

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

In re:)	
)	
STEWART R. DUDLEY,)	CHAPTER 11
)	
Debtor.)	CASE NO. 16-01842-TOM
)	

CHAPTER 11 TRUSTEE'S MOTION TO APPROVE SALE

COMES NOW, Jeffery J. Hartley, the Court-appointed Chapter 11 Trustee (the "Trustee") and respectfully submits this Motion to Approve Sale (this "Motion") for an order pursuant to 11 U.S.C. §§ 105(a), 363, 704 and Fed. R. Bankr. P. 2002 and 6004 to approve the sale of property. In support of this Motion, the Trustee states as follows:

1. The Debtor filed a petition under Chapter 11 of the Bankruptcy Code on May 5, 2016 (the "Petition Date").
2. This Court entered an Order on February 24, 2017 appointing Jeffery J. Hartley as Chapter 11 Trustee (Doc. #273).
3. On July 28, 2017 the Trustee filed an Expedited Motion to Approve Bid Proceeding on Sale of Old Car Heaven combined with an expedited motion to set hearing and a motion to sell the Old Car Heaven facility [Doc.#387] (the "Initial Sale Motion").
4. On August 30, 2017 this Court granted the Trustee's Motion by way of Order [Doc.#410] (the "Initial Sale Order").
5. In Paragraph (iv) of the Initial Sale Order, the Court ordered that a further hearing be held regarding the final sale of the Old Car Heaven facility in Birmingham, Alabama (the "Subject Property").

6. Further, as part of the Initial Sale Order, this Court preliminarily approved the sale of the Subject Property to Red Rock, LLC ("Red Rock") for a price of \$1,975,000.00 subject to a combined due diligence and closing period of one hundred and five (105) days.

7. On September 20, 2017, and within the time allowed in the Initial Sale Motion and Order, the Trustee received an overbid for the Subject Property from FM Capital, LLC ("FM Capital") with a purchase price of \$2,050,000.00.

8. As contemplated by the Initial Sale Motion, the Trustee then conducted a private auction wherein Red Rock and FM Capital were required to make their highest and best bid. These new offers are attached as **Exhibits "A" and "B"**, respectively.

9. Red Rock's new offer is superior to that of FM Capital. Particularly, the new Red Rock offer is preferable in three (3) important aspects:

- (i) The purchase price has increased to \$2,130,000.00;
- (ii) The due diligence period has been shortened to thirty (30) days from October 4, 2017 (ending November 3, 2017) with a closing to occur on or before December 13, 2017; and
- (iii) Red Rock has agreed to give the Trustee unfettered access to the Subject Property up to and including December 31, 2017 (as set forth in the letter from Brian R. Walding, counsel for Red Rock which is attached as **Exhibit "C"** and incorporated by reference for all purposes).

10. Exercising his business judgment, the Trustee believes that the most recent offer by Red Rock is superior to that of FM Capital and should be accepted. The most recent offer by Red Rock is \$155,000.00 more than the initial asking price for the Subject Property, it has a shortened due diligence period and it offers the Trustee the flexibility to control the Subject Property through the Court approved vehicle auction scheduled for December 2, 2017.

WHEREFORE, based on the foregoing, the Trustee respectfully requests that this Court issue an order granting the following relief:

- (i) Approving the sale of the Subject Property to Red Rock for a purchase price of \$2,130,000.00 as set forth in **Exhibit "A"** and on the terms and conditions set for therein;
- (ii) Authorizing and directing the Trustee to execute the necessary documents to effectuate the sale contemplated herein;
- (iii) A determination of the sale of the Subject Property to Red Rock as contemplated herein is commercially reasonable, is in the best interest of the Estate and its creditors and that the Trustee has exercised sound business judgment in regard to all aspects of the proposed sale;
- (iv) That the terms and conditions of the Initial Sale Motion and Initial Sale Order be incorporated by reference for all purposes;
- (v) A determination that notice of the sale of the Subject Property has been appropriate and sufficient; and
- (vi) for all other relief as is just and appropriate.

Respectfully submitted this 6th day of October, 2017.

/s/ Jeffery J. Hartley

JEFFERY J. HARTLEY (HARTJ4885)

Chapter 11 Trustee

Of counsel:

HELMSING, LEACH, HERLONG,

NEWMAN & ROUSE, P.C.

Post Office Box 2767

Mobile, AL 36652

(251) 432-5521

(251) 432-0633 Fax

Email jjh@helmsinglaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of October, 2017, the foregoing was filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties to this proceeding or serve a copy by U.S. Mail as follows:

FM Capital, LLC
c/o Robert Crook via email: rc@shanwalt.com

Brian R. Walding
Walding LLC
2227 First Avenue South
Suite 100
Birmingham, AL 35233

/s/ Jeffery J. Hartley

Jeffery J. Hartley

Doc.#540157

EXHIBIT

tabbies

A

REDROCKRG.COM

RED ROCK
 REALTY GROUP

REAL ESTATE SALES CONTRACT

On this 8th day of AUGUST, in the year 2017, Old Car Heaven, LLC ("Seller") hereby agrees to sell, and Red Rock Realty Group, Inc., its successors and assigns ("Purchaser") hereby agrees to purchase the real estate described as: the Old Car Heaven facility located at 3501 1st Avenue South, Birmingham, Alabama, 35222, together with the improvements thereon and attached appurtenances (the "Property") situated in the City of Birmingham, the County of Jefferson, and the State of Alabama, on the terms stated below:

1. The Purchase Price shall be:
payable as follows:

~~\$1,925,000.00~~ # 2,130,000.00 TNC

Earnest Money, receipt of which is hereby acknowledge

\$ 50,000.00

Cash on closing this sale:

~~\$1,925,000.00~~ # 2,080,000.00 TNC

2. AGENCY DISCLOSURE:

Listing Agency: Graham & Company, LLC and NAI / Mobile, LLC

The Listing Agency is an Agent of: ☐ Seller ☐ Purchaser ☐ Both Parties as a limited consensual dual agent
☐ Acting as a Transactional Broker

Selling Agency: Red Rock Realty Group, LLC

The Selling Agency is an Agent of: ☐ Seller ☒ Purchaser ☐ Both Parties as a limited consensual dual agent
☐ Acting as a Transactional Broker

[Signature] Seller's Initials

TNC Purchaser's Initials

3. **INSPECTIONS:** Purchaser, or Purchaser's representative, shall have the right to enter the Property for the purpose of inspecting same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the condition of the Property. Purchaser agrees to indemnify Seller and Agencies from and against any liability associated with Purchaser's rights under this paragraph.
4. **EARNEST MONEY AND PURCHASER'S DEFAULT:** Seller hereby authorizes The Title Group, Inc. to hold the earnest money in trust for Seller pending the fulfillment of this Contract. In the event Purchaser fails to carry out and perform the terms of this Contract, the Earnest Money shall be forfeited as liquidated damages. Said Earnest Money so forfeited shall be divided equally between Seller and its Agent, except in no event shall Agent receive more compensation than Agent would have received had this transaction closed as contemplated by this Contract. In the event both Purchaser and Seller claim the Earnest Money, the firm holding the Earnest Money may interplead the disputed portion of the Earnest Money into court.
5. **CONVEYANCE:** Seller agrees to convey the Property to Purchaser by a statutory warranty deed, free of all encumbrances except as herein set forth, and Seller agrees that any encumbrances not herein excepted or assumed will be cleared at the time of closing. The Property is sold and is to be conveyed subject to: (i) mineral and mining rights not owned by Seller; (ii) existing leases and tenant escrow deposit that are to be transferred to Purchaser, subject to any present management and/or rental commission Contract thereon; (iii) present zoning classification of M-1; (iv) is not XX located in a flood plain; and (v) unless otherwise agreed herein, subject to utility easements serving the Property, subdivision covenants

Seller's Initials

Purchaser's Initials

TNC

and restrictions, and building lines of record, provided that none of the foregoing materially impair Purchaser's use of the Property for its intended purposes:

6. **TITLE CERTIFICATE:**

A. Within ten (10) days of the execution and delivery of this Contract, Purchaser shall obtain a standard form owner's title insurance commitment in the amount of the Purchase Price from a title insurance company acceptable to both Purchaser and Seller showing the state of Seller's title to the Property, which must be free of all encumbrances and liens except those of the type set forth in Paragraph 6 (D). The title insurance company shall be The Title Group, Inc.

B. If Purchaser finds any of the matters disclosed in the title commitment to be objectionable, it shall notify Seller in writing of such objection within thirty (30) days after receipt of the title commitment. If the defects are not cured by Seller to Purchaser's satisfaction within 30 days following receipt of Purchaser's written notice, Purchaser may waive such defects and proceed to close, or Purchaser may cancel this Contract by written notice to Seller, in which event the Earnest Money shall be refunded to Purchaser in full, and each of the parties shall be released from further liability to the other under this Contract.

C. The cost of providing the title commitment (a.k.a the search fee), if any, shall be by Purchaser and the cost of providing the owner's title insurance shall be by Purchaser. The cost to provide any lender's title insurance policy and any special endorsements required by the Purchaser and/or the Purchaser's lender shall be by Purchaser.

D. Permissible exceptions with respect to the title insurance commitment shall be:

- (i) Any restrictive covenants, rights of way, utility or similar easements, reservations and restrictions of record, which in Purchaser's sole judgment, do not interfere with Purchaser's proposed development of the Property.
- (ii) Current ad valorem taxes and assessments which are a lien on the Property; and
- (iii) Mineral and mining rights not owned by Seller.

7. **SURVEY:**

A. If requested by Purchaser, Seller shall furnish to Purchaser a copy of any existing survey of the Property that Seller may have in its possession, if any, within ten (10) days from the date of this Contract.

B. In the event a new survey is required by the Purchaser and/or Purchaser's lender then the cost of the new survey shall be paid by Purchaser.

8. **HAZARDOUS SUBSTANCES:**

A. If requested by Purchaser, Seller shall supply Purchaser a copy of all existing environmental site assessment reports for the Property that Seller may have in its possession, if any, (including but not limited to Phase I, Phase II, asbestos tests, lead paint tests, etc.) within ten (10) days from the date of this Contract.

B. In the event a new "Phase I" environmental site assessment is required by the Purchaser and/or Purchaser's lender then the cost of the new "Phase I" environmental site assessment shall be paid by Purchaser. In the event that the existing environmental site assessment and/or the new environmental site assessment determines that there exist or may exist any environmental conditions that, in Purchaser's sole discretion, may result in Purchaser either not being able to use the Property as it so desires or that may result in additional cost and expense to Purchaser to remediate the environmental conditions then Purchaser may cancel this Contract and the Earnest Money will be returned to Purchaser. This provision shall apply both before and after the expiration of the Inspection Period.

9. **PRORATIONS:** Ad valorem taxes, rents, operating expenses, insurance, and accrued interest on mortgages assumed, if any,

Seller's initials JS

Purchaser's initials TKC

on or before December 13, 2017

are to be pro-rated between Seller and Purchaser as of the date of closing, and any advance escrow deposits held by mortgagees shall be credited to Seller.

10. **CLOSING AND POSSESSION DATES:** The sale of the Property shall be closed and the deed delivered ~~no more than forty-five (45) days after the expiration of the Inspection Period~~, except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the Property.

11. **DISCLAIMER:** Seller and Purchaser acknowledge that they have not relied upon advice or representations of Agency (or Agent's associated salespersons) relative to (i) the legal or tax consequences of this Contract and the sale, purchase or ownership of the Property; (ii) the structural condition of the Property, including condition of the roof and basement; (iii) construction materials; (iv) the nature and operating condition of the electrical, heating, air conditioning, plumbing, and water heating systems; (v) the availability of utilities or sewer service; (vi) the investment or resale value of the Property; or (vii) any other matters affecting their willingness to sell or purchase the Property on terms and price herein set forth. Seller and Purchaser acknowledge that if such matters are of concern to them in the decision to sell or purchase the Property, they have sought and obtained independent advice relative thereto.

12. **SELLER WARRANTIES:** Unless excepted herein, Seller has not received notice from any lawful authority regarding any assessments, pending public improvements, or repairs, replacement or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in the Contract. Seller warrants it is the fee owner of the Property, or is authorized to execute this document for the fee owner. **THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED OR DEEDS.**

13. **RISK OF LOSS:** Seller agrees to keep in force sufficient hazard insurance on the Property to protect all interests until this sale is closed and the deed is delivered. If the Property is destroyed or materially damaged between the date hereof and the closing, and Seller is unable or unwilling to restore it to its previous condition prior to closing, Purchaser shall have the option of canceling this Contract and receiving the Earnest Money back or accepting the Property in its then condition. If Purchaser elects to accept the Property in its damaged condition, any insurance proceeds otherwise payable to Seller by reason of such damage along with an amount equal to the deductible applicable to the insurance policy shall be applied to the balance of the purchase price or otherwise be payable to Purchaser. TNC

14. **INSPECTION PERIOD:**

A. Purchaser shall have a period of ~~sixty (60)~~ ^{thirty (30)} days from the date of this Contract during which period Purchaser may, at its expense, enter and inspect the Property, undertake a title search (including any outstanding leases of the Property), perform soil testing, engineering and site planning, develop feasibility and financing studies, verify zoning and utility availability, and undertake such other matters as Purchaser deems necessary (the "Inspection Period"). During the Inspection Period, if Purchaser, for any reason, determines the Property is not satisfactory for its intended use, Purchaser shall have the right to cancel this Contract by written notice to Seller. Such cancellation shall entitle Purchaser to the return of any Earnest Money deposit previously submitted, whereupon such refund Purchaser and Seller shall have no further obligation to one another under this Contract. Purchaser shall be liable for any and all actions of Purchaser, its agents, employees or independent contractors while on the Property and agrees to indemnify and hold Seller harmless for any damages resulting from such activities on Property. TNC or amendment to this contract.

B. In the event this Contract is terminated as a result of a judicial court order then Seller shall reimburse Purchaser for Purchaser's reasonable and documented out of pocket expenses incurred during the Inspection Period, and, if applicable, after the Inspection Period has expired, subject to a maximum amount of fifteen thousand dollars (\$15,000).

15. Seller shall, within ten (10) days from execution of this Contract, turn over all plans, contracts, leases, and any other documents, or tests pertaining to the Property that the Seller has in its possession.

16. **COMMISSION:** THE COMMISSION PAYABLE TO THE AGENT(S) IN THIS SALE IS NOT SET BY THE

Seller's initials

Purchaser's initials

BIRMINGHAM ASSOCIATION OF REALTORS, INC., BUT IN ALL CASES IS NEGOTIABLE BETWEEN THE AGENT(S) AND THE CLIENT. In this Contract, Seller agrees to pay to Red Rock Realty Group, LLC, at closing, a commission equal to three percent (3%) of the total purchase price. Seller shall pay a separate commission to Graham & Company, LLC and NAI/Mobile, LLC as set forth in a separate agreement among the parties.

17. ADDITIONAL PROVISIONS: Any additional provisions, if any, set forth on the attached Exhibit ____, are hereby made a part of this Contract.
18. In this Contract, TIME IS OF THE ESSENCE.
19. LEGAL EXPENSES: Each party shall pay its own legal expenses, except that the cost of preparing the deed, the closing statement and any other documents necessary to close the transaction (but not including any documents related to any financing or documents required by any lender that would otherwise not be necessary to close the transaction) shall be split evenly between the parties. Purchaser shall pay for recording costs and any deed and mortgage taxes.
20. ~~Unless this Contract is fully executed by both parties prior to 5:00 PM CDT on Friday, August 11, 2017 then this Contract shall be null and void~~ TMC
21. ENTIRE CONTRACT: THIS CONTRACT CONSTITUTES THE ENTIRE CONTRACT BETWEEN PURCHASER AND SELLER REGARDING THE PROPERTY, AND SUPERSEDES ALL PRIOR DISCUSSIONS, NEGOTIATIONS, AND CONTRACTS BETWEEN PURCHASER AND SELLER, WHETHER ORAL OR WRITTEN. NEITHER PURCHASER, SELLER, NOR AGENT, NOR ANY SALES AGENT SHALL BE BOUND BY ANY UNDERSTANDING, CONTRACT, PROMISE OR REPRESENTATION CONCERNING THE PROPERTY, EXPRESSED OR IMPLIED, NOT SPECIFIED HEREIN.

THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING.

The date of this Contract shall be the date this Contract is fully executed by all parties.

Diane Clauser
Witness

SELLER:

By: Jeffery J. Hartley
Its: As Chairman of Trustees Case 16-01842
Date: 8/23/2017

Jordan Mann
Witness

PURCHASER:

By: [Signature]
Its: President
Date: 7-25-17

Seller's Initials [Signature]

Purchaser's Initials TMC

EARNEST MONEY: Receipt is hereby acknowledged of the Earnest Money as hereinafter set forth

_____ Cash _____ Check

FIRM _____

529194

~~The Trustee executes this contract subject to a further court order approving the distribution of sales proceeds, and subject to any Upset Bid as contemplated by the underlying sales motion.~~

TNC

Seller's initials

Purchaser's initials

SALES CONTRACT

This is a legally binding contract. If not understood, seek competent advice.

Old Car Heaven, LLC and/or FNA Alabama, LLC (SELLER) hereby agrees to sell and Undersigns/Assigne (PURCHASER) hereby agrees to purchase the following described real estate, together with the improvements thereon and attached appurtenances (Real Estate) situated in Jefferson County, Alabama on the terms stated below:

Subject Property Known As: 23-00-30-4-015-003.000 or 3501 1st Avenue South See Exhibit "A" Attached

\$2,062,999 (WLF)

1. The PURCHASE PRICE shall be ~~\$2,050,000.00~~ payable as follows:
EARNEST MONEY, receipt of which is hereby acknowledged

\$50,000.00

CASH on closing this sale

~~\$2,000,000.00~~

\$2,012,999 (WLF)

2. AGENCY DISCLOSURE:

The listing company Graham & Company and NAI Mobile, LLC is: (Two blocks may be checked.)

☐ An agent of the Seller.

☐ An agent of the Purchaser.

☐ An agent of both the Seller and the Purchaser and is acting as a limited consensual dual agent.

☐ Assisting the Purchaser Seller as a transaction broker.

The selling company Shannon Waltchack, llc is (Two blocks may be checked.)

☐ An agent of the Seller.

☒ An agent of the Purchaser.

☐ An agent of both the Seller and the Purchaser and is acting as a limited consensual dual agent.

☐ Assisting the Purchaser Seller as a transaction broker.

3. **CONDITION OF PROPERTY:** Purchaser, or Purchaser's representative, shall have the right to enter the Property and building for the purpose of inspecting same, and/or making boundary line and topographical surveys of the same, and/or making soil tests thereon, and/or in general observing and investigating the conditions of the Property. Seller shall disclose any known defects to the property within ten (10) days from the date herein. Seller to deliver the property in its as is condition. Purchaser shall be allowed to advertise its development on said property during the closing period.
4. **EARNEST MONEY AND PURCHASER'S DEFAULT:** Seller hereby authorizes Title Group Inc. to hold the earnest money in trust for Seller pending the fulfillment of this Contract. Said earnest money to be deposited within 72 hours from contract execution. In the event Purchaser fails to carry out and perform the terms of this Contract, the Earnest Money shall be forfeited as liquidated damages. In the event both Purchaser and Seller claim the Earnest Money, the firm holding the Earnest Money may interplead the disputed portion of the Earnest Money into court. Notwithstanding anything to the contrary, if Purchaser does not obtain (to Purchaser's satisfaction) the items described in paragraph 14, then Purchaser may cancel this agreement and be refunded the earnest monies submitted.
5. **CONVEYANCE:** Seller agrees to convey the Property to Purchaser by a general warranty deed, free of all encumbrances except as herein set forth, and Seller agrees that any encumbrances not herein accepted or assumed will be cleared at the time of closing. The Property is sold and is to be conveyed subject to: (i) mineral and mining rights not owned by Seller; (ii) zoning classification of iv) is partially is not located in a flood plain and legal access to property. Purchaser shall have the right to enforce specific performance on Seller.
6. **TITLE INSURANCE:** Seller agrees to furnish Purchaser a standard form title insurance policy issued by a company qualified to insure titles in Alabama in the amount of the purchase price, insuring Purchaser against loss on account of any defect or encumbrance in the title unless herein accepted. Seller to pay for all costs to perfect title. Seller shall provide Purchaser a title binder within seven (7) days of contract execution. Seller shall provide forms reasonably requested by the title company and or the lender.
7. **PRORATIONS:** Ad valorem taxes, back taxes, operating expenses, insurance, advanced escrows, and accrued interest on mortgages assumed, if any, are to be pro-rated between Seller and Purchaser as of the date of closing, and any advance escrow deposits held by mortgagees shall be credited to Seller.
8. **CLOSING AND POSSESSION DATES:** The sale shall be closed and the deed delivered on or before 36 days after the expiration of the Inspection Period; except Seller shall have a reasonable length of time within which to perfect title or cure defects in the title to the Property. Possession is to be given on delivery of the deed, if the property is then vacant; otherwise, possession shall be delivered upon Closing. If closing date falls on a weekend or Holiday, then closing to occur the next business day.
9. **SELLER WARRANTIES:** Unless excepted herein, Seller has not received from any lawful authority regarding any assessments, pending public improvements, repairs, replacement or alterations to the Property that have not been satisfactorily made. Seller warrants that there is no unpaid indebtedness on the Property except as described in the Contract. Seller warrants he is the fee owner of the Property or is authorized to execute this document for the fee owner. THESE WARRANTIES SHALL SURVIVE THE DELIVERY OF THE DEED.

36 (WLF)

WLF 10/4/17

10. **SURVEY:** Seller shall furnish to Purchaser any existing survey.

11. **PHASE I STUDY:** Seller shall supply Purchaser its existing "Phase I" environmental site assessment for the Property within 7 (seven) days from the effective date. The cost of obtaining a new report will be paid by the purchaser. If the report reveals the presence of any hazardous or toxic substances, or the likely presence of any hazardous or toxic substances on the property or any other similar actual or potential environmental problem, Purchaser shall have no obligation to close on the purchase of the Property, and the Earnest Money shall be returned to Purchaser.

12. **HAZARDOUS SUBSTANCES:** Intentionally Deleted

13. **COMMISSION:** THE COMMISSION PAYABLE TO THE AGENT(S) IN THIS SALE IS NOT SET BY THE BIRMINGHAM AREA BOARD OF REALTORS, INC., BUT IN ALL CASES IS NEGOTIABLE BETWEEN THE AGENT(S) AND THE CLIENT. In this contract, Seller agrees to pay Shannon Waltchack in CASH at closing, a commission equal to 3%. And to pay a separate commission to Graham & Company, LLC and NAI Mobile, LLC as set forth in a separate agreement among the parties.

13. **INSPECTION PERIOD:** Purchaser shall have a period of 40 days from the Effective Date of the Agreement during which period Purchaser may, at his expense, enter and inspect the Property, undertake a title search (including any outstanding leases of the Property), soil testing, engineering and site planning, feasibility and financing studies, zoning and utility verification, and undertake such other matters as Purchaser deems necessary. During such 40 day period, if Purchaser, for any reason, determines the Property is not satisfactory for his intended use, Purchaser shall have the right to cancel this Agreement by written notice to Seller. Such cancellation shall entitle Purchaser to the return of any Earnest Money deposit previously submitted, whereupon such refund Purchaser and Seller shall have no further obligation to one another under this Agreement.

14. **ADDITIONAL PROVISIONS:** Any additional provisions set forth on the attached exhibits, and initialed by all parties, are hereby made a part of this Contract.

- A) Seller shall, within ten (10) days, provide Purchaser a copy of all information on the property that Seller possesses including: (i) Copies of all lease agreements; (ii) copies of any management or service agreements that will be in effect after closing; (iii) copies of all easements and covenants effecting property and (iv) past two years operating statement/tax returns (v) other items requested by Purchaser's lender
- B) This sale shall be contingent upon Purchaser obtaining all the necessary approvals and permits for its proposed use on or before the end of the Inspection Period. Such approvals shall include, but not be limited to, utility verification and studies, structural inspections, satisfactory environmental studies, and code compliance issues.
- C) Property to be delivered free from any ongoing leasing or management obligations.
- D) Prior to the expiration of due diligence period the seller will give a copy of the blue prints to Purchaser.
- E) Members of the purchasing entity are licensed realtors in the State of Alabama.
- F) Seller to provide a set of keys to purchaser at closing.

15. **EFFECTIVE DATE:** The effective date of this agreement shall be the date the Seller and Purchaser fully execute this contract.

16. **ENTIRE AGREEMENT:** THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN PURCHASER AND SELLER REGARDING THE PROPERTY, AND SUPERSEDES ALL PRIOR DISCUSSIONS, NEGOTIATIONS, AND AGREEMENTS BETWEEN PURCHASER AND SELLER, WHETHER ORAL OR WRITTEN. NEITHER PURCHASER, SELLER, NOR AGENT, NOR ANY SALES AGENT SHALL BE BOUND BY ANY UNDERSTANDING, AGREEMENT, PROMISE OR REPRESENTATION CONCERNING THE PROPERTY, EXPRESSED OR IMPLIED, NOT SPECIFIED HEREIN. SOME OF THE MEMBERS OF THE PURCHASING ENTITY ARE LICENSED REALTORS IN THE STATE OF ALABAMA. THIS IS INTENDED TO BE A LEGALLY BINDING CONTRACT. IF YOU DO NOT UNDERSTAND THE LEGAL EFFECT OF ANY PART OF THIS CONTRACT, SEEK LEGAL ADVICE BEFORE SIGNING. This contract is binding on the Seller, its heirs or assigns.

Each of the parties acknowledges that he has a right to be represented at all times in connection with the Contract and the closing by an attorney of his own choosing, at his own expense.

Witness to Seller's Signature

SELLER: _____

By: _____

Its: _____

Date: _____

Witness to Purchaser's Signature

PURCHASER: FM CAPITAL, LLC

By: [Signature]

WF 10/4/17

Its: MANAGING MEMBER
Date: 9-20-2017

EARNEST MONEY: Receipt is hereby acknowledged of the Earnest Money as hereinafter set forth
_____ Cash _____ Check

FIRM _____

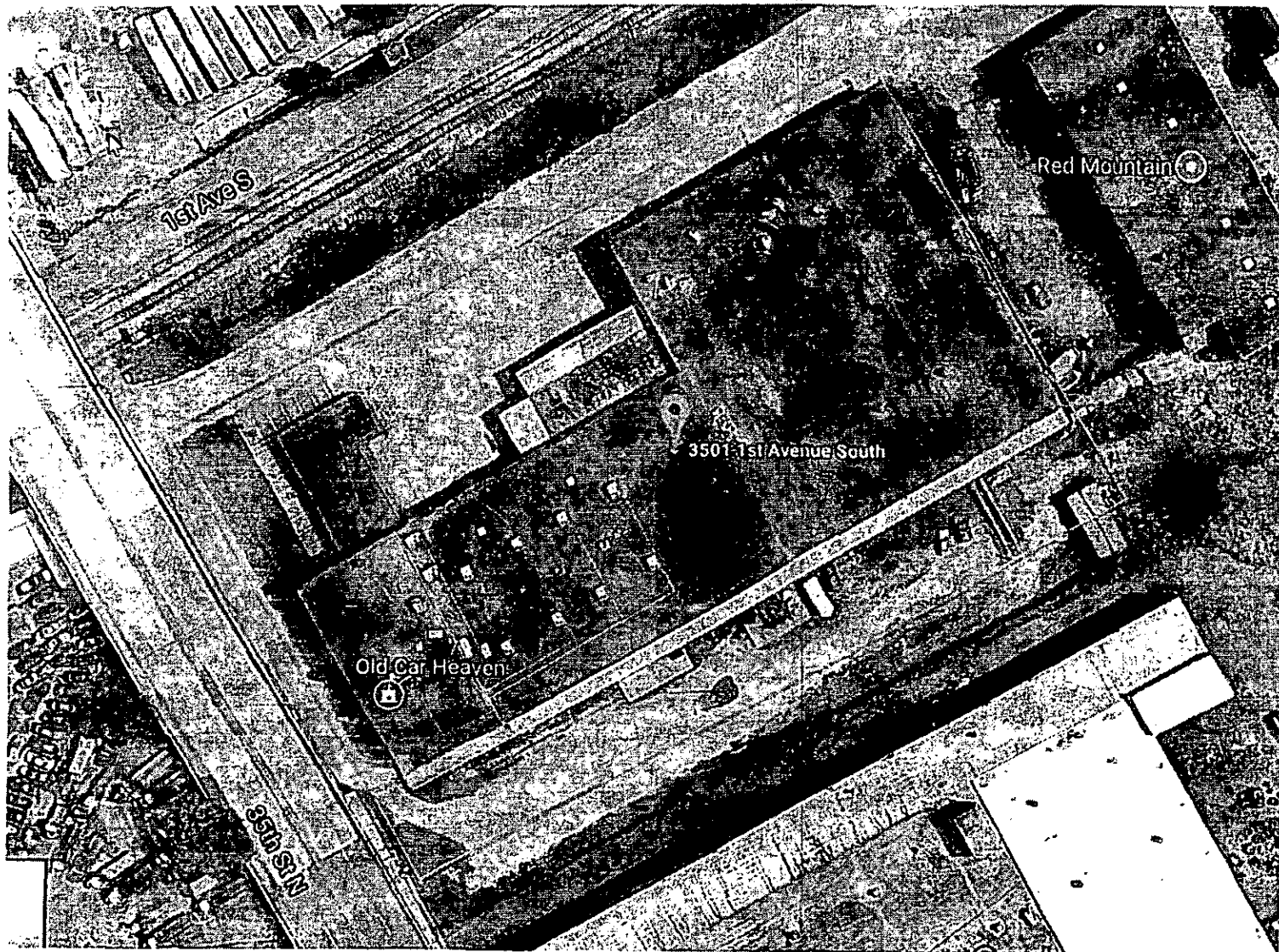


Exhibit "A"

October 4, 2017

VIA ELECTRONIC MAIL



Mr. Jeffery Hartley
Chapter 11 Trustee, Stewart R. Dudley Bankruptcy
Estate
P.O. Box 2767
Mobile, Alabama 36652
(jjh@helmsinglaw.com)

Ogden S. Deaton
Graham & Co.
110 Office Park Drive
Suite 200
Birmingham, Alabama 35223
(ogdend@grahamcompany.com)

RE: Submission of Bid for Old Car Heaven real property with address of 3501 1st Ave S, Birmingham, Alabama 35222 (the "Real Property")

Messrs. Hartley and Deaton:

My firm represents the buyer identified as the "Buyer" in the Trustee's Motion to Sell the Real Property (the "Sale Motion") [Doc. No. 387] in the chapter 11 bankruptcy of Stewart R. Dudley identified as case number 16-01842 (the "Bankruptcy") proceeding in the United States Bankruptcy Court for the Northern District of Alabama (the "Bankruptcy Court"). The Sale Motion was approved by an Order (the "Sale Procedures Order") [Doc. No. 410] entered by the Bankruptcy Court on August 30, 2017.

The Buyer has previously provided earnest money of \$50,000.00 (the "Earnest Money") with the Trustee or its agent, which qualifies for the enclosed revised Real Estate Sales Contract offered by the Buyer (the "Revised Offer"). The Revised Offer is intended to qualify for selection as an Alternative Minimum Bid, as set forth in the Sale Motion. To clarify the terms of the Revised Offer and notwithstanding the Buyer's prior contract, the Buyer intends for the Inspection Period, as defined in the Revised Offer, to expire thirty (30) days from acceptance of the Revised Offer as the "Winning Bidder". For example, if the Revised Offer is accepted today, October 4, 2017, the Inspection Period would expire on Friday, November 3, 2017. And, only upon expiration of this Inspection Period will the Earnest Money become non-refundable to the Buyer. To be clear, should the Revised Offer result in the Buyer being deemed the "Winning Bidder" per the Sale Motion, until the Inspection Period has expired, the Winning Bidder shall not be deemed to "fail[]" to consummate the sale of the "Real Property and thus qualifies for a return of its Earnest Money. See Sale Motion, ¶ 14.

The Revised Offer is subject to an expiration date of 5:00 p.m. prevailing Central time on Thursday, October 5, 2017 (the "Expiration Date"). This Expiration Date is intended to be a date by which any negotiation must be concluded regarding the Revised Offer being accepted, rejected or deemed an alternate to the Winning Bidder. The Expiration Date is not intended to disqualify the Revised Offer from being considered as a next best offer in the event another party is deemed to be the "Winning Bidder" fails to consummate the purchase of the Real Property. See Sale Motion, ¶ 14.

Finally, the Revised Offer calls for a closing date of on or before December 13, 2017, which is intended to comply with the provisions of the Sale Procedures Order. *See* Sale Procedures Order, p. 2, ¶ vii. Notwithstanding this date, the Buyer intends to cooperate fully with the Trustee's reasonable requests related to the auction of vehicles or other personal property located at the Real Property so long as all such goods are removed on or before December 31, 2017 and the Trustee provides insurance, indemnification or other such protections for the Buyer once it takes title to the Real Property. To that end, the Buyer reserves the right to request some nominal or inconsequential rent or other consideration for the Trustee's use of the Real Property based upon the actual date of closing and the nature of such continued use.

If this Revised Offer is not accepted by the Trustee as the Winning Bid, my client seeks return of its Earnest Money. My client looks forward to your consideration of the enclosed Revised Offer and intends for this letter to be incorporated as terms of the Revised Offer.

Very truly yours,

A handwritten signature in black ink, appearing to read "Brian R. Walding", with a stylized flourish at the end.

Brian R. Walding
Walding, LLC