

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

IN RE:

**KAPPA DEVELOPMENT & GENERAL
CONTRACTING, INC.**

NO. 17-51155 KMS

**MOTION FOR AUTHORITY TO SELL PERSONAL PROPERTY,
FREE AND CLEAR OF LIENS**

Comes now the Debtor, Kappa Development & General Contracting, Inc., (hereinafter "Kappa"), by and through its counsel of record, Byrd & Wiser, and files this its Motion for Authority to Sell Personal Property, Free and Clear of Liens, pursuant to Section 363(b)(f) of the Bankruptcy Code and Rule 6004 F.R.Bankr.P., and in support of same would show unto the Court the following, to-wit:

I

The Debtor filed its Petition for Relief pursuant to Chapter 11 June 12, 2017.

II

Kappa remains a Debtor-in-Possession and no Trustee has been appointed.

III

That this Court has jurisdiction over the subject matter pursuant to 28 U.S.C. Section 1334. The instant Motion is a core proceeding pursuant to 28 U.S.C. Section 157(b)(2).

IV

Kappa owns various pieces of construction equipment and vehicles which are itemized on Exhibit "A" attached hereto.

V

The majority of the equipment is encumbered by duly perfected liens in favor of
The First.

VI

The Debtor proposes to dispose of its equipment and vehicles by using Jeff Martin Auctioneers, Inc. located at 2236 Highway 49, Brooklyn, MS 39425.

VII

A copy of the proposed Auction Agreement is attached hereto as Exhibit "B".

VIII

Section 363 of the Bankruptcy Code provides that Kappa, as Debtor-in-Possession, may sell property other than in the ordinary course of business.

IX

Section 363(f) provides that the Debtor-in-Possession may sell such property free and clear of liens interest in such property if ". . . such entity consents. . . " Section 363(f)(2). The First has consented to the Debtor's retention and use of Jeff Martin Auctioneers, Inc. to auction and sell the Debtor's equipment and vehicles.

X

The Debtor would propose that the lien holders, either The First or Citizens Bank, will receive the net proceeds from the sale of any personal property upon which the lender holds a valid first perfected lien position.

XI

The Debtor would further show that the Debtor should be entitled to retain the proceeds from the sale of unencumbered vehicles or equipment.

XII

The Debtor would show unto the Court that the next scheduled auction date is August 10 and 11, 2018.

XIII

Pursuant to Rule 6004(h) F.R.Bankr.P., that the fourteen (14) day stay should be waived.

WHEREFORE, premises considered, Kappa would pray that after notice and

hearing this Court enter its Order allowing Kappa to dispose of its equipment and vehicles by using Jeff Martin Auctioneers, Inc. and further the lien holders, either The First or Citizens Bank, shall receive the net proceeds from the sale of any personal property upon which the lender holds a valid first perfected lien position, and further the Debtor shall be entitled to retain the proceeds from the sale of unencumbered vehicles or equipment and Kappa prays for such other and further relief as is just and proper in the premises.

Respectfully submitted,

KAPPA DEVELOPMENT & GENERAL
CONTRACTING, INC.

BY: BYRD & WISER

BY: 
ROBERT ALAN BYRD, MSB#7651
EMAIL: rab@byrdwiser.com

CERTIFICATE

I, ROBERT ALAN BYRD, Attorney for Kappa Development & General Contracting, Inc., do hereby certify that I have this date transmitted via Electronic Case Filing, as it appears on this date in the court registered e-filers of CM/ECF and/or via U.S. Mail, postage prepaid, a true and correct copy of the above and foregoing Motion for Authority to Sell Personal Property, Free and Clear of Liens to the following:

Paul Murphy, Attorney for The First, at paul.murphy@butlersnow.com

James McCullough, II, Attorney for Hanover Insurance, at jmccullough@brunini.com

Gary Yarborough, Attorney for the City of Waveland, at yf.garyyarborough@att.net

Robert Schwartz, Attorney for Charter Bank, at robert@sojlaw.net

Office of the U.S. Trustee, at USTPRegion05.JA.ECF@usdoj.gov

This the 3rd day of June, 2018.


ROBERT ALAN BYRD

KAPPA DEVELOPMENT AND GENERAL CONTRACTING, INC.				
ESTIMATED REPAIR COST AND VALUES OF EQUIPMENT AND VEHICLES				
YEAR	SS #	DESCRIPTION	REPAIR CST	EST. VALUE
2014	NES6H1466	CASE CX210 EXCAVATOR	\$200.00	\$120,000.00
1996	YCU0444	KOBELCO SK 300LC4 EXCAVATOR	\$900.00	\$23,000.00
2000	YQ07U0443	KOBELCO 210 URSK EXCAVATOR	\$1,100.00	\$21,000.00
2014	KX0804R3	KUBOTA SLV 90 EXCAVATOR	\$1,500.00	\$37,000.00
2012	DAC132108	CASE CX130 EXCAVATOR	\$2,500.00	\$40,000.00
1999	JEE0092666	CASE 621 WHEEL LOADER	\$700.00	\$16,000.00
2004	T0450GH814401	JOHN DEERE JD 450GLP SER.4	\$900.00	\$23,000.00
2003	512914146	C SERIES 8A BOBCAT MINI TRACKHOE	\$600.00	\$8,900.00
2001	57A6967T	MOTOR GRADER JOHN DEERE	\$900.00	\$7,000.00
1997	C21163	INGERSOLL RAND SERIES 70 PROPACK ROLLER	\$200.00	\$22,100.00
2000	JJG003994	480 FLL BOX BLADE TRACTOR	\$800.00	\$4,500.00
2014	NEC700252	CASE 580 RUBBER TIRE BACKHOE	0	\$42,000.00
2014	13754	HIGH FLOW SKID STEER	0	\$49,000.00
2013	240700	BRADCO MILLING MACHIN HP450	\$0.00	\$9,450.00
1999	24733	LAYMORE 6HB POWER BROOM	\$1,800.00	\$6,000.00
		HYDRONIC VIB. PLATE ATTACHMENT	\$0.00	\$6,800.00
1977	MC6587	LOWBOY TRAILER	\$300.00	\$18,000.00
2011	1P924SS0BA003166	PALMER 24 CY TRAILER	\$500.00	\$8,000.00
1979	ST1995	TA2 24 CY TRAILER	\$400.00	\$6,000.00
1990	1HSHKG340LHY295923	INTERNATIONAL TRUCK	\$150.00	\$15,000.00
1993	2M2P26740PC014678	MACK RD6 TANDUM DUMP	\$1,500.00	\$15,000.00
1988	1FDN82C7TVA07217	FORD TANDUM DUMP TRUCK	\$150.00	\$15,000.00
1983	1XP9D39X5DN158509	PETERBILT TRACTOR TRUCK	\$2,000.00	\$8,000.00
2000	13295-67489	HYSTER EQUIPMENT HAULING TRAILER	\$300.00	\$15,000.00
2003	1GCEK19T932315091	CHEVROLET SILVERADO	\$500.00	\$7,000.00
2007	3GNFK12317G309801	CHEVROLET AVALANCHE	0	\$7,000.00
2008	17XFG33X810869	TEXAS BRAGG 28FT TRAILER	0	\$12,000.00
2005	1GCH29U45E249021	CHEVROLET 2500 WORK TRUCK	0	\$10,000.00
1992	1M2AN3Y3N215925	MACK TANDUM DUMP TRUCK	\$1,200.00	\$15,000.00
2003	1GBC431113F509770	DURAMAX 2 TON TRUCK	0	\$15,000.00
1996	1WPSS24SST1199368	WARN GOOSE NECK TRAILER	0	\$10,000.00
1996	1FDNF82C7TVA07217	FORD ORANGE/WHITE WASHTRUCK	\$400.00	\$15,000.00
1994	1FDYR82E1RVA22000	GREEN PUMP/WASH TRUCK	\$850.00	\$20,000.00
		WATER TRUCK	\$300.00	\$6,000.00
		CONEX BOXES (2)	\$250.00	\$4,000.00
		OFFICE TRAILER	\$100.00	\$3,000.00
2000	1GBK7H1C7J5	CHEVROLET 3" PUMP TRUCK 6500	\$250.00	\$9,000.00
1992	2M2P264Y2NC10830	MACK TRUCK RD6905	\$1,200.00	\$10,000.00
	13427T	ALUMINUM DUMP TRAILER 24 YD	\$1,500.00	\$8,000.00
		24 CUBIC YD DUMP TRAILER	\$400.00	\$12,000.00
		MAROON WORK TRUCK	\$200.00	\$5,000.00

1977		BERTRUM SPORTS FISHERMAN 28'			\$2,500.00	\$25,000.00
		LOWBOY TRAILER		yellow	\$2,500.00	\$12,000.00
		THOMPSON WELLPOINT SYSTEM			\$300.00	\$8,000.00
		30' RED DUEL AXLE FLATBED TRAILER			\$250.00	\$4,000.00
		3 PIPE LASERS AND 1 ROTATING LASER				\$8,000.00
					\$30,100.00	\$760,750.00

AUCTION AGREEMENT
JEFF MARTIN AUCTIONEERS, INC.
 2236 Hwy 49 Brooklyn, MS 39425
 601-450-6200 | 601-450-4980 (fax)

SELLER (To appear on check): KAPPA DEVELOPMENT (referred to as "Seller" herein)
 Contact Person: RAYMOND BLACKLIDGE Fed. ID# or Resale Certificate # _____
 Address: 10480 REICHOLE ROAD
 City, State, Zip: GULFPORT, MS 39503
 Phone: (228) 897-1115 Fax: _____ Email: RAB7777.RB@GMAIL.COM
 Annual Contract: YES/NO - Year Effective _____ expires: _____ +1 day
 Auction Date: May 11, 2018 Auction Location: 2236 HWY 49 BROOKLYN, MS 39425

AUGUST 10 -

Seller hereby retains, authorizes, and directs Jeff Martin Auctioneers, Inc. (hereinafter referred to as Auctioneer) to arrange for and to conduct a public auction of property listed on Schedule A attached hereto or items brought to auction location by seller and consigned with auction staff. It is expressly agreed and understood that the items listed therein will be and are subject to the Terms and Conditions as noted hereon (including the Terms and Conditions on page 2 of this form.)

TERMS OF SALE AND AUCTION COMMISSION

- a. Seller agrees that each and every piece of Property listed on Schedule A will be offered for sale at the specified Auction Date and Auction Location in accordance with the Auctioneer's usual practices and procedures. The lotting and grouping of the Property sold and the order in which it is to be sold shall be in the absolute and sole discretion of the Auctioneer.
- b. Auctioneer will collect a buyer's premium on each item from the buyer. Amount to be charged for buyer's premium is auctioneers decision. It is agreed that the buyer's premium shall be additional compensation to the Auctioneer and Seller shall have no right to payment of any portion thereof and the buyer's premium shall have no effect on the commission to be paid to Auctioneer pursuant to subpart c. below.
- c. Seller agrees to pay Auctioneer for its services commission(s) as follows: _____ Customer Initial
 1. 8.000% of sales price per item of Property selling above \$0.00.
 2. \$0.00 No Sale or Buy Back fee per item of Property will be charged to each item that does not sale in auction.
 3. \$0.00 Minimum commission will be charged on each item sold in auction or the percentage stated above whichever is the greater amount.

In addition to other commissions due Auctioneer, there will be a **\$100.00 title fee** for any title not delivered to Auctioneer in accordance with set forth herein.

- d. Seller agrees to give Auctioneer power of attorney to sign Seller's name on the title to the Property should a sale of the Property occur.
- e. Auctioneer will pay Seller net proceeds on or before **21 banking days after the auction proceeds are collected and liens are released**. Net proceeds are the gross sales price less commissions and fees due pursuant to section (c), liens, and other charges incurred in accordance with this agreement. Auctioneer will only pay net proceeds on Property where proceeds have been collected, and Auctioneer will owe nothing to Seller should Auctioneer for any reason not be able to collect proceeds from a sale. If applicable, Auctioneer reserves the right to withhold the payment of the net proceeds of the Property sold by Seller until Seller pays in full any amount due to Auctioneer on items purchased by Seller.
- f. Seller shall deliver & offer for sale each & every piece of Property to the Auction Location on or before auction deadline set for each auction, along with all documentation including titles and bills of sale, evidencing Seller's title and ownership in the Property. Failure to deliver all documentation as provided for above, does not prevent Auctioneer at his sole discretion from removing or including the Property in the Auction.

These **Terms of Sale and Auction Commission** are in addition to and to be read as part of the Terms and Conditions found on page two of this agreement.

Seller acknowledges that it has read, understood, and agrees to abide by all Terms and Conditions in this agreement.

By Jeff Martin Auctioneers, Inc.
 Date: _____

By Seller
 Date: _____

Except as noted in the Terms and Conditions
THIS AGREEMENT IS SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE MISSISSIPPI
UNIFORM ARBITRATION ACT.

TERMS AND CONDITIONS**1. GENERAL**

- a. This Agreement is entered into by and between Seller, as set forth on page 1 of this agreement, and Jeff Martin Auctioneers, Inc. ("Auctioneer").
- b. Seller hereby retains, authorizes, and directs Auctioneer to arrange for and to conduct a public auction of the items of property described in Schedule A or items delivered to auction location not listed in Schedule A (herein referred to as the "Property").

2. SELLER'S WARRANTIES AND REPRESENTATIONS

Seller hereby represents and warrants as follows:

- a. The Property is accurately and completely described.
- b. Unless otherwise specified, the odometer and hour meter readings (if applicable) on all of the Property is correct.
- c. Seller is the legal owner of the Property with full right and authority to sell such Property.
- d. A complete and accurate list of all parties having any claim or lien on or against the Property consigned by seller is disclosed to Auctioneer prior to sale. Except as specified in Schedule A or disclosed, the Property is free and clear of all liens, encumbrances, or claims by any other person or entity. Seller authorizes Auctioneer to contact any creditor or lien holder on the Property and Seller further authorizes the creditor or lien holder to release any information regarding a lien or encumbrance on the Property to Auctioneer. Auctioneer may deduct from the sale proceeds amounts necessary to release liens, claims, or other encumbrances on or against the equipment. If proceeds are insufficient to obtain releases, seller will immediately pay the additional amount necessary. Any liens, encumbrances, or claims not disclosed by seller to auctioneer will be considered an intentional act of fraud and auctioneer reserves the right to pursue legal prosecution for fraud.
- e. Auctioneer is acting as agent for Seller only.

3. ADDITIONAL DUTIES OF SELLER

Failure on the part of the Seller to abide by any of the Seller's Duties including but not limited to the duties listed in Item 2. Above, will be considered a breach of this agreement and will give the Auctioneer, at its sole discretion the right to remove some or all Property from the auction and collect from Seller any and all applicable fees. The inclusion or removal of any Property by Auctioneer shall not abridge, modify or waive any rights Auctioneer has under this agreement.

- a. Seller or seller representative shall be present at the Auction Location on the Auction Date to represent the Property. Auctioneer assumes no responsibility for ensuring Seller is present at the auction and has no responsibility for the price the Property may sell for at the Auction.
- b. Seller shall maintain insurance against loss and/or damage to the Property. Seller acknowledges and agrees that all risk of loss or damage to the Property will remain with the Seller until proceeds from its sale are received by Seller.
- c. Seller assumes responsibility for all repairs, improvements, cleaning and/or painting of the Property until Property is sold at auction. Auctioneer assumes no responsibility for the condition of the Property after delivery or at anytime thereafter. Seller acknowledges that the condition of an item may affect the selling price of the Property at auction. Seller agrees that Auctioneer has the right to service the vehicle prior to the auction to assist in the sell of the property. Such services include but are not limited to adding fuel, replacing a battery, or pressure washing the Property. Auctioneer may charge its costs on parts or fuel plus 30% and labor charges at \$50/hour. Seller agrees to be responsible for such charges and the payment thereof as provided for in Item 5.d. below.
- d. In the event all or a portion of the Property is not sold at auction as provided herein, Seller shall remove unsold Property from the Auction Location within ten (10) days of the Auction Date. Failure to remove the Property acts as consent by Seller for Auctioneer to sell said Property at Auctioneer's next available auction or retail sale upon such terms as Auctioneer deems appropriate. Any charges by Auctioneer as set forth herein must be paid in full before any Property is removed from the Auction Location. For property not sold at auction can be subject to storage fee not to exceed \$100.00 per item per day if not removed in time frame stated above.
- e. In the event any property does not sale I give auctioneer permission to advertise and market for a retail sale either by auctioneer or any auctioneer owned retail entity under same terms of this contract or verbally agreed upon at time of sale.

_____ Initial for yes

4. AUCTIONEER'S DUTIES

- a. Auctioneer shall arrange for, advertise, and conduct a public auction sale of the Property at the Auction Location and Auction Date indicated on the reverse side.
- b. Unless otherwise specified herein, Auctioneer shall pay all cost and expenses of advertising, auctioning, clerking, and cashing in connection with conducting the auction sale.

5. INDEMNIFICATION OF AUCTIONEER

Seller hereby agrees to indemnify and hold harmless Auctioneer against all suits, actions, costs, or charges, including but not limited to attorney's fees, arising from or relating to the sale, storage or servicing of the Property including, but not limited to, any false or incorrect representations or warranties contained herein or for any breach of the Seller's obligations herein, including inaccuracies in the description of Property or the condition of Property. Auctioneer may join Seller in any suit brought by a third party against Auctioneer arising out of claims relating to the Property in lieu of arbitration

6. MISCELLANEOUS

- a. This agreement, which may be amended in writing only signed by the parties, represents the entire agreement between Auctioneer and Seller, and takes the place of all prior agreements.
- b. GOVERNING LAW - This agreement shall be interpreted in accordance with and governed by the laws of the state of Mississippi, to include, but not limited to, the Uniform Commercial Code, as adopted in Mississippi.
- c. ARBITRATION AND VENUE - Except as noted in Item 6. Above, any controversy or claim arising out of or relating to this agreement or any breach thereof shall be settled by binding arbitration in accordance with the Mississippi Uniform Arbitration Laws and shall be instituted and maintained in Forrest County, Mississippi. It is also the expressed intention of the parties that any and all suits for any and every claim arising out of or connected to a breach of this agreement or challenge to the arbitration proceedings or award shall be instituted and maintained in Forrest County, Mississippi or any other place to which Auctioneer expressly consents in writing.
- d. Seller agrees to pay all costs, including, but not limited to, attorney fees, incurred by Auctioneer should any action need be taken by Auctioneer to enforce the terms of this agreement.
- e. By accepting these terms and conditions you are granting Jeff Martin Auctioneers, Inc permission to send you promotional materials via direct mail, email, telephone call and/or text message. You understand standard data rates may apply. Your contact information will not be sold. If you wish to unsubscribe, you may do so at any time.

7. Additional Terms:

_____ Initial

 Terms agreed to _____
 Date: _____

 Terms agreed to By Seller _____
 Date: _____

Except as noted in the Terms and Conditions

THIS AGREEMENT IS SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE MISSISSIPPI UNIFORM ARBITRATION ACT.