

1 JOHN D. MAXEY (SBN: 117617)  
2 DUDUGJIAN & MAXEY  
3 A LAW CORPORATION  
4 13 SIERRAGATE PLAZA BLDG B  
ROSEVILLE, CALIFORNIA 95678  
Telephone: (916) 786-7272

5 Attorneys for Debtor

6  
7  
8 **UNITED STATES BANKRUPTCY COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
10 **SACRAMENTO DIVISION**

11 In re: ) Case No. 15-26612-C-11  
12 ) Chapter 11  
13 UNITED GAS AND FOOD, INC., ) Docket Control # JDM-008  
14 )  
Debtor. ) Date: December 6, 2016  
15 ) Time: 10:30 a.m.  
16 ) Place: Dept C, Courtroom 35  
501 I Street, 6th Floor  
Sacramento, CA 95814  
17 Judge: Christopher M. Klein

18 **DEBTOR’S MOTION TO APPROVE THE SALE OF**  
19 **REAL ESTATE AND PERSONAL PROPERTY FREE**  
20 **AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES,**  
**AND INTERESTS PURSUANT TO 11 U.S.C. §§ 105 and 363(b)**

21 Debtor UNITED GAS AND FOOD, INC., by and through its undersigned counsel, and  
22 pursuant to 11 U.S.C. §§105 and 363(b) and (f) and Fed.R.Bankr.P. 2002(a)(2) and 6004, files this  
23 Motion (the “Sale Motion”) to Approve the Sale of the Real Estate and Personal Property of Debtor  
24 Free and Clear of Liens, Claims, Encumbrances and Interests, and in support thereof states as  
25 follows:  
26

27 **JURISDICTION AND VENUE**

28 This Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§157 and 1334.

DUDUGJIAN & MAXEY  
A Law Corporation  
13 SierraGate Plaza Bldg. B  
Roseville, CA 95678

1 Venue of the case in this district is proper pursuant to 28 U.S.C. §§1408 and 1409.

2 **BACKGROUND**

3 Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (“the  
4 Bankruptcy Code”) on August 20, 2016. The Debtor is managing its affairs as debtor in possession  
5 pursuant to section 1106 and 1108 of the Bankruptcy Code.  
6

7 Debtor is the owner of certain real property located at 1451 Meadowview Rd., Sacramento,  
8 California 95832, consisting of the land, together with all buildings, improvements, easements and  
9 appurtenances thereon and thereto (the “Property”). Debtor presently operates the convenience store  
10 and Valero-branded retail motor fuel station located at the property (the “Business”).  
11

12 Debtor desires to sell the Property, the Business, the related personal property used to operate  
13 the Business, as more fully set forth in the agreement, owned by Debtor and exclusively used in the  
14 operation of the Business, and the fuel and merchandise inventory, which is owned by Debtor and  
15 located at the Property. The Property, the Business, and the Personal Property are referred to as the  
16 **“Assets”**.  
17

18 Pursuant to the terms of the confirmed Chapter 11 Plan of Reorganization, all claims will be  
19 paid in full, in cash, from sale of Debtor’s Assets. The deadline for close of escrow on the Assets  
20 is December 31, 2016. If escrow does not close by December 31, 2016, the case will convert to  
21 Chapter 7.  
22

23 The Debtor has been actively pursuing a sale of the Property with the aim to pay off amounts  
24 owed in accordance with the terms of the Confirmed Plan.

25 To achieve this goal, in addition to employing its own marketing efforts, the Debtor hired  
26 Westside Pacific Inc./LJ Mismas (“Broker”) to oversee the marketing and sale efforts of the  
27 Property.  
28

DUDUGJIAN & MAXEY  
A Law Corporation  
13 SierraGate Plaza Bldg. B  
Roseville, CA 95678

1 The Debtor has been working diligently with Broker to locate a purchaser for the Property  
2 and achieve its primary goal of paying all net proceeds from the sale in accordance with the terms  
3 of the Confirmed Plan.

4  
5 Broker has undertaken its customary marketing efforts both regionally and nationally in  
6 connection with its attempt to secure a buyer for the Property.

7 The Debtor accepted an offer and entered into a Standard Offer, Agreement and Escrow  
8 Instructions for Purchase of Real Estate, and Addendum(s) (collectively the “Agreement”) for the  
9 sale of the Assets free and clear of any interest therein to Mike Amidi and/or Assignee (“Buyer”) for  
10 a total purchase price of \$2,900,000 (the “**Purchase Price**”), to be paid by the Buyer in cash upon  
11 closing. A copy of the Agreement is filed herewith as Exhibit A.

12  
13 The Agreement has no contingencies, has a close of escrow date of December 30, 2016 and  
14 simply needs this Court’s approval. The Broker has had extensive communication with Buyer and  
15 is confident that the transaction will close. The Buyer has provided proof of funds necessary to  
16 comply with the terms of the Agreement.

17  
18 The Debtor has determined in its business judgment that the Buyer’s offer, which was the  
19 result of the extensive sale efforts led by Broker, is the highest and best offer attainable. The Debtor  
20 believes the private sale efforts, upon considering the extensive pre-petition sale efforts, have  
21 resulted in an arms-length, fair value transaction which will result in payment of all net proceeds  
22 from the sale in accordance with the terms of the Confirmed Plan.

23  
24 The Property shall be sold, transferred and conveyed by the Debtor to the Buyer at the  
25 Closing free and clear of all Encumbrances, pursuant to Section 363 of the Bankruptcy Code and an  
26 order of this Court granting this Motion (the “**Approval Order**”).

27  
28 //

DUDUGJIAN & MAXEY  
A Law Corporation  
13 SierraGate Plaza Bldg. B  
Roseville, CA 95678

**SALE OF THE ASSETS**

As previously mentioned, the Debtor has entered into an Agreement for the purchase of the Assets by Mike Amidi and/or Assignee.

The secured debt on the Debtor’s Assets is as follows: (1) Secured claim of Merchants Bank of California, N.A. in the amount of \$1,535,855.84, as of December 1, 2016; (2) Secured claim of the Internal Revenue Service in the amount of \$2,590.67; (3) Secured claim of Insight Environmental, Inc. in the amount of \$361,661.19; and, (4) Secured claim of State Board of Equalization in the amount of \$25,321.29.

The Debtor believes that the sale of the Assets of the Debtor is in the best interest of all creditors and will be sufficient to pay all creditor claims pursuant to the terms of the Confirmed Plan.

Accordingly, in the exercise of its sound business judgment, the Debtor believes that the sale of the Assets at this time is in the best interests of the Debtor, its estate and its creditors.

The Debtor has conducted an investigation of the Assets and has evaluated its options regarding the sale. As a result thereof, the Debtor believes that the respective offer for the Assets set forth herein represents the best offer for the Assets.

**AUTHORITY TO SELL FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS**

By this Motion, the Debtor requests that this Court, pursuant to Section 363(b), (f) and (m) of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure, approve the Agreement and the sale of the Assets to the Buyer free and clear of all encumbrances.

The Bankruptcy Code provides the authority for the Debtor to sell the real and personal property free and clear of all liens, claims, encumbrances and interests. 11 U.S.C. §363(b)(1) provides that the Debtor, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.

1 11 U.S.C. §363(f) states that the debtor may sell property under subsection (b) of this section  
2 free and clear of any interest in such property or an entity other than the estate, only if (1) applicable  
3 non-bankruptcy law permits sale of such property free and clear of such interest; (2) such entity  
4 consents; (3) such interest is a lien and the price at which such property is to be sold is greater than  
5 the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such  
6 entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such  
7 interest.  
8

9 Section 363 is made applicable by the provisions of the confirmed Plan in this case. Section  
10 363(b)(1) of Title 11 authorizes sales of property of the estate “other than in the ordinary course of  
11 business.” 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)  
12 (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose  
13 in a Chapter 11 reorganization case. See, e.g., 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of  
14 property of the estate as a means for implementing a Chapter 11 plan).  
15

16 Section 363(b)(1) states that the “trustee, after notice and a hearing, may use, sell, or lease,  
17 other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Courts  
18 usually defer to the business judgment of a debtor in deciding whether or not to authorize a debtor  
19 to sell property outside the ordinary course of business. See e.g., *In re Continental Airlines, Inc.*, 780  
20 .2d 1223 (5th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Mason’s*  
21 *Nursing Center, Inc.*, 73 E.R. 360, 362 (Bankr. S.D. Fla. 1987).  
22

23 In considering whether a debtor is justified in selling assets outside the ordinary course of  
24 business, courts consider four factors: (1) a sound business reason or emergency justifies a  
25 pre-confirmation sale; (2) adequate and reasonable notice of the sale was provided through interested  
26 parties; (3) the sale has been proposed in good faith; and (4) the purchase price is fair and reasonable.  
27  
28

1 For all of the reasons set forth in this Motion, the Debtor, through the exercise of its business  
2 judgment, has determined that the sale of the Assets to the Buyer and the other transactions set forth  
3 in the Agreement are in the best interests of the Debtor, its creditors and the estate. The Debtor has  
4 been engaged in efforts to market the Property and has determined that the proposed Purchase Price  
5 offered by the Buyer is reasonable, represents fair market value, and the proposed sale is in the best  
6 interests of the estate.  
7

8 Rule 6004(f)(1) of the Federal Rules of Bankruptcy Procedure specifically provides that  
9 “sales not in the ordinary course of business may be by private sale or by public auction.”  
10

11 “A large measure of discretion is available to a bankruptcy court in determining whether a  
12 private sale should be approved.” *Matter of Embrace Sys. Corp.*, 178 B.R. 112, 123 (Bankr. W.D.  
13 Mich. 1995). A private sale under § 363 of the Bankruptcy Code can be approved by the bankruptcy  
14 court if the debtor or trustee shows good cause to depart from the typical sale process subject to  
15 higher and better offers. *See In re Dewey & Leboeuf LLP*, No. 12-12321 MG, 2012 WL 5386276,  
16 at \*6 (Bankr. S.D.N.Y. Nov. 1, 2012) (holding private sale was warranted due to added cost of  
17 auction process). Indeed, “a § 363(b) sale transaction does not require an auction procedure. The  
18 auction procedure has developed over the years as an effective means for producing an arm’s length  
19 fair value transaction.” *In Re Trans World Airlines, Inc.*, No. 01-00056(PJW), 2001 WL 1820326,  
20 at \*4 (Bankr. D. Del. Apr. 2, 2001).  
21

22 The sale of assets to the Buyer as contemplated herein achieves an arms-length, fair value  
23 transaction. Because the Assets have been extensively marketed by Debtor and/or Broker over a  
24 lengthy period, the Debtor believes that the sale proposed herein achieves the maximum value for  
25 the Assets. To that end, the Debtor engaged Broker and underwent an extensive marketing process  
26 in an effort to unearth the highest bidder for the Assets. Broker was successful in securing a  
27  
28

1 potential purchaser who is in a unique position to afford a cash offer to consummate the purchase  
2 of the Assets. The Agreement was negotiated in good faith and at arm's length between the Buyer  
3 and the Debtor.

4  
5 The Debtor requests that the Court enter an order waiving the 14-day stay set forth in Rules  
6 6004(g) of the Federal Rules of Bankruptcy Procedure and providing that the order granting this  
7 Motion be immediately enforceable and that the closing under the Agreement may occur  
8 immediately.

9  
10 **CONCLUSION**

11 WHEREFORE, the Debtor respectfully requests the entry of an order granting this Sale  
12 Motion, including approving the Agreement, approving the sale of the Assets free and clear of all  
13 liens, claims, encumbrances, and interests, and grant such other and further relief as is just and  
14 proper.

15 Dated: 11/21/16

DUDUGJIAN & MAXEY  
A Law Corporation

17 By: /s/ John D. Maxey  
18 JOHN D. MAXEY  
19 Attorneys for Debtor

20  
21  
22  
23  
24  
25  
26  
27  
28  
DUDUGJIAN & MAXEY  
A Law Corporation  
13 SierraGate Plaza Bldg. B  
Roseville, CA 95678