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9 *Attorneys for Roger W. Brown, Trustee*

10 **IN THE UNITED STATES BANKRUPTCY COURT**
11 **FOR THE DISTRICT OF ARIZONA**

12 In re:

13 CLAY E. JOHANSSON,
14 Debtor.

(Chapter 7 Case)

No. 2:22-bk-07104-DPC

15 **NOTICE OF TRUSTEE’S MOTION**
16 **TO SELL PROPERTY OF THE**
17 **ESTATE AND FOR APPROVAL OF**
18 **BIDDING PROCEDURES AND**
19 **NOTICE OF AUCTION**

20 **TO: CREDITORS AND PARTIES-IN-INTEREST:**

21 PLEASE TAKE NOTICE that Trustee has filed a Motion to Sell Property of the Estate and for
22 Approval of Bidding Procedures, a complete copy of same is on file with the Clerk of the Court
23 and available for inspection.

24 **AUCTION:**

25 NOTICE IS GIVEN that the Estate’s interest in the below described property will be offered to the
26 person making the highest and best bid at public sale by Roger W. Brown, Trustee, through
27 Cunningham & Associates, Inc., at its auction facility located at 4753 East Falcon Drive, Suite
28 101, Mesa, Arizona. Bidding will open on or before 2:00 p.m. MST on **Friday, April 21,**
2023. Bidders will be able to place bids in person, by fax, by email, via telephone, or through
the online bidding system at auctionaz.com. If anyone places a bid within the last two minutes
of bidding, the bidding will extend for an additional two minutes. Bidding will start to close as
indicated on the website on Wednesday, **April 26, 2023.** **Online bidding will be available**
simultaneously during the live auction.

Property to be Sold:	Estate’s interest in the following property 2000 Cadillac Seville VIN 1G6KS54Y7YU159671 (“ Vehicle ”)
Terms of Sale:	Notice of the Sale of the Vehicle will be provided to all known parties in interest. The Sale of the Vehicle shall be As-Is, Where-Is, with No Guarantees or Warranties. If the Order approving this Motion has not yet been signed by the time of the Sale, the auction will be held pursuant to the procedures set forth herein and bids will be taken with final approval of the winning bid subject to

1 approval of this Motion. Trustee seeks authority to execute any
2 documents necessary to carry out the provisions of his Motion.
3 Upon the later of the Court approving the sale of the Motion,
4 completion of the proposed sale, and receipt of full payment of the
5 purchase price, Trustee shall execute any necessary Bills of Sale
6 transferring the Estate's interest in the Vehicle to the prevailing
7 bidder(s) subject to the terms set forth herein and an Order entered
8 by the Court approving the terms of the sale. Trustee will also file
9 a Report of Sale.

10 Bidder Registration: All bidders are required to register and
11 provide the necessary information requested before bidding. Upon
12 successful registration, each bidder is assigned a bidder number. A
13 major credit card is required to bid online. A \$25 hold will be
14 placed on each bidder's credit card account, which hold will be
15 reversed if the bidder is not the successful bidder. The hold will
16 remain for successful bidders until payment has been made in full.
17 Bidders are responsible for all purchases made with his/her bidder
18 number, whether by the registered bidder or by anyone he/she
19 might allow to use his/her number.

20 Bidding: All auctions are live online.

21 Payment/Charges: (i) No Buyers Premium will be charged by
22 Auctioneer; (ii) Auctioneer does not accept credit/debit cards;
23 Auctioneer accepts cash, cashier's check, certified funds or wire
24 transfers (with a \$15 fee). Payment is due no later than 2:00 pm
25 MST on the first Friday following the auction; (iii) Sales Tax: For
26 general assets and rolling stock, unless an Arizona tax resale
27 license is provided at the time of payment, the purchaser will be
28 required to pay the combined Arizona state and local sales tax
totaling 8.6%. There is no sales tax on real estate.

Default: In the event of default, the second highest bidder will be
given the option to become the successful bidder at his/her last bid.
The bidder in default will be responsible for the difference in the
bids, or the entire amount of his/her bid in the event that the second
highest bidder does not take the option to become the successful
bidder. The default bidder will also forfeit his/her deposit. A
service charge of 1-1/2% per month, 18% APR, will be added to
all overdue accounts. The bidder in default is also liable for all legal
and collection fees.

Auctioneer Warranties: Trustee and Auctioneer provide no
warranty relating to title, possession, quiet enjoyment or the like in
this disposition. All items sold at the auction are being sold "as is
- where is" to the highest bidder, without warranty, representation,
or guarantee of any kind.

Additional Sale Terms: (i) There are absolutely no refunds; (ii)
The Sale is subject to Trustee approval; and, (iii) All bids at the
auction shall be subject to higher and better bids until close of the
auction. (iv) The Successful Buyer (and only after court approval
of the Motion) shall be provided conveyance documents

	consistent of no less than a Bill of Sale and a Certified copy of the Order approving the Motion and a copy of the Report of Sale.
To View the Property or Obtain More information:	The Vehicle will be available for preview on Tuesday April 25, 2023 , from 10:00 am to 4:00 p.m. For more information Cunningham & Associates at (602) 595-6714 or auctionaz.com
Description of Interest(s) in the Property:	Trustee is not aware of any other entities holding an interest in the Vehicle being sold. There has been no stay relief sought as to the Vehicle.
Appraisals:	The Trustee is not aware of any recent appraisals on the Vehicle being sold.
Compensation/Fees:	Cunningham & Associates, Inc., will be entitled to fees and costs, subject to further Order of the Court. Cunningham & Associates, Inc., is not an insider.
Waiver of Stay:	Trustee respectfully requests that the Court in the discretion provided to it under Bankruptcy Rule 6004(h), waive the fourteen-day stay of the Order approving the sale of the Vehicle.

MOTION:

While more details are contained in the Motion, the relevant sale terms are set forth above and the legal basis is set forth below. Should any party want more details, they can access the Motion on the docket or e-mail the undersigned for a copy.

This Court has jurisdiction over Debtor's Chapter 7 case under 28 U.S.C. § 1334. Proceedings with respect to the Motion are core proceedings that the Court may hear and decide. *See* 28 U.S.C. § 157(b)(1) and (b)(2)(A), (M), (N), and (O). Moreover, venue is appropriate pursuant to 28 U.S.C. § 1408(1). Property of the Estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." *See* 11 U.S.C. § 541(a). The concept of property of the estate is broad in scope, encompassing all kinds of property, including tangible and intangible property, causes of action, real and personal property, certain property held by the debtor in trust for others, and certain property of the debtor held by others. *See U.S. v. Whiting Pools*, 462 U.S. 198, n.9 (1983). As detailed above, the Vehicle were titled in the name of the Debtor as of the Petition Date. The Vehicle are, accordingly, property of the Estate that can be liquidated for the benefit of the creditors of this Estate. 11 U.S.C. § 363(b)(1) provides that "[t]he [T]rustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate"

A trustee must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *E.g., In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986). Courts look to various factors to determine whether to approve a motion under section 363(b), such as: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) whether adequate and reasonable notice is provided. *In re Condere*, 228 B.R. 615, 626 (S.D. Miss. 1998).

The Trustee believes in his best business judgment that the prospective Sale will generate funds for the benefit of the creditors of this Estate and is in the best interest for all creditors and parties-in-interest.

The pertinent provisions of the Motion are set forth above as well as the terms of the Sale. Any person opposing same shall file a written objection, specifying the reason therefor, together with a notice of hearing, on or before 21 days of the date of this mailing as follows: United States Bankruptcy Court, as follows: (a) by hand-delivery or mail to the Clerk of the Court, 230 North First Avenue, Suite 101, Phoenix, Arizona 85003-1706; or (b) electronically at the Court's website:

1 ecf.azb.uscourts.gov using the Court's electronic filing procedures, with a copy to: Lane & Nach,
2 P.C., at the above-address.

3 If a person timely objects to the Motion or the Sale in writing and a hearing is requested but has not
4 yet been conducted by the Court as of the date of the scheduled auction, bids will be taken and the
5 normal sales procedures followed. The closing of the sale remains dependent upon the outcome of
6 the Court hearing regarding the objection. If there is no timely objection and request for hearing,
7 no hearing will be held, and the Trustee will proceed to sell the property without further order of
8 the Court.

9 DATED: March 21, 2023.

10 **LANE & NACH, P.C.**

11 By /s/ Stuart B. Rodgers
12 Stuart B. Rodgers
13 *Attorney for Trustee*