

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION**

In the Matter of:

**Michael W. Davidson
SSN: XXX-XX-3867**

Debtor.

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CASE NO. 18-82270-CRJ11

CHAPTER 11

**MOTION TO SELL REAL PROPERTY FREE AND
CLEAR OF ALL LIENS, CLAIMS INTERESTS AND ENCUMBRANCES**

COMES NOW, Debtor Michael W. Davidson ("Debtor"), and pursuant to §§ 105(a) and 363(f) of the United States Code, 11 U.S.C. § 101, *et seq.* (the "Bankruptcy Code") and Rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure, and files this Motion seeking the entry of an order allowing the Debtor to sell certain real property owned by the Debtor free and clear of all liens, claims, interests, and encumbrances via private sale and granting Debtor such additional relief in order to accomplish the sale of the Real Property. In support of this Motion, Debtor states as follows:

JURISDICTION AND VENUE

1. On July 31, 2018 (the "Petition Date") the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, §§ 101, *et. seq.* ("Bankruptcy Code"), thereby commencing a Chapter 11 case [Doc. #1].
2. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of Debtor's Chapter 11 case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief sought herein is § 363 of the Bankruptcy Code.

FACTUAL BACKGROUND

3. Pre-petition the Debtor owned an interest in certain real property located at 2616 Memorial Parkway, North which is more particularly described as:

All that part of the Southwest Quarter of Section 24, Township 3 South, Range 1 West in the City of Huntsville, Madison, County, Alabama, particularly described as beginning at a point on the West margin of Memorial Parkway 200 feet R.O.W., said place beginning being located North 1 degree 26 minutes East 1284.73 feet from the Southwest corner of said Section 24, said place of beginning is further described as being located North 31 degrees 11 minutes East 974.0 feet from the intersection of the North margin of Max Luther Drive with the East margin of Memorial Parkway.

Thence form the place of beginning South 58 degrees 49 minutes East 231.70 feet;

Thence south 13 degrees 25 minutes East 140.44 feet;

Thence North 58 degrees 49 minutes West 33.31 feet to the said East margin of Memorial Parkway;

Thence North 31 degrees 11 minutes East along said Parkway R.O.W. a distance of 100.00 feet to the place of beginning and containing 0.65 acres more or less.

The above described tract is subject to a utility and drainage easement along the Northeast Boundary of said tract as shown in Deed Book 251, Page 207 of the Probate Records of Madison, County, Alabama. (hereinafter, jointly, "Real Property").

4. There is no debt that encumbers this Real Property.
5. The Debtor has entered into an Agreement to Purchase Real Estate ("Agreement") with Joseph London, III. A true and correct copy of this Agreement is attached as Exhibit "A" attached hereto.
6. Pursuant to this Motion, the Debtor seeks authority from the Court to sell the Real Property to Joseph London, III, a cash buyer, free and clear of all liens, claims, interests, and encumbrances for the sum of \$250,000.00. Mr. London is an arm's length Buyer who has no affiliation with the Debtor.
7. The Debtor valued this property at \$175,000.00 in Schedule "A" of his bankruptcy Petition. Thus, the Debtor considers the sales price to be fair and reasonable.

BASIS FOR RELIEF

- A. Approval of the Sale Free and Clear of All Liens, Interests, Claims, and Encumbrances is Warranted Under 11 U.S.C. § 363.
8. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor-in-possession is given these rights by §1107(a) of the Bankruptcy Code. 11 U.S.C. § 1107(a).
9. Although section 363 of the Bankruptcy Code does not set forth a standard for determining when it is appropriate for a court to authorize the use, sale or lease of a debtor’s assets, disposition of assets of a debtor should be authorized when there is an articulated business justification for doing so. *In re Gulf States Steel, Inc. of Ala.*, 285 B.R. 497, 515 (Bankr. N.D. Ala. 2002); *See also, e.g., Stephens Indus., Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F. 2d 1063 (2nd Cir. 1983);
10. Whether a transaction has a sufficient articulated business justification depends on the facts of the case. *See In re Continental Airlines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). Courts have made it clear that a showing of a sound business justification need not be unduly exhaustive but, rather, a Section 363 movant is “simply required to justify the proposed disposition with sound business reasons.” *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984); *see also In re Orion*, 4 F.3d 1095, 1099 (2nd Cir. 1993) (“[t]he business judgment test affords the trustee or debtor-in-possession broad discretion”).
11. The relief requested by Debtor is in the best interests of the estate and the estates’ creditors. Although the Real property is currently leased, that lease ends in October, 2018. Thus, the Real Property will soon be vacant.

12. Accordingly, Debtor has determined, in its sound business judgment the sale of the Real Property is fair and reasonable and benefits the Debtor's estate and its creditors.
13. Moreover, Debtor seeks the further authority to transfer the Real Property to a buyer without being subject to taxation under any state or local law imposing a stamp, transfer or similar tax in accordance with section 1146(c) of the Bankruptcy Code.
14. Furthermore, notwithstanding the possible applicability of Rules 6004 or 9014 or otherwise, Debtor requests that this Order shall be immediately effective and enforceable upon entry and shall not be stayed pursuant to Rules 6004(h).

NOTICE AND OBJECTIONS

15. Pursuant to Rule 2002(a) and (c) of the Federal Bankruptcy Rules a copy this Motion has been given to all creditors and parties who have requested service in this case, including all their attorneys.
16. Any Party that desires to Object to this Motion must do so in writing **at least ten (10) days prior to the hearing** and file said objection with the U.S. Bankruptcy Court, 400 Well Street NE #222, Decatur, Alabama 35601 and serve a copy upon Kevin D. Heard, Attorney for the Debtor, 303 Williams Avenue SW Suite 921 Huntsville, Alabama 35801.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Debtor respectfully requests that this Court enter an order authorizing him to sell the Real Property free and clear of all existing properly perfected liens, interests and encumbrances to Mr. London, to authorize the Debtor to execute all documents necessary to consummate the sale and grant him such other relief that this Court deems just and proper.

Respectfully submitted this the 24th day of September, 2018.

/s/ Kevin D. Heard
KEVIN D. HEARD
Attorney for Debtor

Of Counsel
HEARD, ARY, & DAURO, LLC
307 Clinton Ave. W, Ste. 310
Huntsville, Alabama 35801
Tel: (256) 535-0817
Fax: (256) 535-0818
kheard@heardlaw.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon Richard Blythe, Bankruptcy Administrator, P.O. Box 3045, Decatur, Alabama 35602; as well as those parties listed on the Clerk's certified matrix, by electronic service through the Court's CM/ECF system or by placing a copy of the same in the United States Mail, postage prepaid, on this 24th day of September, 2018.

/s/ Kevin D. Heard
Kevin D. Heard

AGREEMENT TO PURCHASE REAL ESTATE

The undersigned (herein "Purchaser") hereby offers to purchase from the owner (herein "Seller") the real estate located at 2616 Memorial Pkwy N in the city of Huntsville, County of Madison, State of Alabama, the legal description of which is:

attached to this document.

upon the following terms and conditions:

1. Purchase Price and Conditions of Payment

The purchase price shall be 250,000 Dollars (\$250,000) to be paid in accordance with subparagraph A, below:

☒ A: Cash. The purchase price shall be paid in its entirety in cash at the time of closing the sale.

NA ☒ Cash Subject to New Mortgage. The purchase price shall be paid in cash at the time of closing the sale subject, however, to Purchaser's ability to obtain a first mortgage loan within _____ days after the acceptance of this offer by Seller in the amount of \$_____, payable in not less than _____ monthly installments, including interest at a rate not to exceed _____% financing. If such financing cannot be obtained within the time specified above then either Purchaser or Seller may terminate this agreement and any earnest money deposited by Purchaser will be promptly refunded.

NA ☒ Cash Subject to Existing Mortgage. The purchase price shall be paid in cash at the time of closing the sale after deducting from the purchase price the then outstanding balance due and owing under the existing mortgage in favor of _____, dated _____, 20____, in the original amount of \$_____; of such mortgage debt is approximately \$_____ as of _____, 20____.

NA ☒ Cash With Assumption of Existing Mortgage. The purchase price shall be paid in cash at the time of the closing of the sale after deducting from the purchase price the then outstanding balance due and owing under the existing mortgage in favor of _____, dated _____, 20____, having a present balance of approximately \$_____, as of _____, 20____, which the purchaser hereby assumes and agrees to pay in accordance with its terms and to perform all of its provisions; purchaser shall pay any and all payments coming due after the closing of the sale. Any transfer fees required by the mortgage shall be paid by _____.

NA ☒ Sale by Land Contract. The purchase price shall be paid in accordance with the certain land contract attached hereto and incorporated into this contract by this reference. The down payment to be made at the time of closing this sale shall be \$_____ and the balance of \$_____ shall be paid at the rate of _____% per annum.

2. Earnest Money Deposit

As earnest money Purchaser deposits \$ 5,000 with the seller ~~broker~~ which shall be applied to the purchase price at the time of closing the sale. In the event that this offer is not accepted by Seller this earnest money deposit shall be promptly refunded to Purchaser by the broker. In the event that this offer is accepted by Seller and Purchaser shall fail to perform the terms of this agreement the earnest money deposit shall be forfeited as and for liquidated damages suffered by Seller. Seller is not, however, precluded from asserting any other legal or equitable remedy, which may be available to enforce this agreement.

3. Real Estate Taxes, Assessments, and Adjustments

Real Estate Taxes accrued against the property shall be prorated through the date of closing the sale and Seller shall pay all taxes allocated to the property through that date of acceptance of this offer to purchase. Rents, if any, shall be prorated through the date of closing and all rent deposits shall be transferred to Purchaser. Existing casualty insurance shall be canceled/prorated through the date of closing.

4. Title to the Property

Seller shall provide purchaser prior to the closing and promptly after the acceptance of this offer, at Seller's expense and at Seller's option an abstract of title to the property brought down to date or an owner's policy of title insurance in an amount equal to the purchase price, said abstract of policy to show marketable or insurable title to the real estate in the name of Seller subject only to easements, zoning and restrictions of record and free and clear of all other liens and encumbrances except as stated in this offer. If the abstract or title policy fails to show marketable or insurable title in Seller a reasonable time shall be permitted to cure or correct defects. Seller shall convey title to Purchaser at the time of closing by a good and sufficient general warranty deed free and clear of all liens and encumbrances except as otherwise provided in this offer and subject to easements, zoning and restrictions of record.

5. Possession of the Property

Purchaser shall be given possession of the property on Oct. 24, 2018. A failure on the part of Seller to transfer possession as specified will not make Seller a tenant of Purchaser, but in such event Seller shall pay to Purchaser \$ NA per day as damages for breach of contract and not as rent. All other remedies, which Purchaser may have under law, are reserved to Purchaser.

6. Risk of Loss

The risk of loss by destruction or damage to the property by fire or otherwise prior to the closing of the sale is that of Seller. If all or a substantial portion of the improvements on the property are destroyed or damaged prior to the closing and transfer of title this agreement shall be voidable at Purchaser's option and in the event Purchaser elects to avoid this agreement the earnest money deposited shall be promptly refunded.

7. Improvements and Fixtures Included

This offer to purchase includes all improvements, buildings and fixtures presently on the real estate including but not limited to electrical, gas, heating, air conditioning, plumbing equipment, built-in appliances, hot water heaters, screens, storm windows, doors, Venetian blinds, drapery hardware, awnings, attached carpeting, radio, television antennas, trees, shrubs, flowers, fences and

As Is. Includes everything inside

8. General Conditions

It is expressly agreed that this agreement to purchase real estate includes the entire agreement of Purchaser and Seller. This agreement shall be binding upon the heirs, personal representatives, successors and assigns of both Purchaser and Seller. This agreement shall be interpreted and enforced in accordance with the laws of the State of Alabama.

9. Special Conditions

As Is. Closing costs as required by law
and agreed to 50/50 balance.

10. Time for Acceptance and Closing

This offer is void if not accepted by Seller in writing on or before October, Wed. A.M. (P.M.) of the 24th day of October, 2018.

Closing of the sale shall take place ~ 30 days after Purchaser's receipt of an abstract showing marketable title in Seller or title insurance binder showing insurable title in Seller.

This offer is made at 2616 Mem. Pky State of Alabama, this 16th day of October ~~September~~ 2018.
MD Q3

Joseph Landon III
(PURCHASER)

Joseph Landon III
(PURCHASER)

(206) 694-7947

Acceptance by Seller

The foregoing offer to purchase real estate is hereby accepted in accordance with the terms and conditions specified above. The undersigned hereby agrees to pay a brokerage fee of \$ 0 zero to NA, broker, in accordance with the existing listing contract.

Dated this 16th day of September, 2018.

Michael W. Davidson
(SELLER)

Michael W. Davidson
(SELLER)

Legal description

9/16/18

BOOK PAGE

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EXHIBIT "A"

All that part of the Southwest Quarter of Section 24, Township 3 South, Range 1 West in the City of Huntsville, Madison County, Alabama particularly described as beginning at a point on the East margin of Memorial Parkway 200 feet R.O.W., said place of beginning being located North 1 degree 26 minutes East 1284.73 feet from the Southwest corner of said Section 24, said place of beginning is further described as being located North 31 degrees 11 minutes East 974.0 feet from the intersection of the North margin of Max Luther Drive with the East margin of Memorial Parkway.

Thence from the place of beginning South 58 degrees 49 minutes East 231.70 feet;

Thence South 13 degrees 25 minutes East 140.44 feet;

Thence North 58 degrees 49 minutes West 330.31 feet to the said East margin of Memorial Parkway;

Thence North 31 degrees 11 minutes East along said Parkway R.O.W. a distance of 100.00 feet to the place of beginning and containing 0.65 acres more or less.

The above described tract is subject to a utility and drainage easement along the Northeast Boundary of said tract as shown in Deed Book 251, Page 207 of the Probate Records of Madison County, Alabama.

STATE OF ALA. MADISON CO.
INSTRUMENT NO. 99-161
FILED ON
99 MAY 27 PM 3:47
REC'D
ADG TAX
& RECORDS
TAX HAS BEEN
PAID ON THIS INSTRUMENT
JUDGE OF PROBATE
Charles H. Reed

[Signature]
BARW_3/50239.

Label Matrix for local noticing
1126-8
Case 18-82270-CRJ11
NORTHERN DISTRICT OF ALABAMA
Decatur
Mon Sep 24 16:55:35 CDT 2018

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*Internal Revenue Service
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*Marina Claudia Rezzonico
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*State of Alabama, Department of Revenue
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Kevin D. Heard
Heard, Ary & Dauro, LLC
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Lynda Hall, Tax Collector of Madison CO, AL
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Huntsville, AL 35801-8815

S. Dagnal Rowe
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*Redstone Federal Credit Union
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220 Wynn Drive NW
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*U.S. Securities and Exchange Commission
Reg Director, Branch of Reorganization
Atlanta Regional Office, Suite 900
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Steering Committee
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The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(u)William M. Hancock	(d)William M. Hancock Wolfe, Jones & Boswell 905 Bob Wallace Avenue Suite 100 Huntsville, AL 35801-6504	(d)PRA Receivables Management, LLC PO Box 41021 Norfolk, VA 23541-1021
(u)Alejandro Jorge Rezzonico	(u)Mariano Damian Rezzonico	(u)Marina Claudia Rezzonico

(u)The Estate of Julio Biora	End of Label Matrix
	Mailable recipients 29
	Bypassed recipients 7
	Total 36