

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

Chapter 11  
Case No. 18-41983  
Hon. Phillip J. Shefferly

In re: 4411 ENGLE RIDGE DRIVE, LLC,  
Debtor.

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**MOTION FOR THE SALE OF REAL PROPERTY OF DEBTOR FREE  
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS  
PURSUANT TO 11 U.S.C. § 363(b) AND FED.R.BANKR.P.6004**

The above captioned Debtor, 4411 Engle Ridge Drive, LLC, hereby submits this Motion (the “Motion”) seeking, pursuant to sections 105(a), 363, 346 and 1146 of Title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2002, 6004, and 9014, an Order Approving the Sale of Real property owned by 4411 Engle Ridge Drive, LLC located at 4411 Engle Ridge Drive, Fort Wayne, Indiana 46804, free and clear of liens, claims, encumbrances and interests pursuant to 11 U.S.C. § 363(b) and the Federal Rules of Bankruptcy Procedure 6004.

1. The Court has jurisdiction to consider this Motion pursuant to 11 U.S.C. §§157 and 1334.
2. This matter is a core proceeding pursuant to 28 U.S.C. §157(b) in that it is a matter concerning the administration of the Debtor’s estate. Venue is proper

before this Court pursuant to 28 U.S.C. §§1408 and 1409.

3. The statutory basis for the relief requested herein are sections 105(a), 363(b), (f) and (m), 346 and 1146 of the Bankruptcy Code. The proposed order is attached as Exhibit A.
4. The Debtor owns real property located at 4411 Engle Ridge Drive, Fort Wayne, Indiana 46804, a single building commercial property (“The Property”).
5. On February 16, 2018 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Chapter 11 Cases”). The Debtor is managing its property as a Debtor-in- Possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in the Chapter 11 Case.
6. Debtor is the owner of the following real property: 4411 Engle Ridge Drive, Fort Wayne, Indiana 46804.
7. The Property is impressed with a Mortgage for the benefit of Old National Bank. Old National Bank (ONB) has a perfected secured interest in the Property. ONB is the mortgagee to a mortgage dated October 8, 2013, recorded October 15, 2013, which references a loan in the amount of \$165,200 and additional mortgage dated October 8, 2013, recorded in Allen County, Indiana on October 28, 2013, which references a line of credit in the amount of

\$75,000.

8. The Debtor confirmed a Plan of Reorganization on September 7, 2018, setting forth that Old National Bank has a secured interest in the Property in the amount of \$225,000.
9. The Property is also impressed with a tax lien to the Allen County Treasurer in the amount of \$11,324.83.
10. No other party has a secured interest in The Property.
11. The terms and conditions of the sale are contained in the Purchase Agreement attached as Exhibit B and the proposed Order is attached as Exhibit A.
12. The proposed purchaser, Bold, LLC, proposes to pay the Debtor's estate \$225,000 for The Property.
13. Old National Bank will be paid \$211,675.17, partially paying Old National Bank's secured claims from net proceeds. Old National Bank has agreed to accept this amount in full payment of its secured claim.
14. The Allen County Treasurer will be paid approximately \$11,324.83., paying its secured claims from net proceeds.
15. The Debtor requests authority to sell the real property free and clear of all liens, claims, encumbrances and interests of any kind or nature.
16. Other than as provided in this Motion and notwithstanding anything stated to

the contrary in the Purchase Agreement, the sale of The Property shall be on an “as is, where is” basis without any representations or warranties of any kind, nature or description by the Debtor, including any warranties of merchantability or fitness for a particular purpose; moreover the Order shall provide that Bold, LLC, or an entity to be formed, shall be deemed a good faith purchaser pursuant to §363(m) of the Bankruptcy Code.

17. The sale to Bold, LLC shall be closed at the offices of Attorneys Title Group, Inc. Fort Wayne, Indiana, as soon as possible following the entry of the Order approving the sale.
18. The Debtor proposes to sell the real property asset (The Property) subject to this motion, free and clear of any and all liens, claims and interests, including but not limited to any setoff or recoupment claims or encumbrances.
19. Section 363(b) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may use, sell, or lease other than in the ordinary course of business, property of the estate.” Section 363(f) of the Bankruptcy Code provides that the property may be sold free and clear of any interest in such property pursuant to the terms thereof.
20. This Court’s power to authorize a sale under section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible, case by case

approach. *In re Baldwin United Corp.*, 43 B.R. 905 (Bankr. S.D. Ohio 1984). In determining whether to approve or disapprove the use or sale of the estate property under section 363 (b) of the Bankruptcy Code, the Court should consider the following criteria: [I]mplicit in §363 (b) is the further requirement of justifying the proposed transaction. *In re Lionel Corporation*, 722 F.2d 1063, 1071 (2nd Cir. 1983)...[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business . . . . Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtors, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the assets to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but

merely to provide guidance to the bankruptcy judge. *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988), quoting *In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); accord, *In the Matter of Wonderbowl, Inc.*, 515 F.2d 18, 19 (9th Cir. 1975) (under Bankruptcy Act “[t]he reorganization trustee was fully empowered, with court approval, to sell, to lease, and to compromise within or without a reorganization plan.” Sound business reasons exist for selling the Debtor’s real property and interest in real property at this time. The Property was Debtor’s business location until November 2017 when Debtor consolidated operations to its Michigan facility. Debtor has determined that it is not expected to require a second operations facility in the near future. The building upon the Property is in need of considerable deferred maintenance, including possibly the replacement of the roof and water management system.

21. Debtor’s only secured creditors, Old National Bank and the Allen County Treasurer, will receive notice of this sale upon filing the motion. All liens, claims or encumbrances on The Property will attach to the proceeds of the sale of the assets with the same force, effect and priority of such liens have on the assets such to the rights and defenses, if any, of the Debtor and other parties in interest. Accordingly, the Debtor submits that the prerequisites of 11 U.S.C.

§363(f) of the Bankruptcy Code have been met and a sale should be approved free and clear of all claims, with Claims attaching to the proceeds of the sale.

22. It is in the best interest of the estate to sell the assets and close as soon as possible after approval by the Court. Therefore, the Debtor requests that the stays imposed by Bankruptcy Rules 6004(g) and 6006(d) be waived in any resulting Sale Order.

Wherefore, the Debtor requests that this Court approve the sale as requested herein, and as set forth in the proposed Order attached hereto as Exhibit "A," and grant the Debtor any and all relief as this Court deems just and equitable.

October 10, 2018

Respectfully submitted,

/s/ Don Darnell

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
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**ORDER APPROVING SALE OF REAL PROPERTY OF DEBTOR FREE  
AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS  
PURSUANT TO 11 U.S.C. § 363(b) AND FED.R.BANKR.P.6004**

4411 Engle Ridge Drive, LLC, Debtor in Possession, filed a motion seeking, pursuant to sections 105(a) and 363 of Title 11 of the United States Code (the “Bankruptcy Code”) and Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) 2002, 6004, and 9014, an order approving the sale of real property owned by 4411 Engle Ridge Drive, LLC located at 4411 Engle Ridge Drive, Fort Wayne, Indiana 46804, with any improvements, free and clear of liens, claims, encumbrances and interests pursuant to 11 U.S.C. §363(b) and the Federal Rules of Bankruptcy Procedure 6004. The Motion was filed on October 10, 2018, and the Debtor, according to the Motion and the Certificate of Service filed by the Debtor, served all creditors, interested parties and those parties claiming an interest in the Debtors Assets and Lease interests.

**IT IS ORDERED:** The Motion of Debtor is granted and the sale of the Debtor’s real property commonly known 4411 Engle Ridge Drive, Fort Wayne,



Indiana 46804, as owned by the Debtor is hereby approved as requested in the Debtor's Motion.

**IT IS FURTHER ORDERED** that the sale, as provided in 11 U.S.C. s 363(b) and Fed.R.Bankr.P. 6004 is free and clear of all liens, claims, encumbrances and interest (collectively the "Liens").

**IT IS FURTHER ORDERED** that the sale of the Debtor's real property subject to the sale shall be on an "as is, where is" basis without any representations or warranties of any kind, nature or description by the Debtor, including any warranties of merchantability or fitness for a particular purpose.

**IT IS FURTHER ORDERED** that BOLD, LLC shall not be deemed a successor in interest to the Debtor and shall be deemed a good faith purchaser pursuant to 11 U.S.C. §363(m).

**IT IS FURTHER ORDERED** that Debtor is hereby authorized and directed to execute and deliver any and all agreements, conveyances, instruments, assignments, schedules, documents and amendments as are necessary to transfer title to purchasers under the terms contemplated by the motion.

**IT IS FURTHER ORDERED** that this Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of

governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of the office, or contract, to accept, file, register or otherwise file, record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the sold assets or leasehold interests.

**IT IS FURTHER ORDERED** that this Order is a final and appealable Order. The stay imposed by Fed.R.Bankr.P.6004(g) and 6006(d) shall be inapplicable to the instant sale and the closing may occur immediately.

**IT IS FURTHER ORDERED** this Court retains jurisdiction to implement and effectuate the provisions of this Order, the motion and the purchase agreement, and any subsequent agreement as required to be entered into between the Debtor and BOLD, LLC or his entity to be formed, pursuant to this Order.

**IT IS FURTHER ORDERED** that payment to mortgage creditor Old National Bank shall be paid \$211,675.17 from sales proceeds at the closing of said sale, subject to a requested and proper payoff quote from Old National Bank. This Order shall not prohibit Old National Bank from proceeding with its rights under state law with respect to its mortgage on the Property should the closing of the sale of the Property not occur within 90 days of the date of the entry of this Order. The Allen County Treasurer shall also be paid in full from sales proceeds at the closing of said sale, in

amount required to satisfy said claim in full.

## REAL PROPERTY PURCHASE AGREEMENT

This Asset Purchase Agreement is made this \_\_\_\_ day of August, 2018, ("Agreement") by and between the "Parties":

SELLER: 4411 Engle Ridge Dr. LLC  
c/o Don Darnell  
8080 Grand St., Ste. 1  
Dexter, Michigan 48130

BUYER: BOLD, LLC, or an Entity to be established by Buyer prior to closing.  
4411 Engle Ridge Drive  
Fort Wayne, Indiana 46804

### RECITALS

This Agreement is made with reference to the following representations, facts, and circumstances, all of which are true, and incorporated as a part of the agreement of the Parties:

- A. Seller owns and certain land, improvements, and fixtures and other assets as a commercial building located at 4411 Engle Ridge Dr., Fort Wayne, Indiana, and desires to sell to Buyer, and Buyer desires to buy from Seller; and
- B. Seller agrees to make the representations, warranties, covenants, and indemnifications set forth in this Agreement.

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

### AGREEMENT OF THE PARTIES

1. Agreement to Purchase and Sell. Seller agrees to sell (and/or transfer and assign) to Buyer, and Buyer agrees to purchase (or accept the transfer and assignment of) all real and personal property, rights and interests of every conceivable kind or character whatsoever, whether tangible or intangible, owned by Seller or in which Seller has an interest of any kind, as a going concern, and without limiting the generality of the foregoing, all of Seller's rights, title and interest in and to, the property that follows: (collectively referred to as the "The Property"):

- 1.1 All real property, including the land with the legal description in Exhibit A, together with all improvements situated thereon, all tenements, hereditaments, appurtenances, rights, privileges, alleys, adjacent streets, easements, and rights-of-way incident thereto, all air and mineral rights and all fixtures located in, on or upon the land (collectively, "Premises" or "Real Estate").
- 1.3 Purchased Assets, no liens. Buyer does not assume nor shall Buyer be obligated for any liabilities or responsibilities whatsoever of Seller, or the Business as conducted by Seller through the Closing Date. The Property shall be free and clear of all taxes, liens, claims, encumbrances, pledges, charges, security interests, obligations, rights of third parties, or other interests of any kind or character whatsoever.
2. Purchase Price. The purchase price for all the Property shall be Two Hundred Twenty Five Thousand Dollars and 00/100 (\$225,000.00), (the "Purchase Price.") The purchase price shall be allocated amongst the Property in Purchaser's sole discretion. Purchaser shall provide Seller with a proposed allocation no later than five (5) days prior to the Closing.
- 2.1 Financing. Purchaser's performance under this Contract is conditioned upon its ability to secure financing in the amount of \$305,000.00 (Purchase Price and needed repairs) from Garrett State Bank, for which he has been preliminarily approved.
- 2.2 Tax Purposes. The Parties agree to be bound by the allocation of assets in this paragraph for all federal, state, and local income tax purposes. The Parties further agree to submit Internal Revenue Service form 8594 (or other forms required by law) in accordance with allocation of assets in Section 2.
- 2.3 Terms of Payment. The total Purchase Price shall be paid at the Closing with wired funds, upon delivery of the Warranty Deed and Bill of Sale, to the Buyer.
- 2.4 Deposit. Buyer has previously paid Seller's rental agent a rental security deposit of \$3,600 and an additional \$1,000 deposit in a previous proposed sale. Said deposits, in the total sum of \$4,600 shall be considered, for the purpose of this agreement, as Buyer's earnest money deposit. The Deposit and accrued interest will be applied to the Purchase Price if the sale is consummated or immediately repaid to Buyer, or its nominee, in full if this Agreement is terminated.
3. Title
- 3.1 Real Estate. At Closing the title to the Real Estate will be free, clear and unencumbered.

- A. Condition of Title. The Real Estate shall be conveyed to Buyer by Warranty Deed conveying indefeasible fee simple marketable title.
- B. Evidence of Title. Within ten (10) days after the Effective Date Seller shall deliver to Buyer, at Seller's sole cost and expense, an ALTA Commitment for Owners Title Insurance (including legible copies of all documents identified as exceptions to, or that affect title) ("Commitment") issued by ATTORNEYS TITLE GROUP, INC. (Contact Kathy Walker at 260-918-3972), (the "Title Company"), without standard exceptions, in the amount of Two Hundred Twenty Five Thousand Dollars and 00/100 (\$225,000.00), naming Buyer as the insured, with an effective date subsequent to the Effective Date herein, agreeing to insure fee simple marketable title in the condition required under this Agreement. At the Closing, the Commitment will be updated to the later of the Closing Date or recording of the Warranty Deed to insure the gap between the Closing Date and the date of recording. At the Closing, the Seller will pay the premium for the owner's title policy to be issued pursuant to the Commitment ("Title Policy") and will cause the Owner's Title Policy to be issued as soon as possible after Closing. Buyer shall pay for the Lender's Title Insurance premium.
- ~~C. Seller shall provide, at Seller's sole expense, a current Boundary Survey certified to the Buyer and the Title Company, showing all improvements and indicating whether or not the property is in a flood hazard area.~~ JW
- D. If objection to the title ~~or Survey~~ is made by the Buyer, then Seller shall have 10 days after it is notified in writing of the particular defects claimed to employ its good faith efforts to procure a cure for the defects. If Seller is unable through the exercise of its good faith efforts to procure a cure for the claimed defects to the Buyer's satisfaction within 10 days after notice is given to Seller, then, at Buyer's sole option, Buyer may (i) take title to the Real Estate despite the existence of objectionable matters, (ii) terminate the Agreement, in which case, notwithstanding anything herein to the contrary, all sums deposited by Buyer shall be immediately refunded to Buyer and this Agreement shall be deemed null and void and of no further force and effect. Notwithstanding the foregoing: (a) if the Real Estate is subject to any mortgage, lien or charge in a fixed or ascertainable amount ("Financial Liens"), then Seller shall pay all the Financial Liens at or before the Closing, and if the Seller refuses or fails to do so, the Buyer shall have the right to deduct from the Purchase Price the value of such Financial Liens. Seller will remain obligated to remove at or before Closing all Title Objections consisting of Financial Liens. All Financial Liens will be deemed to be continuing Title Objections, even if no Title Objection Notice is given by Buyer.

4. Not Used.
5. Adjustments. At the Closing, the following shall be adjusted or apportioned and, to the extent practicable, all such prorations shall be computed and paid at Closing, and to the extent not practicable, as soon as practicable after the Closing:
  - 5.1 Real Estate.
    - A. Real Estate Taxes. All taxes and assessments assessed for any prior calendar year and remaining unpaid, shall be paid by Seller and all taxes assessed for the current calendar year shall be prorated between Seller and Buyer on a calendar year basis as of the day immediately prior to the Closing Date (Indiana Customary Tax Proration). If at the time of closing the tax bill for the Real Estate for the succeeding year has not been issued, taxes payable by either party shall be computed based on the last tax bill available to the Closing Agent/Title Company.
    - B. Special Assessments. Any special assessments applicable to the Property for municipal improvements previously made to benefit the Property shall be paid by Seller. Buyer will assume and agree to pay all special assessments for municipal improvements which are completed after the date of this Purchase Agreement.
    - C. Recording Fees. Buyer shall assume the costs of recording the deed when it is delivered by Seller to Buyer.
    - D. Revenue Stamps. Not Applicable to Indiana Properties.
6. Representations, Covenants, and Warranties of Seller. Seller and Seller's members, jointly and severally, represent, covenant, and warrant, which representations, covenants and warranties shall survive the Closing, all the following to be true:
  - 6.1 Authority. When executed, this Agreement and all instruments necessary to carry out the transactions contemplated by this Agreement will be legal, valid and binding obligations of Seller.
    - (a) Consents or Resolutions. Seller shall furnish to Buyer and the Title Company any and all consents or resolutions approving the terms and provisions of this Agreement and authorizing an individual(s) signing for and on behalf of the Seller, to execute all



documents necessary and proper to put into effect the terms and provisions of this Agreement.

- (b) Entity Action. The execution and delivery by Seller of this Agreement and the other documents and instruments required under this Agreement, and the performance by Seller of all of its obligations under this Agreement are now and will be, as of the Closing, duly authorized by all necessary entity action; including, without limitation, that of its governing persons, and will not, as of the Closing, result in a breach or violation of or default under Seller's organizational documents.
  - (c) Approval of Bankruptcy Court. Immediately upon Seller's acceptance of this Agreement, Seller shall cause it's attorney to apply to the Federal Bankruptcy Court handling Seller's bankruptcy, for permission to sell the Property. All costs involved with this process shall be paid by the Seller.
- 6.2 Organization and Standing of Seller. Seller is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Michigan.
- 6.3 Title to Properties of Seller. Seller has good and marketable title to all the Property. Further, except as set forth in this Agreement, there are no imperfections of title that would affect the marketability of title of the assets of Seller. That the instruments to be executed and delivered to the Buyer at Closing will be legal, valid in accordance with their terms and binding, and at Closing will effectively vest in the Buyer good and marketable fee simple title to the Property free and clear of any and all liabilities, obligations, liens and encumbrances.
- 6.4 Contracts of Seller. Seller has no contract or commitment extending beyond the projected Closing Date except that certain month to month lease with Buyer.
- 6.5 Status of Contracts of Seller. Seller has complied with all of the provisions of contracts described in this Agreement and with all other contracts and commitments to which Seller is a party. Seller has entered into no other existing or valid contracts or purchase agreements relating to the Property.
- 6.6 No Judgments. There are no judgments, liens, actions, or proceedings pending against Seller as a result of the operation of subject business and that there are no outstanding violations of any municipal, county, or state ordinances or laws against the Seller arising out of the subject Business, of which Seller has knowledge, with exception to Seller's bankruptcy proceedings pending as Cause No. None of the None Court.



- 6.7 Labor or Materials. No labor shall be performed or material furnished within ninety (90) days prior to Closing without written notice to Buyer. Further, all bills for the labor or materials shall be paid on or before Closing by Seller.
- 6.8 Utility expenses.  
All unpaid water, sewer, and utility bills for the furnishing of services to the Property which may become a lien upon the Premises, which were incurred before the date of November 1, 2017, shall be paid by Seller on or before Closing, or upon receipt of the final billing, whichever is later. Water, sewer, and utility bills incurred on or after November 1, 2017 shall remain the responsibility of the Buyer.
- 6.9 Litigation regarding Seller. Seller is a Chapter 11 Debtor in Possession pending in the Eastern District of Michigan Case No. 18-41983. This Agreement and the Seller's obligations as set forth herein are contingent upon approval this agreement and the sale of the Debtor's interest in the Property. Debtor shall file a motion under Section 363 of the Bankruptcy Code within two days of the execution of this Agreement, seeking the Court's approval of this sale.
- 6.10 No liabilities. As of the Closing Date, there will be no liabilities or obligations of any nature, whether accrued, absolute, contingent or otherwise, including without limitation, commissions owed by the Seller, tax liabilities due or to become due, other than as disclosed in writing to, and approved, by the Buyer in writing.
- 6.11 Undisclosed liabilities. Seller does not know of or have reasonable grounds to know of any basis for the assertion of any liability of any nature, in any amount, which would be a charge or obligation or lien against the Business or for which Buyer may become liable for as a successor.
- 6.12 Condition of Property of Seller and Real Estate. The following representations and covenants are made with respect to the condition of the Property:
- A. There are no known defects, hidden or otherwise, that have not been disclosed to Buyer;
- B. There are no outstanding citations issued by any health, building, or other governmental agency (including OSHA) having jurisdiction over the Property
- 6.13 Non-Disclosure. The Seller hereby warrants that it has disclosed all material facts to Buyer, and that it will hold Buyer harmless for any claim or claims arising because of the

misrepresentation or non-disclosure of a material fact or facts and will indemnify Buyer for any loss or additional cost to Buyer because of any misrepresentations or non-disclosures.

6.14 Reliance. The foregoing representations and warranties are made with the knowledge and expectation that Buyer is placing complete reliance on them.

7. Representations and Warranties of Buyer. Buyer represents, covenants, and warrants the following to be true:

7.1 Status of Buyer. Buyer, as of the Closing Date, will be an Indiana limited liability company, duly organized and validly existing in good standing under the laws of the State of Indiana.

7.2 Authority. Buyer has the power and authority to enter into and perform its obligations under this Agreement.

7.3 Consents or Resolutions. Buyer shall furnish to Seller and Title Company consents or resolutions approving the terms and provisions of this Agreement and authorizing an individual, for and on behalf of the Buyer, to execute all documents necessary and proper to put into effect the terms and provisions of this Agreement.

7.4 Reliance. The foregoing representations and warranties are made by Buyer with the knowledge and expectation that Seller is placing complete reliance on them.

8. Fire or Other Casualty/Risk of Loss

8.1 Insurance. The Property is and will be adequately insured against fire and casualty to the Closing Date for fire and extended coverage, personal liability, and property damage (''Policies''), by Seller. The Policies are and will be outstanding and duly enforced and the premiums to become due on the Policies to the Closing Date will be paid when due by Seller. Seller has not received any notice of any cancellation of the Policies.

8.2 Assumption of Risk. Seller assumes all risks of destruction, loss, or damage due to any casualty, including any liability arising out of ownership of the Purchased Assets, up to the time of the Closing.

8.3 Right to Terminate Agreement. If the Purchased Assets are damaged in whole or in part by casualty, or taken or subject to being taken under eminent domain or similar government confiscatory proceedings, Buyer at Buyer's option, may, (a) terminate this Agreement by delivering written notice thereof to Seller, or (b) proceed to close as herein provided, in which

event the Buyer shall take the Purchased Assets as affected by the destruction, damage or taking by eminent domain, and at Closing, Seller shall pay over or assign to Buyer, all insurance proceeds or condemnation awards, or both, recoverable by the Seller on account of such casualty or taking, and Seller shall execute and deliver to Buyer such other and further documents as Buyer may reasonable request to perfect its interest in and to collect such proceeds and awards. If this transaction shall be closed notwithstanding a casualty or taking by eminent domain, Buyer shall be entitled to participate with Seller in settling all losses with insurers and awards with authorities exercising the powers of eminent domain, as the case may be.

9. Conditions Precedent. This Agreement and all of the obligations of Buyer under this Agreement are, at Buyer's option, subject to the fulfillment, before or at the time of the Closing, of each of the following conditions:
  - 9.1 Representations and Warranties True at the Closing. The representations, covenants, and warranties of Seller and contained in this Agreement shall be true at the Effective Date, and the time of the Closing.
  - 9.2 Performance. The obligations, agreements, documents, and conditions required to be signed and performed by Seller, shall have been performed and complied with before or at the Closing.
  - 9.3 Due Diligence by Buyer. From and after the Effective Date through the Closing Date, Buyer may conduct such investigations, surveys, environmental testing, inspections and studies Buyer may deem necessary with respect to the Purchased Assets (''Due Diligence''). Seller will permit Buyer access to the Purchased Assets for the purposes of conducting the Due Diligence. Buyer may, in their absolute discretion, terminate this Agreement during or after conducting the Due Diligence. If Buyer elects to terminate this Agreement, Buyer will provide Seller with a notice in writing no later than five (5) days following the twentieth (20<sup>th</sup>) day after the Effective Date (''Due Diligence Period''). If the termination notice is not given, and the Bankruptcy Court approves the sale, then the Parties shall proceed to a closing. If Buyer gives their notice to terminate, this Agreement shall become null and void and the Seller and the Buyer shall be relieved of any and all liability hereunder. Seller shall timely cooperate with and assist Buyer in all aspects of Buyer's Due Diligence at Buyer's request.
10. Closing, possession, and closing delivery. This transaction will be consummated (Closing) on or before the Thirtieth (30) day after the date the Bankruptcy Court approves of the sale, provided all the conditions precedent are fully satisfied, or are waived by Buyer (Closing Date). The closing date may be extended on written request of either party. The Seller shall

deliver to and put Buyer in possession and control, and the Buyer shall receive and accept complete operating control and possession, of the Purchased Assets at Closing. At Closing, the Seller shall execute and deliver to Buyer, among other documents and/or instruments, satisfactory to Buyer, the following:

- A. Warranty Deed for the Real Estate.
  - B. Title Commitment updated to the Closing Date or recording of the Warranty Deed, whichever is later to occur, to provide gap coverage.
  - C. Such affidavits as the title company shall reasonably require in order to issue its title insurance policy as provide for herein.
  - D. A statement of the Seller's nonforeign status pursuant to Section 1445 of the Internal Revenue Code.
  - E. A duly executed Bill of Sale to Buyer covering the Personal Property to be transferred and conveyed by Seller to Buyer hereunder, free and clear from all liens, obligations, charges, and encumbrances.
  - F. Evidence of payment of any and all taxes.
  - G. Authority Documents.
11. Broker. Seller and Buyer each represent that neither Seller nor Buyer have dealt with any broker in connection with this transaction. Seller and its members, jointly and severally, shall indemnify and hold Buyer harmless from and against any and all claims, demands, actions, causes of action, loss or liability, including, without limitation, reasonable attorneys' fees, incurred by Buyer as a result of any claim for a broker's commission, finder's fee or other similar fee being due as a result of the transaction herein.
12. Default
- 12.1 Default by Buyer. If Buyer defaults, and the default is not cured within fifteen (15) days after written notice from Seller, Seller, as Seller's sole and exclusive remedy, may, by written notice, declare a forfeiture hereunder and receive the Deposit as liquidated damages, and not as a penalty, which is the Parties' reasonable estimate of fair compensation for the foreseeable losses that might result from the default, because of the difficulties and inconvenience in attempting to establish the loss.
- 12.2 Default by Seller. If Seller defaults and the default is not cured within fifteen (15) days after written notice from Buyer, then Buyer will be entitled to receive an immediate refund of the full Deposit, plus an amount equal to the Deposit from Seller, as Buyer's remedy, and as liquidated damages and not as a penalty or, in the alternative, Buyer will have the right to enforce the terms of this Agreement by specific performance, at Buyer's option.

13. Miscellaneous

- 13.1 Counterparts. This Agreement may be executed simultaneously in a number of identical counterparts, each of which for all intents and purposes is deemed an original, and all of which collectively constitute one Agreement, however, in making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart. The Parties may execute and deliver this Agreement by facsimile transmission and/or email (PDF), and the receiving Party may rely fully thereon as an original.
- 13.2 Construction. All of the terms and provisions of this Agreement have been negotiated by Seller and Buyer with the assistance of their respective legal counsels. Therefore, it is the intent of Seller and Buyer that this Agreement not be construed for or against any of the Parties hereto, and that none of the Parties hereto shall be deemed the draftsman of this Agreement.
- 13.3 Time of the Essence. Time is of the essence of this Agreement and of each covenant and agreement that is to be performed at a particular time or within a particular period of time. However, if the final date of any period which is set out in any provision of this Agreement or the closing date falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of Michigan, then the time of such period or the closing date, as the case may be, shall be extended to the next date which is not a Saturday, Sunday or legal holiday.
- 13.4 Notices. Any notice required or permitted to be given hereunder by one party to the other will be in writing and the same will be given and will be deemed to have been served and given when (i) delivered in person to the address set forth below for the party to whom the notice is given, (ii) placed in the United States mail, certified and return receipt requested, addressed to such party at the address hereinafter specified, (iii) deposited into the custody of FedEx Corporation to be sent by FedEx Overnight Delivery or other reputable overnight carrier for next day delivery, addressed to such party at the address hereinafter specified, or (iv) telecopied by facsimile transmission to such party at the telecopy number listed below, provided that such transmission is electronically confirmed on the date of such transmission. In addition, notice may be given by email at the email address set forth below for the party to whom notice is given, and such notice will be deemed given and served upon transmission so long as such notice is also given on the same day via a method provided for in (i) through (iv) above.

A. The address of Seller for all purposes including all notices will be:

4411 Engle Ridge Dr., LLC  
c/o Don Darnell, Esq.  
7926 Ann Arbor St.  
Dexter, Michigan 48130  
734-424-5200  
dondarnell@darnell-law.com

- B. The address of Buyer for all purposes including all notices will be:

BOLD, LLC  
c/o A. Dale Bloom, Esq.  
200 East Main Street, Suite 1000  
Fort Wayne, Indiana 46802  
260-426-1300  
DBloom@BurtBlee.com

AND TO:

NICK DANCER  
4411 Engle Ridge Drive  
Fort Wayne, Indiana 46804  
260-415-1951  
NickDancer@DancerConcrete.com

- C. From time to time either party may designate another address within the forty-eight (48) contiguous states of the United States of America for all purposes of this Agreement by giving the other party not less than ten (10) days' advance written notice of such change of address in accordance with the provisions hereof. Each attorney listed above for Buyer and Seller may give notices on behalf of Buyer or Seller, as the case may be.
- 13.5 Amendment. This Agreement shall not be amended, altered, or terminated except by a writing executed by each Party.
- 13.6 Governing Law. This Agreement shall be governed in all respects by the laws of the state of INDIANA. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions and this Agreement shall be construed in all respects as if such invalid or unenforceable provision was amended.

- 13.7 Headings. The paragraph headings used in this Agreement are included solely for convenience.
- 13.8 Entire Agreement. This Agreement sets forth the entire understanding of the parties; further, this Agreement shall supersede and/or replace any oral or written Agreement(s) relating to this subject matter entered into by the parties before the date of this Agreement.
- 13.9 Waiver. The waiver by any party of any breach or breaches of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of any provision of this Agreement.
- 13.10 Binding Effect. This Agreement, inclusive of its terms and provisions, shall survive the Closing and shall be binding on and inure to the benefit of, and be enforceable by, the respective heirs, legal representatives, successors, and assigns of the parties.
- 13.11 Good Faith Cooperation. The Parties agree each in good faith shall take all steps reasonably necessary to facilitate the purchase and sale contemplated in this Agreement and to execute such documents reasonably necessary to carry out and otherwise put into effect the terms and provisions of this Agreement. At the Closing and any time after it, the Parties shall execute and deliver all documents and/or take such other action necessary to put into effect the terms of this Agreement.
- 13.12 Attorney fees. If either Party fails to perform its obligations under this Agreement or if a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting or non-prevailing party in the dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights under this Agreement including, without limitation, all court costs and reasonable attorney's fees.
- 13.13 Exhibits. The following exhibits are attached to and are a part of this Agreement:

Exhibit A - Legal Description



The Parties have executed this Agreement as of the dates set below. The last of the dates of execution (and delivery of the fully executed Agreement to the first Party to sign) being the Effective Date of the Agreement, and the date this Agreement becomes effective:

Dated: 8/28/18

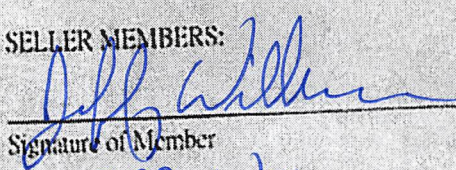
SELLER: 4411 Eagle Ridge Drive, LLC

By:   
Signature of Authorized Individual

Jeff Wilkerson Member  
Printed Name and Title

SELLER MEMBERS:

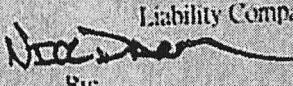
Dated: 8/28/18

  
Signature of Member

Jeff Wilkerson  
Printed Name of Member

BUYER: BOLD, LLC, an Indiana Limited  
Liability Company

Dated: 08/22/2018

 ND444  
By: NICK DANCER, Sole Member