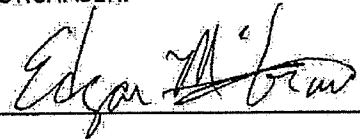
(Two blanks may be checked)

- ☐ An agent of the Seller.
☐ An agent of the Purchaser.
☐ An agent of both the Seller and Purchaser and is acting as a limited consensual dual agent.
☒ Assisting the ☒ Purchaser ☐ Seller as a transaction broker.

Signed and Accepted:

PURCHASER:

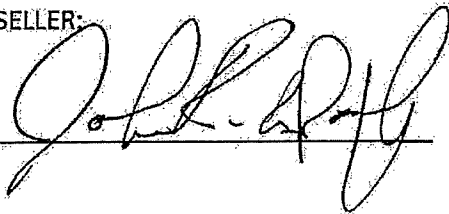
Date:



9-13-2018

SELLER:

Date:



9/13/18

Submitting Agent:

Name: Forrest During

Cell: 205-902-8779

Email: fduring@nationalland.com

REAL ESTATE BROKERAGE SERVICES DISCLOSURE - RULE 790-X-3.13(1)

THIS IS FOR INFORMATION PURPOSES. THIS IS NOT A CONTRACT.

Alabama law requires you, the consumer, to be informed about types of services which real estate licensees may perform. The purpose of this disclosure is to give you a summary of these services.

A SINGLE AGENT is a licensee who represents only one party in a sale. That is, a single agent represents his or her client. The client may be either the seller or the buyer. A single agent must be completely loyal and faithful to the client.

A SUB-AGENT is another agent/licensee who also represents only one part in a sale. A sub-agent helps the agent represent the same client. The client may be either the seller or the buyer. A sub-agent must also be completely loyal and faithful to the client.

A LIMITED CONSENSUAL DUAL AGENT is a licensee for both the buyer and the seller. This may only be done with the written, informed consent of all parties. This type of agent must also be loyal and faithful to the client, except where the duties owed to the client conflict with one another.

A TRANSACTION BROKER assists one or more parties, who are customers, in a sale. A transaction broker is not an agent and does not perform the same services as an agent.

*Alabama law imposes the following obligations on all real estate licensees to all parties, no matter their relationship:

1. To provide services honestly and in good faith;
2. To exercise reasonable care and skill;
3. To keep confidential any information gained in confidence, unless disclosure is required by law or duty to a client, the information becomes public knowledge, or disclosure is required by law or duty to a client, the information becomes public knowledge, or disclosure is authorized in writing;
4. Present all written offers promptly to the seller;
5. Answer your questions completely and accurately.

Further, even if you are working with a licensee who is not your agent, there are many things the licensee may do to assist you. Some examples are:

1. Provide information about properties;
2. Show properties;
3. Assist in making a written offer;
4. Provide information on financing.

You should choose which type of service you want from a licensee, and sign a brokerage service agreement. If you do not sign an agreement, by law the licensee working with you is a transaction broker.

The licensee's broker is required by law to have on file an office policy describing the company's brokerage services. You should feel free to ask any questions you have.

The Alabama Real Estate Commission requires the real estate licensee to sign, date, and provide you a copy of this form. Your signature is not required by law or rule, but would be appreciated.

Forrest Denny
Agent Print Name

[Signature]
Agent Signature

9-13-18
Date

Edgar McGraw
Consumer Print Name

Edgar McGraw
Consumer Signature

9-13-2018
Date

***THIS IS NOT A CONTRACT.**