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GARY FARRAR,
Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
(Sacramento Division)**

In re
FREEDOM 123 LLC,
Debtor.

Case No.: 20-24691-A-7
DC No.: HSM-009
Date: June 14, 2021
Time: 9:00 a.m.
Place: 501 I Street
Sacramento, CA
Ctrm. 28, 7th Flr.
Judge: Hon. Fredrick E. Clement

**TRUSTEE'S MOTION FOR APPROVAL OF SALE OF REAL PROPERTY
(2113 N. Berry's Chapel Rd., Franklin, Tennessee, 37069)**

GARY FARRAR, the duly appointed Chapter 7 Trustee ("Trustee"), in the pending bankruptcy case of FREEDOM 123 LLC ("Debtor"), Case No. 20-24691-A-7 (the "Bankruptcy Case"), files this Trustee's Motion for Approval of Sale of Real Property ("Motion"), as follows:

Introduction and Relief Requested

1. This case was filed as a voluntary petition under Chapter 11 Subchapter V of the Bankruptcy Code on October 7, 2020. The case was converted to Chapter 7 on March 2, 2021. The Trustee was appointed as the Chapter 7 Trustee on March 5, 2021, and has at

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1 all relevant times served in that capacity.

2 2. Jurisdiction for the filing of this Motion exists pursuant to 28 U.S.C. Sections
3 157 and 1334; 11 U.S.C. Section 363; Federal Rule of Bankruptcy Procedure 6004; and the
4 reference to this court by the District Court for the Eastern District of California.

5 3. On November 4, 2020, the Debtor filed its Summary of Assets and Liabilities
6 for Non-Individuals, including Schedule A/B. (Docket 35) The asset which is the subject of
7 this Motion is listed on the Debtor's Schedule A/B as follows: "Single family home and 2
8 acres, 2113 N. Berrys Chapel Road, Frenklin, Tennessee" [sic in Debtor's Schedules – should
9 be "Berry's" and "Franklin, Tennessee"] (the "Property"). The Property was scheduled with
10 a value of \$629,000.00.

11 4. The Debtor's Schedule D (at Item #2.8) (Docket 35) evidences a first mortgage
12 in favor of FCI Lender Services, Inc. (Sherman Bridge Alt Fund, LP), in the amount of
13 \$478,544.00, secured by the Property. The Title Report obtained by the Trustee shows
14 Sherman Bridge Alt Fund, LP ("Sherman Bridge") as the first mortgage lender. The
15 Trustee's counsel has been communicating with counsel for Sherman Bridge.

16 5. Based on communications with counsel for Sherman Bridge, the Trustee
17 understands that the amount required to obtain a release of Sherman Bridge's lien, through
18 May 31, 2021, is \$529,769.27. The Trustee anticipates Sherman Bridge's consent to this
19 Motion as it will be paid this amount, or otherwise increased amount per additional per diem
20 interest, through escrow. As a result, the Trustee anticipates that Sherman Bridge will
21 reconvey its deed of trust securing its claim in the ordinary course of such a transaction.

22 6. In addition to seeking authorization to pay through escrow all undisputed
23 amounts owed at closing to remove Sherman Bridge's lien, the Trustee also seeks
24 authorization to pay all past due real property taxes and pro-rated current property taxes
25 owed against the Property, as well as any special assessments or fines owed to
26 governmental entities. Since these obligations will be paid through escrow, the Trustee does
27 not seek authorization to sell the Property free and clear of these claims.

28 7. The Trustee has reviewed the state of title on the Property. From that review,

1 the Trustee has determined that a judgment lien was recorded against the Property on
2 March 7, 2016, in favor of Portfolio Recovery Associates, LLC. The Trustee understands
3 from the title officer handling this transaction, however, that this judgment has been satisfied
4 and that a full release is anticipated prior to closing. To the extent this judgment lien is not
5 released prior to or in connection with closing, the Trustee submits that such lien is in bona
6 fide dispute within the meaning of 11 U.S.C. Section 363(f)(4), and therefore requests that
7 the sale be ordered free and clear of such lien with the proceeds from such sale being held
8 by the Trustee pending determination of such lien rights, if any.

9 8. The Trustee does not believe any other liens of record exist in favor of any
10 other party. If any monetary liens are discovered to exist against the Property, delivery of
11 title free and clear of such other monetary liens may require the cooperation and consent of
12 those lien holders. If any other such secured creditor's consent cannot be obtained by the
13 date scheduled for closing, Buyers' sole recourse will be to either assume the lien, without
14 adjustment to the Purchase Price, or terminate the Agreement and receive the refund of
15 Buyers' deposit.

16 9. The Trustee has received and accepted an offer to purchase the Property for
17 \$600,000.00 from Benjamin Fordham and Kathryn Fordham (collectively "Buyer"), subject
18 to court approval and overbidding. The terms of the proposed offer to purchase the Property
19 are summarized in the description of the Purchase Agreement described below.

20 10. Pursuant to this Motion, the Trustee seeks an order from this court authorizing
21 the Trustee to: (i) enter into and perform under the Purchase Agreement described below;
22 (ii) pay customary expenses of closing associated with this sale as set forth in the Purchase
23 Agreement; and (iii) execute all documents reasonably necessary and appropriate to
24 consummate the sale approved by the court. Finally, for the reasons set forth below, the
25 Trustee requests that the court waive the stay of effectiveness of the order on this Motion
26 pursuant to Federal Rule of Bankruptcy Procedure 6004(h).

27 11. Buyer's offer to purchase has been accepted by the Trustee, as Seller, through
28 the mutual execution of that certain Purchase and Sale Agreement dated as of May 4, 2021,

1 together with Addendum thereto dated May 10, 2021 (collectively, the "Purchase
2 Agreement"). A true and correct copy of the Purchase Agreement is attached as Exhibit "A"
3 to the Exhibits Cover Sheet filed and served with this Motion.

4 12. The material terms of the proposed sale are as follows:

5 a. The proposed sale of the Property and the Purchase Agreement are
6 subject to Bankruptcy Court approval through the granting of this Motion;

7 b. The Purchase Price for the Property is \$600,000.00 ("Purchase Price"
8 or "Sales Proceeds");

9 c. Buyer has deposited the sum of \$5,500.00 (the "Deposit") into escrow.
10 The Deposit is creditable against the Purchase Price and is non-refundable after satisfaction
11 of all of Buyer's conditions to closing. If Buyer fails to close the purchase due to default by
12 Buyer, the Deposit shall be non-refundable and shall be retained by the Trustee as liquidated
13 damages for such breach;

14 d. Other than bankruptcy court related contingencies (set forth below),
15 Buyer has waived all contingencies pursuant to paragraph 20 of the Addendum to the
16 Agreement;

17 e. Buyer will pay the Purchase Price and close escrow within fifteen (15)
18 days of written court approval of this Motion (the "Closing Date");

19 f. Closing costs will be allocated pursuant to the Purchase Agreement
20 with the closing costs allocated to the Estate being paid from the Sales Proceeds. Any
21 amounts required to be withheld for state or federal taxes will be paid from the Estate's share
22 of the Sales Proceeds. The portion of the Sales Proceeds remaining after deduction of the
23 foregoing costs allocable to the Estate as Seller, shall be referred to herein as the "Net Sales
24 Proceeds;"

25 g. The Purchase Agreement provides that Buyer's obligation to purchase
26 the Property is contingent upon (1) court approval of this Motion and the sale of the Property,
27 (2) possible overbidding on the Property at the hearing on the Motion;

28 h. Buyer will acquire, as part of the Property, all improvements and any

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1 fixtures located on the Property in which this bankruptcy estate owns any interest therein;

2 i. Buyer will acquire the Property in its "AS IS," "WHERE IS," "WITH ALL

3 FAULTS" condition. Trustee is making no representations or warranties, directly or

4 indirectly, with respect to the condition or history of the Property and has no duty to inquire

5 or investigate or provide any disclosures related to the Property;

6 j. Buyer shall rely solely on its own investigation of the Property in the

7 decision to acquire the Property; and

8 k. The proposed sale to Buyer is subject to overbidding at the hearing on

9 this Motion. If no overbids for the Property are made at the hearing on this Motion, or if the

10 Buyer is the highest bidder for the Property at the hearing on the Motion, the Deposit shall

11 be applied to the Purchase Price or the highest price bid by Buyer at the hearing on the

12 Motion, whichever is greater. If a Qualified Overbidder outbids Buyer, Buyer may elect to

13 retain a first backup position, for a period of thirty (30) days after the hearing on the Motion,

14 to buy the Property at the Purchase Price or the highest bid made for the Property by Buyer

15 at the hearing on the Motion, if the successful overbidder fails to close its purchase within

16 said thirty (30) days. If a Qualified Overbidder outbids Buyer and closes its purchase of the

17 Property, then the Purchase Agreement shall terminate and the Deposit shall be returned to

18 Buyer.

Fair Price for Property

20 13. As set forth in its most recent Schedule A/B filed November 4, 2020, the Debtor

21 valued the Property at approximately \$629,000.00. The Trustee has independently

22 concluded, based on his investigation, that the Purchase Price of \$600,000.00 is a fair price

23 for the Property. The Trustee has investigated the value of the Estate's interest in the

24 Property through independent research, his review of property values for similarly situated

25 properties in the area, and his extensive communications with several parties and real estate

26 professionals in the area, including the proposed Buyer.

27 14. Furthermore, the overbidding process will provide an opportunity for any party

28 wishing to pay more for the Property to participate in the bidding and acquire the Estate's

1 interests, if any, in the Property.

2 **Proposed Terms for Overbidding**

3 15. The Trustee proposes that any persons or entities wishing to bid on the
4 Estate’s interest in the Property be required to first become a qualified overbidder
5 (a “Qualified Overbidder”) in the manner set forth below. Any person or entity wishing to
6 become a Qualified Overbidder must deliver to the Trustee a payment in the amount of
7 \$5,500.00 (the “Overbidder Deposit”), in the form of cash, a cashier’s check or money order
8 made payable to “Gary Farrar, Chapter 7 Trustee of the Freedom 123, LLC Bankruptcy
9 Estate,” or wire transfer, which will be applied to the purchase price for the Property if the
10 Qualified Overbidder is the successful purchaser following the hearing on the Motion, and
11 demonstrate to the Trustee the ability to close within fifteen (15) calendar days of entry of
12 the court’s order approving this Motion, by cash, cashier’s check, money order, or wire
13 transfer. Such financial showing shall include, without limitation, either overbidder
14 qualification for financing acceptable to Trustee and sufficient to pay the initial overbid for
15 the Property, or proof of the ability of the overbidder to fund payment of the initial overbid in
16 cash. The Overbidder Deposit and showing of financial ability to perform shall be delivered
17 to the Trustee no later than the commencement of the hearing on the Motion. The
18 Overbidder Deposit shall be non-refundable, but shall become refundable in the event this
19 Motion is not approved by the court, or if the Qualified Overbidder is not the highest bidder
20 at the hearing on the Motion, and does not elect to be approved as a back-up bidder.

21 16. The Trustee proposes that the initial overbid, if any, must be in the amount of
22 at least \$610,000.00. The Trustee proposes that further overbids, if any, be in increments
23 of at least \$5,000.00. The high bidder must purchase the Estate’s interest in the Property
24 on terms identical to those set forth in the Agreement, subject to any modifications ordered
25 by the court, including to the Payment.

26 17. In the event a Qualified Overbidder outbids the Buyer at the hearing on this
27 Motion, the Buyer may elect to maintain the Buyer’s offer to purchase as a back-up offer
28 (with the Payment based on the highest bid made by the Buyer at the hearing on the Motion).

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1 Any such back-up offer shall become effective upon the overbidder’s failure to close in
2 accordance with the terms of the Agreement, as may be modified by the court, so long as
3 Buyer’s purchase price is the next highest bid for the Property.

4 **Anticipated Tax Consequences from the Sale**

5 18. The Trustee has consulted with an experienced CPA to determine what federal
6 and/or state tax liability may be incurred on the proposed sale, if any. Based on such
7 consultation, the Trustee believes the proposed sale will result in minimal taxable gain to the
8 estate, likely below \$4,000.00.

9 **Request for Waiver of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure**

10 19. The Trustee asserts that waiver of the automatic 14-day stay of a sale order
11 provided in Rule 6004(h) of the Federal Rules of Bankruptcy Procedure is appropriate in this
12 case. The Motion contemplates a closing within fifteen (15) days of the court’s entry of its
13 approval order on the Motion. The Property is presently vacant and there have been at least
14 some reports, unconfirmed, that the Property has been accessed by unauthorized
15 individuals. In addition, the Trustee has not had the benefit of funds in this Estate to care
16 for the Property pending sale. There have been additional reports to the Trustee that basic
17 yard maintenance is overdue, requiring attention. Finally, the Trustee wishes to conclude
18 his administration of this case as quickly as possible. Creditors and the estate would
19 therefore benefit from a waiver of Rule 6004(h).


20 **WHEREFORE**, the Trustee respectfully requests the court to enter an order providing
21 that: (1) the Agreement is approved and the Trustee is authorized to enter into the
22 Agreement, and to sell the Estate’s interest in the Property to the Buyer, in exchange for the
23 Purchase Price, to be paid on the terms and conditions set forth in this Motion and in the
24 Agreement; (2) the Trustee is authorized to sign any and all documents that may be
25 appropriate and/or necessary to consummate the sale of the Estate’s interest in the Property
26 to the Debtor; (3) the sale of the Estate’s interest in the Property to the Debtor is “as is,”
27 “where is,” with no representations or warranties, expressed or implied, without limitation,
28 any warranty or representation as to the condition thereof, or the existence or lack of any

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1 liens or encumbrances thereon, interests therein, rights of third parties, state of title, or the
 2 existence of any claims of any kind or nature related to it; (4) the court waive the 14-day stay
 3 of Rule 6004(h) of the Federal Rules of Bankruptcy Procedure; and (5) for such other relief
 4 as the court deems appropriate.

5 Dated: May 14, 2021

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 7 By 
 8 _____
 9 Howard S. Nevins, Attorneys for
 10 GARY FARRAR, Chapter 7 Trustee

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