

Form SWD12 (01/14)

United States Bankruptcy Court  
Western District of Michigan  
One Division Ave., N.  
Room 200  
Grand Rapids, MI 49503

<p><b>IN RE:</b> Debtor (name used by the debtor in the last 8 years, including married, maiden, trade, and address):</p> <p><b>P.D.M. Company, et al</b> 8595 Bingham Rd. Traverse City, MI 49684 Tax ID: 38-2575814</p> <p style="text-align: right;">Debtor</p>	<p><b>Case Number 14-00552-swd</b></p> <p><b>Chapter 11</b></p> <p><b>Honorable Scott W. Dales</b></p>
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**NOTICE TO CREDITORS AND OTHER PARTIES IN INTEREST**

**DEBTORS RENEWED MOTION FOR ORDERS: (I) APPROVING SALE OF ALL THE ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363(b) and (f); (II) AUTHORIZING DEBTORS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND LEASES TO PURCHASER AND (III) GRANTING FURTHER RELATED RELIEF**

Please take notice that the above-referenced motion has been filed with the Bankruptcy Court. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney. (If you do not have an attorney, you may wish to consult one.)

If you want the court to consider your view on this matter, attend the hearing scheduled for January 5, 2015 at 01:00 PM at the United States Bankruptcy Court, One Division Ave., N., 2nd Floor, Courtroom A, Grand Rapids, MI 49503.

You or your attorney may wish to file a response explaining your position. Such response should be **received** at least five business days prior to the scheduled hearing. A copy should also be served upon the party who has filed the motion and to his/her attorney.

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.



DANIEL M. LAVILLE  
CLERK OF BANKRUPTCY COURT

**Dated:** December 9, 2014

/s/ \_\_\_\_\_  
Kathy Trapp  
Deputy Clerk

Notice returned to Troy W. Stewart, Esq. for appropriate service: (12/9/14-kmt )

NOTICE IS HEREBY GIVEN that the court may, in its discretion, orally continue or adjourn the above hearing on the record in open court. If this occurs, parties in interest will not be given further written notice of the new hearing date. If an entity is not present at the originally scheduled hearing, information regarding the time, date and place of an orally continued or adjourned hearing may be accessed through the Bankruptcy Court's web site ([www.miw.uscourts.gov](http://www.miw.uscourts.gov)) provided the person has a PACER login and password, or by visiting the Clerk's Office of the United States Bankruptcy Court located at One Division Avenue North, 2nd Floor, Grand Rapids, Michigan 49503. Information about a PACER login and password may be obtained by either

calling PACER service center between 8:00 a.m. and 5:00 p.m. Monday through Friday, CST at (800) 676-6856 or via its web site at <http://pacer.psc.uscourts.gov>.

**UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF MICHIGAN**

In re:

P.D.M. COMPANY, INC., *et al*,

Debtors.

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Case No. 14-00552-swd

(Jointly Administrated)

Chapter 11

**DEBTORS' RENEWED MOTION FOR ORDERS: (I) APPROVING SALE OF ALL THE  
ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF BUSINESS  
FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES PURSUANT TO 11  
U.S.C. § 363(b) and (f); (II) AUTHORIZING DEBTORS TO ASSUME AND ASSIGN  
CERTAIN EXECUTORY CONTRACTS AND LEASES TO PURCHASER AND (III)  
GRANTING FURTHER RELATED RELIEF**

NOW COMES the Debtors in Possession, P.D.M. Company, Inc. and Bingham Partners, Inc. (“Debtors”), by and through its counsel, Troy W. Stewart of Kuhn Rogers, PLC (f/k/a Kuhn, Darling, Boyd & Quandt, PLC), who state in support of their Renewed Motion for Orders: (I) Approving Sale of All the Assets of the Debtors Outside the Ordinary Course of Business Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. § 363(b)&(f), (II) Authorizing Debtors to Assume and Assign Certain Executory Contracts and Leases to Purchaser and (III) Granting Further Related Relief as follows:

**Jurisdiction**

1. On February 3, 2014 (the “Petition Date”), the Debtors, P.D.M. Company and Bingham Partners, Inc., each filed a Voluntary Petition for Relief under Chapter 11 of the Bankruptcy Code.

2. The Debtors have been operating their business as a Debtor-In-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. No official committee of creditors holding unsecured claims has been appointed in this case, and no Trustee or examiner has been appointed.

4. This Court has jurisdiction over the matters asserted in this motion pursuant to 28 U.S.C. §§ 157 and 1134. This is a core proceeding pursuant to 28 U.S. C. § 157(b).

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

6. The statutory basis for the relief requested herein are 11 U.S.C. §§ 105(a), 363, 365, 1146(a) and Fed.R.Bankr.P. 6004 and 6006.

### **Background and History**

7. The Debtors collectively operate a lumber company. The Debtor Bingham Partners, Inc. owns the real property located at 8595 Bingham Road, Traverse City, Michigan on which P.D.M. Company conducts its lumber business. P.D.M. Company has been in the lumber business for over 30 years and was started by its current President, Robert Gene Kelly.

8. The Debtors' business consist of providing various wood products, finished and/or unfinished, to various customers. The Debtors' customers include lumber companies, general contractors, private individuals and other persons or entities. The Debtors supply a wide variety of wood products ranging from customized wood floors and doors to tables, molding, caskets and chairs.

9. The Debtors typically have three (3) total employees although the number of employees fluctuates depending on the needs of the business.

10. Robert Gene Kelly is the current President of both Debtors. The shares of P.D.M. Company and Bingham Partners, Inc. are each owned by Mr. Kelly and/or Pam Kelly, who own approximately ninety (90%) percent of the outstanding shares, and James Varley who owns the remaining shares.

11. The Debtors generated revenues of approximately \$58,000.00 in 2013.

### **Events that Led to the Chapter 11 Filing**

12. As a result of the down turn in the economy in the mid to late 2000's, the Debtors business struggled to find customers in order to generate revenue over those years. The Debtors originally obtained financing from Irwin Union Bank and as a result of the collapse of that bank; the Debtors' indebtedness to Irwin Union Bank was assigned to First Financial Bank ("Bank").

13. In 2010, First Financial Bank filed a lawsuit against the Debtors relating to the indebtedness and against the individual guarantors of the indebtedness. On February 2, 2011, a Consent Order was entered by the Leelanau County Circuit Court pursuant to which the Debtors were adjudged to be indebted to First Financial Bank in the total amount of \$822,635.68, less a credit for the a tentative payment in the amount of \$5,379.00.<sup>1</sup> Pursuant to the Consent Order, the indebtedness was to accrue interest at the prime rate plus five (5%) percent.

14. Subsequent to the entry of the Consent Order, the Debtors were unable to make regular payments to the bank on account of the indebtedness due to a lack of revenue and/or were unable to work out any acceptable payment plan with First Financial Bank. As a result, First Financial Bank proceeded to foreclose upon the real property owned by Bingham Partners, Inc., which serves as the basis for the Debtors' business operations, and filed a Complaint with the Leelanau County Circuit Court on January 7, 2014 for the appointment of a receiver and other relief.

15. The Debtors filed for Chapter 11 Bankruptcy protection in order to prevent the First Financial Bank from foreclosing upon the real property and/or from obtaining an order appointing a receiver to run the business operations and so that the Debtors could have an opportunity to reorganize based upon anticipated contracts, refinancing and/or a sale of the

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<sup>1</sup> The "judgment" was also against the personal guarantors of the indebtedness; James Varley, Barbara Varley, Roberts G. Kelly and Pamela Kelly. In addition, the Bank received a payment in the amount of approximately \$147,000.00 on account of the indebtedness in late 2013.

business assets. The Debtors determined to file for Chapter 11 Bankruptcy protection in order to attempt to preserve and enhance the value of its business operations for the benefit of all creditors and to maintain operations for the benefit of customers and employees.

### **Relief Requested**

16. On August 26, 2014 the Debtors filed a Motion with this Court (the “Prior Sale Motion”) pursuant to which the Debtors requested Orders approving the sale of all of their assets outside the ordinary course of business and other related relief [Docket No. 100]. However, the Debtors were unable to secure a signed Asset Purchase Agreement for the proposed sale of their assets and as a result; the Prior Sale Motion was eventually withdrawn.

17. The Debtors have now secured a signed Asset Purchase Agreement for the sale of all their assets. (**See Exhibit A – Asset Purchase Agreement**). Accordingly, by this renewed sale Motion, the Debtors seek authority to sell all the assets owned by the Debtors and used to operate the business, including all real property and personal property owned by the Debtors, free and clear of all liens, claims and encumbrances (collectively “Claims”), with all Claims, to the extent they exist and there is no agreement as to the resolution thereof, to attach to the proceeds from the sale. Further, the Debtors believe that this renewed sale motion and the signed Asset Purchase Agreement will provide a better payout or dividend to creditors and is more beneficial to all creditors than the Prior Sale Motion.

18. The Debtors proposes to sell all of their assets to Grand Traverse Band, LLC, of 2604 N. West Bay Shore Drive, Suttons Bay, Michigan 49682 for a total price of \$700,000.00, pursuant to the terms of a proposed Asset Purchase Agreement a copy of which is attached as **Exhibit “A”**, and to approve and confirm such sale at a hearing to be conducted on December 17, 2014 or such other day as the Court may determine.

19. The proposed purchaser, Grand Traverse Band, LLC, is not related to or an affiliate of the Debtors.

20. The Debtors also seek authority to assume and assign certain equipment and vehicle contracts and/or leases pursuant to 11 U.S. C. § 365 to Grand Traverse Band, LLC pursuant to and in accordance with the terms of the Asset Purchase Agreement. (See **Exhibit A**).

21. The Debtors also seeks an order pursuant to Fed.R.Bankr.P. 6004(h) and 6006(d) that the order authorizing the sale of the assets and the assignment of any executory contracts or leases is immediately effective, and not subject to the 10 (ten) day automatic stay provided in Rules 6004(h) and 6006(d).

#### **Terms of Asset Purchase Agreement and Summary of Debtors' Assets and Liabilities**

22. The Debtors' primary assets include the following: (a) two (2) parcels of real property owned by Bingham Partners, Inc.; (b) equipment as listed on P.D.M. Company's Schedule B, inventory as listed on P.D.M. Company's Schedule B, and accounts receivable, the majority of which Debtors believe is uncollectable for various reasons.

23. According to the Debtors' appraisals of the equipment owned by P.D.M. Company and the real property owned by Bingham Partners, Inc., these assets have a value of \$893,675.00. According to First Financial Bank's appraisals, the Debtors real property and equipment have a value of \$434,450.00. At the time the Petitions were filed, P.D.M. Company had inventory on hand that had a value of \$245,995.60. As a result of normal business operations, the currently value of the inventory on hand is approximately \$210,685.00.

24. The Debtors firmly believe that the value of all their assets would be substantially less in the liquidation or forced sale scenario, especially when considering the costs associated with such a sale. In other words, the Debtors believe that the value of their assets will be

maximized via the sale of the businesses as a going concern, as proposed in the Asset Purchase Agreement.

25. As set forth in the proposed Asset Purchase Agreement, Grand Traverse Band, LLC proposes to purchase all of the Debtors' assets without exception. **(See Exhibit A)**.

26. Pursuant to the terms of the Asset Purchase Agreement, the total purchase price has been allocated as follows: (a) \$400,000.00 of the purchase price shall be allocated to the real estate owned by Bingham Partners, Inc.; (b) \$150,000.00 of the purchase price shall be allocated to the equipment owned by P.D.M. Company; and (c) \$150,000.00 of the purchase price shall be allocated to the inventory, accounts receivable, general intangibles, and other assets owned by P.D.M. Company. **(See Exhibit A)**.

27. Pursuant to the terms of the Asset Purchase Agreement, the sale is expressly subject to this Court's approval and various other conditions, such as the Purchaser's completion of satisfactory due diligence and the Purchaser's ability to obtain the consent, authorization and approval of its Board of Directors. **(See Exhibit A)**.

28. Pursuant to the terms of the Asset Purchase Agreement, in the event the sale is approved and a closing takes place, the Debtors principal, Robert G. Kelly, would enter into an Employment Agreement with the Purchaser. **(See Exhibit A)**.

29. Pursuant to the terms of the Asset Purchase Agreement, in the event that all the required conditions are met, satisfied or waived, the closing would occur within 21 days from the date of this Court's order approving the sale, subject to the Purchaser's ability to extend the closing date for an additional 60 days. **(See Exhibit A)**.

### **Summary of Claims**

30. The Debtors' secured obligations consist of the following: (a) First Financial Bank, (b) Internal Revenue Service, (c) Michigan Department of Treasury, and (d) State of Michigan Unemployment Agency.

31. The creditors of the Debtor Bingham Partners, Inc. are: (a) First Financial Bank (secured), the Internal Revenue Service (priority and unsecured), Moothart & Sarafa PLC (unsecured), and J. L. Stephen, CPA (unsecured).

32. The creditors of the Debtor P.D.M. Company are: (a) First Financial Bank (secured), (b) Michigan Department of Treasury (secured, priority and unsecured), (c) State of Michigan Unemployment Insurance Agency (secured, priority and unsecured), (d), Michigan Department of Treasury (administrative), and (e) various unsecured creditors.

33. According to the Proof of Claims filed by First Financial Bank, the Bank has a secured claim as to P.D.M. Company in the amount of \$87,450.00 and as to Bingham Partners, Inc. in the amount of \$347,000.00 for a total secured claim in the amount of \$434,450.00, and an unsecured claim as to both Debtors in the amount of \$358,631.14.

34. According to the Proof of Claim filed by Internal Revenue Service, the IRS has a secured claim as to P.D.M. Company in the amount of \$68,420.63 plus interest at the rate of three (3%) percent from the date of the Petition.

35. According to the Proof of Claim filed by Michigan Department of Treasury, the Michigan Department of Treasury has a secured claim as to P.D.M. Company in the amount of \$8,841.94, and an unsecured claim in the amount of \$12,147.98.

36. First Financial Bank has a perfected security interest or lien only upon the real property owned by Bingham Partners, Inc. and the equipment owned by P.D.M. Company. The Bank does not have a lien on the Debtors inventory or accounts receivable.

37. The Debtors are uncertain as to whose lien (e.g. First Financial Bank, the IRS, Michigan Department of Treasury or State of Michigan Unemployment Agency) is in first position or takes priority as it relates to the Debtors assets. However, it is believed that the proposed sale of the assets would allow the Debtors to pay off all secured and priority claims or obligations.

38. In addition, pursuant to the Proofs of Claims filed in this matter and the Debtors' Schedules, the following entities have asserted priority claims:

- a. Claim No. 2 Internal Revenue Service \$100.00 [Bingham Partners];
- b. Claim No. 1 Internal Revenue Service \$100.00 [P.D.M. Company];
- c. Claim No. 3 Michigan Department of Treasury \$11,705.49 [P.D.M. Company]; and
- d. Claim No. 6 State of Michigan Unemployment Insurance Agency \$0.92 [P.D.M. Company].

39. The Michigan Department of Treasury also has an administrative claim (Claim No. 8) in the amount of \$1,197.04 relating to P.D.M. Company and post-petition taxes

40. The unsecured claims (both filed and scheduled) of Bingham Partners total approximately \$3,285.44. The unsecured claims (both filed and scheduled) of P.D.M. Company total approximately \$39,100.27. However, these amounts do not include any unsecured claim of First Financial Bank.

#### **Reasons for Immediate Sale of the Assets**

41. The Debtors submit that there are sound business reasons, a sound business purpose or an articulated business reason to justify the sale of the assets as a going concern as proposed in the Asset Purchase Agreement. The Debtors have been unable to operate at a profit since the Petitions were filed and as a result, the Debtor P.D.M. Company has been unable to timely pay post-petition tax obligations and other operating expenses such that the Debtors face

the prospect of having to cease business operations or a conversion of both cases to Chapter 7 liquidations.<sup>2</sup>

42. The Debtors also submit that the proposed purchase price for the assets is the highest and best offer that can be expected given the facts and circumstances presented, and that the purchase price is reasonable and fair given the various appraisals. Although the Debtors have not actively marketed their assets or attempted to find alternate buyers for their assets, the Debtors have been attempting to negotiate a sale with the purchaser, Grand Traverse Band, LLC, since before the Petitions were filed and those negotiations have finally culminated into an Asset Purchase Agreement. The Debtors believe that the purchaser, Grand Traverse Band, LLC is a uniquely situated and presents the best opportunity for the continued success of the business.

43. Prior to the filing of the Petitions, the Debtors had been in communications with representatives of Grand Traverse Band, LLC for the purchase and/or sale of the Debtors' assets. As a purchaser, the Grand Traverse Band, LLC provides a unique opportunity for the continued success of the business as it intends to market the business products to its members and otherwise employ some of its members on a going forward basis. Accordingly, in the business judgment of the Debtors' management, the Grand Traverse Band, LLC's proposal contains the best terms and presents the most likely change for a completed sale in the near future at the best price and with the best likelihood of a distribution to the Debtors' unsecured creditors.

44. The Debtors further submit that the sale of all of the assets as a going concern, as proposed in the Asset Purchase Agreement, will produce the highest and best offer for the assets when taking into consideration of the Debtors' business reputation, contacts and contracts along with goodwill in the community, especially as compared to a sale of Debtors' assets pursuant to

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<sup>2</sup> The US Trustee has filed a Motion For Conversion [Docket No. 126] which is currently scheduled for hearing on December 17, 2014 at 10:00 a.m.

a liquidation procedure either in a Chapter 7 proceeding or subsequent to repossession by First Financial Bank.<sup>3</sup>

45. At this point, the Debtors concede that reorganization efforts have not been successful and that there is no reasonable likelihood of a successful organization. The Debtors are in need of a large cash infusion or they need to eliminate their current debts in order to be able to continue business operations and be profitable. Although the Debtors have looked into potential refinancing, it was readily apparent that the Debtors would not be able to make the payments that would have been required given the current status of their business operations, just like the Debtors have not been able to continue to make adequate protection payments to First Financial Bank, which ultimately resulted in the automatic stay being lifted. Accordingly, the Debtors now believe that the best interest of the Debtors, the estate and the Debtors' creditors would be best served by an immediate sale of all of the Debtors' assets as proposed in the Asset Purchase Agreement because the proposed sale will allow the Debtors to pay off all of their secured, priority, and administrative obligations, and it will allow the Debtors' unsecured creditors to receive some amounts on account of their claims. The Debtors submit that all of the creditors will receive more from the proposed sale than what the creditors would otherwise receive if the Debtors are forced to cease their business operations or the cases are converted or dismissed.

46. The Debtors have determined that the operating capital that would be required to complete any reorganization efforts is significant, especially when compared to the Debtors' lack

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<sup>3</sup> First Financial Bank previously obtained relief from the automatic stay as it relates to the bank's collateral (real property and equipment) and it obtained an Order for Appointment of Receiver from the Leelanau County Circuit Court on December 1, 2014, pursuant to which a receiver has been appointed to oversee the bank's collateral in accordance with and pursuant to the terms of the Order.

of revenue as of late, and as such, the Debtors now believe that there is no reasonable likelihood that they will be able to propose a feasible plan of reorganization.

47. Postponing an immediate sale of all of the Debtors' assets will only serve to increase administrative expenses, whether the business is operated as a going concern or closed while a delayed sales process plays out, severely impacting the possibility of a distribution to the unsecured creditors of the Debtors' estate.

48. The Debtors believes that the proposed sale of all the assets will produce a distribution to unsecured creditors which would otherwise absolutely not be available if the assets of the Debtors are otherwise sold or liquidated subject to the secured and priority claims of the Bank, the Internal Revenue Service, the Michigan Department of Treasury and the State of Michigan Unemployment Agency and applicable administrative claims.

49. Under the circumstances presented, the Debtors believe that an immediate sale of the assets will benefit the estate of the Debtors and all of the creditors of the estate and is the best case scenario for all interested parties.

50. Based upon the Debtors' business judgment and its assessment of the value of the Debtors' assets, including without limitation Debtors' goodwill as a going concern, the Debtors believe that the price for the assets set forth in the Grand Traverse Band, LLC proposal is reasonable, fair and appropriate under all circumstances and that the Debtors ability to obtain a higher price is very, very unlikely.

51. Based upon the foregoing and given the appraised value of the assets and the proposed purchase price, the Debtors negative net revenue since the filing of the Petition, the likelihood that a plan of reorganization will not be proposed or confirmed, and the decreasing

value of the assets, the Debtors state that a sound business purpose exists for the sale of the all of the Debtors assets as proposed in the Asset Purchase Agreement.

### **Basis for Relief**

52. Section 363(b) of the Code provides in relevant part that “the trustee, after notice and hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.”

53. In determining whether a sale of assets outside the ordinary course of business should be approved pursuant to § 363(b) of the Bankruptcy Code, a debtor has the burden of establishing that a valid business purpose exists. See *In re Lionel Corp.*, 722F.2d 1063, 1070-71 (2d Cir. 1983); see also *In re Stephens Industry, Inc. v. McClung*, 789 F.2d 386 (6<sup>th</sup> Cir. 1986). Once a debtor has articulated a valid business purpose, however, a presumption arises that the debtors’ decision to sell the assets was made on an informal basis, in good faith and in the honest belief the action was in the best interest of the estate. See *In Re Integrated Resources, Inc.*, 147 B.R. at 656 (S.D.N.Y. 1992); *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. Ill. 1995) (the business judgment rule is a presumption that in making a decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interest of the company).

54. Courts within the Sixth Circuit have held that transaction may be approved under §363 when they are supported by sound business judgment. See, e.g. *Stephens Industries, Inc. v. McClung*, 789 F.2d 386, 389-90 (6<sup>th</sup> Cir. 1986) (“a court can authorize a sale of Debtors’ assets when a sound business purpose dictates such action”); see also *In re Embrace Sys. Corp.*, 178 B.R. 112, 124 (Bankr. W.D. Mich 1995); see also *In re North American Royalties, Inc.*, 276 B.R. 860, 866 (Bankr. E.D. Tenn. 2002); see also *In re Quality Stores, Inc.*, 272 B.R. 643, 647

(Bankr. W.D. Mich 2002) (“noting the ‘wide business discretion’ given to debtors selling assets under §363”).

55. The Debtors request approval to sell all of their assets to the proposed purchaser, Grand Traverse Band, LLC, free and clear of any and all liens, claims and encumbrances pursuant to § 363(f) of the Bankruptcy Code. A debtor may sell property under §§ 363(b) and 363(f) of the Bankruptcy Code “free and clear of any interest in such property of an entity other than the estate,” if one of the following conditions are met:

- (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 such property is to be 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.

56. The Debtors proposes that any Claims that exist immediately prior to the closing of sale of the assets attach to the proceeds of the sale with the same validity, priority, force and effect as they had at such time (subject to the distribution plan immediately below), thus satisfying the requirement of § 363(f) of the Code. Specifically, all holders of Claims could be compelled to accept a money satisfaction of the Claims in legal or equitable proceedings in accordance with § 363(f)(5) of the Code.

57. Upon the Court’s approval of the proposed sale, the Debtors propose a distribution of the sale proceeds to be received by each Debtor as follows:

I. BINGHAM PARTNERS = \$400,000.00

- a. \$15,000.00 (or such other amount as may be approved by the Court or otherwise agreed to) shall be paid to the Debtor’s counsel, Kuhn Rogers,

PLC (f/k/a Kuhn, Darling and Quandt PLC), only upon the Court's entry of an order approving said fees<sup>4</sup>;

- b. \$100.00 or the actual amount determined to be due shall be paid to the Internal Revenue Service on account of and in full satisfaction of the priority claim set forth in Claim No. 2;
- c. \$1,000.00 shall be paid to the unsecured creditors on a pro-rata basis or held in trust until further order of this Court
- d. \$1,500.00 shall be set aside and used to pay any real property taxes (estimated to be approximately \$1,300.00), transfer taxes or other obligations of the Debtor relating to the Debtor's transfer of the real property and, to the extent this entire amount is not used, the remaining balance, if any, shall be applied to the remaining sale proceeds as set forth in (e) below; and
- e. The remaining sale proceeds, which are estimated to be approximately \$382,400.00, shall be paid to First Financial Bank in exchange for a complete release of and in full satisfaction of all of the Bank's claims relating to the indebtedness and the Debtor, including without limitation the Bank's secured and unsecured claims.

II. P.D.M. Company = \$300,000.00

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<sup>4</sup> Counsel for the Debtors filed a fee application on behalf of each Debtor on November 11, 2014. Upon information and belief, the deadline for objections to the fee applications was December 2, 2014 and no objections to the fee applications were timely filed. Accordingly, it is believed that Counsel for the Debtors will have an administrative claim for the amounts of fees and costs incurred by each Debtor, as set forth in the respective fee applications, but Counsel for the Debtors are proposing to accept payment of an amount which is less than the administrative claim amount.

- a. \$68,420.63 plus interest at the rate of three (3%) percent since the Petition date shall be paid to the Internal Revenue Service on account of and in full satisfaction of the secured portion of Claim No. 1;
- b. \$8,841.94 shall be paid to the Michigan Department of Treasury on account of and in full satisfaction of the secured portion of its Claim No. 3;
- c. \$15,209.06 shall be paid to the State of Michigan Unemployment Insurance Agency on account of and in full satisfaction of the secured portion of its Claim No. 6;
- d. \$100.00 or the actual amount determined to be due shall be paid to the Internal Revenue Service on account of and in satisfaction of the priority claim set forth in Claim No. 1;
- e. \$11,705.49 shall be paid to Michigan Department of Treasury on account of and in full satisfaction of the priority claim set forth in Claim No. 3;
- f. \$8,230.60 shall be paid to A. L. Mitchell and Associates pursuant to the Court's Order dated October 20, 2014;
- g. \$1,197.04 shall be paid to the Michigan Department of Treasury on account of and in full satisfaction of its administrative claim, Claim No. 8;
- h. \$30,000.00 (or such other amount as may be approved by the Court or otherwise agreed to) shall be paid to the Debtor's counsel, Kuhn Rogers, PLC (f/k/a Kuhn, Darling and Quandt PLC), only upon the Court's entry of an order approving said fees<sup>5</sup>;

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<sup>5</sup> Counsel for the Debtors filed a fee application on behalf of each Debtor on November 11, 2014. Upon information and belief, the deadline for objections to the fee applications was December 2, 2014 and no objections to the fee

- i. \$20,000.00 shall be paid to the unsecured creditors on a pro-rata basis or held in trust until further order of this Court;
- j. \$10,000.00 shall be held back and set aside to cover any applicable closing costs or expenses which are the obligation of the Debtor, or any additional amounts that may be due pursuant to any of the above referenced filed claims, including but not limited to federal or state payroll taxes and, to the extent this entire amount is not used, the remaining balance, if any, shall be applied to the remaining sale proceeds as set forth in (k) below; and
- k. The remaining sale proceeds, which are estimated to be approximately \$140,715.87, shall be paid to First Financial Bank in exchange for a complete release of and in full satisfaction of all of the Bank's claims relating to the indebtedness and the Debtor, including without limitation the Bank's secured and unsecured claims.

**Assumption and Assignment of Executory Contracts and Unexpired Leases**

58. As part of the proposed sale of assets, the Grand Traverse Band, LLC is to assume and be assigned certain executory contracts and unexpired leases (the "Designated Contracts") relating to equipment and/or vehicles used in the Debtors' business. (See Exhibit A).

59. The Debtors request that the Court authorize Debtors to assume and assign all Designated Contracts.

**Immediate Effect of Sale Order**

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applications were timely filed. Accordingly, it is believed that Counsel for the Debtors will have an administrative claim for the amounts of fees and costs incurred by each Debtor, as set forth in the respective fee applications, but Counsel for the Debtors are proposing to accept payment of an amount which is less than the administrative claim amount.

60. Grand Traverse Band, LLC intends to purchase all of the assets of the Debtors as a going concern so that Grand Traverse Band, LLC can continue operations related to the business of the Debtors.

61. An order providing that the sale order shall take immediate effect (as opposed to being automatically stayed for ten (10) days pursuant to Fed.R.Bankr.P. 6004(h) and 6006(d)) will permit Grand Traverse Band, LLC to effect the business transition immediately upon entry of the Order, will increase the likelihood of a successful transition for the benefit of Grand Traverse Band, LLC, the Debtors' employees and customers of the Debtor. Such an order will also reduce or eliminate administrative expenses which might otherwise be incurred in the ten (10) day stay period.

#### **Notice of Motion**

62. The Debtors will provide notice of this Sale Motion to (a) all parties on the Debtors' matrix; (b) all parties that have requested notice in this case pursuant to Fed.R.Bankr.P. 2002; and (c) Grand Traverse Band, LLC.

WHEREFORE, the Debtors respectfully requests that the Court grant the relief requested in the Sale Motion, including: (i) authorizing the sale of all of the Debtors' assets pursuant to the Asset Purchase Agreement and § 363 of the Bankruptcy Code, free and clear of all liens, claims and encumbrances; (ii) authorizing Debtors to assume and assign the Designated Contracts; and (iii) granting related relief as may be just and appropriate.

Dated: December 3, 2014

/s/ Troy W. Stewart

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Troy W. Stewart (P61856)  
Kuhn Rogers PLC  
412 South Union, P. O. Box 987  
Traverse City, MI 49685-0987  
(231) 947-7901 Ext. 129  
Email: [twstewart@krlawtc.com](mailto:twstewart@krlawtc.com)