



BUY/SELL AGREEMENT

THIS BUY/SELL AGREEMENT made this _____ day of _____, 20__, by and between the undersigned Salvatore LaMonica, solely in his capacity as Chapter 7 trustee of the estate of Peter J. Gould, whose Chapter 7 case is pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), assigned case number 15-10544 before the Honorable Shelley C. Chapman, United States Bankruptcy Judge, and in his capacity as the sole shareholder, president, and sole member of the board of directors of Portage Partners, Inc. and in accordance with Orders of the Bankruptcy Court dated August 1, 2017 [Doc. No. 334] and December 7, 2017 [Doc. No. 366], hereinafter called the "Seller" or "Trustee", and _____ of _____

_____ [please note whether husband and wife, married, single, partnership, corporation, etc], hereinafter called the "Buyer". The Buyer hereby offers to buy the Property commonly described as 2400 Yellowbrick Road, Portage, Michigan 49002 and 5500 Portage Rd, Portage, Michigan 49002, Parcels 10-00002-035-C and 10-00002-35-D and legally described in the attached Exhibit A, subject to any existing building and use restrictions, zoning ordinances and easements, if any, according to the following terms:

1. The full purchase price of _____ Dollars (\$ _____) shall be paid upon execution and delivery of signed Deed by Seller by bank money order, cashier's check or wire transfer of immediately available funds. In addition to, and above the purchase price, the Buyer agrees to pay the Buyer's Premium fee of (dollars) _____ (the "Buyer's Premium"). The Buyer's Premium shall be a minimum of one thousand dollars (\$1,000.00) or six percent (6%) of the purchase price, whichever is greater. The Buyer's Premium shall be paid to the Seller by means of bank check or money order, cashier's check, or wire transfer of immediately available funds along with the Deposit, as set forth below in Paragraph 14. Cash, personal or company checks will not be accepted as payment.
2. The Sale of the Property shall be closed within thirty (30) days of entry of an Order of the Bankruptcy Court approving the sale of the Property to the Buyer (the "Approval Order") or ten (10) days after all necessary papers are ready, whichever is later (the "Closing Date"). If the closing of the sale is delayed by reasons of delays in the title work, or by title defects which can be readily corrected, a further period of sixty (60) days shall be allowed for closing in the sole and absolute discretion of the Seller.
3. Seller warrants that, in accordance with the Approval Order, the property will be transferred free and clear of all liens of record prior to the date of closing unless otherwise excepted. Exceptions: none.
4. Possession will be given to Buyer at closing. Exceptions: Tenancy of Enterprise-Rent-A-Car (the "Tenant") pursuant to lease dated February 18, 2000, as to 2400 Yellowbrick Road, Portage, Michigan 49002.
5. **Acceptance of Premises.** Buyer acknowledges that they have made their own independent investigation with respect to the Property and its condition, including, but not limited to, zoning, governmental permits/approvals, and/or any environmental concerns and agrees to accept the Property in its present condition. The Property is being sold to the Buyer "AS IS, WHERE IS". The Buyer acknowledges and agrees that the Seller and the Auction Company make no representation or warranty as to the condition of

Buyer Initials _____ Seller Initials _____

the Property, including building improvements and fixtures, mechanical systems, well and septic systems, environmental conditions, and the Seller and the Auction Company assume no responsibility as to compliance of the Property with any laws, rules or regulations, federal, state or local.

6. All improvements and appurtenances now on the Property are included in the sale. Exceptions: All personal property belonging to the Tenant.
7. All Property improvements are sold "AS IS" with no warranties of any type. Any repairs or improvements which must be made are the responsibility of the Buyer. Buyer represents and warrants to Seller that Buyer has had the opportunity to inspect to their satisfaction, the entire Property, including, but not limited to, structural, plumbing, heating, electrical and mechanical components of the Property, and, Buyer agrees to accept the Property in its present "AS IS" condition, with no representations or warranties concerning its condition or permitted use. Buyer acknowledges that the Property may require repairs, maintenance or refurbishing which shall be the responsibility and cost of the Buyer.
8. Buyer acknowledges that Buyer has had the opportunity to investigate to their satisfaction, the zoning classification of the Property and any other matters of interest pertinent to the Property, including, without limitation, its environmental condition and history. Buyer agrees to purchase the property "AS IS", subject to current zoning restrictions, easements of record, and environmental condition. Acceptable rezoning, special use permits, specific uses, and environmental reports are not a contingency or condition of the sale of Real Estate.
9. Real property taxes, water, sewer, utility, or other customary adjustments shall be prorated through the closing Date with the Seller responsible for the amounts due up to the Closing Date, and the Buyer responsible for all amounts due thereafter. The Buyer will assume or pay any dues or assessment balance after Seller pays for any dues or assessment installments which are due and payable on or before the Closing Date. Exceptions: none.
10. The quality of title shall be that which any reputable title insurance company is willing to approve and insure, and shall be obtained by the Buyer at the Buyer's sole expense. In the event the Buyer is unable to obtain title insurance, then the Trustee, in his sole discretion, shall have the option to obtain title insurance on behalf of the Buyer at the expense of the Buyer to be paid at closing. Any mortgage title policies or additional specific endorsements desired by the Buyer shall be their cost and obligation. The inability to obtain specific endorsements by the Buyer shall not be a contingency of the sale of Real Estate.
11. Buyer acknowledges that no new survey has been conducted. Any surveys desired or required by the Buyer shall be at their own responsibility and cost and are not a contingency of the sale of Real Estate. Exceptions: none.
12. The closing will be held at Best Homes Title Agency, LLC. Closing fees charged by the title company of approximately Three Hundred Fifty and 00/100 Dollars (\$350.00) will be divided evenly between the Buyer and the Seller, payable at closing. At closing Buyer will pay the transfer tax charged by the State of Michigan and Kalamazoo County, and will pay for issuance of the title insurance policy referenced above.
13. Per the Michigan PA 288 of 1967, as amended by P.A. 87 of 1997, Seller will transfer without warranty to Buyer the right to divide the Property purchased hereunder as follows: no known rights to split. This is

Buyer Initials _____ Seller Initials _____

subject to compliance with the Act. Seller and Auction Company make no representation as to the effect local zoning ordinances or regulations may have on Buyer's ability to divide the Property at all. Buyer acknowledges that local laws may differ and be more restrictive and not allow Buyer to divide the Property into smaller parcels.

14. Buyer hereby deposits (*greater of \$5,000 or 10% of the purchase price*) Dollars (\$_____) as valuable consideration evidencing Buyer's good faith to be held in a Trustee account by the Seller and to be applied to the purchase price (the "Deposit"). In the event of default by the Buyer, the Deposit and the Buyer's Premium may be forfeited as liquidated damages, or alternatively, at Seller's election, the Seller may retain such Deposit as part of the payment of the purchase price and pursue any legal or equitable remedies against the Buyer. In the event of default by the Buyer, Buyer agrees to relinquish the Deposit and the Buyer's Premium. In the event of default by the Seller or if Seller is unable to deliver free and clear, unencumbered title, unless specifically excepted in Paragraph 3, Buyer shall be entitled to return of the Deposit and the Buyer's Premium with no further remedy. The ability to obtain financing is NOT a contingency of the sale of the Property. The Deposit and Buyer's Premium is due in possession of the Trustee within 48 hours of the conclusion of the Auction. Wire transfer, bank check, and cashier's check are accepted for the Deposit and Buyer's Premium.
15. Binding Effect. This agreement shall be binding upon and shall inure to the benefit of each of the parties hereto, and their respective heirs, personal representatives, successors and assigns.
16. Time is of the essence regarding this contract; except that Seller may waive this provision for the purpose of curing title defects.
17. Seller agrees to pay the Auctioneer the Buyer's Premium upon application and Order of the Bankruptcy Court and in accordance with the Order, dated December 7, 2017, approving the Seller's employment of the Auctioneer.
18. This Agreement represents the entire understanding and agreement between the parties with respect to the subject matter hereof, supersedes all prior agreements or negotiations between such parties, and may be amended, supplemented or changed only by an agreement in writing which makes specific reference hereto and which is signed by the party against whom enforcement of any such amendment, supplement or modification is sought.
19. Buyer agrees that the Auction Company will have 10 business days from the date of entry of the Approval Order or of the auction, whichever is later, to secure execution of this Agreement from the Seller.
20. If property is vacant land, buyer acknowledges that no new perk tests have been performed. Any perk tests desired or required by the Buyer, shall be at their own responsibility and cost and are not a contingency of the sale of Real Estate.
21. Rents shall be prorated to the Closing Date. Rent payments received by the Seller before this date for periods ending after this date shall result in a credit to the Buyer against the purchase price. There is no security deposit held by the Seller, or any other party, on behalf of the Tenant.
22. Buyer acknowledges that this Property is being sold only subject to entry of the Approval Order which shall authorize and allow Seller to proceed with consummating the sale contemplated by this Agreement. Buyer

Buyer Initials _____ Seller Initials _____

agrees that this agreement shall remain binding and that Buyer cannot withdraw from its obligations hereunder. Notification of Bankruptcy Court action with respect to this agreement shall be by telephone or email. If the Bankruptcy Court fails and/or refuses to enter the Approval Order, for whatever reason other than default of the Buyer, the Deposit and the Buyer's Premium shall be returned to Buyer in full and Buyer shall no have any further obligation under this Agreement.

23. Buyer acknowledges and understands that a survey is needed to provide an accurate legal description for the property at 5500 Portage Rd, Portage, MI 49002. It will be the buyer's responsibility to pay for the survey at closing. The cost for this is \$1,500.00.

24. Buyer acknowledges and understands that there may be hazardous substance on the property as disclosed by Michigan DNR document recorded in Liber 1908, page 409. Buyers will be responsible for any cost or requirement associated with this.

In witness whereof, the parties have signed this agreement as of the date and year first above written.

BUYER'S SIGNATURE _____ Dated _____

BUYER'S PRINTED NAME _____ Dated _____

BUYER'S SIGNATURE _____ Dated _____

BUYER'S PRINTED NAME _____ Dated _____

BUYER'S ADDRESS _____

BUYER'S DAYTIME TELEPHONE (_____) _____ - _____

SELLER'S ACCEPTANCE:

The above offer is hereby accepted.

SELLER'S SIGNATURE _____ Dated _____

SELLER'S PRINTED NAME Salvatore LaMonica, in his capacity as Chapter 7 trustee of the estate of Peter J. Gould, and in his capacity as the sole shareholder, president, and sole member of the board of directors of Portage Partners, Inc.

Dated _____

SELLER'S ADDRESS c/o LaMonica Herbst & Maniscalco, LLP
3305 Jerusalem Ave. Ste. 201
Wantagh, NY 11793

SELLER'S TELEPHONE (516) 826-6500

Buyer Initials _____ Seller Initials _____