

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

IN RE:)
)
Rex A. Nichols and Claudene B. Nichols) **Case No.: 16-02350**
)
Debtors.)

**JOINT MOTION TO SELL PROPERTY FREE AND CLEAR OF LIENS
UNDER SECTION 363 OF THE BANKRUPTCY CODE**

Come now Debtors, Rex A. Nichols and Claudene B. Nichols (“the Nichols”), by and through counsel, Marion E. Wynne, and Branch Banking and Trust Company (“BB&T”), by and through counsel, Joe A. Joseph, and request the Court authorize, pursuant to Section 363(b) and (f) of the Bankruptcy Code, and Bankruptcy Rule of Procedure 6004(c), the private sale of certain real property of this Estate and as grounds therefor would show as follows:

Motion to Sell

1. The Debtors propose to sell three adjacent unimproved parcels located off Bromley Road, Stapleton, Baldwin County, and constituting on approximately 482 acres (the “Property”) to MKA Holdings, LLC (the “Buyer”) for the amount of One Million Four Hundred Thousand and 00/100 Dollars (\$1,400,000.00) pursuant to the terms and conditions stated in the Purchase Agreement attached hereto as Exhibit “A”. Oakmont Estates Investments, Inc., an entity fully owned by Debtors, owns 51 acres that is part of property making up the 482 acres comprising the sale to MKA Holdings, LLC.

2. To the best of the Debtors’ knowledge, information, and belief, the following parties claim a lien, mortgage, encumbrance, or other interest:

(a) BB&T holds a first mortgage on said property, which secures a debt in the approximate amount of \$5,300,000.00. The mortgage was recorded as Instrument No. 1028765 on January 31, 2007 in the records of the Judge of Probate, Baldwin County, Alabama.

(b) Teddy J. Faust, Baldwin County Revenue Commissioner, holds a lien to secure payment of property taxes for the subject property for the tax year 2016..

(c) Osprey Rand, LLC avers it has a judgment lien on the property. Debtors aver that even if such lien exists it is subordinate to the BB&T lien which is greater than the value of the real estate collateral.

3. The Debtors allege that they are entitled to sell the Property free and clear of the above listed lienholders, with the liens to attach to the proceeds of the sale pursuant to Sections 363(b), 363(b)(2), 363(f)(4) and 363(f)(5) of the Bankruptcy Code.

4. The Debtors believe that the sale of the Property is in the best interest of the Estate, in that, the transaction, if consummated, will eliminate the debt owed to their largest creditor, BB&T, which will be beneficial to all other creditors and potential bidders for the Debtors' assets.

5. The purchase price represents the best and highest offer that the Debtors have received for the property.

6. The Debtors believe that the Purchaser is purchasing the Property in good faith, and that the Purchaser is entitled to the benefits of Section 363(m).

7. The Purchase Agreement and the purchase price of the Property is an arms-length transaction between unrelated parties, and were not controlled by an agreement among potential purchasers.

8. The Property does not include "personally identifiable information" nor is this transaction subject to the Clayton Act.

9. The Debtors propose to pay the closing costs and property taxes at closing and will reserve from the closing proceeds the fees due pursuant to 28 U.S.C. Section 1930 (the Bankruptcy Administrator BA-2 quarterly fees) and a reserve for earned but not yet approved or paid attorneys' fees for Debtor's counsel, with the balance to be paid to the first lienholder, BB&T at closing. From the proceeds received, BB&T will apply the funds to the balance of the outstanding indebtedness secured by the Property.

Agreement Between Debtors and BB&T

10. Debtors propose to pay additional funds into the closing in an amount to allow BB&T to receive \$1,800,000. Upon receipt of this amount BB&T will give Debtors a full and complete release of all indebtedness owed by Debtors to BB&T. If for any reason, the Debtors are unable to deliver \$1,800,000 to BB&T at the closing, the sale shall not be consummated, and the terms and conditions stated in paragraphs 11-12 below shall take effect.

11. Debtors and BB&T have agreed that Debtors will consent to BB&T's Motion for Relief from the Automatic Stay if the sale herein proposed does not close within 30 days of the Order granting this Motion to Sell. Further, if the sale does not

close within 30 days of the Order, BB&T will not grant Debtors a full release of indebtedness as proposed in paragraph 10 above.

12. If the sale does not close within 30 days of the Court Order allowing the sale, Debtors agree to file a Motion to Employ John Dixon & Associates as auctioneers and a Motion to Sell the Property by Public Auction under § 363. The parties seek an Order that approves such sale of the Property at Public Auction without any additional hearings before the Court.

13. Debtors agree to consent to a Motion by BB&T to extend the deadline to file a complaint objecting to discharge to December 9, 2016.

Other Motions Being Filed Contemporaneously

14. In order to produce the funds necessary to pay BB&T \$1,800,000 net at the closing the Nichols will propose the sale of other properties owned by entities owned and controlled 100% by the Debtors. These entities are:

(a) Cambron Investments, LLC owns 36 lots in Phase II of the Cambron Subdivision, 139 contiguous acres not yet submitted to the subdivision form, and 8 acres of commercial property located on Highway 31 in Baldwin County. If the Court approves, this property will be sold to CPI Holdings, LLC for \$1,000,000 payable in cash or certified funds at closing.

(b) Nichols Properties, Inc. owns office space properties in Daphne, Baldwin County, Alabama (PPIN 046841 and 077301). Nichols Investments, LLC owns other office space properties in Daphne (PPIN 067038 and 063485). These properties are to be

sold with the Cambron properties for an additional \$375,000. The total purchase price to be paid by CPI Holdings, LLC for the sale of the Cambron properties and the office space properties is \$1,375,000.

(c) Nichols Properties, Inc. also owns an office building in the Rock Creek Subdivision in Fairhope, Alabama (PPIN 114851). This property will be sold to ClearPoint Properties, LLC for \$625,000.

15. Debtors will use the proceeds from this sale to pay the additional funds needed to pay BB&T \$1,800,000 net at closing. Accordingly, all of the closings described in paragraph 14 must occur either prior to, or simultaneously with, the closing with the Buyer, as described in paragraph 1.

WHEREFORE, Debtors pray that after due proceedings are held this Honorable Court will grant Debtors' Motion to Sell free and clear of liens with the liens to attach to the proceeds pursuant to § 363(f) and further grant such other relief as is necessary to accomplish the purposes of the sale.

Respectfully submitted by,

WILKINS, BANKESTER, BILES & WYNNE, P.A.

By: /s/ Marion E. Wynne, Jr.
MARION E. WYNNE, JR.
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twynne@wbbwlaw.com

/s/ Joe A. Joseph
Joe A. Joseph
Attorney for Branch Banking and Trust
Company
c/o Burr & Foreman LLP
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Birmingham, AL 35203
(205) 251-3000
jjoseph@burr.com

CERTIFICATE OF SERVICE

I certify that on the 7th day of October, 2016, a true and correct copy of the above and foregoing pleading was filed electronically in the Bankruptcy Court for the Southern District of Alabama. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access the filing through the Court's electronic filing system. I additionally certify that I have served a copy of the foregoing pleading by email or by first class mail, postage prepaid, to the following parties:

Osprey Rand, LLC: via email to its attorney, John H. Adams at jha@esclaw.com	Branch Banking and Trust Company: via email to its attorney, Joe A. Joseph at jjoseph@burr.com
Sabal Financial Group, L.P.: via email to its attorney, Mindi C. Robinson at Mindi.Robinson@mrpllc.com	Mark Zimlich, Bankruptcy Administrator: via email at mark_zimlich@alsba.uscourts.gov
Teddy Faust, Baldwin County Revenue Commissioner: via email at tfaust@baldwincountyal.gov	

/s/ Marion E. Wynne, Jr.
MARION E. WYNNE, JR.

STATE OF ALABAMA

BALDWIN COUNTY

PURCHASE AGREEMENT

This Purchase Agreement (hereinafter "Agreement") made and entered into on the day and year indicated below, by and between REX A. NICHOLS, an individual, CLAUDENE NICHOLS, an individual, OAKMONT ESTATES INVESTMENTS, INC., a corporation (hereinafter collectively referred to as "Sellers"), and MKA HOLDINGS, LLC (hereinafter "Buyer").

1. **SUBJECT PROPERTY:** The Sellers agree to sell and convey by general warranty deed and the Buyer agrees to purchase the following property:

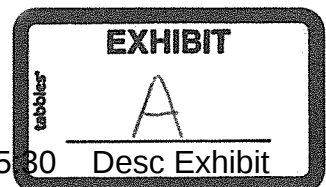
Three adjacent unimproved parcels located off Bromley Road, Stapleton, Baldwin County, Alabama, more particularly identified as PPIN# 075364, 062855, 316512, constituting approximately 482 acres.

(hereinafter collectively referred to as the "Property").

2. **PURCHASE PRICE:** The total purchase price for the Property shall be ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,400,000.00) payable in cash or certified funds at closing to the United States Bankruptcy Court, Southern Division, Case No. 16-02350, *In Re: Rex A. Nichols and Claudene B. Nichols*. The Buyer's Purchase Price comprises a value consideration for the timber crop in addition to the raw land acreage.

3. **MINERAL & TIMBER RIGHTS:** Any and all of Sellers' owned mineral rights and timber cutting rights connected with the Property shall convey to Buyer with the Warranty Deed. Timber and growing crops are included in the Purchase Price of this Agreement.

4. **PROPERTY TAXES:** Sellers shall pay their prorated share as of the date of closing of the Property taxes on the subject property. The ad valorem taxes accrued on the Property from



October 1st to the date of Closing shall be reflected as an adjustment to the Purchase Price on the settlement statement at Closing.

5. **ABSTRACTS OF TITLE AND TITLE INSURANCE.** Sellers shall furnish a title commitment to the Buyer issued from Alabama Land Title. Buyer shall notify Sellers within 10 days after receipt of the title commitment in the event that the title commitment discloses any defects or use restrictions that render the title un-merchantable in the Buyer's sole opinion and/or prohibits Buyer from developing the property and/or harvesting its timber. In the event Sellers are unable to cure such defects prior to the Closing Date, then Buyer may elect to cancel this Agreement.

Sellers shall be responsible for purchasing an owner's title policy of insurance in the amount of the Purchase Price that shall be provided to Buyer at Closing.

6. **UNPAID ASSESSMENTS:** Any property assessments attached to the property prior to the Closing Date shall be paid by the Sellers, without proration. Any public improvements, now installed but not yet filed as a lien, shall be paid by Sellers. Any Owners Association assessments that are due and payable prior to the execution of this Agreement shall be paid by Sellers. Any Owners Association assessments known to the parties at the time of the execution of this Agreement that become due prior to Closing but after the execution of this Agreement shall be paid by Sellers. Any Owners Association assessments that are approved by the Association prior to the Closing Date but do not become due and payable until after the Closing Date shall be paid by Sellers.

7. **ZONING AND USE REGULATIONS:** Buyer has evaluated the existing Zoning Ordinances and Use Regulations, if any, affecting the Property. This Agreement shall not be contingent on Buyer's satisfaction with said existing Zoning Ordinances and Use Regulations.

8. **BANKRUPTCY PROCEEDINGS:** The parties acknowledge that the Sellers are currently in Chapter 11 Bankruptcy with the United States Bankruptcy Court, Southern Division (16-02350). The parties understand that this Agreement is contingent on the Bankruptcy Court's approval of this sale and its ability to transfer to the Buyer the Property free and clear from any and all liens, judgments, adverse claims, encroachments, any claims by BB&T or any of its affiliates or assignees, and other encumbrances, conveying to the Buyer fee simple title to the said Property, in a form satisfactory to Buyer.

9. **BB&T APPROVAL CONTINGENCY:** The parties acknowledge that BB&T is the primary lienholder on the Property and significant creditor in the Sellers' bankruptcy proceedings. The parties acknowledge that this Agreement is subject to approval by BB&T. However, the Sellers can waive this contingency, and move forward with the sale under the Bankruptcy Court's approval, and elect to work out any deficiency through the bankruptcy proceedings. Notwithstanding, the parties understand that nothing in this paragraph shall eliminate the requirement that Seller ultimately must have the ability to transfer to the Buyer the Property free and clear from any and all liens, judgments, adverse claims, encroachments, any claims by BB&T or any of its affiliates or assignees, and other encumbrances, conveying to the Buyer fee simple title to the said Property, in a form satisfactory to Buyer.

10. **CONVEYANCE OF TITLE:** When the Buyer has paid the Purchase Price as defined in this Agreement in full, the Sellers, respectively to the parcels each owns, will then execute and deliver to the Buyer two separate General Warranty Deeds (one for the two parcels owned by Rex A. Nichols and Claudene Nichols, jointly, and one for the parcel owned by Oakmont Estates

Investments, Inc.), both being free from liens, judgments, adverse claims, encroachments, any claims by BB&T or any of its affiliates or assignees, and other encumbrances, conveying to the Buyer fee simple title to the said Property, in a form satisfactory to Buyer.

The Property is to be conveyed subject to existing Zoning Ordinances and Use Regulations. Sellers make no warranties concerning the physical condition of the Property and the Property is being sold "as is" with all faults with respect to its physical condition, except as specifically set forth herein.

11. **ATTORNEY'S FEES**: Buyer shall bear his own costs for attorney's fees outside of closing. Sellers shall be responsible for their attorney's fees outside of closing.

12. **CLOSING COSTS**: Except as otherwise identified herein, Buyer shall be responsible for all closing fees, recording fees, document preparation, and other like expenses associated with the closing. Sellers shall be responsible for the purchase of an ALTA Title Insurance Policy only.

13. **CLOSING AND POSSESSION DATES**: The sale shall be Closed and the Warranty Deeds delivered within 30 days of the Bankruptcy Court's approval of this Agreement. Closing shall be at a location of Alabama Land Title, 2690 S McKenzie St, Foley, Alabama. Time is of the essence with respect to all terms, conditions, obligations, and particulars of this Agreement. Possession is to be given the Buyer at Closing, without fail.

14. **WASTE**: Sellers agree not commit waste or remove any merchantable timber with regard to the Property prior to surrendering possession of the property to Buyer beyond reasonable wear and use.

15. **LIABILITY FOR LOSS:** The Sellers shall be liable for any loss or damage to the Property prior to Closing caused by Sellers' negligent and/or deliberate acts. The Sellers shall not be liable for any loss or damage to the Property prior to Closing caused by events out of Sellers' control (i.e. acts of God, the elements, weather conditions to include hurricanes and tornados, earthquakes, fire, acts of governmental authority and war, or other casualty). If there is such an event, which causes substantial damages to the Property, meaning a depreciation of value by more than three percent (3%), the Buyer shall have the option to either re-negotiate the purchase price for the Property solely to consider the depreciation value caused by said event or cancel this Agreement.

16. **PENALTY FOR DEFAULT:** In the event either party to this Agreement 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 fees for the prosecution or defense of the litigation.

17. **REPRESENTATIONS, COVENANTS AND WARRANTIES.** Sellers represent and warrant to Buyer the correctness, truthfulness and accuracy of the following representations and warranties:

(a) *Authority Relative to this Agreement:* Sellers have full power and authority to execute this Agreement and carry out the transaction contemplated by Sellers, subject to approval by the United States Bankruptcy Court for the Southern District of Alabama.

(b) *Tax Matters:* Sellers have paid all property taxes due up and until the year preceding the closing date. Buyer is responsible for the property taxes for the year in which the closing date occurs, having received an abatement for the period in

which the Sellers owned the property.

(c) *Property*: Sellers have good and marketable title to the Property. Sellers further represent that the subject real property is free and clear of any restrictions on transfer, claims, indebtedness or liabilities, any zoning ordinances, use regulations, restrictions, easements or covenants appearing on the plat of record for the subject property.

(d) *Compliance with Applicable Laws*: None of Sellers' actions in transferring the Property are prohibited by or have violated or will violate any law in effect on the date of this Agreement or on the date of closing to the best of Sellers' information, knowledge and belief.

(e) *Survives Closing Date*: The parties understand and agree that the aforementioned covenants and representations set forth in (a) – (e) above, shall survive the date of the closing of this Agreement.

18. **BINDING EFFECT.** This Agreement shall be binding on, and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto, but nothing contained in this paragraph shall be construed as a consent by the Sellers to any assignment of this Agreement or of any interest therein by the Buyer.

19. **ASSIGNMENT.** Neither this Agreement, nor any interest therein, shall be assigned by the Sellers or Buyer, either voluntarily, involuntarily, by operation of law, or otherwise, without the written consent of the other party.


20. **WAIVER.** The waiver of any breach of this Agreement by either party shall not constitute a continuing waiver or a waiver of any subsequent breach, either of the same or another provision of this Agreement.

21. **ENTIRE AGREEMENT.** It is expressly understood and agreed that this Agreement contains the entire agreement between the parties hereto, and that no other promises or inducements have been made with respect to the compromise and settlement of this matter, and that the terms of this Agreement are contractual in nature, and not a mere recital. The parties have all participated in the drafting and finalizing of this Agreement. The parties have executed this instrument individually and/or by and through their authorized representatives, after having had its meaning and effect fully explained to them by their respective attorneys.


IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year indicated below.

SELLERS:

Date: 10/06/2016

 (SEAL)
REX A. NICHOLS

Date: 10/06/2016

 (SEAL)
CLAUDENE NICHOLS

Date: 10/06/2016

Rex A. Nichols (SEAL)
OAKMONT ESTATES INVESTMENTS,
INC.
By: Rex A. Nichols
Its: President

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Rex A. Nichols** whose name is signed to the foregoing Purchase Agreement, and who is known to me, acknowledged before me on this day that being informed of the contents of the said Purchase Agreement, he executed the same voluntarily on the day the same bears date.

Given under my hand and seal hereto affixed by me on this the 6th day of October, 2016.

Michelle McDonald
Notary Public
My Commission Expires: Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
April 23, 2018

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Claudene Nichols** whose name is signed to the foregoing Purchase Agreement, and who is known to me, acknowledged before me on this day that being informed of the contents of the said Purchase Agreement, she executed the same voluntarily on the day the same bears date.

Given under my hand and seal hereto affixed by me on this the 6th day of October, 2016.

Michelle McDonald
Notary Public

My Commission Expires: MICHELLE MCDONALD
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
April 23, 2018

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Rex A. Nichols**, whose name as President for **OAKMONT ESTATES INVESTMENTS, INC.**, is signed to the foregoing Purchase Agreement, and who is known to me, acknowledged before me on this day that he, as such President of the company, and being informed of the contents of the said Purchase Agreement, executed the same voluntarily for, with full authority, and as the act of the company on the day the same bears date.

Given under my hand and seal hereto affixed by me on this the 10th day of October, 2016.

Michelle McDonald
Notary Public

My Commission Expires: MICHELLE MCDONALD
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
April 23, 2018

BUYER:

Date: 10/6/16

 (SEAL)

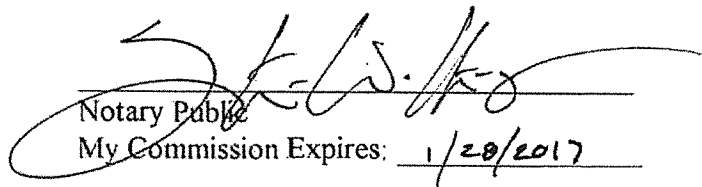
MKA HOLDINGS, LLC
By: Michael Aho
Its: Managing member

STATE OF ALABAMA

COUNTY OF BALDWIN

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that **Michael Aho**, whose name as Managing Member for **MKA HOLDINGS, LLC**, is signed to the foregoing Purchase Agreement, and who is known to me, acknowledged before me on this day that he, as such Managing Member of the company, and being informed of the contents of the said Purchase Agreement, executed the same voluntarily for, with full authority, and as the act of the company on the day the same bears date.

Given under my hand and seal hereto affixed by me on this the 6th day of October, 2016.


Notary Public
My Commission Expires: 1/20/2017