

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

IN RE:)	
)	Case No.: 17-22665
Andrew Young, et al.)	(Jointly Administered)
Andy’s Truck and Equipment Co., Inc.;)	
D.A.Y. Investments, LLC; Gary II, LLC;)	CHAPTER 11
Gold Coast Rand Development Corp.; and)	
Surplus Management Systems, LLC,)	
)	
Debtors.)	Judge James R. Ahler
)	

**MOTION TO SELL REAL PROPERTY OF DEBTOR SURPLUS
MANAGEMENT SYSTEMS LLC COMMONLY KNOWN AS 2301 VIRGINIA
AVENUE, GARY, INDIANA 46407 AT PRIVATE SALE
FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES**

Come now Debtor-In-Possession, Surplus Management Systems, LLC (“**Debtor**”), by its undersigned counsel, and moves the Court, pursuant to 11 U.S.C. Section 363(b)(1), for authority to sell real property of the Debtor commonly known as 2301 Virginia Avenue, Gary, Indiana, 46407, such real estate being more particularly described as Diamond Park Subdivision, all lots 1 to 6, Block 2, and having the tax parcel number 45-08-15-179-001.000-004, together with all fixtures, appurtenances, and hereditaments thereunto belonging (all of which is hereinafter referred to as the “**Real Estate**”) to Detrick Curtis (“**Purchaser**”) through a private sale, free and clear of all liens, claims and encumbrances. In support, the Debtor respectfully states as follows:

1. In September 2017, the Debtor filed its voluntary petition under Chapter 11 of the Bankruptcy Code. At or about the same time, the other above-

captioned Debtors also filed their voluntary petitions pursuant to Chapter 11 of the Bankruptcy Code.

2. On or about February 8, 2018, this Court entered an Agreed Order for Joint Administration of these bankruptcy cases.

3. Prior to the Debtor's petition date, on or about March 15, 2016, the Debtor entered into that certain No Lien Contract for Condition Sale of Real Estate (the "**Prepetition Agreement**"), providing for the sale of the Real Estate to the Purchaser for \$40,000 payable through installments over two years. The Purchaser paid the Debtor \$11,800 under the Prepetition Agreement before the Debtor's dispute with the taxing authorities and ensuing bankruptcy filing prevented the Debtor from completing the transaction.

4. As of November 14, 2018, the total outstanding taxes that are claimed to be due on the Real Estate are \$41,657.50, which amount includes \$22,168.61 in delinquent taxes and \$17,760.15 penalties related to the Debtor's longstanding dispute with Lake County taxing authorities. In short, a significant portion of the delinquent taxes and all of the alleged penalties are disputed by the Debtor based on a history of improper tax assessments – a dispute that should have been resolved pursuant to a Settlement Agreement between the Debtor and Lake County that was approved by the Bankruptcy Judge Wedoff and subsequently breached by Lake County.

5. On or about November 20, 2018, the Debtor and Purchaser entered into a new Contract for Purchase of Real Estate (the "**New Contract**"), providing for the

sale of the Real Estate subject to this Court's approval. A true and correct copy of the New Contract is attached hereto as **Exhibit A**.

6. The New Contract provides *inter alia* for:

(i) Purchase price payment to the Debtor in the amount of \$28,200, equal to the remaining balance due from Purchaser under the Prepetition Agreement;

(ii) Entry of an order by this Court approving the New Contract and authorizing the sale of the Real Estate to Purchaser free and clear of any liens, claims or encumbrances pursuant to 11 U.S.C. § 363(f);

(iii) Delivery of a recordable quitclaim deed by the Debtor;

(iv) Debtor's retention of liability for all taxes accrued up to and including March 15, 2016 and Purchaser's assumption of responsibility for all taxes accruing from and after March 15, 2016;

(v) Closing to occur within thirty (30) days after the Debtor obtains a final and no longer appealable order from the Court approving the Contract and authorizing the proposed sale, and in any event, by no later than January 31, 2019;

(vi) Purchaser's payment of any applicable transfer taxes or other closing costs, if any; and

(vii) Mutual general releases, including, without limitation, any claim related to the Prepetition Agreement.

7. The New Contract has been negotiated at arms' length and resolves a potential dispute between the parties related to the Prepetition Agreement. The

current assessed value of the Real Estate is \$36,200; accordingly, the aggregate \$40,000 purchase price to be paid by the Purchaser, who has already made certain improvements to the Real Estate in reliance on the Prepetition Agreement, reflects a fair price for the Debtor's estate.

8. The proposed sale is in the best interests of the Debtor's estate as it resolves Purchaser's potential claim against the estate, it will generate proceeds to pay the Debtor's tax liability once the Lake County Treasurer's disputed claim is resolved, and it should free up additional funds to support the Debtor's reorganization.

9. Under § 363(f) of the Bankruptcy Code, the Debtor-in-Possession has the same powers as a trustee and may sell property free and clear of any lien, claim, or interests in such property, if, among other things:

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which property is sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

10. Because § 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the sale of the Real Estate free and

clear of liens, claims, encumbrances, pledges, mortgages, security interests, charges, options, and other interests (collectively, the “**Interests**”).

11. Additionally, § 1129(b)(2)(A) of the Bankruptcy Code specifically allows a debtor to sell property subject to a lien, free and clear of such lien, if such lien attaches to the net proceeds of the sale, subject to any claims and defenses the Debtor may possess with respect to the liens.

12. The Debtor submits that, to the extent the Lake County Treasurer objects to the proposed sale (and thus does not consent under § 363(f)), Lake County Treasurer’s claim and related tax lien are in bona fide dispute. Just without the exorbitant penalties, the \$28,200 purchase price payment will exceed the amount of the alleged tax liability. Moreover, the Lake County Treasurer’s tax lien will attach to the proceeds of the proposed sale, and such proceeds will be held in the Debtor’s DIP account to secure payment of such taxes once the Court determines how much is due and owing by the Debtor, or until the Debtor and the Lake County Treasurer can otherwise agree on the amount due.

13. Pursuant to Local Rule B-6004-1, the Debtor has served a copy of this Motion upon the United States trustee, the entities included on any list required by Fed. R. Bankr. P. 1007(d), and all entities that can be discovered through a reasonably diligent inquiry holding liens upon or having interests in the property to be sold.

WHEREFORE, the Debtor prays this Court for the entry of an Order:

(i) approving the New Contract and authorizing the Debtor's sale of said Real Estate to Purchaser pursuant to the New Contract, free and clear of all Interests; and (ii) granting all other relief as the Court may deem proper in the premises.

Dated: December 10, 2018

Respectfully submitted,

Surplus Management Systems, LLC

By: /s/ Gordon E. Gouveia II

Gordon E. Gouveia II
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Chicago, Illinois 60654
P: (312) 541-0151
F: (312) 980-3888
ggouveia@foxrothschild.com
Counsel to the Debtor

EXHIBIT A

CONTRACT FOR PURCHASE OF REAL ESTATE

Detrick Curtis (hereinafter referred to as “**Purchaser**”), offers to purchase (“**Contract**”) from Surplus Management Systems LLC (hereinafter referred to as “**Seller**”) certain real estate located in Lake County, Indiana, with a street address of 2301 Virginia Avenue, Gary, Indiana, 46407, such real estate being more particularly described as Diamond Park Subdivision, all lots 1 to 6, Block 2, and having the tax parcel number 45-08-15-179-001.000-004, together with all fixtures, appurtenances, and hereditaments thereunto belonging (all of which is hereinafter referred to as the “**Real Estate**”), for the total sum of Twenty-Eight Thousand Two Hundred Dollars and Zero Cents (\$28,200.00) (hereinafter referred to as the “**Purchase Price**”) and other valuable consideration, upon the following terms and provisions, and subject to approval by the United States Bankruptcy Court for the Northern District of Indiana, Hammond Division (the “**Bankruptcy Court**”).

1. Payment of Purchase Price at Closing. Purchaser shall pay to Seller at Closing, as such term is defined in Paragraph 6 below, the Purchase Price by certified check or electronic fund transfer as directed by Seller’s counsel.
2. Conditions to Each Party’s Obligations. The obligation of each of Seller and Purchaser to consummate this transaction is contingent upon the other party having performed all of the obligations to be performed by it hereunder at or before the Closing.
3. Free and Clear Sale Order. Title to the Real Estate shall be conveyed by Seller to Purchaser via a recordable quitclaim deed and pursuant to order of the Bankruptcy Court authorizing such sale free and clear of any liens, claims or encumbrances pursuant to 11 U.S.C. § 363.
4. Condition of Real Estate. Subject only to the requirements of Paragraph 3, the sale of the Real Estate pursuant to this Contract shall be on an “AS IS AND WHERE IS” basis, subject to all conditions and faults and without representations or warranties of any kind, nature or description by the Seller or its agents. Purchaser acknowledges and represents that (i) it has had an opportunity to inspect and examine the Real Estate and to conduct any and all due diligence regarding the Real Estate prior to Closing; (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and the Real Estate; and (iii) it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Real Estate by any person whatsoever, or the completeness of any information provided in connection therewith. In addition to and not in limitation of the foregoing, it is understood and agreed by Seller and Purchaser that Seller makes no warranty of habitability, suitability, merchantability, fitness for a particular purpose or fitness for any purpose with regard to the Real Estate. Purchaser recognizes, stipulates

and agrees that the provisions of this section are a material inducement to Seller in connection with the execution of this Agreement and the consummation of the transactions contemplated hereby and that, but for the provisions of this section, Seller would not have executed this Agreement or agreed to sell the Real Estate on the terms and conditions contained herein. The provisions of this section shall survive the Closing.

5. Taxes and Assessments. Seller shall be responsible for all taxes accrued up to and including March 15, 2016. Purchaser shall be responsible for all taxes accruing from and after March 15, 2016. Any taxes and assessments previously paid by Purchaser shall not be a credit to the Purchase Price.
6. Closing. The transaction contemplated hereby shall be closed within thirty (30) days after Seller obtains a final and no longer appealable order from the Bankruptcy Court approving the Contract and authorizing the transaction contemplated hereunder, and in any event, if approved by the Bankruptcy Court, Closing shall occur not later than January 31, 2019. Closing shall occur at a time agreed to between the parties. Notwithstanding the forgoing, Closing may be conducted in escrow without the need for a "sit down" Closing. At Closing, Seller agrees to deliver to Purchaser, a duly executed quitclaim deed, in recordable form, and Purchase agrees to deliver the Purchase Price to Seller.
7. Transfer Fees; Commissions. At Closing, Purchaser shall pay the cost of any state and/or local transfer conveyance taxes in the amount required by law. Seller and Purchaser represent and warrant to each other that they have dealt with no broker, finder, or other person with respect to this Contract or the transactions contemplated hereby, and insofar as they know, no broker, finder or other person is entitled to any commission or a finder's fee in connection herewith. Seller and Purchaser each agree to indemnify and hold harmless one another against any loss, liability, damage, or claim incurred by reason of any brokerage commission or finder's fee alleged to be payable because of any act, omission, or statement of the indemnifying party. Such indemnity obligations shall be deemed to include the payment of reasonable attorneys' fees and court costs incurred in defending any such claim, and shall survive the Closing hereof.
8. Mutual Releases. As additional consideration for the transactions contemplated under this Contract, the parties agree to release one another at Closing from any and all actual and potential claims, including but not limited to any claims related to the No Lien Contract for Conditional Sale of Real Estate between the parties dated March 15, 2016.
9. Default. If either party breaches this Contract, the other party may (i) pursue specific performance, or (ii) terminate this Contract. Except as otherwise expressly provided herein, the remedies provided in this Paragraph 9 shall be the sole remedies available to Purchaser or Seller upon such breach.

10. Notices. All notices, requests, demands, consents, and other communications required or permitted under this Contract shall be in writing and shall be deemed to have been duly and properly given on the date of service if delivered personally, or sent by facsimile with written confirmation of receipt by the recipients, or, if mailed, on the second day after such notice is deposited in a receptacle of the United States Postal Service, registered or certified mail, first class postage prepaid, return receipt requested, or on the first day following deposit with a nationally recognized overnight courier service (i.e., FedEx), postage prepaid, and in any event addressed appropriately as follows:

If to the Seller: Surplus Management Systems LLC
Attn: Andrew Young, Manager
38335 Shagbark Lane
Wadsworth, IL 60083

With a copy to: Gordon E. Gouveia II, Esq.
Fox Rothschild LLP
321 N. Clark St., Suite 800
Chicago, IL 60654

If to Purchaser: Detrick Curtis
200 W. 75th Ave.
Merrillville, IN 46410

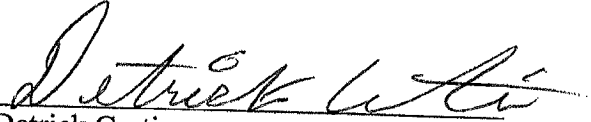
With a copy to: Christopher R. Schmidgall, Esq.
Law Office of Weiss, Schmidgall & Hires, P.C.
Six W. 73rd Ave.
Merrillville, IN 46410

11. Assignment; Entirety of Agreement. This Contract shall be assignable by Purchaser and shall be binding upon and inure to the benefit of the respective heirs, representatives, successors, and assigns of the parties hereto. No such assignment shall relieve Purchaser of its obligation to purchase the Real Estate pursuant to the terms of this Contract, subject to the satisfaction of the conditions set forth herein. This writing embodies the entire agreement between the parties hereto and there are no representations, promises, understandings, or agreements, either oral or written, between the parties which are not set forth herein.
12. Survival. All of the representations, warranties, and covenants of Seller stated herein shall survive the Closing and the conveyance of the Real Estate to Purchaser and shall be binding upon and inure to the parties hereto and their respective heirs, successors, and assigns.
13. Governing Law. This Contract shall be construed and enforced in accordance with the laws of the state of Indiana.

14. Attorneys' Fees. In the event of any controversy, claim, or dispute between Purchaser and Seller arising out of or related to this Contract or the breach thereof, each party shall be responsible for its own attorneys' fees, costs, and expenses, unless expressly stated to the contrary in this Contract.
15. Severability. If any one or more of the provisions contained in this Contract shall be held invalid, illegal, or unenforceable, this Contract shall be construed to give effect to the balance of its terms.
16. Interpretation. Words of any gender used in this Contract shall be construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.
17. Time of Essence. Time is of the essence concerning this Contract.

"PURCHASER"

Detrick Curtis

By: 
Detrick Curtis

Dated: November 20, 2018

ACCEPTANCE OF OFFER

Subject to Bankruptcy Court approval, the undersigned hereby accepts the foregoing offer on this 20th day of November, 2018.

“SELLER”

Surplus Management Systems LLC

By:


Andrew Young, Manager

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

IN RE:)	
)	Case No.: 17-22665
Andrew Young, et al.)	(Jointly Administered)
Andy’s Truck and Equipment Co., Inc.;)	
D.A.Y. Investments, LLC; Gary II, LLC;)	CHAPTER 11
Gold Coast Rand Development Corp.; and)	
Surplus Management Systems, LLC,)	
)	
Debtors.)	Judge James R. Ahler
)	

**ORDER AUTHORIZING SALE OF REAL PROPERTY OF DEBTOR
SURPLUS MANAGEMENT SYSTEMS LLC COMMONLY KNOWN AS 2301
VIRGINIA AVENUE, GARY, INDIANA 46407 AT PRIVATE SALE
FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES**

On December 10, 2018, the Debtor, Surplus Management Systems LLC, filed a Motion to Sell Real Property Commonly Known as 2301 Virginia Avenue, Gary, Indiana, 46407 at Private Sale Free and Clear of Liens and Encumbrances (the “Motion”)¹; notice of the Motion was provided to all creditors and parties-in-interest in this case; no objection to the Motion or request for hearing with respect to the Motion was filed.

The Court finds that the Motion should be granted.

IT IS ORDERED as follows:

1. The New Contract attached to the Motion as Exhibit A is hereby approved.
2. Pursuant to the terms and conditions of the New Contract, the Debtor, Surplus Management Systems LLC, is authorized to sell to Purchaser, Detrick Curtis, the Real Estate commonly known as 2301 Virginia Avenue, Gary, Indiana, 46407 and more particularly described as follows:

Diamond Park Subdivision, all lots 1 to 6, Block 2, and having the tax parcel number 45-08-15-179-001.000-004, together with all fixtures, appurtenances, and hereditaments thereunto belonging.

¹ Any capitalized terms not defined herein shall carry the meaning in the Motion.

3. The sale of the Real Estate hereunder (the “Sale”) shall be free and clear of all liens, encumbrances, and other Interests, as detailed in the Motion, with all outstanding real estate tax liens related to taxes incurred on or before March 15, 2016 to attach to the proceeds of Sale in their current order of priority.

4. Purchaser shall acquire title to the Real Estate subject only to real estate taxes accruing from and after March 15, 2016. Furthermore, any tax payments made by Purchaser following the Sale shall be applied by Lake County to real estate taxes accruing from and after March 15, 2016.

5. The Debtor, Surplus Management Systems LLC, is authorized to sign, execute and deliver such documents as are necessary to effectuate the Sale.

6. The proceeds of the Sale shall be deposited and held in the DIP account of Debtor, subject to further order of the Court.

7. Pursuant to Fed. R. Bankr. P. 6001(f)(1) and N.D. Ind. L.B.R. B-6004-1(c), the Debtor shall file a Report of Sale that includes an itemized statement of the property sold, the name of the purchaser, and the price received for the property, including itemization of expenses deducted from the proceeds of Sale, if any. Said Report shall be filed with the Clerk within 10 days of completion of the Sale, and shall be served on those parties as set out in N.D. Ind. L.B.R. B-6004-1(a).

Dated: _____

JUDGE, UNITED STATES BANKRUPTCY COURT