

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA**

**In re: NORMAN EDWARD McMAHON : CHAPTER 11
Debtor :
: BANKRUPTCY NO. 16-11874**

**ORDER GRANTING DEBTOR'S MOTION FOR PERMISSION TO SELL REAL
ESTATE**

AND NOW, this day of September, 2016, it is hereby ORDERED that the Debtor is granted permission to sell his property at 160 Essex Avenue, Sewell, NJ 08080 ("the Properties"), to Eric Marchesano for \$ 175,000, free and clear of all liens, pursuant to the terms of the Agreements of Sale attached to the Motion as Exhibit "A," with the proceeds to be distributed to all taxes and other unavoidable liens of taxing authorities against the Property, the commission of \$10,500 due to Berkshire Hathaway Fox & Roach Realtors, and any additional settlement costs chargeable to the Debtor, with any remainder payable to the Debtor, into an escrow account pending distribution under a Chapter 11 Plan of Reorganization. The proceeds of the sale shall therefore be retained by the Debtor in his counsel's IOLTA account. The title clerk shall email and fax a completed HUD-1 or settlement sheet from the closing directly to the Debtor's counsel, David A. Scholl, judgescholl@gmail.com, fax: 267-639-9178, immediately upon the close of the settlement, and the said counsel shall promptly notify the title company of his approval or objections to the sums to be disbursed. Upon counsel's approval, the title clerk shall send the disbursement check to counsel by traceable mail.

CONTRACT FOR SALE OF REAL ESTATE

This Contract for Sale is made on 8/26/2016

BETWEEN Norman McMahon

whose address is 801 Lawrence Lane, Newtown Square, PA 19073

referred to as the Seller,

AND Eric Marchesano

whose address is 121 Wilson Ave. Sewell, NJ 08080

referred to as the Buyer.

The words "Buyer" and "Seller" include all Buyers and all Sellers listed above.

1. Purchase Agreement. The Seller agrees to sell and the Buyer agrees to buy the property described in this contract.

2. Property. The property to be sold consists of (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Seller's rights relating to the land; and (c) all personal property specifically included in this contract. The real property to be sold is commonly known as the Township of Mantua in the County of Gloucester and State of New Jersey. It is shown on the municipal tax map as lot 00007 in block 184.

3. Purchase Price. The purchase price is \$175,000.00

4. Payment of Purchase Price. The Buyer will pay the purchase price as follows:

Previously paid by the Buyer (initial deposit)	\$ 5,000.00
Amount of mortgage	\$170,000.00

5. Deposit Moneys. All deposit moneys will be held in trust by Surety Title Company in Marlton until closing of title.

6. Due Diligence. The Buyer shall have 21 days after the acceptance of this contract to conduct due diligence on the property. If he finds anything not to his satisfaction, he has the right to terminate this contract for any reason.

7. Time and Place of Closing. The closing date cannot be made final at this time. The Buyer and Seller agree to make October 7th 2016, the estimated date for the closing. Both parties willfully cooperate so the closing can take place on or before the estimated date. The closing will be held at Surety Title 11 Eves Dr, Marlton NJ 08053.

8. Transfer of Ownership. At the closing, the Seller will transfer ownership of the property to the Buyer. The Seller will give the Buyer a properly executed deed and an adequate affidavit of title. If the Seller is a corporation, it will also deliver a corporate resolution authorizing the sale.

9. Type of Deed. A deed is a written document used to transfer ownership of property. In this sale, the Seller agrees to provide and the Buyer agrees to accept a deed known as Bargain and Sale w/ covenants vs. grantors acts.

10. Personal Property and Fixtures. Many items of property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in shelving. All fixtures are INCLUDED in this sale unless they are listed below as being EXCLUDED.

(a) The following items are INCLUDED in this sale:

(b) The following items are EXCLUDED from this sale:

11. Physical Condition of the Property. This property is being sold "as is". The Seller does not make any claims or promises about the condition or value of any of the property included in this sale. The Buyer has inspected the property and relies on this inspection and any rights which may be provided for elsewhere in this contract. The Seller agrees to maintain the grounds, buildings and improvements subject to ordinary wear and tear.

12. Inspection of the Property. The Seller agrees to permit the Buyer to inspect the property at any reasonable time before the closing. The Seller will permit access for all inspections provided for in this contract.

13. Building and Zoning laws. The Buyer intends to use the property as a Display/Showroom Building

The Seller states that this use does not violate any applicable zoning ordinance, building code or other law. The Seller will obtain any municipal "certificate of occupancy. If the Seller fails to correct any violations of law, at the Seller's own expense, the Buyer may cancel this contract

14. Flood Area. The federal and state governments have designated certain areas as "flood areas". This means they are more likely to have floods than other areas. If this property is in a flood area the Buyer may cancel this contract within 30 days of the signing of this contract by all parties.

15. Property Lines. The Seller states that all buildings, driveways and other improvements on the property are within its boundary lines. Also, no improvements on adjoining properties extend across the boundary lines of this property.

16. Ownership. The Seller agrees to transfer and the Buyer agrees to accept ownership of the property free of all claims and rights of others. Except for:

(a) the rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the part of the property next to the street or running to any house or other improvement on the property,

(b) recorded agreements which limit the use of the property, unless the agreements: (1) are presently violated; (2) provide that the property would be forfeited if they were violated; or (3) unreasonably limit the normal use of the property, and

In addition to the above, the ownership of the Buyer must be insurable at regular rates by any title insurance company authorized to do business in New Jersey subject only to the above exceptions.

17. Correcting Defects. If the property does not comply with paragraphs 15 or 16 of this contract the Seller will be notified and given 30 days to make it comply. If the property still does not comply after that date the Buyer may cancel this contract or give the Seller more time to comply.

18. Termite Inspection. The Buyer is permitted to have the property inspected by a reputable termite inspection company to determine if there is any damage or infestation caused by termites or other wood-destroying insects. If the Buyer chooses to have this inspection, the inspection must be completed and the Seller notified of the results within 10 days of the signing of this contract by all parties. The Buyer will pay for this inspection. If infestation or damage is found, the Seller will be given 10 days to agree to exterminate all infestation and repair all damage before the closing. If the Seller refuses or fails (within the 10-day period) to agree to exterminate all infestation and repair all damage before the closing, the Buyer may cancel this contract.

19. Risk of Loss. The Seller is responsible for any damage to the property, except for normal wear and tear until the closing. If there is damage, the Buyer can proceed with the closing and either:

- (a) require that the Seller repair the damage before the closing; or
- (b) deduct from the purchase price a fair and reasonable estimate of the cost to repair the property. In addition the Buyer may cancel this contract if the estimated cost of repair is more than \$5,000.00

20. Cancellation of Contract. If this contract is legally and rightfully cancelled, the Buyer can get back the deposit and the parties will be free of liability to each other. However, if the contract is cancelled in accordance with paragraph 13, 14, 17, 18 or 19 of this Contract, the Seller will pay the Buyer for all title and survey costs.

21. Assessments for Municipal Improvements. Certain municipal improvements such as sidewalks and sewers may result in the municipality charging property owners to pay for the improvement. All unpaid charges (assessments) against the property for work completed before the closing will be paid by the Seller at or before the closing. If the improvement is not completed before the closing, then only the Buyer will be responsible. If the improvement is completed, but the amount of the charge (assessment) is not determined, the Seller will pay an estimated amount at the closing. When the amount of the charge is finally determined, the Seller will pay any deficiency to the Buyer (if the estimate proves to have been too low), or the Buyer will return any excess to the Seller (if the estimate proves to have been too high).

22. Adjustments at Closing. The Buyer and Seller agree to adjust the following expenses as of the closing date: rents, municipal water charges, sewer charges, taxes, interest on any mortgage to be assumed and insurance premiums. If the property is heated by fuel oil, the Buyer will buy the fuel oil in the tank at the closing date. The price will be the current price at that time as calculated by the supplier. The Buyer or the Seller may require that any person with a claim or right affecting the property be paid off from the proceeds of this sale.

23. Possession. At the closing the Buyer will be given possession of the property. No tenant will have any right to the property unless otherwise agreed in this contract.

24. Complete Agreement. This contract is the entire and only agreement between the Buyer and the Seller. This contract replaces and cancels any previous agreements between the Buyer and the Seller. This contract can only be changed by an agreement in writing signed by both Buyer and Seller. The Seller states that the Seller has not made any other contract to sell the property to anyone else. The Seller's agreement to pay the Broker (if any) is contained on the next page.

25. Parties Liable. This contract is binding upon all parties who sign it and all who succeed to their rights and responsibilities.

26. Notices. All notices under this contract must be in writing. The notices must be delivered personally or mailed by certified mail, return receipt requested, to the other party at the address written in this contract, or to that party's attorney.

SIGNED AND AGREED TO BY:

Witnessed or Attested by:

Date Signed: 8/26/2016

(Seal)

Eric Marchesano BUYER

As to Buyer(s)

(Seal)

BUYER

(Seal)

Norman McMahon SELLER

As to Seller(s)

(Seal)

SELLER

STATE OF NEW JERSEY, COUNTY OF CAMDEN

I CERTIFY that on _____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

(Print name of attesting witness below signature)

Signed and sworn to me on _____

STATE OF NEW JERSEY, COUNTY OF CAMDEN

I CERTIFY that on _____, _____ personally came before me and acknowledged under oath, to my satisfaction, that this person (or if more than one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her act and deed.

(Print name of attesting witness below signature)

Signed and sworn to me on _____

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN
DISTRICT OF PENNSYLVANIA**

In re: **NORMAN EDWARD McMAHON,** : **CHAPTER 11**
Debtor : **BANKRUPTCY NO. 16-11874**

**DEBTOR'S MOTION FOR PERMISSION TO SELL REAL ESTATE AND APPOINT
SELLING REALTOR AS A PROFESSIONAL PERSON**

The Debtor now comes and seeks permission to sell his real estate consisting of a commercial building on a lot, known and numbered as 160 Essex Avenue, Sewell, NJ 08080, to Eric Marchesano for \$175,000, pursuant to Contract for the Sale of Real Estate attached to the original Motion filed, and available to any interested party upon request from the undersigned, free and clear of all liens, subject to higher and better offers, with the proceeds to be distributed, subject to the court's approval, to all real estate taxes and governmental liens, and to the commission of six percent (6 %), or \$10,500 payable to the listing broker, Berkshire Hathaway Fox & Roach Realtors, whose appointment as a professional person pursuant to New Jersey Agreement of Sale Listings/Lease, also attached to the original Motion filed, and available upon request from the undersigned, with the net proceeds to be deposited in the IOLTA account of counsel for the Debtor pending further order of the court.

/s/DAVID A. SCHOLL
512 Hoffman Street
Philadelphia, PA. 19148
610-5550-1765
Attorney for Debtor

COMMERCIAL, INDUSTRIAL, AND/OR INVESTMENT REAL ESTATE

ADDRESS: 160 Essex Avenue Price \$360,000

MUNICIPALITY: Mantua

COUNTY Gloucester

TAX ID # 10-00184-0007

APPROXIMATE LOT SIZE: .67 (to be verified by Buyer)

This Listing Agreement entered into by and between Berkshire Hathaway Fox & Roach, Realtors®, hereinafter designated as "Berkshire Hathaway" or "BROKER" and Norm Mc Machon, hereinafter designated as "OWNER."

1. **EXCLUSIVE RIGHT TO SELL: 160 Essex Avenue Sewell NJ 08080**

In consideration of Berkshire Hathaway's listing and endeavoring to procure a purchaser/tenant for the property known as 102 Warwick rd. Stratford Township, Camden County, New Jersey, hereinafter designated as "Property," OWNER grants BHHS the sole and exclusive right to sell the Property for one year from the effective date of this agreement unless owner after one hundred eighty days chooses to terminate this agreement with a thirty day written notice to Agent.

Effective Dates: Starts September 12th, 2015 Expires December 12th 2016 at Midnight

2. **COMMISSION:**

OWNER shall pay to BHHS a commission of 6% of the gross, improved sales price when a sale, exchange, merger, change in controlling interest, newly formed partnership, joint venture, option to purchase of the offering or Property is effected by BHHS, OWNER or by any other person, firm or corporation during the term of this contract. OWNER warrants and represents that he/she/it is the OWNER of the Property and that he/she/it can and will execute an acceptable Deed of conveyance. For the purpose of establishing basis for commission amount, except in the event of a sale, the listed price herein shall be considered the sale price. Non-refundable deposits, down payments or option payments shall be considered part of the purchase price and the OWNER will pay BHHS the commission on all such payment upon receipt of same by BHHS. In the event of a lease, OWNER shall pay to BHHS a commission of 1 month's rent for 1 year lease and 2 month's rent for any multi-year lease. Commission is due at the signing of the lease for the first year and for multi-year half is due at signing and other half due at commencement of lease.

ADDITIONAL COMMISSION PROVISIONS:

A. If:

- 1. A lease term is renewed, extended or a new lease agreement is executed with the same tenant, or there is any other continued tenancy, AND/OR
- 2. Buyer/tenant occupies additional space or relocates to other space of Owner's, then Owner will pay the Broker's Fee in paragraph 2 above. Broker's fee will be earned at the time the extended term begins or the additional space is occupied.

B. If a buyer/tenant under lease for which a Broker's Fee is payable under this Contract, its successor or assigns, or any agent, officer, employee or shareholder of a buyer/tenant purchases the Property, whether strictly in accordance with the terms of any option, right of first refusal, similar right or otherwise during the term of the lease, any extension thereof, or within 30 days after the expiration thereof, then Owner will pay the Broker's Fee in paragraph 2 above.

C. If a lease for which a Broker's Fee is payable contains a percentage rent clause, Owner will pay Broker's Fee on the percentage rent payable by the buyer/tenant at the rate applicable to the period of the lease term for which the percentage rent is payable. The Broker's Fee will be paid within 15 days after receipt of each buyer/tenant payment.

D. In the event Owner sells or otherwise disposes of Owner's interest in the Property, Owner must pay Broker's Fee as set forth in this Contract or any other agreement of which it is a party. In this case, all payments will immediately become due and payable in full prior to sale, including those fees otherwise payable over the term of any lease(s) or otherwise payable in the future.

3. **LISTING PRICE AND TERMS:**

A. Owner is hiring Broker to negotiate the following type of transaction regarding the disposition of the Property:

A sale, for the following price and terms: AS IS SALE

or any other price and terms agreeable to Owner.
 A lease, or other tenancy, for the following price and terms described here, or by (check if applicable) _____ an exhibit/addendum outlining lease terms that is attached as part of this Contract, or any other price and terms agreeable to Owner: _____

B. Marketing Expenses will be paid as follows: Berkshire Hathaway

4. **OWNER COOPERATION:**

OWNER agrees to fully cooperate with BHHS to render whatever assistance may be necessary in giving a prospective purchaser the opportunity of a full inspection of the Property. OWNER further represents that the information supplied to BHHS is correct and is solely the representation of OWNER and not BHHS. OWNER further authorizes BHHS to erect "for sale" and "sold" signs, as appropriate, on the Property until settlement. OWNER further agrees, during the term of this agreement, or any extension thereof, to direct any and all inquiries received by OWNER from any source whatsoever, including any other broker, with respect to or concerning the Property or any part thereof together with the name and address of the person or entity making such inquiry to BHHS; which shall thereupon diligently investigate each such inquiry and use its best skills and efforts to procure a purchaser for the Property.

5. **ENVIRONMENTAL NOTIFICATION:**

OWNER represents and warrants that the Property being sold is environmentally safe and represents that no toxic conditions exist. OWNER further represents if the Property is subject to the New Jersey Environmental Clean-up Responsibility Act N.J.S.A. 13:1K-6 et seq. (P.L. 1983, 330), then OWNER, within 5 days of signing an agreement of sale, or executing an option to purchase, or a lease purchase agreement, or publicly announce the closing of the operation, will comply with the terms of the law. OWNER also represents that a toxic landfill is not located within a one-mile radius of the Property unless otherwise stated in this agreement.

6. **EXTENSIONS UPON SALE:**

Should OWNER enter into an agreement to convey the Property during the term of this Listing Agreement or any extension period hereof, then OWNER agrees that this Listing Agreement shall be automatically renewed and extended up to and including the time of settlement.

7. **BUYER'S DEFAULT:**

In the event that BHHS alone, or in co-operation with any other broker, procures a buyer that enters into an Agreement of Sale for the Property and buyer defaults thereunder, any monies paid on account shall be equally divided between OWNER and BHHS but, in no event will the sum paid to BHHS be in excess of the above-specified commission.

8. **OWNER'S RIGHT TO WITHDRAW PROPERTY:**

OWNER may withdraw the Property from the market at no cost to OWNER. Should OWNER decide to sell the withdrawn Property within one year of the date of such withdrawal, then this Listing Agreement will automatically renew for the remaining term of this Listing Agreement. If the purpose of the withdrawal is to lease, rather than otherwise convey the Property, OWNER will execute with BHHS a lease listing contract with rental amounts to be determined at that time.

9. **BROKER'S RIGHT AFTER EXPIRATION:**

Commission shall be paid when the Property is sold, conveyed or otherwise transferred or leased within 180 days after the termination of this Listing Agreement or any extension hereof to anyone with whom BHHS has negotiated prior to final termination, provided OWNER has received notice in writing (including the names of prospective purchasers) before or upon termination of this Listing Agreement or any extension hereof. Should OWNER enter into another listing agreement with another licensed real estate broker, OWNER must disclose to such other broker the existence of such prospective buyers and expressly denominate them as an exception to any other listing agreement.

10. **BINDING NATURE AFTER EXPIRATION:**

OWNER represents and warrants that BHHS is the only real estate company entitled to a commission for the sale of the Property. OWNER further acknowledges that he or she has read this Listing Agreement, understands its contents, has full authority to enter into this Listing Agreement so as to bind all parties in ownership, and has received a copy hereof. This Listing Agreement with all extensions and changes are binding upon the OWNER, his/her/its heirs and assigns.

11. **ANTI-DISCRIMINATION CLAUSE:**

Owner acknowledges receipt of the Attorney General's memorandum regarding discrimination under New Jersey law, attached hereto.


12. **COMMISSION SPLIT:**

Listing brokers usually cooperate with other brokers by sharing information about their listings and offering to pay part of their commission to the broker that produces a buyer. The amount of commission split your broker offers can affect the extent to which your property is exposed to prospective buyers working with agents from other brokerage firms. For this Property, the commission split being offered to potential cooperating brokerage firms is Half of total commission.

13. **DEFENSE AND INDEMNITY:**

OWNER will defend, indemnify and hold harmless BHHS, and each and all of its agents, employees, officers, directors, shareholders, parents, subsidiaries, affiliated corporations and entities, partners, limited partners, insurers, re-insurers, attorneys, predecessors, and assigns of and from any and all manner of actions and causes of action, suits, debts, dues, attorney fees, attorney costs, court costs, consultant fees, accounts, bonds, covenants, contracts, guarantees, notes, bonds, leases, agreements,

THIS IS A LEGALLY BINDING CONTRACT; IF NOT UNDERSTOOD, SEEK COMPETENT LEGAL ADVICE

 9/6/15
OWNER DATE OWNER DATE

BY: BERKSHIRE HATHAWAY FOX & ROACH, REALTORS®

 9/10/15
Licensee DATE

04/08

VERIFIED STATEMENT OF PROPOSED REALTOR

I, **DAWN VARALLO** am a registered New Jersey real estate agent employed by Berkshire Hathaway Fox & Roach Realtors, the proposed realtor for the sale by the Debtor in this case, for a commercial property at 160 Essex Avenue, Sewell, NJ 08080. I verify, under penalty of perjury, that I have no connection with the Debtor other than the sale of the realty at issue, and therefore have no conflict of interest with him. Further, I have no connection whatsoever with any of the creditors or parties in interest in this case, nor with their respective attorneys and accountants, nor with the United States Trustee, nor with any person employed by the United States Trustee's office.



DAWN VARALLO

Berkshire Hathaway Fox, & Roach Realtors

701 Route 73 South

Marlton, NJ 08053

856-801-5300