

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

**IN RE: TALLEY ENTERPRISE HOLDINGS, INC. CASE NO.: 16-51778-KMS
DEBTOR-IN-POSSESSION CHAPTER 11**

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

Talley Enterprise Holdings, Inc., Debtor-in-Possession (“Debtor” or “Talley”) files this Motion for Authority to Sell Property Free and Clear of Liens, Claims and Encumbrances pursuant to §363 (b) and (f) of the *United States Bankruptcy Code*, Rules 2002(a)(2), 2002(c)(1) and 9014 of the *Federal Rules of Bankruptcy Procedure*, and Miss. Bankr. L.R. 9014-1as follows:

1. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1334. This Court has the statutory authority to enter a final order in connection with this matter pursuant to 28 U.S.C. §157(b)(2) (A), (N) and (O). This Court has the constitutional authority to enter a final order in connection with this matter.

2. The Debtor filed a petition for relief pursuant to Chapter 11 of the *United States Bankruptcy Code* on October 13, 2016. No trustee has been appointed in this case. The Debtor is in possession of its assets pursuant to §1108 of the *United States Bankruptcy Code*. No committee has been appointed in this case.

BACKGROUND

3. The Debtor is a real estate holding company owned and operated by David Talley (“D. Talley”).

4. The Debtor owns one piece of real property, a Chevron station located at 7011 Beat Line Rd., Long Beach, Mississippi 39560 (the “Station”).

5. On August 6, 2008, Talley executed a Promissory Note (the "Note ") in favor of Hancock Bank ("Hancock") in the amount of \$855,608.00, bearing interest at the rate of 5.50% per annum with a maturity date of August 5, 2013. A true and correct copy of the Note is attached hereto as Exhibit "A."

6. Note 1 was secured by a Deed of Trust covering the Station, which was recorded in the Office of the Chancery Clerk of Harrison County, Mississippi as Instrument Number 2008 11373T-J1. A true and correct copy of the Deed of Trust is attached hereto as Exhibit "B."

7. On August 5, 2013, the Note matured. On September 6, 2013, Talley executed a Loan Extension and Deferral Agreement (the "Deferral") whereby the maturity date of the Note was expended until September 5, 2013. A true and correct copy of the Deferral is attached hereto as Exhibit "C."

8. On October 15, 2013, Talley executed a Promissory Note (the "Extension Note") in favor of Hancock in the original principal amount of \$616,866.79, bearing interest at the rate of 5.50% per annum with a maturity date of December 4, 2013. A true and correct copy of the Extension Note is attached hereto as Exhibit "D."

9. After the Extension Note matured, Hancock was not willing to renew the Note any further.

10. On July 25, 2008, Talley executed a Business Resource Line of Credit Agreement (the "LOC") in favor of Hancock in the original principal amount of \$50,000.00 bearing interest at a variable rate further described in the LOC with a maturity date of July 25, 2013. A true and correct copy of the LOC is attached hereto as Exhibit "E."

11. On October 15, 2013, Talley executed an extension of the Business Resource Line

of Credit Agreement (the “Extension LOC”) in favor of Hancock in the original principal amount of \$39,000.00 bearing interest at a variable rate further described in the Extension LOC with a maturity date of November 22, 2013. A true and correct copy of the Extension LOC is attached hereto as Exhibit “F.”

12. The LOC and Extension LOC were cross-collateralized with the Note.

13. On November 1, 2016, Talley entered into an Asset Purchase Agreement: Chevron Station (the “Agreement”) with BAMB Properties, II, LLC (the “BAMB”) for the purchase of the Station for the price of \$761,000.00. The closing date under the Agreement is within 10 days of the entry of an Order from the Court authorizing the sale of the Station. A true and correct copy of the Agreement along with a financing commitment from BAMB’s bank is attached hereto as Exhibit “G.”

RELIEF REQUESTED

14. Generally, the Debtor requests the Court to approve this Motion, to authorize the Debtor to sell the Station pursuant to §363 of the *Bankruptcy Code*.

Section 363 Standards

15. Section 363(b)(1) of the *Bankruptcy Code* provides that (after notice and a hearing) “the Trustee may use, sell or lease, other than in the ordinary course of business, property of the estate.” As a general matter, “A judge determining a §363(b) application [should] find from the evidence presented before [her] at the hearing a good business reason to grant such application.” *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983). Certain factors pertinent to this analysis have been articulated. Specifically, the Court should consider whether:

(1) A sound business purpose justifies the sale;

- (2) Accurate and reasonable notice of the sale was provided;
- (3) The price to be paid is adequate, ie, fair and reasonable; and
- (4) The sale is in good faith, ie, there is an absence of any lucrative deals with insiders.

In re Industrial Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bkcty. E.Dist. Penn. 1987); *In re Wilde Horse Enterprises, Inc.*, 137 B.R. 830, 841-2 (Bkcty. Cent. Dist. Cal. 1991); *In re The Landing*, 156 B.R. 246, 249 (Bkcty. E. Dist. Missouri, 1993); *In re George Walsh Chevrolet, Inc.*, 118 B.R. 99, 102 (Bkcty. E. Dist. Missouri, 1990).

16. Consideration of the factors weighs in favor of authorizing the sale. The sale price of the Station is reasonable for comparable properties in the area. Talley's creditors will be given adequate notice of the sale, and there are no insiders who will benefit from the sale to BAMM.

Attachment of Liens to Net Sales Proceeds and Good Faith Purchaser Status

17. Satisfaction of any of the requirements delineated in §363(f) allows the sale of property free and clear of all liens, claims, encumbrances and other interests. The Debtor requests that the sale be made free and clear of all liens as defined in §101(37) of the *Bankruptcy Code*, and all claims as defined in §101(5) of the *Bankruptcy Code*, and all liabilities, trusts, guaranties, security agreements, security interests, pledges, privileges, options, hypothecations, charges, rights, obligations, restrictions, charges and encumbrances in or with respect to the Station.

18. Debtor requests the Court to order the liens of Hancock attached to the net sales proceeds from the sale.

Good Faith Purchaser Status

19. If a purchaser is in good faith, §363(m) of the *Bankruptcy Code* protects the parties in the event of a reversal or modification on appeal of the authorization of a sale under §363(b). In

determining whether a purchaser has acted in good faith, courts look to the integrity of the purchasers in the course of the legal proceedings. *See, eg. In re Abbotts Dairies of PA, Inc.*, 788 F.2d 143, 147-48 (3rd Cir. 1986). In the instant case, the Debtor does not anticipate any lack of good faith on the part of BMM. The Debtor will request the Court to adjudicate that the purchasers are good faith purchasers when the Debtor files its Report of Sale and Motion for Confirmation of Sale.

Authorization for Consummation of Sale

20. The Debtor requests this Court to declare that the Debtor be authorized to execute and deliver to BMM any and all conveyance and transfer documents, which will be construed and constitute for any and all purposes a full and complete conveyance marketable title in and to the Station.

21. The Debtor requests this Court to include in the order granting this Motion that nothing contained in this Motion or the order granting this Motion, shall prejudice, alter, amend or modify the rights claims and defenses of any one or more of the Debtor and all parties to any civil action that was pending in any court on the date of the filing of the Petition for Relief, nor shall the same constitute of waiver of any right claim or defense of any person interested in this Chapter 11 case, except as specifically provided in the order approving this Motion.

22. Considering the exigencies, the Debtor requests this Court to find good cause exists to authorize the consummation of the sale without subjecting the order to a stay of execution, as permitted under Rules 7062 and 6004(h) of the *Federal Rules of Bankruptcy Procedure*.

WHEREFORE, Talley Enterprise Holdings, Inc., Debtor-in-Possession, hereby moves this Honorable Court, after notice and an opportunity for a hearing, to enter an order granting the relief requested above and further grant the Debtor all other relief to which it is entitled, given the

premises.

Respectfully Submitted,

**TALLEY ENTERPRISE HOLDINGS,
INC.**

By: /s/ W. Jarrett Little

W. Jarrett Little, It's Attorney

OF COUNSEL:

W. Jarrett Little, MSB No. 104812

Lentz & Little, PA

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Gulfport, Mississippi 39501

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jarrett@lentzlittle.com

CERTIFICATE OF SERVICE

I, W. Jarrett Little, Attorney for the Debtor-In-Possession, do hereby certify that the following have been served electronically via ECF with a copy of the foregoing document:

United States Trustee: USTPRegion05.JA.ECF@usdoj.gov

Paul S. Murphy: paul.murphy@butlersnow.com

I further certify that I mailed a true and correct copy of the foregoing document to:

Talley Enterprise Holdings, Inc.

7011 Beatline Rd.

Long Beach, MS 39560

This the 3rd day of November, 2016.

/s/W. Jarrett Little

W. Jarrett Little

ASSET PURCHASE AGREEMENT: CHEVRON STATION

This ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into effective as of the 1st day of November, 2016 (the "Effective Date"), by and between Talley Enterprise Holdings, Inc. ("Seller"), agreeing to sell the property and improvements located at 7011 Beat Line Road, Long Beach, Mississippi 39560 ("Property"), to BAMB Properties, II, LLC. ("Buyer").

WHEREAS, Seller desires to sell to Buyer certain real estate and improvements utilized in connection with the Chevron C-Store and Gas Station located at 7011 Beat Line Road, Long Beach, Mississippi 39560, and Buyer desires to purchase such assets from Seller, subject to the terms and condition set forth in this Agreement.

NOW, THEREFORE, in consideration of the following premises and the mutual covenants and agreements contained herein, the parties hereto agree as follows:

ARTICLE I

Purchase and Sale of Certain Assets of Seller. At the Closing, Seller agrees to sell, transfer, assign and deliver to Buyer the Purchased Assets (as defined below), and Buyer agrees to purchase and take the Purchased Assets from Sellers, on the terms and subject to the conditions set forth in the Agreement. Subject to the provisions below "Purchased Assets" include the Property which real property is more particularly described in *Schedule 1.1*, attached hereto and incorporated herein by reference, together with all improvements situated thereon and all rights appurtenant thereto ("Property").

Section 1.1 Purchase Price. As consideration in full for the acquisition of the Purchased Assets from Seller, Buyer shall pay to Seller the sum of Seven Hundred Sixty-One Thousand and 0/100 Dollars (\$761,000.00).

Section 1.2 Closing. The closing of the transaction contemplated by this Agreement (the "Closing") shall take place within 10 days of the entry of an order by the United States Bankruptcy Court for the Southern District of Mississippi approving the sale.

Section 1.3 Closing Deliveries. At the Closing:

(a) Buyer shall pay to the Seller the Purchase Price, which shall be payable to the Seller in the form of a certified check, or wire transfer.

(b) Seller shall execute and deliver to Buyer a Bill of Sale conveying to Buyer all Purchased Assets other than the Owned Real Property and the Material Agreements;

(c) Seller shall execute and deliver to Buyer special warranty deeds conveying the Property to Buyer,



(d) Seller and Buyer shall mutually execute and deliver settlement statement pertaining to the transactions contemplated by this Agreement;

(e) Seller and Buyer shall execute such additional documents and make such additional deliveries to each other as reasonably required in connection with the closing of the transactions contemplated by this Agreement.

Section 1.4 **Inspection Period of Assets and Business Equipment.** During the Due Diligence Period, Buyer may make any and all necessary inspections of the building, improvements, fueling, business equipment, mechanicals, etc. Any mechanicals, equipment or building problems must be in a reasonable working order and Seller will make sure that they are in reasonable working order, except for screens, card readers, and printers on existing dispensers as Buyer is rebranding and updating pumps.

ARTICLE II

Representation and Warranties of Seller

Seller hereby represents and warrants to Buyer as follows:

Section 2.1 **Organization.** Seller is a Mississippi resident or corporation duly organized, valid existing and in good standing under the laws of Mississippi at the time of sale, and has the full power to own its assets and properties and to conduct its businesses as presently conducted.

Section 2.2 **Authority.** Seller has all requisite power and authority to execute, deliver and perform their respective obligations under this Agreement and the other agreements, certificates and instruments to be executed by Seller in connection with or pursuant to this Agreement (collectively, the "Seller Party Document"). This Agreement has been, and at the Closing the other Seller Party Documents will be, duly executed and delivered by Seller. This Agreement is, and upon execution and delivery by Seller, enforceable against Seller in accordance with their respective terms (regardless of whether enforcement is sought in a proceeding of law or in equity). Upon the request of Buyer, Seller will provide to Buyer a copy of any resolutions of the directors of each Seller authorizing such Seller to consummate the transactions contemplated by this Agreement.

Section 2.3 **Title to Purchased Assets.** Seller agrees to pay all existing liens, mortgages and encumbrances on the property in question at closing except as stated below.

(a) Seller owns insurable fee simple title to the Property and clear of any mortgages, liens, or encumbrances except for liens for 2016 property taxes which are not yet due and payable, rights of way for public roads, easements for public utilities, applicable rules and regulations of local governmental authorities, and any easements, plat notations, covenants, restrictions, and/or other encumbrances which are of record as of the date hereof or which may otherwise be approved by Buyer during the Due Diligence Period as contemplated in Section 4.2 below.

(b) Seller owns good and marketable title to all of the Purchased Assets other than the Owned Real Property and rights under any Material Agreements (which rights are subject to all terms and conditions of such Material Agreements) free and clear of any liens or security interests except for liens and security interests which will be released and terminated prior to or at the Closing.

(c) The execution and delivery of the Seller Party Documents by Seller at the Closing will convey to and vest in Buyer insurable fee simple title to the Owned Real Property and good and marketable title to the other Purchased Assets, provided that the Owned Real Property will be subject to any encumbrances against the Owned Real Property as contemplated above and any other Permitted Encumbrances approved by Buyer as contemplated below, and any rights under any Material Agreements shall be subject to all terms and conditions of any such Material Agreements.

Section 2.4 No Violation. Neither the execution or delivery of the Seller Party Documents nor the consummation of the transactions contemplated thereby, including without limitation the sale of the Purchased Assets to Buyer, will conflict with or result in the breach of any term or provision of, or violate or constitute a default under (or an event that with notice or lapse of time or both would constitute a breach of default), or result in the creation of any lien on any of the Purchased Assets, or relieve any third party of any obligation to the Businesses, or give any third party the right to terminate or accelerate any obligation. Further, neither the execution, delivery nor performance by the Sellers of the Seller Party Documents will conflict with or result in the breach of any term or provision of, or violate or constitute a default under any charter provision, bylaw, or material agreement, instrument, order, law or regulation to which either Seller is a party or by which either Seller or any of the Purchased Assets is in any way bound or obligated.

Section 2.5 Governmental Consents. No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any governmental agency, authority, commission, board or other body (each, a "Governmental Body") is required on the part of Sellers in connection with the sale of the Purchased Assets to Buyer or any of the other transactions contemplated by this Agreement, except that the sale of the Purchased Assets must be approved by the United States Bankruptcy Court for the Southern District of Mississippi.

Section 2.6 Agreements Pertaining to Owned Real Property. Seller has not granted any other party to an option to purchase, right of first refusal, or other right to purchase the Owned Real Property. There are no leases in effect with respect to the Owned Real Property.

Section 2.7 Taxes.

(a) All required federal, state, local and other Tax returns, notices and reports (including, without limitation, income, property, sales, use, franchise, withholding, social security and unemployment Tax returns) relating to the Sellers, the Businesses, and the Purchased Assets have been accurately prepared and duly and timely filed, and all Taxes required to be paid with respect to the periods covered by any such returns have been timely paid. No Tax deficiency or tax

lien has been proposed or assessed against the Purchased Assets or the Businesses or against either Seller relating to the Business or the Purchased Assets, and neither Seller has executed any waiver of any statute of limitations on the assessment or collection of any Tax relating to the Businesses or the Purchased Assets. No Tax audit, action, suit, proceeding, investigation or claim is now pending or, to the knowledge of Seller, threatened against either Seller relating to the Businesses or the Purchased Assets, and no issue has been raised (and is currently pending) by any taxing authority in connection with the Sellers' respective Tax returns or reports relating to the Businesses or the Purchased Assets. Seller has withheld or collected from each payment made to each of its employees in the Businesses the full amount of all Taxes required to be withheld or collected therefrom and has paid the same to the proper Tax receiving officers or authorized depositaries.

(b) "Tax" or "Taxes" means any and all taxes, charges, fees, levies, assessments, duties or other amounts payable to any federal, state or local Governmental Body, including, without limitation, (i) income, franchise, profits, gross receipts, minimum, alternative minimum, estimated, al valorem, value added, sales, use, service, real or personal property, capital stock, license, payroll, withholding, disability, employment, social security, workers compensation, unemployment compensation, utility, severance, excise, stamp, windfall profits, transfer and gains taxes; (ii) customs, duties, imposts, charges, levies or other similar assessments of any kind; and (iii) interest, penalties and additions to tax additions to tax imposed with respect thereto.

Section 2.8 Litigation. There are currently no pending or, to the knowledge of Seller, threatened lawsuits, administrative proceedings or reviews, or formal or informal complaints or investigations by any individual, corporation, partnership, Governmental Body or other entity (collectively, a "Person") against or relating to or to which any of the Purchased Assets are subject, except for the Seller's chapter 11 bankruptcy case pending before the United States Bankruptcy Court for the Southern District of Mississippi Case No.: 16-51778-KMS. Seller is not subject to or bound by any currently existing judgment, order, writ, injunction or decree application to any Seller or the Businesses or the Purchased Assets which would prohibit or restrict the transactions contemplated hereby.

2.8.a. Seller states that he will fully disclose all litigation that his company and he are involved in with his tenants or others; however, in general, Seller will make sure that no litigation impedes the sale of the property at closing.

Section 2.9 Permits. Seller's permits lapsed once the property was leased. To any such permits, rights or other authorizations that Seller acquires by cancellation of the lease and confiscation of the leased property, such Permits, to the extent obtained and transferable, are included in the Purchased Assets. No loss or expiration of any such Permit is pending or threatened, other than expiration in accordance with the terms thereof of Permits that may be renewed in the ordinary course of business.

Section 2.10 Assigned or Assumed Material Agreements. Other than this document, there are no oral or written agreements relating to the Purchased Assets or the Business to which either Seller is a party or by which either Seller or any of the Purchased

Assets are bound (collectively the "Material Agreements") being assigned to and/or assume by the Buyer.

Section 2.12 Inventory Levels. As of the Closing, the quantities of each item of inventory on hand at Business will be sufficient for the continued conduct of the Business in a manner consistent with Seller's past practice.

Section 2.13 Hazardous Substances.

(a) Seller has no actual knowledge of the presence of any hazardous substance(s) as herein defined, on the Owned Real Property, except for fuel stored in underground storage tanks and related fuel dispensing equipment included in the Purchased Assets in the ordinary course of Seller's business.

(b) Seller notes that tenant failed to perform annual inspection, which is another reason that Seller is terminating the lease. Subject to that and Seller's actions to have such inspection done now, this inspection will be done. Thereafter, to the actual knowledge of Seller after no investigation or inquiry by Seller, Seller and Owned Real Property is in compliance with all state and local environmental laws, including, but not limited to the Mississippi Petroleum Underground Storage Tank Act, and the Rules of the Mississippi Department of Environment and Conversation Division of Underground Storage Tanks, in so far as such laws pertain to the Owned Real Property and Seller's business operations thereon.

As used herein "**Hazardous Substances**" shall mean; any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous or toxic substance, or other similar term, by any local, state or federal environmental law, statute, regulation or ordinance, presently in effect, including, without limitation, asbestos and petroleum products.

Section 2.14 Condition of Improvements and Equipment. Subject to 1.5, above, Seller warrants that all mechanicals, business equipment and fueling equipment are all in working condition. Seller also warrants that there are no structural, roofing, settling, functional problems to the building. Buyer may during his Due Diligence period perform inspections and shall submit in writing any found and requested items to be repaired to seller to correct.

Section 2.15 Title. Seller shall provide to Buyer a clear title examination, certification, or opinion. Within thirty (30) days, Seller shall provide notice of any encumbrance or matter of title to which Buyer objects within ten (10) days after the receipt of the owner's title insurance commitment; provided, however, that it is understood and agreed that Buyer objects to any mortgage, deed of trust, or other monetary liens except for a lien for property taxes for the year of closing which are not yet due and payable. Seller shall have ten (10) days from receipt of any such written notice to either (i) cure or agree to cure such encumbrance or title matter, or (ii) to notify Buyer of any encumbrances or title matters which Seller does not agree to cure. For all purposes hereunder, and notwithstanding any provision in this Agreement to the contrary Buyer shall be deemed to have approved all encumbrances and/or other matters of title to which Buyer fails to specifically object by providing written notice to Seller within ten (10) days of the receipt

of the owner's title insurance commitment contemplated above (such approved encumbrances, the "Permitted Encumbrances"), and the Owned Real Property shall be conveyed to Buyer subject to such Permitted Encumbrances.

That each of the warranties and representations of Seller is true and correct as of the Closing Date, and shall survive the closing for a period of one (1) year after the Closing.

ARTICLE III

Representations and Warranties of Buyer

Buyer represents and warrants to Seller as follows:

Section 3.1 **Buyer.** Buyer is a Mississippi Limited Liability Corporation and Mississippi Corporation whose full legal names are set forth in the caption of this Agreement above. Prior to Closing, Buyer agrees to provide Seller with a copy of his driver's license or other satisfactory personal identification card.

Section 3.2 **Authority.** Buyer has all requisite power and authority to execute, deliver and perform its obligations under this Agreement and the other agreements, certificates and instruments to be executed by Buyer in connection with or pursuant to this Agreement (collectively, the "Buyer Documents"). This Agreement has been, and at the Closing the other Buyer Documents will be, duly executed and delivered by Buyer. This Agreement is, and, upon execution and delivery by Buyer at the Closing, each of the other Buyer Documents will be, the legal, valid and binding agreement of Buyer, enforceable against Buyer in accordance with its respective terms (regardless of whether enforcement is sought in a proceeding of law or in equity).

Section 3.3 Governmental Consents.

(a) No consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Body is required on the part of Buyer in connection with the transactions contemplated by this Agreement, except as set out herein below.

(b) Buyer shall apply for and be able to obtain all registrations, permits and licenses so as to be able to continue the operation of the Business after the Closing.

ARTICLE IV

Covenants and Agreement

Section 4.1 **Delivery of Evaluation Materials.** Within five (5) days of the Effective Date, Seller shall deliver to Buyer copies of any of the following documents in the possession of either Seller: environmental reports concerning the underground storage tank systems of the Business or the soils of the Owned Real Property, survey or parcel description showing property lines, sales reports for the Business when Seller ran business but not with current tenant's information, for the past twenty-four (24) months, monthly sales tax filings of the Business for

the past six (6) months, property tax invoices or reports for the Owned Real Property for the past two (2) years, contracts with vendors of the Business which Seller wishes Buyer to assume at Closing (if any), and construction or building plans or surveys or drawings pertaining to the improvements situated on any of the Owned Real Property or the Leased Real Property, and any other documentation regarding the Purchases Assets which Buyer specifically requests in writing prior to the execution and delivery of this Agreement and which Seller is willing to provide (if any) (such reports and other documentation, collectively, the "Evaluation Materials").

Section 4.2 Due Diligence Period; Title Matters. Buyer shall have a period until the entry of an order by the United States Bankruptcy Court for the Southern District of Mississippi to conduct any due diligence which Buyer wishes to conduct with respect to the Purchased Assets and/or the Business. All such due diligence shall be conducted at Buyer's expense. The results of all such due diligence shall be satisfactory to Buyer in its discretion. In the event that the results of any due diligence are not satisfactory to Buyer, or Seller fails to cure or to agree to cure any encumbrance or title matter to which Buyer has specifically objected to within (10) days as contemplated above, then Buyer may terminate this Agreement upon written notice delivered to Seller's prior to the expiration of the Due Diligence Period. If Buyer is satisfied with the results of its due diligence, then Buyer may deliver notice of such approval to Seller (an "Approval Notice"). If Buyer does not terminate this Agreement by providing written notice to Seller prior to the expiration of the Due Diligence Period, then Buyer shall be deemed to have approved the results of all due diligence and to have provided an Approval Notice to Seller as of the date on which the Due Diligence Period ends. This Agreement is further contingent on a sufficient appraisal and Buyer receiving financing that is acceptable to Buyer.

Section 4.3 Access and Information. Sellers shall provide Buyer and its representatives with reasonable access to the Business and the Purchased Assets during normal business hours for purposes of conducting due diligence. Seller shall permit persons designated by Buyer to have access to the Owned Real Property and the Leased Real Property for the purpose of making surveys, environmental assessments, engineering tests, soil tests, and other investigations and tests with respect thereto. Provided, however, that Buyer shall indemnify Seller and defend and hold Seller harmless from any and all liabilities, losses, costs and expenses (including, without limitation, any death, personal injury, damage to the Owned Real Property, damage to any other real or personal property, and mechanic's liens or any other type of liens) caused by any such entry by Buyer or its agents, contractors, designees or representatives onto the Owned Real Property and/or the Leased Real Property and/or the making any such surveys, environmental assessments, engineering tests, soil tests, and/or other investigations or tests made with respect to the Owned Real Property by Buyer or its agents, contractors, designees or representatives. If Closing does not occur, Buyer shall restore the Owned Real Property to substantially the condition in which it existed at the time Buyer first entered the Owned Real Property. Buyer shall provide evidence to Seller, before Buyer enters the Owned Real Property, of Buyer's commercial general liability insurance coverage in the minimum amount of \$1,000,000 per occurrence with respect to any entry onto the Owned Real Property, and such insurance shall

name each Seller as an additional insured under the policy. Buyer's obligations under this Section 4.3 shall survive the termination of this Agreement and the Closing.

Section 4.4 Assistance with Permits and Filings. Seller will use commercially reasonable efforts to assist Buyer in obtaining any Permits, or any consents to assignment related thereto, that Buyer will require in connection with the continued operation of the Business and the Purchased Assets after the Closing.

Section 4.5 Fulfillment of Conditions by Seller. Seller agrees not to take any action that would cause the conditions to the obligations of the parties to effect the transactions contemplated hereby not to be fulfilled, including, without limitation, by taking or causing to be taken any action that would cause the representations and warranties made by Seller herein not to be true and correct as of the Closing. Seller shall take all commercially reasonable steps within their power to cause to be fulfilled the conditions precedent to Buyer's obligations to consummate the transactions contemplated hereby that are dependent on the action of the Seller.

Section 4.6 Fulfillment of Conditions by Buyer. Buyer agrees not to take any action that would cause the conditions to the obligations of the parties to effect the transactions contemplated hereby not to be fulfilled, including, without limitation, by taking or causing to be taken any action that would cause the representations and warranties made by Buyer herein not to be true and correct as of the Closing. Buyer shall take all reasonable steps within its power to cause to be fulfilled the conditions precedent to the obligations of Seller to consummate the transactions contemplated hereby that are dependent on the actions of the Buyer.

Section 4.7 Transaction Costs. Buyer shall pay all legal, accounting and other professional fees that it incurs in connection with the negotiation, execution and performance of this Agreement and the transactions contemplated hereby. Seller shall pay all legal, accounting and other professional fees incurred by Seller in connection with the negotiation, execution and performance of this Agreement and the transactions contemplated hereby. Seller shall be responsible for the expense of the preparation of the deeds of conveyance for the Owned Real Property. Buyer shall be responsible for the expenses of recording the deeds executed and delivered at the Closing and any mortgage, deeds of trust, UCC financing statements, and other security instruments in favor of Buyer's lender, if any. Buyer shall be responsible for the expense of the title examinations, opinions, certifications, and commitments, and all fees and premiums payable with respect to title insurance commitments and/or policies Buyer or its lender elects to procure. Buyer and Seller shall be equally responsible for any closing fee payable to the settlement agent closing the transactions contemplated by this Agreement.

Section 4.8 Employee Matters. Buyer shall have no obligation to offer employment to any of Seller's employees whose employment elects to terminate prior to the Closing. The employment by Buyer of any employees of the Business whose employment is terminated by Seller prior to the Closing will commence on the date of the Closing. Nothing in this Section 4.8 shall be deemed to require Buyer to retain any of the employees it hires for any period of time or at any particular compensation rate or in any particular position. Neither Buyer nor Seller intend for any individual to be a third party beneficiary to this Agreement.

Section 4.9 **Property Taxes; Transactional Taxes; Prorations.** Seller shall be responsible for any sales tax due as a result of Seller's sale of equipment or other tangible personal equipment to Buyer. Seller shall be responsible for paying the transfer tax payable with respect to the transfer of the Owned Real Property to Buyer. Real property taxes assessed against the Owned Real Property for the year in which the Closing occurs shall be prorated as of the Closing. If the amount of such 2016 real property taxes is not available as of the Closing with respect to any particular parcel included in the Owned Real Property, such proration shall be based upon the most current assessment of such parcel of real property and the tax rate for the prior tax year (unless the tax rate for the year of Closing is then available).

Section 4.10 **Risk of Loss; Condemnation.** The risk of loss by fire, flood, or other casualty, or the taking of the Owned Real Property or any part thereof by eminent domain (or by deed in lieu thereof), and the other Purchased Assets shall remain solely with Sellers until Closing. Notwithstanding the preceding sentence, in the event of any material damage to or destruction of the improvements constructed on the Owned Real Property by fire, flood, or other casualty, and/or the taking of any portion of the Owned Real Property by eminent domain or threat thereof, Buyer shall have the right, at its option, to either (a) terminate this Agreement by giving Seller written notice to such effects, or (b) proceed to Closing, in which event either (i) the Purchase Price shall be abated by the amount of the insurance proceeds paid to Seller on account of the subject damage or destruction (if any) or condemnation award paid to Seller (if any), or (ii) if no such insurance award or condemnation proceeds have been received by the appropriate Seller at the time of Closing, then the appropriate Seller shall, at the Closing, assign its right to collect such insurance proceeds to Buyer (provided that Seller will not warrant the collectability of any such proceeds or awards).

Section 4.11 **Environmental Compliance Matters.** In addition to the other documents and instruments to be executed and delivered at or prior to Closing pursuant to this Agreement, Seller and Buyer shall complete, execute, and deliver any forms necessary to evidence the change in ownership and operators of the underground storage tank systems used in the operation of the Businesses required by the Mississippi Department for Environmental Protection to provide notice of the change in ownership of the underground storage tank systems of the Businesses located in Mississippi.

Section 4.12 **Conduct of Business.** From the Effective Date and continuing through the earliest of the termination of this Agreement, the Closing, or the date which is sixty (60) days after the Effective Date, Seller agrees: (a) to operate the Businesses in a manner which is consistent with past practice, subject to the closure of any one or more of the Businesses due to the unavailability of labor upon commercially reasonable terms, casualty events resulting in damage or destruction of any of the Purchased Assets, or other events beyond the control of Seller; and (b) to keep the Purchased Assets in substantially the same condition as such Purchased Assets are in as of the Effective Date, ordinary wear and tear excepted, loss, damage, or destruction by casualty event or criminal actions excepted, and damage or destruction caused by Buyer or its agents, employees or independent contractors.

ARTICLE V

Closing Conditions

Section 5.1 **Conditions to Obligations of Buyer.** The obligations of Buyer under this Agreement are subject to the satisfaction at or prior to expiration of the Due Diligence Period or the Closing, as applicable, of the following conditions, but compliance with any of such conditions may be waived by Buyer in writing:

(a) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects at and as of the Closing with the same effect as though such representations and warranties were made at and as of the Closing.

(b) Seller shall have performed and complied with all the covenants and agreements required by this Agreement to be performed or complied with by Seller at or prior to the Closing, including without limitation the delivery of all items required to be delivered by Seller.

(c) All contractual and governmental consents, approvals, orders, permits, licenses, or authorizations necessary for Buyer's continued operation of the Business after the Closing shall have been obtained prior to the expiration of the Closing.

(d) As of the end of the Due Diligence Period and continuing as of the Closing, there shall be no pending or threatened material litigation in any court or any proceeding before or by any Governmental Body to restrain or prohibit or obtain damages or other adverse relief with respect to the Purchased Assets or the Business or this Agreement or the consummation of the transactions contemplated hereby.

(e) At the Closing, Seller shall have delivered to Buyer or the settlement agent a payoff letter or other written commitment from the lien holders to release or terminate their mortgages, deeds of trust or liens, executed mortgage releases, deed of trust releases, UCC-3 Termination Statement, and such other releases satisfactory to Buyer and the settlement agent to evidence the release of any mortgages, deeds of trust or liens on the Purchased Assets.

(f) Prior to the expiration of the Due Diligence Period, Buyer shall have determined that any environmental site assessments, investigations, and testing conducted by Buyer with respect to the Owned Real Property, and/or other Purchased Assets (at Buyer's expense) are satisfactory to Buyer in its discretion.

(g) Within thirty (30) days of the Effective Date and as contemplated above, Buyer shall have received (at Buyer's expense) commitments for owner's policies of title insurance or title reports respecting the Owned Real Property reflecting only such exceptions as are acceptable of Buyer in its discretion, of if such title commitments or title reports reveal any conditions or encumbrances which are not acceptable to Buyer, the Seller which owns such parcel of Owned Real Property shall have cured such title condition or encumbrance or committed to cure such condition or encumbrance as contemplated above.

Section 5.2 **Conditions to Obligations of Seller.** The obligations of Seller under this Agreement are subject to this satisfaction at or prior to the Closing of the following conditions, but compliance with any of such conditions may be waived by Seller in writing.

(a) All representations and warranties of Buyer contained in this Agreement shall be true and correct in all material respects at and as of the Closing with the same effect as though such representations and warranties were made at and as of the Closing.

(b) Buyer shall have performed and complied with the covenants and agreements required by this Agreement to be performed or complied with by Buyer at or prior to the Closing, including without limitation the delivery of the Purchase Price and all other items required to be delivered by it pursuant to above.

(c) All necessary material, contractual and governmental consents, approvals, orders or authorizations shall have been obtained prior to Closing.

(d) There shall be no pending or threatened material litigation in any court or any proceeding before or by any Governmental Body to restrain or prohibit or obtain material damages or other adverse relief with respect to this Agreement or the consummation of the transactions contemplated hereby except for the Seller's chapter 11 bankruptcy case pending before the United States Bankruptcy Court for the Southern District of Mississippi Case No. 16-51778-KMS. The United States Bankruptcy Court for the Southern District of Mississippi must approve the sale.

ARTICLE VI

Indemnification

Section 6.1 **Indemnification of Buyer by Seller.** Seller agrees to indemnify and hold Buyer, its member(s), managers, employees and agents (collectively, the "Buyer Parties") harmless from any and all liabilities, obligations, claims, contingencies, damages, costs and expenses, including all court costs and reasonable attorneys' fees (collectively, "Losses"), that Buyer may suffer or incur as a result of on relating to any one or more of the following:

(a) the breach of any representation or warranty made by Seller in this Agreement or pursuant hereto;

(b) the breach of any covenant or agreement of Seller under this Agreement;

(c) any liabilities, debts or obligations relating to the Purchased Assets or the operation of the Business prior to the Closing and which exist of the date of Closing, known or unknown;

(d) any liability under any Material Agreement arising before or after Closing and related to the facts existing or events occurring, including any breach of a Material Agreement, prior to Closing, excluding any obligations of tenant and anything not discovered within 365 days; or

- (e) any liabilities, debts or obligations of Seller.

Section 6.2 Survival. The representations and warranties of Seller under this Agreement shall survive the execution and delivery of this Agreement and the Closing of the transactions contemplated hereby for a period of one (1) year and shall not be deemed to have merged into the deeds, bills of sales, assignment, and/or other closing documents. The covenants of Seller above, shall survive the execution and delivery of this Agreement and the Closing of the transactions contemplated hereby and shall not be deemed to have merged the deeds, bill of sale, assignment, and/or other closing documents.

Section 6.3 Indemnification of Seller. Buyer agrees to indemnify and hold Seller, and each Seller's officers, directors, shareholders, employees, and agents (each, a "Seller Party", and collectively, the "Seller Parties") harmless from any and all Losses that any Seller Party may suffer or incur as a result of or relating to any one or more of the following;

- (a) the breach of any representation and/or warranty made by Buyer in this Agreement or pursuant hereto;
- (b) the breach of any covenant or agreement of Buyer under this Agreement.;
- (c) any liabilities, debts, or obligations arising out of the operation of the Business or the Purchased Assets following the Closing;
- (d) any liabilities, debts, or obligations of Buyer.

Section 6.4 Survival. The representations and warranties of Buyer under this Agreement shall survive the execution and delivery of this Agreement and the Closing of the transactions contemplated hereby for a period of one (1) year and shall not be deemed to have merged into the deeds, bills of sale, and/or other closing documents. The covenants of Buyer above shall survive the execution and delivery of this Agreement and the Closing of the transactions contemplated hereby and shall not be deemed to have merged the deeds, bill of sale, assignment, and/or other closing documents.

Section 6.5 Notice. Any party entitled to receive indemnification under this Article VI (the "Indemnified Party") agrees to give prompt written notice to the party or parties required to provide such indemnification (the "Indemnifying Parties") upon the occurrence of any indemnifiable Loss or the assertion of any claim or the commencement of any action or proceeding in respect of which such a Loss may reasonable be expected to occur (a "Claim"), but the Indemnified Party's failure to give such notice will not affect the obligations of the Indemnifying Party under this Article VI except to the extent that the Indemnifying Parts is materially prejudiced thereby. Such written notice shall include a reference to the event or events forming the basis of such Loss of Claim and the amount involved, unless such amount is uncertain or contingent, in which even the Indemnified Party will give a later written notice when the amount becomes fixed.

ARTICLE VII

Miscellaneous

Section 7.1 **Termination.** This Agreement and the transactions contemplated hereby may be terminated and abandoned (a) by Buyer at any time prior to the expiration of the Due Diligence Period if Buyer is not satisfied with the results of its due diligence; (b) at any time prior to the Closing by mutual written consent of Buyer and Seller; or (c) by either Buyer, on the one hand, or either Seller, on the other hand, if a condition to performance by the terminating party hereunder has not been satisfied or waived, in writing, prior to the expiration of the Due Diligence Period of the Closing, as applicable.

Section 7.2 **Notices.** All notices that are required or may be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by facsimile or by registered or certified mail, postage prepaid, to the parties at the following addresses (or to the attention of such other person or such other address as any party provide to the other parties by notice in accordance with this):

If to Buyer:

**Will Martens
821 Crown Circle
Birmingham, Alabama 35242**

If to Seller:

**David Talley
75 Woodridge Lane
Picayune, Mississippi 39466**

Any such notice or other communication shall be deemed to have been given and received (whether actually received or not) on the day it is personally delivered or delivered by courier or overnight delivery service or sent by facsimile or, if mailed, when actually received (as confirmed on the return receipt card).

Section 7.3 **Attorneys' Fees and Costs.** If attorneys' fees or other costs are incurred to secure performance of any obligations hereunder, or to establish damages for the breach thereof or to obtain any other appropriate relief, whether by way of prosecution or defense, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection therewith.

Section 7.4 **Modification.** This Agreement may not be modified or amended except in writing signed by the party against whom enforcement is sought.

Section 7.5 **Counterparts.** This Agreement may be executed in one or more counterparts for the convenience of the parties hereto, all of which together shall constitute one and the same instrument.

Section 7.6 **Interpretation.** The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement. Neither this Agreement nor any provision contained in this Agreement shall be interpreted in favor of or against any party hereto because such party or its legal counsel drafted this Agreement or such provision.

Section 7.7 **Assignment.** This Agreement may not be assigned by any party hereto, by operation of law or otherwise, without the prior written consent of the other parties to this Agreement.

Section 7.8 **Schedules; Entire Agreement.** Each schedule attached to this Agreement is hereby incorporated by reference into and made a part of this Agreement for all purposes. This Agreement and the exhibits and schedules attached hereto and the related agreements and instruments contemplated hereby contain the entire understanding of the parties relating to the subject matter hereof and supersede all prior written or oral and all contemporaneous oral agreements and understandings relating to the subject matter hereof. This Agreement may not be modified or amended except in writing signed by the party against whom enforcement is sought. Unless otherwise expressly stated in this Agreement, no right or remedy described or provided in this Agreement is intended to be exclusive or to preclude a party from pursuing other rights and remedies to the extent available under this Agreement, at law or inequity.

Section 7.9 **Specific Performances.** The parties hereby acknowledge and agree that the failure of any party to perform its agreement and covenants hereunder, including its failure to take all required actions on its part necessary to consummate the transactions contemplated hereby, will cause irreparable injury to the other party for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of injunctive relief by any court of competent jurisdiction to compel performance of such party's obligations and to the granting by any court of the remedy of specific performance of its obligations hereunder.

Section 7.10 **Binding Effect; No Third Party Beneficiaries.** This Agreement is intended for the sole benefit of the parties hereto, and their successors and permitted assigns. All the terms, conditions, representations, warranties, covenants and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and permitted assigns of the parties hereto. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Agreement and their successors and permitted assigns. Nothing expressed or referenced to this Agreement shall be

construed to give any other person or entity any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

Section 7.11 Governing Law; Venue. This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of Mississippi, without giving effect to any conflicts of law rule or principle that might require the application of the laws of another jurisdiction. Any action to enforce this Agreement or any provision hereof or otherwise arising out of this Agreement shall be commenced in the Mississippi state court of appropriate jurisdiction in Harrison County, Mississippi.

Section 7.12 Rights Cumulative. The rights and remedies of the parties under this Agreement are cumulative with any other rights and remedies otherwise available to the parties at law or in equity.

Section 7.13 Waiver. Any waiver of any right, power, or privilege hereunder must be in writing and signed by the party purported to have waived such right, power, or privilege. Neither the failure nor any delay by any party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver unless in such a writing signed by the waiving party, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, privilege.

Section 7.14 Obligations of Buyer Parties. BAMB Properties, II, LLC agrees to perform and be bound by, all representations, warranties, covenants, and agreements of "Buyer" under this Agreement, and all term and conditions set forth in this Agreement. Notwithstanding any provision of this Agreement to the contrary, all obligations of the individuals comprising "Buyer" under this Agreement shall be joint and several.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER:


Talley Enterprise Holdings, Inc.



David Talley, President

BUYER:

BAMB Properties, II, LLC



Will Martens, Managing Member

SCHEDULE 1.1

**Preliminary Listing of
Equipment, Furniture and Fixtures Included in Purchased Assets***

* The attached preliminary listing is subject to review, revision, and approval by the parties following walk-through to be conducted prior to the Closing

[Attached]

Fuel dispensers

Pumps
UST's
Canopy
Signage

Magnolia STATE BANK

October 12, 2016

Re: BAMM Enterprises II, Inc.

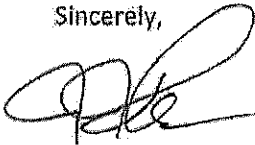
To Whom It may Concern

Mr. Will Martens is a very good customer of Magnolia State Bank, and it is my pleasure to present you with this approval letter. Mr. Will Martens, owner of BAMM Enterprises II, Inc. has been approved for the purchase of the property located at 7011 Beat Line Road Long Beach, MS.

This approval is subject to clean title and appropriate value based on appraisal from licensed appraiser.

If you need any additional information, please do not hesitate to contact me at (601) 582-5276

Sincerely,



JJ Thoms
Petal President