

Form JDG11 (03/15)

**United States Bankruptcy Court
Western District of Michigan**
One Division Ave., N.
Room 200
Grand Rapids, MI 49503

IN RE: Debtors (names used by the debtors in the last 8 years, including married, maiden, trade, and address):

Donald Lee Ribble
11574 Winchester Dr
Shelbyville, MI 49344
SSN: xxx-xx-2846
Donna Joy Ribble
11574 Winchester Dr
Shelbyville, MI 49344
SSN: xxx-xx-9194

Debtors

Case Number 17-01076-jwb
Chapter 7
Honorable James W. Boyd

NOTICE TO PARTIES IN INTEREST OF HEARING

YOU ARE HEREBY NOTIFIED that a hearing will be held at the United States Bankruptcy Court, One Division Ave., N., 3rd Floor, Courtroom B, Grand Rapids, MI 49503 on **August 30, 2018** at **09:00 AM** to consider and act upon the following matter:

Trustee's Motion for Sale of Real Property Free and Clear of Liens Pursuant to 11 U.S.C. Section 363 via Courtroom Auction (DN 42)

If you want the court to consider your views on this matter, attend the hearing on the date stated above.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

You or your attorney may wish to file a written response to the motion explaining your position. Any response shall be mailed to the Clerk of the United States Bankruptcy Court, One Division Ave., N., Grand Rapids, Michigan 49503, and should be received by the Clerk at least 7 (seven) days before the above hearing date. A copy of your responses should also be mailed upon the opposing party and his/her attorney.

If you or your attorney do not take these steps, the court may decide to grant the relief sought in the motion and may enter an order granting relief requested.

DANIEL M. LAVILLE
CLERK OF BANKRUPTCY COURT

Dated: July 11, 2018

/S/ _____
J. Koerth
Deputy Clerk

A copy of this notice returned to Steven L. Rayman, Esq. on July 11, 2018 for service upon the mailing matrix .

NOTICE IS HEREBY GIVEN THAT THE COURT MAY, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the continued or adjourned hearing. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be accessed through the Bankruptcy Court's web site (www.miwb.uscourts.gov) provided the person has a PACER login and password, or by visiting the clerk's office of the United States Bankruptcy Court located at One Division Ave., N., 2nd Floor, Grand Rapids MI 49503. Information about a PACER login and password may be obtained by either calling PACER service center between 8:00 a.m. and 5:00 p.m. Monday through Friday, CST at (800) 676-6856 or via its web site at <http://pacer.psc.uscourts.gov>

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN**

IN THE MATTER OF:

DONALD LEE RIBBLE AND
DONNA JOY RIBBLE,

Case No.: 17-01076
Chapter 7 – Filed: 03/09/2017

Debtors.

//

**MOTION FOR SALE OF REAL PROPERTY FREE AND CLEAR OF LIENS
PURSUANT TO 11 U.S.C. § 363 VIA COURTOOM AUCTION**

NOW COMES Thomas A. Bruinsma, Trustee (“Trustee”), by and through his attorneys, Rayman & Knight, and for his Motion for Sale of Real Property Free and Clear of Liens Pursuant to 11 U.S.C. §363 via Courtroom Auction (“Motion”), says as follows:

1. This Motion pertains to the above-captioned Chapter 7 proceeding which was filed on March 9, 2017.
2. Your Trustee is the duly appointed and acting Trustee in this cause.
3. Among the assets of this estate there exists a strip of real property consisting of a portion of Lot 18 of Chateau Park with a parcel number of 08-11-064-10 otherwise consisting of all of the land between Lot #18 of Chateau Park and Gun Lake bounded by and extension of the lot lines from the corners of lot #18 of Chateau Park to the shores of Gun Lake, Barry County No. 2012-007682, Orangeville Township, Barry County, State of Michigan. The property includes all riparian/littoral rights to Gun Lake, subject to easements, conditions and restrictions of record (“Property”). The Property has a common address of 11751 Marsh Road and consists of a strip of land approximately 12 ft. by 47 ft., more or less, on Gun Lake.
4. Your Trustee has received an offer for the Property from one Lake Michigan Credit Union (“Credit Union”) whereby the Credit Union has agreed to purchase the Property

“AS IS, WHERE IS” and subject to *ad valorem* taxes and assessments for the sum of \$15,000.00 in cash.

5. That the sale shall be on a cash basis, subject to Court approval with open bidding, with the successful bidder being required to make a deposit in the amount of \$5,000.00, same being the deposit tendered by the Credit Union three days prior to the hearing scheduled for this Motion. Bidding shall be in increments of \$1,000.00 or more. Any party desiring to bid on the Property must be present.

6. The Property shall be sold “**As is, Where is**”, without representation or warranty, expressed or implied, of any kind or nature, or description, including, without limitation, any warranty of marketability, usability or fitness for any purpose. The Trustee shall not be required to inspect, test or report on the condition of the Property, the operability of any system(s) contained therein or the existence of any defects of any kind, including, environmental defects, as to the Property.

7. The Property shall be sold free and clear of liens, encumbrances and/or claims therein. Upon information, one Equipment Financial Services, Inc. (“Equipment Financial”) may claim an interest in the Property by virtue of a certain Loan Modification Agreement dated September 8, 2015, attached as Exhibit “A”. Your Trustee believes that the Property can be sold free and clear of liens for the following reasons:

- a. The Loan Modification Agreement does not constitute a mortgage. There is a *bona fide* dispute as to whether there is a lien on the Property and, as such, the Property may be sold free and clear pursuant to 11 U.S.C. §363(f)(4);
- b. Equipment Financial is owed approximately \$25,000.00 and, in addition to such interest as it holds on the Property, also holds a mortgage on the Debtors’ home. The Debtors’ home has a value greatly in excess (perhaps \$90,000.00 or more) of the amount owed to Equipment Financial. To the extent Equipment Financial

holds a valid mortgage against the Debtors' home, which your Trustee does not dispute, it is adequately protected. As such, the Court should approve a sale of the Property;

- c. To the extent there is a lien or a mortgage, all liens, mortgages and encumbrances shall attach to proceeds in the same rank, validity, priority as existed prior to the Petition with such liens, mortgages and encumbrances attaching to proceeds;
- d. The Trustee further proposes that in the event that the Credit Union fails to close, that the Trustee be authorized to complete the sale to a "back up" bidder, if any there is.

8. Your Trustee believes that the sale of the Property, pursuant to the terms herein, is in the best interests of the estate. The Debtors listed the value of this Property in their Schedules as \$1,000.00. They did not list a mortgage or a lien against it. Further, the Trustee has commenced marketing efforts regarding the Debtors' home which he believes may not, itself, be fully exempt. Moreover, your Trustee has made efforts to determine the extent of a lien against the Property in the amount owed against it, as set forth below:

- a. The Trustee has performed an extensive examination of the Debtors' at the First Meeting of Creditors and a 2004 Exam;
- b. The Trustee has written Equipment Financial to inquire as to its balance and its position; and
- c. Counsel for your Trustee attempted to contact Equipment Financial via telephone to no avail.

9. Any lien of Equipment Financial is in bona fide dispute and the Trustee may sell the Property free and clear of liens pursuant to 11 U.S.C. §363(f)(4).

WHEREFORE, your Trustee prays that this Court enter an Order:

- A. Granting this Motion;
- B. Holding a hearing at which time open bidding for the Property shall be had;

C. Authorizing the Trustee to execute such conveyance documents as are reasonably required to effectuate the sale, including, but not limited to, a Trustee's Deed; and

D. Ordering such other relief as the Court finds just and equitable.

RAYMAN & KNIGHT
Attorneys for Trustee

Dated: July 5, 2018

By: 

Steven L. Rayman (P30882)

BUSINESS ADDRESS:
141 East Michigan Avenue, Suite 301
Kalamazoo, MI 49007
Telephone: (269) 345-5156

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REGISTER OF DEEDS
BARRY COUNTY, MI.

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LOAN MODIFICATION AGREEMENT

This Loan Modification Agreement ("Agreement"), made this 8th day of September, 2015, between Donald L. Ribble and Donna J. Ribble (a married couple) and Equipment Financial Services, Inc., P.O. Box 2551, Grand Rapids, MI 49501 ("Lender"), amends and supplements (1) the Mortgage, Deed of Trust, or Security Deed (the "Security Instrument") dated June 7, 2012 and recorded in Book as: THE FOLLOWING DESCRIBED LANDS AND PREMISES SITUATED IN THE TOWNSHIP Orangeville, COUNTY OF Barry STATE OF MICHIGAN. TO WIT; Parcel#08-11-064-10 at All of the land between Lot #18 of Chateau Park and Gun Lake bounded by and extension of the lot lines from the corners of lot #18 of Chateau Park to the shores of Gun Lake. Barry County number 2012-007682, Orangeville Township, Barry County, State of Michigan.

The Note, bearing the same date as, and secured by, the State of Michigan, County of Barry. Security Instrument which covers the real and personal property described in the Security Instrument and defined therein as the "Property" located at 11573 Winchester Drive, Shelbyville, Mi 49344.

the real property described being set forth as follows: Parcel#08-11-064-10 at All of the land between Lot #18 of Chateau Park and Gun Lake bounded by and extension of the lot lines from the corners of lot #18 of Chateau Park to the shores of Gun Lake. Barry County number 2012-007682, Orangeville Township, Barry County, State of Michigan.

In consideration of the mutual promises and agreements exchanged, the parties hereto agree as follows (notwithstanding anything to the contrary contained in the Note or Security Instrument):

1. As of Equipment Financial Services, Inc, Equipment Lease/Purchase Agreement #109543, the amount payable under the Note and the Security Instrument (the "Unpaid Principal Balance") according to Equipment Lease/Purchase Agreement #109543 dated 6/7/2015.
2. Borrower promises to pay all property tax and any other costs according to the Equipment Lease/Purchase agreement dated 6/7/2012 the Unpaid Principal Balance, plus interest, to the order of Lender. Borrower promises to make monthly payments of principal and interest according to Equipment Lease/Purchase Agreement #109543 dated 6/7/2015.
3. If all or any part of the Property or any interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred) without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by the Security Instrument.



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- If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by the Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by the Security Instrument without further notice or demand on Borrower.
4. Borrower also will comply with all other covenants, agreements, and requirements of the Security Instrument, including without limitation, Borrower's covenants and agreements to make all payments of taxes, insurance premiums, assessments, escrow items, impounds, and all other payments that Borrower is obligated to make under the Security Instrument; however, the following terms and provisions are forever canceled, null and void, as of the date specified in paragraph No. 1 above:
 - (a) all terms and provisions of the Note and Security Instrument (if any) providing for, implementing, or relating to, any change or adjustment in the rate of interest payable under the Note; and
 - (b) all terms and provisions of any adjustable rate rider, or other instrument or document that is affixed to, wholly or partially incorporated into, or is part of, the Note or Security Instrument and that contains any such terms and provisions as those referred to in (a) above.
 5. Borrower understands and agrees that:
 - (a) All the rights and remedies, stipulations, and conditions contained in the Security Instrument relating to default in the making of payments under the Security Instrument shall also apply to default in the making of the modified payments hereunder.
 - (b) All covenants, agreements, stipulations, and conditions in the Note and Security Instrument shall be and remain in full force and effect, except as herein modified, and none of the Borrower's obligations or liabilities under the Note and Security Instrument shall be diminished or released by any provisions hereof, nor shall this Agreement in any way impair, diminish, or affect any of Lender's rights under or remedies on the Note and Security Instrument, whether such rights or remedies arise thereunder or by operation of law. Also, all rights of recourse to which Lender is presently entitled against any property or any other persons in any way obligated for, or liable on, the Note and Security Instrument are expressly reserved by Lender.
 - (c) Nothing in this Agreement shall be understood or construed to be a satisfaction or release in whole or in part of the Note and Security Instrument.
 - (d) All costs and expenses incurred by Lender in connection with this Agreement, including recording fees, title examination, and attorney's fees, shall be paid by the Borrower and shall be secured by the Security Instrument, unless stipulated otherwise by Lender.
 - (e) Borrower agrees to make and execute such other documents or papers as may be necessary or required to effectuate the terms and conditions of this Agreement which, if approved and accepted by Lender, shall bind and inure to the heirs, executors, administrators, and assigns of the Borrower.
 - (f) Borrower authorizes Lender, and Lender's successors and assigns, to share Borrower information including, but not limited to (i) name, address, and telephone number, (ii) Social Security Number, (iii) credit score, (iv) income, (v) payment history, (vi) account balances and activity, including information about any modification or foreclosure relief programs, with Third Parties that can assist Lender and Borrower in obtaining a foreclosure prevention alternative, or otherwise provide support services related to Borrower's loan. For purposes of this section, Third Parties include a counseling agency, state or local Housing Finance Agency or similar entity, any insurer, guarantor, or servicer that insures, guarantees, or services Borrower's loan or any other mortgage loan secured by the

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Property on which Borrower is obligated, or to any companies that perform support services to them in connection with Borrower's loan.

IF MORE THAN ONE APPEARS AS MORTGAGOR OR MORTGAGEE, OR IF EITHER BE OF THE FEMININE SEX, OR A CORPORATION, THE PRONOUNS AND RELATIVE WORDS USED HEREIN SHALL BE READ AS WRITTEN IN THE PLURAL, FEMININE OR NEUTER RESPECTIVELY AND ALL COVENANTS SHALL BIND AND INSURE TO THE BENEFIT OF THE HEIRS, PERSONAL REPRESENTATIVES, ASSIGNS AND SUCCESSORS OF THE RESPECTIVE PARTIES:

IN WITNESS WHEREOF THE MORTGAGOR HAS HEREUNTO SET HIS HAND AND SEAL.

SIGNED ON THE DATE FIRST ABOVE WRITTEN

[Signature]
Shirley M. Carroll
Equipment Financial Services, Inc.

[Signature] *[Signature]*
Donald L. Ribble and Donna Ribble

State of MICHIGAN, County of

I, Skylet Cummings Notary Public of the State and County aforesaid,

certify that the above signature Shirley Carroll, Donald L. Ribble and Donna Ribble

personally came before me and acknowledged due execution of the foregoing instrument.

Witness my hand and seal this 10th the day of September, 2015

[Signature]
Notary Public:

My Commission Expires: 6.25.18

SKYLET A CUMMINGS
Notary Public, State of Michigan
County of Ottawa

PREPARED BY
Shirley M. Carroll
Equipment Financial Services, Inc.
P.O. Box 2551, Grand Rapids, MI 49501
My Commission Expires June 25, 2018
Acting in the County of Kent

AFTER RECORDING RETURN TO
Equipment Financial Services, Inc.
P.O. Box 2551, Grand Rapids, MI 49501