

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:	)	Case No. 16-53329
Evergreen Health Services, Inc., et al., <sup>1</sup>	)	Chapter 11
	)	Hon.
	)	
Debtors.	)	(Jointly Administered)

**COVER SHEET FOR MOTION FOR APPROVAL OF PRIVATE SALE**

The Debtors have filed a motion for approval of a private sale of the property located at 4330 Port Austin Road, Caseville, Michigan 48725, which is attached to this cover sheet. Pursuant to E.D. Mich. L.B.R. 6004-1, the Debtors have identified below, by page and paragraph number, the location in the proposed order accompanying the motion of each of the following provisions:

PROVISION	Contained in proposed order	Location in proposed order
(1) Provisions concerning the qualifications of the bidding parties.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(2) Provisions concerning the criteria for a qualifying bid and any deadlines for (i) submitting such a bid, and (ii) notification of whether the bid made constitutes a qualifying bid.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(3) Provisions that require qualified bids to identify points of variation from the stalking horse bid (including price and other terms).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

<sup>1</sup> The Debtors in these jointly administered proceedings are: Evergreen Health Services, Inc. (Case No. 16-53329) and Richard Kelterborn and Janis Meredith-Kelterborn (Case No. 16-53330).

(4) Provisions pertaining to the conditions to the qualified bidders' obligation to consummate the purchase (including the time period within which the purchaser must close the transaction).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(5) Provisions pertaining to the amount required for a good faith deposit.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(6) Provisions that relate to a "Back-Up Buyer" should the first winning bidder fail to close the transaction within a specified period of time.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(7) No-shop or No-Solicitation provisions including the justification for such provision.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(8) Provisions relating to Break-Up fees, Topping fees, and/or Expense Reimbursement (including the waiver of such fees due to rebidding).	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(9) Provisions specifying the bidding increments.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(10) Provisions relating to auction procedures including manner in which auction is to be conducted and when the auction will be open and when it will close.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(11) Provisions relating to whether the auction will occur and the termination of the auction process and/or sale.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
(12) Provision whether 14 day stay of F.R.Bankr.P. 6004(h) and 6006(d) is waived.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Page 14, ¶ 19
(13) Provisions regarding timing for notice, submission of bids, objections to sale and other key events.	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

Date: Dec. 9, 2016

/s/ Lynn M. Brimer (P43291)

[Debtor's counsel]

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:	)	Case No. 16-53329
Evergreen Health Services, Inc., <u>et al.</u> , <sup>1</sup>	)	Chapter 11
	)	Hon. Maria L. Oxholm
	)	
Debtors.	)	(Jointly Administered)

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**DEBTORS' SECOND MOTION PURSUANT TO 11 U.S.C. §§ 363(b)  
AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002, 9006, 6004,  
AND L.B.R 6004-1 FOR ENTRY OF AN ORDER (1) APPROVING THE SALE OF  
REAL PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE  
AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS  
THROUGH A PRIVATE SALE AND TRANSFERRING LIENS TO PROCEEDS  
OF SALE AND (2) GRANTING RELATED RELIEF**

Evergreen Health Services, Inc., (“Health Services”) and Richard Kelterborn and Janis Meredith-Kelterborn (collectively, the “Kelterborns”) (Health Services and the Kelterborns shall collectively be referred to as the “Debtors”) as Debtors and Debtors-in-Possession, by and through their attorneys, Strobl & Sharp, P.C., with the consent of the Internal Revenue Service, which will receive most of the net proceeds of the net sale proceeds for application to its secured claim, bring this Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 363(b) and 365(a), and Federal Rules of Bankruptcy Procedure 2002, 9006, 6004 and L.B.R. 6004-1 (1) Approving the Sale of Real Property Outside the Ordinary Course of Business Free and Clear of Liens, Claims, Encumbrances and

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<sup>1</sup>The Debtors in these jointly administered proceedings are: Evergreen Health Services, Inc., (Case No. 16-53329) and Richard Kelterborn and Janis Meredith-Kelterborn (Case No. 16-53330)

Interests through a Private Sale and Transferring Liens to Proceeds of Sale; and (2) Granting Related Relief (the “Motion”), and in support thereof state as follows:

### **Jurisdiction**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

2. On September 28, 2016, (the “Petition Date”), Health Services filed its voluntary petition for relief under Chapter 11 of Title 11, United States Code (the “Code”). Pursuant to §§1107 and 1108 of the Bankruptcy Code, Health Services is continuing to operate its business and manage its properties and assets as a debtor-in-possession.

3. Also on September 28, 2016, Janis Meredith-Kelterborn, Evergreen’s sole shareholder, officer and director, filed a joint voluntary petition with her husband, Richard Kelterborn, for relief under Chapter 11 of the Code styled *In re: Richard Kelterborn and Janis Meredith-Kelterborn*, Case No 16-53330. The Kelterborns continue to manage their assets as Debtors-in-Possession.

4. Due to the close and intertwined relationship between Evergreen and the Kelterborns, Evergreen and the Kelterborns filed an amended motion for joint

administration of their respective cases. On October 31, 2016, the Court granted the motion for joint administration and on November 2, 2016, entered an order directing the joint administration of the Evergreen and Kelterborn cases [Docket No. 52].

5. An asset of the Debtor Richard Kelterborn's estate is real property located at 4330 Port Austin Rd., Caseville, MI 48725 (the "Property") (a legal description of the Property is attached as **Exhibit B** hereto).

#### **Relief Requested**

6. The statutory basis for the relief requested is found in Section 363 (b) and (f) of the Code, as implemented by Bankruptcy Rules 2002 and 6004, and LBR 6004-1 (E.D.M.).

7. As described above, the Debtor Richard Kelterborn desires to proceed with a private sale of the Property proceeds and requests that the Court enter an Order, substantially in the form attached hereto as **Exhibit A**, authorizing the sale of the Property free and clear of liens, claims, encumbrances and interest and transferring liens to proceeds.

#### **Facts Relevant to this Motion**

8. In October 2014, Debtor Richard Kelterborn entered into a Residential Real Estate Listing Agreement with Osentoski Realty with Dale Ignash as the Broker, a reputable broker in the Caseville, Michigan area and listed the Property for sale with a listing price of \$325,000. The Property was continuously listed with Osentoski Realty

through October 2015. On December 15, 2015, the Debtor Richard Kelterborn entered into a marketing agreement with David L. Kraft Realty Co., LLC and the Property was again listed for sale with a listing price of \$299,900. The asking price was subsequently reduced to \$289,000. The listing agreements expired prior to the Petition Date.

9. The brokers and the Debtor Richard Kelterborn actively marketed and attempted to sell the Property during the listing periods to no avail. Because of market conditions and the unique nature of the Property, the brokers and Debtor Richard Kelterborn were unsuccessful in selling the Property. In fact, despite multiple showings there were no offers made during either of the listing periods.

10. The Property has substantial deferred maintenance and is in need of a new furnace, new roof and the siding is covering asbestos and needs to either be removed and remediated or sealed. The Property lacks adequate parking and does not have sufficient acreage to add a garage. As a result of the deferred maintenance and parking issues, the Property is difficult to market.

11. Subsequent to the expiration of the listing period and after the Petition Date, the Debtor Richard Kelterborn received a proposed Purchase Agreement for the Property from the Debtor Janis Meredith-Kelterborn's son's wife Cynthia Hecht ("Hecht") in the amount of One Hundred and Twenty Five Thousand and no/100 Dollars (\$125,000.00) (the "Hecht Offer").

12. The Debtors filed a motion seeking authority to conduct a sale through an auction process relying on the Hecht Offer as the Stalking Horse Bid (the “Original Sale Motion”) [Docket No. 86].

13. The Internal Revenue Service, a secured party on the Property, informally indicated it would object to the Original Sale Motion.

14. Subsequent to the filing of the Original Sale Motion, Debtor Richard Kelterborn received a Buy and Sell Agreement from Daniel and Kelli Rankin, husband and wife (collectively the “Rankins”), for the purchase of the Property at a purchase price of Two Hundred Five Thousand and 00/100 Dollars (\$205,000.00) (the “Purchase Agreement”). A copy of the Buy and Sell Agreement is attached as **Exhibit C**.

15. The material terms of the Purchase Agreement are as follows:

- a. The Rankins will purchase the Property for Two Hundred Five Thousand and 00/100 Dollars (\$205,000.00);
- b. Within five (5) days of acceptance of the Purchase Agreement, which agreement was accepted by Debtor Richard Kelterborn on December 6, 2016, the Rankins are required to escrow \$10,000.00 as a good faith deposit earnest money deposit;
- c. The closing shall occur on or before January 31, 2017;
- d. The sale is “AS IS WHERE IS;”

- e. The bunkbeds in the upstairs bedroom shall be included in the purchase;
- f. The sale is contingent upon the Rankins obtaining a mortgage commitment which has been provided to Debtors;
- g. Debtor Richard Kelterborn will transfer all of his right, title and interest in the Property to the Rankins via a Warranty Deed at the closing; and
- h. The sale is contingent upon court approval.

14. The Internal Revenue Service has consented to the private sale of the Property to the Rankins based on the terms of the Purchase Agreement.

15. On December 6, 2016, Debtor Richard Kelterborn and the Rankins executed the Purchase Agreement.

16. On December 9, 2016, the Debtors filed a Notice of Withdrawal of the Original Sale Motion [Docket No. 95].

17. The Debtor Richard Kelterborn wishes to proceed with the sale of the Property to the Rankins.

#### **Necessity for Relief**

18. Sale of the Property through the Private Sale as set forth in the Purchase Agreement is necessary for an effective reorganization of the Kelterborns' debt.

19. The proceeds will eliminate Debtor Richard Kelterborn's individual debt to the Huron County Treasurer and will substantially reduce the Kelterborns' joint individual obligations to the Internal Revenue Service.



20. Debtor Richard Kelterborn is prepared to proceed with the sale as set forth in the Purchase Agreement.

21. This Motion seeks approval of the private sale of the Property pursuant to the terms of the Purchase Agreement under Section 363.

22. The terms of the Purchase Agreement are consistent with those in the industry and are commercially reasonable.

### Standards

23. Section 363(b)(1) of the Bankruptcy Code authorizes “a trustee, after notice and a hearing, [to] sell, use or lease, other than in the ordinary course of business, property of the estate . . .”

24. Federal Rule of Bankruptcy Procedure 6003(f)(1) further provides that “[a]ll sales not in the ordinary course of business may be by private sale or by public auction.”

25. “[A] bankruptcy court can authorize a sale of all a Chapter 11 debtor’s assets under § 363(b)(1) when a sound business purpose dictates such an action.” *Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 389-390 (6<sup>th</sup> Cir.1986). As set forth herein, the Debtor has satisfied the four elements of the “sound business purpose” test with respect to the private sale of the Property, as follows:

- i. a “sound business purpose” justifies the sale of assets outside the ordinary course of business;

- ii. adequate and reasonable notice has been provided to interested persons;
- iii. the debtor has obtained a fair and reasonable price; and
- iv. the sale was negotiated in good faith.

*McClung*, 789 F.2d 386 at 390.

26. Debtor Richard Kelterborn has attempted, both prior to and since the Petition Date, to sell the Property at a higher purchase price.

27. In order for the Debtors Richard Kelterborn and Janis Meredith-Kelterborn, to successfully reorganize, Debtor Richard Kelterborn must be able to sell the Property and thereby eliminate the monthly expenses associated with maintaining the Property and while generating funds to significantly reduce their obligations to creditors.

28. Debtors believe the sale of the Property at this time pursuant to the Purchase Agreement is in the best interest of creditors of Debtor Richard Kelterborn's estate and satisfies the sound business purpose test.

29. The sale contemplated by the Purchase Agreement is the best recovery for Debtor Richard Kelterborn's estate and will result in the greatest distribution to his creditors.

30. Although there is no active listing agreement, the Internal Revenue Service has agreed to the payment of a commission to Osentoski Realty Company, the realty firm that located and presented the buyers to Debtor Richard Kelterborn, in the amount of 4.5% or Nine Thousand Two Hundred Twenty-Five Dollars (\$9,225.00). The remaining proceeds, less standard seller's closing costs will be available for distribution to Debtor

Richard Kelterborn's creditors.

31. Other than the secured claims of the Huron County Treasurer and the Internal Revenue Service, the Debtors do not believe that any liens, claims or encumbrances exist against the Property. However, to the extent that there are liens, claims, or encumbrances against the Property, the Property shall be transferred free and clear of same pursuant to 11 U.S.C. §363(f), and such liens shall attach to the proceeds of sale.

32. The Debtors propose that upon the closing of the sale, the 4.5% commission would be paid to Osentoski Realty. The secured claim of the Huron County Treasurer will be paid in full upon the closing of the sale. In addition, the secured claim of the Internal Revenue Service for the Kelterborns' 2010 joint individual income taxes in the amount of \$145,286.48, plus interest as of the Petition Date in the approximate amount of \$2,078.79 (assuming a closing on January 31, 2017), will be paid at closing. The balance of the sale proceeds, less any standard closing costs assessed against seller, will be placed in an escrow account with Debtors' counsel, Strobl & Sharp, P.C., until the time of confirmation of Debtors' plan of reorganization (the "Escrow Account"). Upon the entry of an order confirming plan, Strobl & Sharp, P.C., acting as escrow agent, will distribute funds pursuant to the order confirming plan.

33. The Debtor Richard Kelterborn also requests that this Court find that the Purchaser is entitled to the protections provided by Section 363(m) of the Bankruptcy

Code in connection with the proposed Sale. Section 363(m) provides, in pertinent part:

(m) The reversal or modification on appeal of an authorization under subsection (b) ... of this section of a sale ... of property does not affect the validity of a sale ... under such authorization to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C., § 363(m). Section 363(m) protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the transaction is reversed on appeal.

#### **Waiver of the Stay of Effectiveness of the Sale Order**

34. Due to the need to transition the Property as quickly as possible and in order to protect and preserve the Property, the stay as set forth in Fed. R. Bank. P. 6004 (h) should be waived.

#### **Waiver of Memorandum of Law Requested**

35. As this motion raises no novel issues of fact or law, and the legal basis relied upon by the Debtor Richard Kelterborn has been adequately set forth herein, Debtors request that the requirement of a separate memorandum of law be waived.

#### **Notice**

36. Notice of this Motion has been served on all creditors and parties in interest entitled to notice.

**Conclusion**

WHEREFORE, the Debtors request that this Court enter an Order in the form attached hereto as **Exhibit A** approving the bidding procedures set forth above and grant such other relief as the Court deems appropriate in this matter.

Respectfully Submitted,

By: /s/ Lynn M. Brimer  
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Dated: December 9, 2016

**Exhibit A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

In re:	)	Case No. 16-53329
Evergreen Health Services, Inc., <u>et al.</u> , <sup>2</sup>	)	Chapter 11
	)	Hon. Maria L. Oxholm
	)	
	)	
Debtors.	)	(Jointly Administered)

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**ORDER GRANTING DEBTORS' SECOND MOTION PURSUANT  
TO 11 U.S.C. §§ 363 AND FEDERAL RULES OF BANKRUPTCY  
PROCEDURE 2002, 9006, 6004, AND L.B.R 6004-1 (1) APPROVING THE SALE  
OF REAL PROPERTY OUTSIDE THE ORDINARY COURSE OF BUSINESS  
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND  
INTERESTS THROUGH A PRIVATE SALE AND TRANSFERRING LIENS TO  
PROCEEDS OF SALE AND (2) GRANTING RELATED RELIEF**

This matter is presented on the Debtors' Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 363 and 365 and Federal Rules of Bankruptcy Procedure 2002, 9006, 6004 and L.B.R. 6004-1 (1) Approving the Sale of Real Property Outside the Ordinary Course of Business Free and Clear of Lines, Claims, Encumbrances and Interests through a Private Sale and Transferring Liens to Proceed of Sale and (2) Granting Related Relief, Including a Waiver of Federal Rule of Bankruptcy Procedure 6004(g) (the "Motion"). The Court has considered the Motion and the matters reflected in the record of the hearing held on the Motion, if any. It appears that the Court has jurisdiction over this

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<sup>1</sup>The Debtors in these jointly administered proceedings are: Evergreen Health Services, Inc., (Case No. 16-53329) and Richard Kelterborn and Janis Meredith-Kelterborn (Case No. 16-53330)

proceeding; that this is a core proceeding; notice of this Motion has been provided to those entitled to receive service; the relief sought in the Motion is in the best interests of the Debtor Richard Kelterborn, his estate and creditors; and good and sufficient cause exists for such relief.

**NOW THEREFORE,**

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. **Findings and Conclusions.** The Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. **Statutory Predicates.** The statutory predicates for the relief requested in the Motion are sections 105, 362, and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rule 6004-1.

C. **Opportunity to Object.** A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities.

D. **Title to the Real Property.** The Property constitutes property of the Debtor Richard Kelterborn's estate and title thereto is vested in the Debtor Richard Kelterborn's estate within the meaning of section 541(a) of the Bankruptcy Code.

E. **Business Justification.** The Debtor Richard Kelterborn has demonstrated a sufficient basis and compelling reasons for entering into the Purchase Agreement and selling the Property under section 363 of the Bankruptcy Code. Such action is an appropriate exercise of the Debtor Richard Kelterborn's business judgment and in the best interests of the Debtor Richard Kelterborn, his estate, his creditors, and all other parties in interest.

F. **Opportunity to Purchase.** Prior to Petition Date, the Debtor Richard Kelterborn marketed the Property in order to achieve the highest and best offer for the Property.

G. **Highest or Otherwise Best Offer.** The total consideration provided by the Rankins for the Property is the highest or otherwise best offer received by the Debtor Richard Kelterborn.

H. **Good Faith Purchaser.** The Purchase Agreement with the Rankins and the Sale contemplated thereby have been negotiated in good faith, at arm's length, and without collusion or fraud. The terms and conditions of the Purchase Agreement and the Sale, including the total consideration to be realized by the Debtor Richard Kelterborn pursuant to the Purchase Agreement, are fair and reasonable, and the Sale is in the best interest of the Debtor Richard Kelterborn, his creditors, and his estate. The Rankins are a "good faith purchaser" of the Property, entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code with respect to the Sale and transfer of the



Property. The terms defined in the Purchase Agreement are incorporated by reference in this Order.

I. The Purchase Agreement was not controlled by an agreement between potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The Debtor Richard Kelterborn and the Rankins have not engaged in any conduct that would cause or permit the Purchase Agreement to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. The Rankins are entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code.

J. The Rankins will be acting in good faith in consummating the Sale at any time on or after entry of this Order, and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d). The Rankins is not an “insider” as that term is defined in section 101(31) of the Bankruptcy Code.

K. **Free and Clear.** The Sale and the transfer of the Property to the Rankins will be, as of the closing of the Sale (“Closing”), a legal, valid, and effective transfer of the Property, and such transfer vests or will vest the Rankins with all right, title, and interest of the Debtor Richard Kelterborn to the Rankins free and clear of all liens, claims (as defined in section 101(5) of the Bankruptcy Code), interests, and encumbrances with any Liens, Claims, and Encumbrances to attach to the consideration to be received by the Debtor Richard Kelterborn in the same priority and subject to the same defenses and

avoidability, if any, as of the Closing. Therefore, the Sale contemplated by the Purchase Agreement is in the best interests of the Debtor Richard Kelterborn, his estate and creditors, and all other parties in interest.

L. **Satisfaction of 363(f) Standards.** The Debtor Richard Kelterborn may sell the Property free and clear of all Liens, Claims, and Encumbrances, because, with respect to each creditor asserting a Lien, Claim, and Encumbrance, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens, Claims, and Encumbrances who did not object or who withdrew their objections to the Motion are deemed to have consented to the Motion and Sale of the Property to the Rankins pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens, Claims, and Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims, and Encumbrances, if any, attach to the proceeds of the Sale ultimately attributable to the Property in which such holders allege a Lien, Claim, and Encumbrance, in the same order of priority, with the same validity, force and effect that such holder had prior to the Sale, and subject to any claims and defenses the Debtor Richard Kelterborn and his estate may possess with respect thereto.

M. **No Fraudulent Transfer.** The Sale is not for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. Neither the

Debtor Richard Kelterborn nor the Rankins are or will be entering into the Purchase Agreement fraudulently.

N. **Fair Consideration.** The consideration for the Sale constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia. The Purchase Agreement represents a fair and reasonable offer to purchase the Property. Approval of the Purchase Agreement and the consummation of the Sale are in the best interests of the Debtor Richard Kelterborn, his estate, his creditors, and all other parties in interest.

O. **Compliance with Bankruptcy Code.** The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code and all of the applicable requirements of such sections have been or will be complied with in respect of the Sale as of the Closing.

P. **Sale Not a Sub Rosa Plan.** The Sale of the Property outside of a plan of reorganization pursuant to the Purchase Agreement neither impermissibly restructures the rights of the Debtor Richard Kelterborn's creditors nor impermissibly dictates the terms

of a plan of reorganization for the Debtor Richard Kelterborn. The Sale does not constitute a *sub rosa* chapter 11 plan.

Q. **Time is of the Essence.** Time is of the essence in consummating the Sale. In order to maximize the value of the Property, it is essential that the Sale occur within the time constraints set forth in the Purchase Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004 and 6006.

R. The Sale contemplated by the Purchase Agreement is in the best interests of the Debtor Richard Kelterborn and his estate, creditors, interest holders and all other parties in interest herein.

**IT IS HEREBY ORDERED THAT:**

1. **Relief Granted.** The Motion shall be, and hereby is, GRANTED in its entirety, subject to the terms of this Order.

2. **Objections Overruled.** All objections and responses to the Motion, this Order, the Sale or the relief granted herein that have not been overruled, withdrawn, waived, settled, or otherwise resolved, are hereby overruled and denied on the merits with prejudice.

3. **Approval.** The Purchase Agreement and the Sale are hereby approved and authorized in all respects, and the Debtor Richard Kelterborn is hereby authorized and empowered, pursuant to sections 363 and 365 of the Bankruptcy Code, to enter into, and to perform its obligations under, the Purchase Agreement and to execute and perform

such agreements or documents, and take such other actions as are necessary or desirable to effectuate the terms of the Purchase Agreement.

4. **Good Faith Purchaser.** The Rankins are a good faith purchaser of the Property and are hereby granted and are entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Order are hereafter reversed, modified, or vacated by a subsequent order of the Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer, or assignment under the Purchase Agreement or obligation or right granted pursuant to the terms of this Order (unless stayed pending appeal), and notwithstanding any reversal, modification, or vacatur, any sale, transfer, or assignment shall be governed in all respects by the original provisions of this Order or the Purchase Agreement, as the case may be.

5. **Section 363(n) of the Bankruptcy Code.** The Sale approved by this Order is not subject to avoidance or any recovery or damages pursuant to section 363(n) of the Bankruptcy Code.

6. **Authorization of Performance by the Debtor Richard Kletterborn.** The Debtor Richard Kletterborn is authorized to fully perform under, consummate, and implement the terms of the Purchase Agreement together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement

and effectuate the terms of the Purchase Agreement, this Order, and the Sale, including, without limitation, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Rankins for the purpose of assigning, transferring, granting, conveying, and conferring to the Rankins, or reducing to possession any or all of the Property, as may be necessary or appropriate to the performance of the Debtor Richard Kelterborn's obligations as contemplated by the Purchase Agreement, without any further orders of the Court.

7. **Valid Transfer.** Effective as of the Closing, the sale of the Property by the Debtor Richard Kelterborn to the Rankins shall constitute a legal, valid, and effective transfer of the Property notwithstanding any requirement for approval or consent by any person and vests the Rankins with all right, title, and interest of the Debtor in and to the Property, free and clear of all Liens, Claims, and Encumbrances, pursuant to section 363(f) of the Bankruptcy Code.

8. **Free and Clear.** Upon the Closing, the Debtor Richard Kelterborn shall be, and hereby is, authorized and empowered, pursuant to sections 105, 363(b), and 363(f) of the Bankruptcy Code, to sell the Property to the Rankins. The Sale of the Property to the Rankins vests the Rankins with all right, title, and interest of the Debtor Richard Kelterborn to the Property free and clear of any and all Liens, Claims, and Encumbrances, with all such Liens, Claims, and Encumbrances to attach only to the proceeds of the Sale of the Property with the same priority, validity, force, and effect as

they had in or against the Property on the Petition Date. The Motion shall be deemed to provide sufficient notice as to the sale of the Property free and clear of all Liens, Claims, and Encumbrances in accordance with Local Rule 6004-1. Following the Closing, no holder of any Lien, Claim, and Encumbrance on the Property may interfere with the Rankins' use and enjoyment of the Property based on or related to such Lien, Claim, and Encumbrance, and no interested party may take any action to prevent, interfere with, or otherwise enjoin consummation of the Sale.

9. At the Closing, a 4.5% commission shall be paid to Osentoski Realty, the secured claim of the Huron County Treasurer will be paid in full and the secured claim of the Internal Revenue Service for the Kelterborns' 2010 joint individual income taxes in the amount of \$145,286.48, plus interest as of the Petition Date in the approximate amount of \$2,078.79 (assuming a closing on January 31, 2017), will be paid. The balance of the sale proceeds, less any standard closing costs assessed against seller, will be placed in an escrow account with Debtors' counsel, Strobl & Sharp, PC, until the time of confirmation of Debtors' plan of reorganization. Upon the entry of an order confirming plan, Strobl & Sharp, PC, acting as escrow agent, will distribute funds pursuant to the order confirming plan

10. The provisions of this Order authorizing the Sale of the Property free and clear of Liens, Claims, and Encumbrances shall be self-executing, and neither the Debtor nor the Rankins shall be required to execute or file releases, termination statements,

assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. In addition, the Rankins are authorized, in their sole discretion, to attach the real property legal description from the Purchase Agreement to this Order and record this Order in the local land records to provide record notice of the transfer of the Property free and clear of any and all Liens, Claims, and Encumbrances.

11. **Direction to Creditors.** On the date of the Closing (the "Closing Date"), each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Liens, Claims, and Encumbrances on the Property, if any, as such Liens, Claims, and Encumbrances may otherwise exist.

12. **Direction to Surrender Possession or Control.** The Debtor, Richard Kelterborn is directed to surrender possession or control of the Property to the Rankins on the Closing Date or at such time thereafter as the Rankins and Debtor Richard Kelterborn may mutually agree. .

13. **Transfer of Title and Interests.** All of the Debtor Richard Kelterborn's interests in the Property to be acquired by the Rankins under the Purchase Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Rankins. Upon the occurrence of the Closing, this Order shall be considered and constitute for any and all purposes a full and complete general assignment,



conveyance, and transfer of the Property acquired by the Rankins under the Purchase Agreement and/or a bill of sale or assignment transferring indefeasible title and interest in the Property to the Rankins.

14. This Order (a) is effective as a determination that, as of the Closing, all Liens, Claims and Encumbrances, have been unconditionally released, discharged and terminated as to the Property, and that the conveyances and transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise 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 lease; and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

15. **No Bulk Sales.** No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale and the Property.

16. **Amendments.** Subject to the terms of the Purchase Agreement, the Purchase Agreement and any related agreements may be waived, modified, amended, or

supplemented by agreement of the Debtor and the Rankins, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not material and substantially conforms to, and effectuates, the Purchase Agreement and any related agreements. Any material modification, amendment, or supplement to the Purchase Agreement must be approved by Order of the Court following a motion on notice to all interested parties.

17. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Purchase Agreement or any related agreements in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court, the Debtor Richard Kelterborn, and the Rankins that the Purchase Agreement and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order. Likewise, all of the provisions of this Order are non-severable and mutually dependent.

18. **Binding Order.** This Order and the Purchase Agreement shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtors and the Rankins, their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if the Debtors' cases are converted from chapter 11 to a chapter 7 proceeding, all creditors of the Debtors (whether known or unknown), all non-Debtor parties to any contracts, filing agents, filing officers, title agents, recording

agencies, 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 their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Property. The Purchase Agreement and Sale shall not be subject to rejection or avoidance under any circumstances. This Order and the Purchase Agreement shall inure to the benefit of the Debtor Richard Kelterborn, his estate, his creditors, the Rankins and their respective successors and assigns.

19. **No Stay of Order.** Notwithstanding Bankruptcy Rules 6004 and 6006, this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Time is of the essence in closing the Sale referenced herein, and the Debtor and the Rankins intend to close the Sale on or before January 31, 2017. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

20. **Lift of Automatic Stay.** If and to the extent that section 362 may be applicable to a particular action in connection with the Purchase Agreement and Sale, the automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Rankins to deliver any notice provided for in the Purchase Agreement and allow the Rankins to take any and all actions permitted under the Purchase Agreement in

accordance with the terms and conditions thereof.

21. **Retention of Jurisdiction.** The Court shall retain jurisdiction to (a) interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, in all respects, (b) to decide any disputes concerning this Order and the Purchase Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Purchase Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the Property, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, Claims, and Encumbrances.

22. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtors' jointly administered chapter 11 cases or any order confirming any such plan or any other order in the chapter 11 cases of the Debtors (including any order entered after any conversion of the Debtors' cases into a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with or derogate from, the provisions of the Purchase Agreement or this Order.

23. **Further Assurances.** From time to time, as and when requested by any party to the Purchase Agreement, and subject to the terms of such Purchase Agreement,

each such party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, vest in the Rankins right, title, and interest in and to the Property.

24. **Governing Terms.** To the extent this Order is inconsistent with any prior order or pleading in the chapter 11 case, the terms of this Order shall govern. To the extent there is any inconsistency with between the terms of this Order and the terms of the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of the Order shall govern.

**EXHIBIT B**

Land in the Township of Lake, County of Huron, State of Michigan

Commencing at the water's edge of Saginaw Bay and the East line of Government Lot 3, Fractional Section 15, Township 18 North, Range 11 East, thence South 3 degrees 54 minutes West 150 feet more or less, to the Northerly margin of State Highway M-25; thence South 71 degrees 36 minutes West 216.16 feet along the Northerly margin of said highway to the point of beginning of this description; thence South 71 degrees 36 minutes West 54.04 feet along the Northerly margin of said-highway; thence North 03 degrees 54 minutes East 137 feet more or less,(parallel with the East line of Block 2, of Smalley Quarry Shores Subdivision) to the water's edge of Saginaw Bay; thence Northeasterly along Saginaw Bay to the point that lies North 3 degrees 54 minutes East of the point of beginning of this description; thence Southerly to the point of beginning, being a part of Government Lot 3, in said Fractional Section 15.

Commonly known as: 4330 Port Austin Rd., Caseville MI 48725

Tax ID: 13-015-101-00

EXHIBIT C

**Osentoski Realty Company**  
**Buy and Sell Agreement**

6906 Main St., PO Box 613  
Caseville, MI 48725  
989-856-3887  
Fax 866-457-5890

1006 Van Dyke Rd.  
Bad Axe, MI 48413  
989-269-6231  
Fax 866-457-5890

8536 Lake Street P.O. Box 420  
Port Austin, MI 48467  
989-738-5251  
Fax 866-457-5890

DATE: 12-3-16 A.M./P.M.

50/50 co-broke between Osentoski Realty Co. &

BUYER'S OFFER

The undersigned, DANIEL AND Kelli L RANKIN H&W, hereinafter called the buyer, HEREBY OFFERS TO BUY THROUGH OSENTOSKI REALTY CO., the following property located in the City/Twp. Of LIME, County of Huron, Michigan, commonly known as: 4330 Post Avenue Rd. Caseville MI 48725 legally described as:

Acres 3.213-015-10100  
subject to any existing building and use restrictions, zoning ordinances and easements if any, for the sum of: Two hundred fifty thousand (\$205,000.00) Dollars.

2. The terms of purchase shall be as indicated by "X" below: (other unmarked terms of purchase do not apply). Payment of such money shall be made in cash, certified check, or bank money order.

CASH  The full purchase price upon execution and delivery of Warranty Deed.  
New MTG  The full purchase price upon execution and delivery of Warranty Deed, contingent upon the Buyer's ability to obtain a Real Estate Mortgage Commitment within 30 days of seller's acceptance, which Buyer agrees to apply for and accept promptly if tendered.

Contract \$ \_\_\_\_\_ upon execution and delivery of Land Contract, wherein the balance of \$ \_\_\_\_\_ shall be payable in monthly installments of \$ \_\_\_\_\_ or more including interest at \_\_\_\_\_ % per annum, interest to start on date of closing and the first such payment to become due 30 days after closing date.

3. Other provisions: Buyer will have access to BUNK BEDS IN UPSTAIRS BARN by January 12-6-2016

4. All improvements and appurtenances are included in the purchase price, including now in or on the property, the following: TV antenna and complete rotor equipment, carpet, lighting fixtures, and their shades, hardware for drapery and curtains, window shades and blinds, screens and storm windows and doors, stationary laundry tubs, water softener (unless rented), water heater, heating or air conditioning equipment, water pump and pressure tank, built-in kitchen appliances including garbage disposal, awnings, mail box, all plantings, fence(s). Exceptions: NA

5. All matters related to but not limited to zoning, soil borings, franchising, matters of survey, use permits, drain easements, rights of way, etc. are to be secured and paid for by buyer unless otherwise specified in other provisions as set forth in Paragraph 3 of this agreement, or see addendum attached hereto. Buyer also acknowledges that there are not other or additional written or oral understandings.

6. Seller shall be responsible for fire and extended coverage insurance until the sale is closed.

7. Seller to pay all taxes, special assessments and other bills now a lien on the property, unless stated in item number 3; except 2015 2016 taxes, which shall be prorated to the date of closing. Taxes for current year shall be pro-rated on a calendar year basis and treated as paid in arrears.

Initials (S) RRK (B) [Signature]

20. THE ABOVE AGREEMENT IS/or IS NOT HEREBY ACCEPTED: Date: \_\_\_\_\_

21. If counter offer is made by Seller in Paragraph 20 and said counter offer is not accepted by the Buyer within 3 days, the parties agree this agreement shall be null and void and Seller hereby authorizes OSENTOSKI REALTY CO.. to return Buyer's deposit.

22. This agreement shall be binding and inure to the benefit of the parties hereto, their heirs, administrators, successors, and assigns.

23. SELLER ALSO AGREES TO PAY OSENTOSKI REALTY CO. a commission of \_\_\_\_ % of the sale price or as stated on listing agreement for negotiating this sale. All deposits are to be held by OSENTOSKI REALTY CO. in accordance with the terms thereof, and in accordance with the current regulations of the Michigan Department of Licensing and Regulation's Real Estate Division. If this sale is not consummated because of Seller's refusal to perform, then the commission shall be due and payable upon such refusal. If the sale is not consummated because of the Buyer's failure to perform and the deposit made herewith forfeited, Seller agrees said deposit shall be applied first to reimburse Listing Broker for all expenses, incurred by Broker on half of such deposit shall be retained by the Broker in full payment for services rendered in this transaction.

24. RECEIPT IS ACKNOWLEDGED BY SELLER of a copy of this agreement.

Witness

Seller

X Rudolph R. Ketter Date 12/16/16

X

Date

Seller's Address: 5573 St Andrew DR Phone: 248 884 8890  
Clarkston MI 48348

**BUYER'S RECEIPT OF ACCEPTANCE**

25. RECEIPT IS HEREBY ACKNOWLEDGED BY BUYER of the Seller's acceptance of Buyer's agreement. In the event of the acceptance was subject to changes as herein before set forth in Paragraph 20, from Buyer's Agreement, the Buyer agrees to accept said changes, all other terms and conditions remaining unchanged.

Date \_\_\_\_\_, 20 \_\_\_\_\_.

Witness

Buyer

X [Signature]  
X [Signature]



8. An owner's policy of Title Insurance, and a tax history, all certified to a date subsequent to the acceptance of this offer, are to be furnished without expense to Buyer, covering the foregoing amount of purchase price.

9. Any evidence of title and supporting documents are to be examined by TBD attorney.

10. Sale to be closed within 10 days after all necessary documents are ready.

11. If the closing of the sale is delayed by reasons of title defects which can be readily corrected, or if the terms of purchase are a cash sale with a new mortgage or land contract and the lender issues a commitment prior to the date of closing but is delayed in consummating the security transaction, an extension of thirty (30) days shall be allowed for closing, unless otherwise agreed to in writing between Buyer and Seller.

12. Occupancy to be given on day of closing or/ 0 days after closing. Buyer shall assume all risk of loss or damage not caused by acts of Seller from date of closing. Seller to pay rent of \$      per day from day of closing until vacated.

13. I hereby agree to give OSENTOSKI REALTY CO. 3 days to get the Seller's signature to the written acceptance to the offer which, when signed, will constitute a binding agreement between Buyer and Seller, and herewith deposit \$ 0 as earnest deposit to apply on the purchase price. If offer is accepted, I hereby agree to pay an additional \$ 10,000.00 as earnest money within 5 days from the acceptance date, to be held in escrow until the time of closing. In the event of default by Buyer, all deposits made hereunder may be forfeited as liquidated damages at Seller's election or alternatively, Seller may retain such deposits as part payment of the purchase price and pursue his legal or equitable remedies hereunder against Buyer.

14. This agreement is the sole and whole agreement between Seller and Buyer and time is of the essence.

15. This agreement shall be binding and inure to the benefit of the parties hereto, their heirs, administrators, successors, and assigns.

16.  Buyer will not obtain an inspection, and hereby agrees to accept the Premises in its present "AS IS" Condition.

The Buyer may obtain an inspection of Premises, at the Buyer's expense, within fifteen (15) days of final acceptance date, The "STIPULATED TIME PERIOD". If the Buyer is not satisfied with the inspection, the Buyer may terminate this agreement by giving written notice to the LISTING OFFICE on or before 3:00p.m. on the last day of "STIPULATED TIME PERIOD". If this agreement is terminated, the deposit money shall be returned to the Buyer and neither party shall have any further rights or obligations under this agreement.

17. Closing to take place on or before 1-31-2017

18. RECEIPT IS ACKNOWLEDGED BY Buyers of a copy of this agreement.

Witness

Buyer

X

X

X

12-3-16

12-3-16

Buyer's Address: 12995 Blue Water Dr Phone: 586-255-578

Received from above named Buyer deposit moneys in the form of \_\_\_\_\_ By: \_\_\_\_\_

(Salesperson)

**SELLER'S ACCEPTANCE**

19. It is agreed by the broker and Seller or lessor, parties to this agreement, that as required by law, discrimination because of race, creed, color or national origin be said parties in respect to the sale or lease of the subject property is prohibited.

Initials

(S)

BRK

X

(B)

KL

**ADDENDUM TO BUY AND SELL AGREEMENT**

**Date:**

\_\_\_\_\_  
\_\_\_\_\_

**Seller** Richard Kelterborn **Buyer(s)** Daniel and Kelli L. Rankin

Street Address: 4330 Port Austin Rd. City/State: Caseville, Michigan 48725

In the event any provision of this Addendum to Buy and Sell Agreement dated December \_\_\_\_\_, 2016 ("Addendum") conflicts in whole or in part with any of the terms of the Buy and Sell Agreement ("Contract") between Buyer and Seller, the provisions of this Addendum will control.

1. **Condition of Property:** The undersigned Buyer acknowledges and understands that the Property (Property is herein defined to be the property and improvements, if any, which are the subject of the Contract) is being sold as-is, and with all faults. Seller makes no representations or warranties as to any of the above, the condition of the Property, the Property's systems, the serviceability or fitness for a particular use of the Property or any component of the Property. Buyer agrees that, in contracting to buy the Property and proceed to closing, Buyer has not relied upon any representation or warranty made by the Seller and/or Seller's attorneys and/or agents. Upon the closing of the transaction which is the subject of the Contract the Buyer hereby releases the Seller, Seller's attorneys and agents from any claims which the Buyer may have against the Seller, Seller's attorney and agents arising out of the Contract.

2. **Bankruptcy Court Approval:** The undersigned Buyer acknowledges and understands that the Seller is a Debtor-In-Possession in Bankruptcy Case No: 16-53329 and that the sale of the Property is subject to and conditioned upon Bankruptcy Court approval.

Signatures to Appear on the Following Page

**Seller: Richard Kelterborn**

**Buyer: Daniel Rankin**

Richard R Kelterborn

**Date:** 12/16/16

**Date:** \_\_\_\_\_

**Buyer: Kelli L. Rankin**

**Date:** \_\_\_\_\_

**Listing Broker:**

**Selling Broker:**

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

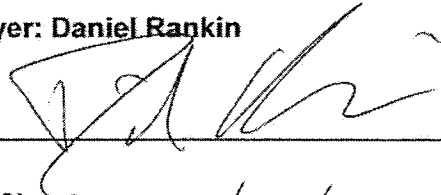
**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

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Seller: Richard Kelterborn

Buyer: Daniel Rankin



Date:

Date:

12/6/16

Buyer: Kelli L. Rankin



Date:

12/6/16

Listing Broker:

Selling Broker:

By:

By:

Date:

Date:

\*S&B\85281\002\FORM\SB579372.DOC