

## TERMS AND CONDITIONS OF SALE

1. **Seller.** The Seller is James B. Angell, Chapter 7 Trustee for Malcolm McFall Babb, Case Number 06-03003-8-JRL, E.D.N.C. (the "Trustee"). The Trustee has the authority to sell the interests of "M. McFall Babb", Susan S. Shaw and Cynthia Ann Simpson Hattersley in the Property. A copy of the order granting such authority is made a part to the Trustee's Deed (see paragraph 12(a) below) attached hereto as Exhibit A. It is noted that Exhibit A is a specimen copy of the Trustee Deed and the precise language is subject to change.
2. **Property.** The Property to be sold is all of the plot, piece or parcel of land described below, together with any improvements located thereon located in the City of Charlotte, County of Mecklenburg, State of North Carolina, generally described as one-half interest as tenant in common in that property described as approximately 10.3 acres located at Milton Road and Herrington Drive in Charlotte, Mecklenburg County, North Carolina . The Property will be conveyed using the legal description attached to the Trustee's Deed (see paragraph 12(a) below) attached hereto as Exhibit A. No personal property is to be conveyed as part of the sale.
3. **Purchase Price.** The Purchase Price shall be the highest bid from a Qualified Bidder that is accepted by the Auctioneer, accepted by the Trustee, and approved by the Bankruptcy Court.
4. **No Conditions.** There shall be no conditions that Buyer be able to obtain financing of any part of the purchase price. The sole condition shall be approval of the sale by the United States Bankruptcy Court presiding over the bankruptcy case of Malcolm McFall Babb, Case No. 06-03303-8-JRL, E.D.N.C.
5. **Conditions to Final Bid.** Any acceptable final bid from a Qualified Bidder (a) be immediately followed by a signed and written acknowledgement of the amount of the bid on these Terms and Conditions of Sale; (b) be accompanied by demonstration of an ability to close in a prompt fashion; and (c) posting of a good faith deposit in the amount of at least \$10,000, paid in the form of cash, a certified or cashier's check, unless extended in the discretion of the Trustee in his sole discretion.
6. **Recommendation of High Bid.** Upon the conclusion of the bidding process at the Sale, the Trustee shall submit the best bid from a Qualified Bidder (the "Successful Bid") to the Bankruptcy Court for approval in an order confirming sale. In addition, the Trustee may seek approval of one or more unsuccessful bidders making "back up" offer(s) in the event of a default by the Successful Bidder. In recommending the best bid, the Trustee shall use his business judgment, taking into account factors including but not limited to the amount of money to be paid, the timing of monies to be paid, the solvency of the bidder and the risk of nonpayment of deferred amounts.
7. **"Back up" Offer.** An unsuccessful bidder wishing to be considered for the sale in the event that the Successful Bidder fails to close within the time frame established by these Terms of Sale may elect in writing to make an irrevocable "back up" offer by having the Auctioneer to hold a good faith deposit in the amount of \$10,000.00 until the closing date for such Successful Bid; if the Successful Bidder fails to close within the established time frame,

Initials: \_\_\_\_\_

then if such unsuccessful bidder has been approved by the Court, the Trustee shall close with sale with the approved unsuccessful bidder.

If the Auctioneer holds the good faith deposit of an unsuccessful bidder and closes with the Successful Bidder, then the unsuccessful bidder's good faith deposit shall be returned by the Auctioneer within three (3) business days after the closing.

8. **Failure to Meet Conditions.** In the event that the Successful Bidder does not timely comply with the conditions to final bid, the Trustee may seek sell the Property to the Qualified Bidder making the next highest "back up" offer pursuant to paragraph 7 above, and, upon notification thereof, such Qualified Bidder shall be required to honor the Terms and Conditions of Sale with respect to its bid.
9. **Retention of Deposits.** The Auctioneer shall retain any good faith deposit made by the Successful Bidder or a Qualified Bidder making a "back up" offer until the closing of the sale of the Property; provided, that the Auctioneer shall continue to hold any deposit made by the Successful Bidder or an unsuccessful bidder whose bid has been approved by the Court after default by such bidder until the rights of the parties to the deposit have been adjudicated. Any deposits posted by a bidder shall be applied to the purchase price at closing to such bidder or to the damages to the estate upon a default by the bidder posting the deposit.
10. **Liability for Breach.** The Successful Bidder or any unsuccessful bidder whose bid has been approved by the Bankruptcy Court fails to close within the established time frames, then the Trustee shall retain any deposits, and, in addition, the Successful Bidder shall be liable for breach of contract and/or such other claims and causes of action as may be available under North Carolina law, federal bankruptcy law, and such other law as may apply.
11. **No Credit Bids:** Credit bids that operate to relinquish claims against the estate are not permitted.
12. **Approval of Sale:** No bid at auction shall be deemed a final sale absent approval from the Bankruptcy Court. The Trustee shall seek to have an order confirming the sale entered by the Court immediately after the auction is completed.
  - a. **Title; Deed.** Title must be delivered at Closing by Trustee's Quitclaim Deed, a copy of which is attached hereto as Exhibit A. The Trustee will obtain an order from the Bankruptcy Court selling the Property shall be free and clear of all liens for ad valorem taxes (current year ad valorem taxes being prorated to the date of closing); the judgment lien against Malcolm M. Babb in favor of Carolina First Bank, as successor to Anchor Bank (formerly First Atlantic Bank) based on that action originally filed in the Common Pleas Court of the Fifteenth Judicial Circuit of South

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Carolina, Horry County, Civil Action No. 95-CP-26-2539, and the judgment lien in favor of Char-Meck Hospital Authority against Susan Shaw, Case No. 04-CVM-28215<sup>1</sup>, with such liens, claims and encumbrances to attach to the proceeds of such sale. The sale will be made free and clear of any vested or contingent right in the nature of dower or curtesy in accordance with 11 U.S.C. §363(g).<sup>2</sup> The Property shall be sold free and clear of these liens in accordance with 11 U.S.C. §§ 363(f) and 105, and the sale of the Property will be free and clear of any unsecured claims against the Debtor. The Buyer shall take title to the Property subject to any liens, claims and encumbrances not specified in this paragraph.

13. Subject to this order, any bidder is advised to undertake title research prior to submitting a bid to satisfy himself as to any liens, encumbrances or other exceptions of record, including: but not limited to any deeds of trust, judgments, outstanding ad valorem tax liens, materialmen's liens, utility easements, and restrictive covenants of record.
14. **Closing Costs.** All closing costs (specifically including costs of recording the deed and for preparation and recording of all instruments required to secure the balance of the purchase price) other than the excise taxes (revenue stamps) payable to the Register of Deeds, any land transfer taxes payable by seller, and the sellers attorneys fees are the responsibility of the buyer. Any outstanding and accrued ad valorem taxes on the Property shall be paid by Buyer.
15. **Seller Payments.** Seller shall pay for preparation of a deed and all other documents necessary to perform Seller's obligations under this agreement, and for excise tax (revenue stamps) and land transfer taxes required by law.
16. **Closing.** Closing shall be defined as the date and time of recording of the deed. All parties agree to execute any and all documents and papers necessary in connection with Closing and transfer or title after ten but within fifteen days after the entry of the Order Approving Sale. The deed is to be made to persons making the bid or such other person(s) designated by the bidder in the bid.
17. **CLOSING SHALL CONSTITUTE ACCEPTANCE OF THE TITLE TO THE PROPERTY AND THE CONDITION OF THE PROPERTY IN ITS 'AS IS' CONDITION.** Closing and acceptance of the deed by Buyer shall constitute full performance by Seller and shall discharge Seller of all terms, conditions and agreements made or required to be performed hereunder and no liability therefore on the part of the Seller shall survive delivery of the deed unless the parties agree in writing to have such items survive delivery of

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<sup>1</sup> Susan Shaw, the co-owner of the Property contends that the judgment is against someone else named "Susan Shaw" and not against her.

<sup>2</sup> Susan Shaw and Cynthia Hattersley state that they are not married at this time. Mitchell McFall Babb is not married at this time. Malcolm McFall Babb is married to Brenda Babb, but both disclaim that Malcolm McFall Babb has any interest in the Property.

Initials: \_\_\_\_\_

the deed.

18. **No Warranties or Conditions regarding Use of the Property.** Seller makes no representations or warranties regarding the zoning of the property or the absence of any restrictions on use of the property. Prior to signing this Offer to Purchase and Contract, Buyer is advised to review the zoning for the Property, and Restrictive Covenants, if any, which may limit the use of the Property, and to read the Declaration of Restrictive Covenants, By-Laws, Articles of Incorporation, Rules and Regulations, and other governing documents of the owners' association and/or the subdivision, if applicable.
19. **No Warranties or Conditions Regarding Flood Hazard Area.** The Seller has no knowledge and makes no representations regarding the possible location of the Property in a Special Flood Hazard Area. Buyer is cautioned to undertake due diligence to determine whether the Property is located in a Special Flood Hazard Area prior to signing this contract.
20. **No Warranties or Conditions Regarding Assessments.** Seller makes no warranty regarding special assessments, either pending or confirmed, for sidewalk, paving, water, sewer or other improvements on or adjoining the Property. Buyer is cautioned to undertake due diligence to determine whether there are any pending or confirmed special assessments with respect to the Property. Buyer shall take title subject to all pending assessments and all any owners' association assessments and all governmental assessments confirmed through the time of Closing, if any.
21. **Bankruptcy Court Approval; Jurisdiction.** The validity of any Contract resulting from the acceptance by the Trustee of a bid made in accordance with these terms shall be subject to the entry of an order of the Bankruptcy Court in the case of In re Malcolm M. Babb, Case No. 06-03003-8-JRL, E.D.N.C., approving this contract; provided that the bidder shall have no rights to terminate or withdraw from this Contract prior to Bankruptcy Court approval except pursuant to specific provisions allowing such termination or withdrawal set out herein. All controversies between the parties shall be presented and adjudicated exclusively in the Bankruptcy Court for the Eastern District of North Carolina and all parties consent to personal jurisdiction and venue therein.
22. **No Personal Liability of Trustee.** Notwithstanding anything in this Contract, it is expressly understood and agreed among the parties that the Trustee has no personal knowledge of the Premises and is acting solely as Trustee and shall have no personal liability in the event any representation, warranty or covenant made by Seller herein shall prove to be inaccurate. Buyer acknowledges that Seller is a party to this contract solely in his capacity as Trustee and shall not have any personal liability hereunder.
23. **Risk of Loss.** The risk of loss or damage by fire or other casualty prior to Closing shall be upon Seller. If the improvements on the Property are destroyed or materially damaged prior to Closing, either Buyer or Seller may terminate this contract by written notice delivered to the other party and all deposits shall be returned to Buyer. In the event Buyer does NOT elect to terminate this contract, Buyer shall be entitled to receive, in addition to the Property, any of the Seller's insurance proceeds payable on account of the damage or destruction applicable to the

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Property being purchased, if any.

24. **No Assignment.** This contract may not be assigned without the written consent of all parties, but if assigned by agreement, then this contract shall be binding on the assignee and his heirs and successors.
25. **Binding Effect; Construction.** This contract shall be binding upon and shall inure to the benefit of the parties i.e., Buyer and Seller and their heirs, successors and assigns. As used herein, words in the singular include the plural and the masculine includes the feminine and neuter genders, as appropriate.
26. **Disclosure of Relationships.** The Bidder is not a friend, relative or other insider of the Malcolm McFall Babb or Mitchell McFall Babb, and the Bidder does not hold any interest adverse to Malcolm McFall Babb or Mitchell McFall Babb, except as follows:

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The undersigned bidder(s) has signed the Terms and Conditions prior to tendering a bid, and understand s that these terms and conditions will be incorporated and made a part of any offer made at the sale, and if accepted, will become part of the contract between the Trustee and the bidder. The Trustee is not required to consider any bid made subject to any additional or conflicting terms with the Terms and Conditions of Sale.

Proof of identity and the ability to close is required.

Initials: \_\_\_\_\_

Bidder(s):

Name(s): \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_

Date: \_\_\_\_\_

If the deed is to be made to someone other than the Bidder or a Corporation, Limited Liability Company or other entity to be formed by the above-referenced Bidder whose owners are solely comprised of the above-referenced bidder, disclose the following:

The name of entity/person to take title at closing:

\_\_\_\_\_

Owners and managing agents of the entity/person to take title at closing are:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The amount of the "Stalking Horse Bid" made by the Bidder is: \$60,000.00.

\_\_\_\_\_  
Initials

Initials: \_\_\_\_\_



Prepared by James B. Angell, Howard Stallings From & Hutson, P.A., P.O. Box 12347, Raleigh, NC 27605

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

TRUSTEE'S DEED

THIS TRUSTEE'S DEED made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by James B. Angell, Trustee in Bankruptcy for Malcolm McFall Babb, Grantor, whose address is P.O. Box 12347, Raleigh, NC 27605, to XXXX and wife, XXX, whether one or more, Grantee, whose address is XXXXXXXXXXXX.

WITNESSETH:

THAT WHEREAS a certain Voluntary Petition in Bankruptcy entitled "*Malcolm Mcfall Babb, Case Number 06-08003-8-JRA*" has been filed with the United States Bankruptcy Court, Eastern District of North Carolina; and whereas a copy of the Order appointing the Trustee is attached hereto as Exhibit A; and whereas by Order Confirming Sale of Real Property attached hereto as Exhibit B; and whereas by an Order Allowing Sale of Property Free and Clear of Liens Claims and Interests, attached hereto as Exhibit C, the Trustee was authorized to sell the herein described real property to the Grantee for the sum of \$XXXX; and whereas said purchase price has been fully paid;

NOW, THEREFORE, the Grantor, acting as Trustee as aforesaid, under authority of said Order of the Court and in consideration of said purchase price of \$XXXXXXXX, has bargained and sold and by these presents does bargain, sell and convey unto the Grantee and their heirs and assigns in interest certain tracts or parcels of land lying and being in Mecklenburg County and the State of North Carolina and more particularly described and bounded as follows:

Approximately 10.38 acres located on Barrington Drive and Milton Road, Charlotte, North Carolina owned by M. McFall Babb, Susan Shaw, and Cynthia Hattersley less that portion of said lot taken by the City of Charlotte in Case No. 95-CVS-111662, Mecklenburg County, North Carolina, Reference Tax ID Number 09921126, more particularly described in Exhibit D attached hereto (the "Property").

GRANTOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, AS TO TITLE TO THE PROPERTY AND THE PROPERTY IS BEING SOLD IN AS IS CONDITION.

TO HAVE AND TO HOLD said lands and premises together with all privileges thereunto belonging to the Grantee and their heirs and assigns in interest in as full and ample manner as the Grantor, as Trustee as aforesaid, is authorized and empowered to convey the same.

IN TESTIMONY WHEREOF, the Grantor, acting as Trustee aforesaid, has hereunto set his hand and seal, the day and year first above written.

\_\_\_\_\_  
James B. Angell  
Trustee in Bankruptcy  
for Malcolm McFall Babb

(SEAL)

NORTH CAROLINA

WAKE COUNTY

I, Jennifer L. McInnes, a Notary Public in and for the County and State aforesaid, do hereby certify that James B. Angell, Trustee in Bankruptcy for Malcolm McFall Babb, personally appeared before me this day and acknowledged the due execution of the foregoing Trustee's Deed.

Witness my hand and official seal this \_\_\_\_ day of \_\_\_\_\_, 2011.

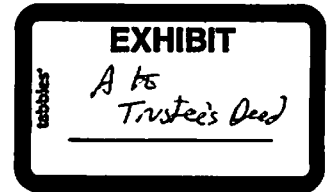
Notary Public \_\_\_\_\_  
Jennifer L. McInnes  
My Commission Expires: 10/11/2014

**SPECIAL**



VAN-006 Order Appointing Interim Trustee and Approving Standing Bond - Rev. 07/09/2004

**UNITED STATES BANKRUPTCY COURT**  
**EASTERN DISTRICT OF NORTH CAROLINA**  
1760 A Parkwood Blvd.  
Wilson, NC 27893



IN RE:  
Malcolm McFall Babb  
P.O. Box 4800  
Calabash, NC 28467

CASE NO.: 06-03003-8-JRL  
DATE FILED: September 22, 2006  
CHAPTER: 7

**ORDER APPOINTING INTERIM TRUSTEE AND APPROVING STANDING BOND**

IT IS ORDERED AND NOTICE IS HEREBY GIVEN THAT:

The following interim trustee is hereby appointed, and the trustee's standing bond is fixed under the blanket bond heretofore approved.

James B Angell  
Howard, Stallings, From & Hutson, PA  
PO Box 12347  
Raleigh, NC 27605-2347

DATED: February 26, 2007

J. Rich Leonard  
United States Bankruptcy Judge



UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION

IN RE:

BABB, MALCOLM MCFALL

CASE NO.

06-03003-8-JRL

DEBTOR(S)

CHAPTER 7

**ORDER CONFIRMING SALE OF REAL PROPERTY**

THIS MATTER comes before the undersigned United States Bankruptcy Judge upon the Motion of James B. Angell ("Trustee"), trustee in the above-referenced matter, for Confirmation of Sale of Real Property. Based on the record in this case and the presentations of the parties, the Court finds as follows:

1. On or about September 28, 2011, the Trustee sold certain real property located in Mecklenburg County, North Carolina, through a private sale for the sum of \$XXX to XXX, generally described as follows:

Approximately 10.38 acres located on Barrington Drive and Milton Road, Charlotte, North Carolina owned by M. McFall Babb, Susan Shaw, and Cynthia Hattersley less that portion of said lot taken by the City of Charlotte in Case No. 95-CVS-111662, Mecklenburg County, North Carolina; Reference Tax ID Number 09921126 (the "Property").

The legal description of the Property to be included in the deed to be used to effectuate the sale is made part of the Trustee's Deed attached to the Terms and Conditions of Sale attached to the Motion as **Exhibit A**.

2. The Property is titled in the names of M. McFall Babb, Cynthia Ann Simpson Hattersley and Susan S. Shaw. The Trustee has the authority to sell the interests of "M. McFall Babb" pursuant to that Order of the Court filed on April 16, 2009 (DE 365) approving a compromise with Mitchell McFall Babb. The Trustee has the authority to sell the interests of Cynthia Ann Simpson Hattersley and Susan S. Shaw pursuant to that consent order filed on August 17, 2009 (DE 412).

3. On XXX, the Trustee filed a MOTION FOR AN ORDER: (1) APPROVING A PUBLIC SALE AND BIDDING PROCEDURES FOR SALE; (2) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS OF SALE; (3) APPROVING STALKING HORSE FEE; AND (4) FOR OTHER RELIEF (11 U.S.C. § 105, and 363; Bankruptcy Rules 2002 and 6004) ("Motion") which was served on all creditors. The Motion contained information pertaining to this sale and no objections were received within the time limits set forth in the Notice, or any objections that were filed were overruled by the Court.

4. By the entry of an Order on XXXXX, the Motion was allowed and the sale was authorized (DE XX)(the "Order").

5. The Auctioneer complied with the terms and provisions of sale, as required in the Order.

6. No bidder whose offer is submitted to the Court is a friend, relative or other insider of the Malcolm McFall Babb or Mitchell McFall Babb, and or holds any interest adverse to Malcolm McFall Babb or Mitchell McFall Babb.

7. The amount offered for the Property at said sale is fair and reasonable and in the best interest of the estate and its creditors.

**WHEREFORE, IT IS ORDERED:**

1. A sale of the Property to XXXX for the purchase price of \$XXXXXX pursuant to the terms and conditions of sale, attached to the Motion as Exhibit B is hereby approved;
2. In the alternative, if XXXX shall fail to close in accordance with the terms and conditions of sale, then a sale of the Property to XXXXX, as a back-up bidder, for the purchase price of \$XXXXXX is hereby approved, in accordance with the terms and conditions of sale attached to the Motion as Exhibit C; and
3. The Trustee is hereby authorized to close on the sale of the Property in accordance with the sales approved herein and to execute such documents as may be necessary or desirable to consummate said sale.

END OF DOCUMENT

**EXHIBIT**  
C to Trustee's  
Deed

UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION

IN RE:

MALCOLM MCFALL BABB

CASE NO.

06-01003-8-JRL

DEBTOR

CHAPTER 7

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**ORDER (1) APPROVING PUBLIC SALE AND BIDDING PROCEDURES FOR SALE; (2) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AND TRANSFERRING LIENS TO PROCEEDS OF SALE; (3) APPROVING STALKING HORSE FEE; AND (4) GRANTING OTHER RELIEF (11 U.S.C. § 105, and 363; Bankruptcy Rules 2002 and 6004)**

THIS MATTER COMES before the Court on the Motion of James B. Angell, Chapter 7 Trustee (the "Trustee") for Malcolm McFall Babb (the "Debtor"), for an order (1) approving certain bidding procedures relating to the proposed sale of certain real estate in the name of "M. McFall Babb" and others; (2) authorizing the sale of such assets free and clear of all liens, claims, and encumbrances pursuant to Bankruptcy Code sections 105 and 363 and Bankruptcy Rule 6004; (3) approving a stalking horse fee payable to a buyer meeting certain criteria in the event of successful sale to another party, and (4) for other relief, and, based on the record in this case and the representations of the parties, the Court finds as follows:

1. This matter is a core proceeding pursuant to 28 U.S.C. § 157, and the Court has jurisdiction pursuant to 28 U.S.C. §§ 151, 157, and 1334. The Court has the authority to hear this matter pursuant to the General Order of Reference entered August 3, 1984, by the United States District Court for the Eastern District of North Carolina. The statutory predicates for the relief requested are Bankruptcy Code Sections 105 and 363 and Bankruptcy Rules 2002 and 6004.
2. The Debtor filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on September 22, 2006 and this case was converted to one under Chapter 7 on February 26, 2007.

### **The Property to be Sold**

3. Pursuant to 11 U.S.C. §363(b), Federal Rules of Bankruptcy Procedure 6004, 2002 (a), and 2002 (c) (1), James B. Angell, Chapter 7 Trustee in the above referenced case ("Trustee") proposes to sell the following described property:

Approximately 10.38 acres located on Barrington Drive and Milton Road, Charlotte, North Carolina owned by M. McFall Babb, Susan Shaw, and Cynthia Hattersley less that portion of said lot taken by the City of Charlotte in Case No. 94-CV-5111662, Mecklenburg County, North Carolina; Reference Tax ID Number 09921106 (the "Property"). The legal description of the Property to be included in the deed to be used to effectuate the sale is made part of the Trustee's Deed attached to the Terms and Conditions of Sale attached to the Motion as Exhibit A.

4. The Property is titled in the names of M. McFall Babb, Cynthia Ann Simpson Hattersley and Susan S. Shaw. The Trustee has the authority to sell the interests of "M. McFall Babb" pursuant to the Order of the Court filed on April 16, 2009 (DE 365) approving a compromise with Mitchell McFall Babb. The Trustee has the authority to sell the interests of Cynthia Ann Simpson Hattersley and Susan S. Shaw pursuant to that consent order filed on August 17, 2009 (DE 412).
5. The Trustee has made previous attempts to sell the Property. First, the Trustee pursued an expression of interest with a prospective buyer that did not result in an offer. Then, the Trustee listed the Property with a licensed real estate broker for a period from approximately March, 2010, through approximately March, 2011. The initial listing price was \$280,000.00, reduced in May, 2010 to \$230,000. No offers were received.
6. In March, 2011, the Trustee engaged the Auctioneer. The Auctioneer conducted a public sale of the Property pursuant to a Hybrid Sealed Bid Procedure. The sealed bids were closed at noon on June 14, 2011. At the end of the auction, the high bid was in the amount of \$60,000.00 and was submitted by James Bates with a deposit in the amount of \$10,000.00. Due to discrepancies between the form of the bid and the Notice of Proposed Sale, the sale made pursuant to the Hybrid Sealed Bid Procedures could not be confirmed.

7. The tax value of the Property prior to January 1, 2011 was \$220,300. In 2011, the value of the Property was reassessed at \$672,500.00. This reassessment was appealed informally by the Debtor and formally by the Trustee. These appeals are pending and have not been determined.

**Proposed Sales Procedure**

8. The Trustee proposes to sell the Property pursuant to 11 U.S.C. §§ 363 at an absolute auction subject to certain procedures, terms and conditions set out on the Motion (the “Terms of Sale”). Among the terms and conditions,

- a. **Stalking Horse Bid.** Approval is sought for retaining the bid of James Bates as a “Stalking Horse Bid” in the amount of \$60,000, to be carried forward to the Public Sale. In the event the final bid at the Public Sale is in excess of the Stalking Horse Bid, at the time of Closing James Bates will receive twenty percent (20%) of the bid amount in excess of the Stalking Horse Bid up to a maximum of \$10,000. The Stalking Horse Bid shall be the initial bid at the sale.
- b. **Minimum Topping Bids.** A Qualified Bidder may appear and place a minimum topping bid above the Stalking Horse Bid or any other bid previously made at the Auction for the Property. The initial competing bid by a third-party Qualified Bidder for the Property must exceed the \$60,000.00 bid made by the Stalking Horse Bidder by at least \$5,000.00. Any successive bid following the initial competing bid at the auction shall exceed the immediately preceding bid by an amount of not less than \$5,000.00.
- c. **Recommendation of High Bid.** Upon the conclusion of the bidding process at the sale, the Trustee shall submit the best bid from a Qualified Bidder (the “Successful Bid”) to the Bankruptcy Court for approval in an order confirming sale. In addition, the Trustee may seek approval of one or more unsuccessful bidders making “back up” offer(s) in the event of a default by the Successful Bidder. In recommending the best bid, the Trustee shall use his business judgment, taking into account factors including but not limited to the amount of money to be paid, the timing of monies to be paid, the solvency of the bidder and the risk of nonpayment of deferred amounts.
- d. **Other Terms and Conditions.** Other Terms and Conditions of the Sale are set out in the Motion.

**Sale Free and Clear of Certain Liens and Interests.**

9. The Trustee moves that the sale of the Property be made free and clear of the following liens and interest in accordance with 11 U.S.C. §§ 363(f) and 105 with such liens, claims and encumbrances to attach to the proceeds of such sale.
  - a. all liens for ad valorem taxes (current year ad valorem taxes being prorated to the date of closing);
  - b. the judgment lien against Malcolm M. Babb in favor of Carolina First Bank, as successor to Anchor Bank (formerly First Atlantic Bank) based on that action originally filed in the Common Pleas Court of the Fifteenth Judicial Circuit of South Carolina, Horry County, Civil Action No. 95-CP-26-2579 and
  - c. the judgment lien in favor of Char-Meck Hospital Authority against Susan Shaw, Case No. 04-CVM-28215<sup>1</sup>.
10. The Trustee further moves that the sale will be made free and clear of any vested or contingent right in the nature of dower or curtesy in accordance with 11 U.S.C. §363(g).<sup>2</sup>
11. The Trustee further moves that the Property shall be sold free and clear of any unsecured claims against the Debtor pursuant to 11 U.S.C. §105.

**The Proposed Sale and Assignment Is Made in Good Faith**

12. . Section 363(m) of the Bankruptcy Code provides, in pertinent part:

The reversal or modification on appeal of an authorization under [section 363(b) or (c)]... of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 11 U.S.C. §363(m).

13. The terms of sale and bidding procedures are established to provide all parties with the equal opportunity to purchase the assets without favoritism and without the ability to manipulate the bidding process. The Trustee seeks an order that the sales procedures result in a good faith purchaser in its order confirming the sale in accordance with 11 U.S.C. §363(m).

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<sup>1</sup> Susan Shaw, the co-owner of the Property contends that the judgment is against someone else named “Susan Shaw” and not against her.

<sup>2</sup> Susan Shaw and Cynthia Hattersley state that they are not married at this time. Mitchell McFall Babb is not married at this time. Malcolm McFall Babb is married to Brenda Babb, but both disclaim that Malcolm McFall Babb has any interest in the Property.

WHEREFORE, the Court finds that the Motion should be granted. It is THEREFORE ORDERED, ADJUDGED, AND DECREED:

1. The proposed Sales Procedures as set forth in the Motion are hereby approved and the Trustee is authorized to sell the Property in accordance with the approved bidding procedures;

2. The Stalking Horse Bid, and the terms and conditions for compensation of the Stalking Horse Bidder, as set out in the Motion, are hereby approved;

3. The sale of the Property shall be free and clear of the following liens and interest in accordance with 11 U.S.C. §§363(f) and 105 with such liens, claims, and encumbrances to attach to the proceeds of such sale.

- a. all liens for ad valorem taxes (current year ad valorem taxes being prorated to the date of closing);
- b. the judgment lien against Malcolm M. Babb in favor of Carolina First Bank, as successor to Anchor Bank (formerly First Atlantic Bank) based on that action originally filed in the Common Pleas Court of the Fifteenth Judicial Circuit of South Carolina, Horry County, Civil Action No. 95-CP-26-2539; and
- c. the judgment lien in favor of Char-Meck Hospital Authority against Susan Shaw, Case No. 04-CVM-28215.

4. The sale of the Property shall be free and clear of any vested or contingent right in the nature of dower or curtesy in accordance with 11 U.S.C. §363(g).

5. The sale of the Property shall be free and clear of any unsecured claims against the Debtor pursuant to 11 U.S.C. §105.

6. The sales procedures result in a good faith purchaser in its order confirming the sale in accordance with 11 U.S.C. §363(m).

7. Subject to the entry of an order confirming the sale, the Trustee is authorized to execute such documents as may reasonably be necessary to accomplish the contemplated sale.

8. This Court shall retain jurisdiction regarding any other matter or thing arising out of or relating to the sale.

END OF DOCUMENT