

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**In re:**

**ALDERSON BROADDUS UNIVERSITY, INC., ET AL.,**

**Case No. 23-00427**

**Chapter 7**

**Debtors.<sup>1</sup>**

**TRUSTEE’S MOTION TO SELL REAL ESTATE BEING THE CAMPUS  
LOCATED AT 101 COLLEGE HILL DRIVE, PHILLIPI, WEST VIRGINIA,  
ALONG WITH FURNISHINGS, FIXTURES, EQUIPMENT, AND SUPPLIES FREE  
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS,  
PURSUANT TO 11 U.S.C. § 363(b), (f) AND (m) AND § 105, AND FED. R. BANKR. P.  
2002 AND 6004; TO COMPROMISE ALLOCATION OF SALE PROCEEDS  
BETWEEN ALDERSON BROADDUS UNIVERSITY AND ALDERSON  
BROADDUS ENDOWMENT CORPORATION, PURSUANT TO  
FED R. BANKR. P. 9019; AND TO COMPROMISE THE LEASE OF  
ASTROTURE FROM PNC BANK, PURSUANT TO FED R. BANKR. P. 9019**

Thomas H. Fluharty, Chapter 7 Trustee for the administratively consolidated bankruptcy estates of Alderson Broaddus University, Inc. and Alderson-Broaddus Endowment Corporation, by Counsel Joe M. Supple, files this motion pursuant to 11 U.S.C. § 363 seeking an Order approving the sale of real estate being the campus located at 101 College Hill Drive, Phillipi, West Virginia, along with furnishings, fixtures, equipment, and supplies, ”free and clear of, Claims<sup>2</sup>, Liens and Encumbrances<sup>3</sup>, and Interests<sup>4</sup> for the sum of \$4,900,000.00. The Trustee also seeks approval of a compromise of the allocation of sale proceeds between the bankruptcy estates of Alderson Broaddus University, Inc. and Alderson-Broaddus Endowment Corporation. The Trustee

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<sup>1</sup> The Debtors in these chapter 7 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: Alderson Broaddus University, Inc. (7072) and Alderson-Broaddus Endowment Corporation (2324).

<sup>2</sup> “Claims” shall have the meaning ascribed to such word in 11 U.S.C. § 101(5).

<sup>3</sup> “Liens and Encumbrances” shall mean any mortgage, deed of trust, pledge, security interest, encumbrance, easement, condition, reservation, lien (statutory or otherwise), mechanic’s lien, covenant, encroachment, lease, right of use or possession, or otherwise similar third-party interest, or other survey, defect, charge, hypothecation, deemed trust, action, right-of-way easement or covenant on real property.

<sup>4</sup> “Interests” means any interest as that term is used in 11 U.S.C. § 363(f).

also seeks approval of the compromise of a lease of astroturf from PNC Bank. In support of his motion, the Trustee states:

1. The Court has jurisdiction pursuant to 28 U.S.C. §1334, venue is properly before this Court pursuant to 28 U.S.C. §1408 and this is a core proceeding.

### **Background**

2. Alderson Broaddus University, Inc. (hereinafter “ABU”) operated a private university in Phillipi, Barbour County, West Virginia.

3. On December 10, 2018, ABU conveyed much of its real estate and all personal property owned as of December 10, 2018, to Alderson-Broaddus Endowment Corporation (hereinafter “ABEC”). ABEC is a non-profit corporation formed in 1976 to operate exclusively for the benefit and support of ABU. The purpose of the conveyance of assets from ABU to ABEC was to allow for a \$28 million Community Facilities Direct Loan from the United States Department of Agriculture (“USDA”). ABU sought to retire its outstanding bonds through long-term financing. However, USDA direct loan funds for rural communities may only be used for purchase, construction, or improvements of essential community facilities. Accordingly, to allow ABU to qualify for the loan, ABU and USDA agreed on a sale-leaseback of ABU’s assets to ABEC. ABU guaranteed the loan from USDA to ABEC on an unsecured basis.

4. Accordingly, the USDA holds a first lien in the amount of \$30,594,000 against the real estate and personal property conveyed to ABEC on December 10, 2018. *See Proof of Claim # 1-1, Case No. 23-534.*

5. After the sale, ABEC operated solely as landlord, and ABU as the tenant and

operating entity. All furnishings, fixtures, equipment, and supplies purchased by ABU after December 10, 2018 are the property of ABU and not subject to the lien held by USDA.

6. ABU filed a voluntary Chapter 7 bankruptcy petition on August 31, 2023. Thomas H. Fluharty is the duly appointed Chapter 7 Trustee.

7. On November 1, 2023, ABEC filed a voluntary Chapter 7 bankruptcy petition, case number 23-00534. Thomas H. Fluharty is the duly appointed Chapter 7 Trustee.

8. On December 1, 2023, this Court entered an order directing the joint administration of the ABU and ABEC bankruptcy estates.

9. Since his appointment, the Trustee has worked diligently with the USDA to identify potential purchasers of the campus. The lack of funds available to maintain utilities and security at the campus necessitates an expedited approach to the marketing and sale of the assets of the debtor estates.

10. The Trustee and USDA have received multiple inquiries from entities who have expressed interest in purchasing the campus or part of the campus. However, the Trustee has received only one offer.

11. DACK Investments, LLC, a West Virginia limited liability company, has offered to purchase the campus, along with furnishings, fixtures, equipment, and supplies.

#### **Terms of Sale**

12. On December 27, 2023, the Trustee entered an Asset Sale and Purchase Agreement (“APA”) to sell the campus located at 101 College Hill Drive, Phillipi, West Virginia, along with furnishings, fixtures, equipment, and supplies, as more specifically described in the APA (collectively the “Property”) to Dack Investments, LLC (“Purchaser”) for

the sum of \$4,900,000.00 (“Purchase Price”). A copy of the APA is attached hereto as **Exhibit A**.

13. The Trustee and Purchaser agree that the sum of \$4,000,000.00 shall be allocated to real estate and the sum of \$900,000.00 shall be allocated to personal property.

14. The sale to Purchaser is contingent upon Bankruptcy Court approval.

15. Upon Bankruptcy Court approval of the sale to Purchaser, the Trustee shall immediately deliver possession of the Property to Purchaser. Upon delivery of possession, Purchaser shall secure the Property and comply with all applicable municipal regulations.

16. The APA provides for a \$10,000 earnest money deposit.

17. Purchaser shall receive a breakup fee of \$50,000.00 from the sale proceeds of the Property only if the Bankruptcy Court approves a sale of the Property to a different purchaser and Purchaser has complied with the terms of the APA.

18. Upset bids must be in writing and delivered to Trustee’s counsel, Joe M. Supple, Supple Law Office, PLLC, 801 Viand Street, Point Pleasant, West Virginia 25550, 304-6756249, joe.supple@supplelawoffice.com, and set forth the name of the party making the upset bid and set forth terms of the upset bid, so as to be received at least five (5) calendar days prior to the sale hearing. Additionally, upset bids must be for at least \$5,000,000.00 and shall be accompanied by an executed purchase agreement redlined to show changes from the Purchase Agreement, and a certified check in the amount of \$10,000.00 payable to Thomas H. Fluharty, Trustee and delivered to Trustee’s counsel by the upset bid deadline, representing an earnest money down payment.

19. If the Trustee receives an upset bid, the Trustee shall file a notice of upset bid with the Court and an auction will be conducted by the Trustee during an adjournment of the sale

hearing. Only the original purchaser, DACK Investments, LLC, and individuals or entities that file timely upset bids will have an opportunity to bid at the auction. The opening bid at the auction shall be for no less than \$100,000.00 more than the highest upset bid received prior to the upset bid deadline. Successive bids shall be in increments of \$100,000.00. Authorized representatives must be present to bid at the auction.

20. Closing shall be completed, unless extended by agreement of the parties, on a date on or before thirty (30) days after entry of an order by the Bankruptcy Court authorizing sale of the Property to the ultimate purchaser, free of all Claims, Liens and Encumbrances, Interests, liabilities, of every kind and nature, with all Claims, Liens and Encumbrances, and Interests, attaching to the proceeds of sale.

21. In the event that the highest bidder does not close, the Trustee seeks authority to sell the Property to the next highest bidder for the amount so bid.

### **The Sale**

22. The transfer of the Property to Purchaser represents an arms' length transaction and has been negotiated in good faith between the parties. The Trustee moves for the entry of an order approving the sale and finding that Purchaser, as transferee of the Property, is a good faith purchaser within the meaning of 11 U.S.C. §363(m) and, as such, is entitled to the full protections of 11 U.S.C. § 363(m). The Trustee has proceeded in good faith in all respects in connection with this proceeding in that:

- a. Purchaser recognized that the Trustee was free to deal with any other party interested in acquiring the Property;

b. All payments to be made by Purchaser in connection with the transaction have been disclosed; and

c. Purchaser has not violated 11 U.S.C. § 363(n) by any action or inaction.

23. The Trustee moves for entry of an order that, in the absence of a stay of the Court's Order approving the sale (the "Sale Order"), if Purchaser elects to close under the APA at any time after entry of the Sale Order, then, with respect to the APA, Purchaser will be entitled to the protection of § 363(m) if the Sale Order or an authorization contained therein is reversed or modified on appeal.

24. The Trustee further moves for the entry of an order finding that he has established sound business justifications in support of the Sale and a determination that the Purchase Price presents the best opportunity for the estate to realize the highest distribution possible to all creditors; that the Purchase Price, as approved herein, is the highest and best offer for the Property; that the Purchase Price constitutes full and adequate consideration and reasonably equivalent value for the Property; and that the transfer of the Property on the Closing to Purchaser for the Purchase Price is in the best interest of the bankruptcy estates, the Debtors' creditors, and all parties-in-interest.

#### **Authorizing the Sale of the Property**

25. The Trustee, pursuant to 11 U.S.C. §363(f) and this Court's general equitable powers under 11 U.S.C. § 105(a), moves for an Order that upon entry of the Sale Order, Purchaser will take possession of the Property and shall secure the Property and comply with all applicable municipal regulations, and that upon Closing of the Sale, Purchaser will take title to the Property and that the transfer of the Property will be free and clear of any and all Claims, Liens and Encumbrances, and Interests whatsoever, whether contingent, unliquidated, unmaturred

or otherwise, and whether of or against the Debtors, the Purchaser, or the Property. All Claims, Liens and Encumbrances, Interests, and liabilities, will attach solely to the proceeds of the Sale with the same validity and priority as they attached to the applicable Property.

26. The Trustee further moves for the entry of an order finding that the Purchaser shall not have any liability or responsibility for any liability or other obligation of the Debtors arising under or related to the Property, including without limitation, any successor liability of any kind or nature.

27. The Trustee also moves for the entry of an order that, effective on the Closing Date, all persons or entities, to the extent allowed by law, are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser, its successors and assigns, or the Property, based upon or with respect to any Claim, Lien and Encumbrance, Interest, and liability of which the sale of the Property is free and clear under the terms of the Sale.

28. The Trustee further moves for the entry of an order that, at the Closing the Trustee will sell, transfer, assign and convey to the Purchaser and/or their assigns all of the Debtors' rights, title and interest in, to and under the Property; that the Trustee is authorized, empowered and hereby directed to deliver deeds, bills of sale, and other such documentation that may be necessary or requested by the Purchaser in accordance with the terms of the APA to evidence the transfers required herein.

**Allocation of Sale Proceeds to ABU and ABEC and Carveout for Administrative Expenses**

29. The real estate that is the subject of this motion is property of the ABEC bankruptcy estate and the lien of the USDA shall attach to the proceeds of sale of the real estate.

30. The Trustee and USDA are unable to determine what personal property was purchased on or before December 10, 2018, and therefore titled in the name of ABEC and subject to the lien of USDA. Thus, the Trustee and USDA have agreed, subject to Court approval, to allocate 50% of the proceeds of sale of personal property to the ABEC bankruptcy estate and 50% to the ABU bankruptcy estate.

31. Bankruptcy Rule 9019(a) provides that “on motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Compromises are tools for expediting the administration of the case, reducing administrative costs and are favored in bankruptcy. See In re Bond, 1994 U.S. App. Lexis 1282, \*9-\*13 (4<sup>th</sup> Cir. 1994) (“To minimize litigation and expedite the administration of the bankruptcy estate, ‘compromises are favored in bankruptcy.’”) Fogel v. Zell, 221 F.3d 955, 960 (7<sup>th</sup> Cir. 2000); In re Martin 91 F.3d 389, 393 (3d Cir. 1996).

32. The decision to approve a settlement or compromise is within the discretion of the Court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. See TMT Trailer Ferry, 390 U.S. at 424-25. The settlement need not be the best that the debtor could have achieved, but need only fall “within the reasonable range of litigation possibilities.” In re Telesphere Communications, Inc., 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994).

33. The Court should approve the allocation compromise. Identifying the date of purchase of every item of personal property on campus would require an immense amount of time and resources. Due to the difficulty of locating and accessing business and accounting records, it is unlikely that this task could be accomplished accurately. Because ABU has operated for many



years, it is likely that most of the personal property was purchased prior to December 10, 2018. Conversely, personal property purchased after December 10, 2018 is newer and likely has a greater value.

34. The Trustee believes that a 50/50 allocation of personal property sale proceeds is in the best interest of both bankruptcy estates.

35. If an upset bid is accepted and approved by the Court, the increased purchase price, less break-up fee, shall be allocated 18.4% to personal property and 81.6% to real estate. This is based upon the allocation percentage agreed to by DACK Investments, LLC.

36. The lien of the USDA shall attach to the ABEC bankruptcy estate's share of personal property sale proceeds.

37. The USDA consents to a 3% carve out from the proceeds of sale of real and personal property allocated to ABEC for payment of the Trustee's commission for the sale of ABEC property. In addition, the USDA consents to an additional carve out from the proceeds of sale of real and personal property allocated to ABEC for the payment of the Trustee's reasonable attorney fees. While working on matters involving both the ABEC and ABU bankruptcy estates, Counsel for the Trustee agrees to charge 50% of his time to each estate.

**Claims and Leases Secured by ABU Personal Property  
and Assumption and Compromise of Lease with PNC Bank**

38. People Bank holds a claim against ABU in the amount of \$3,514.99 secured by a 2012 Dodge Ram 2500 titled in the name of ABU. *See Proof of Claim # 108, Case No. 23-427.* The 2012 Dodge Ram is included in the sale, and the lien of Peoples Bank shall attach to the personal property sale proceeds allocated to ABU.

39. PNC Bank National Association is the lessor of the astroturf field installed at the football stadium owned by ABEC. ABU is the lessee. PNC Bank asserts that the transaction is a true lease, with an outstanding secured balance of \$397,361.00. *See Proof of Claim # 29-1, Case No. 23-427.* PNC Bank has agreed to accept the sum of \$40,000.00 in full satisfaction of the outstanding balance of the lease and has agreed to issue a bill of sale at the closing of the sale transaction. Inclusion of the astroturf field in the sale was required by Purchaser. The USDA agrees to carve-out \$20,000.00 from sale proceeds allocated to the ABEC bankruptcy estate and subject to the USDA lien for payment to PNC Bank. The Trustee, pursuant to Bankruptcy Rule 9019, seeks authority to compromise the lease and pay \$20,000.00 from personal property sale proceeds allocated to ABU, for a total payment of \$40,000.00 to PNC Bank at Closing.

40. The Trustee is excluding from this sale all other personal property of ABU that is leased or encumbered. The excluded items of personal property are identified on Schedule B of the APA.

41. The Trustee believes that the sale of the Property and the compromises set forth in this motion are in the best interest of the ABEC and ABU bankruptcy estates, and that the purchase price is fair and reasonable. There is a limited market for a sale transaction of this type and size, and the Trustee with the assistance of the USDA has worked diligently to locate potential buyers. The cost of maintaining utility service and securing the assets for a prolonged period will reduce the available distribution to creditors of both estates. The upset bidding procedure set forth herein will allow all interested parties access to information and an opportunity to bid.

**Relief Requested**

42. The Trustee prays that the Court enter an Order, in the form attached to this

motion, which:

- a. Approves the APA;
- b. Authorizes the Trustee to sell the Property free and clear of all Claims, Liens and Encumbrances, and Interests, pursuant to 11 U.S.C. §§ 105 and 363;
- c. Approves the Sale of the Property pursuant to 11 U.S.C. § 363(b), (f), (h), (m) and Fed. R. Bankr. P. 6004;
- d. Declares that all Claims, Liens and Encumbrances, and Interests against or associated with the Property will attach to the proceeds of the Sale;
- e. Authorizes the payment of the usual and ordinary expenses of the Sale (not including attorney's fees) at closing from the proceeds of the Sale;
- f. Authorizes the payment of all unpaid real estate taxes assessed against the Property and proration of 2024 real estate taxes at Closing from the proceeds of sale;
- g. Authorizes the payment of the secured claim of Peoples Bank;
- h. Authorizes the payment of the breakup fee as set forth in paragraph 17;
- i. Authorizes the procedures and terms for upset bids as set forth herein;
- j. Approves the allocation of fifty percent (50%) of the proceeds from the sale of personal property to the ABEC bankruptcy estate and fifty percent (50%) to the ABU bankruptcy estate.
- k. Authorizes the carve-out from the proceeds of sale of real and personal property allocated to ABEC for payment of the Trustee's commission and Trustee's attorney fees related to the sale of ABEC property;

- l. Approves the compromise of the astroturf lease from PNC Bank and authorizes the distribution to PNC Bank at Closing as set forth in paragraph 39;
- m. Authorizes the Trustee to sell the Property to the next highest bidder in the event that the entity making the highest bid does not close; and
- n. Authorizes the Trustee to execute the deed, bill of sale, and any other documents required for closing.

Thomas H. Fluharty  
Chapter 7 Trustee  
By Counsel,

/s/ Joe M. Supple  
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