

**IN THE MATTER OF  
THE ESTATE OF  
ALAN D. KIDD,  
Deceased**

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**PROBATE COURT  
SHELBY COUNTY, ALABAMA**

**CASE NO. PR-2015-000750**

**PETITION FOR ORDER FOR SALE OF REAL ESTATE  
AT PRIVATE SALE**

**TO THE HONORABLE JUDGE OF PROBATE, JEFFERSON COUNTY, ALABAMA:**

Comes now your petitioner, the undersigned Michelle G. Kidd, as the personal representative of the Estate of Alan D. Kidd, deceased (the "Estate" of the "Decedent"), pursuant to Section 43-2-844 of the Code of Alabama (1975), as amended, and upon information and belief, respectfully represents to Your Honor as follows:

1. The Decedent died intestate on October 13, 2016. By Letters of Administration granted on December 15, 2015, your petitioner was appointed as personal representative of the Estate and is at the date of this petition the duly qualified and acting personal representative of the Estate.

2. At the time of his death, the Decedent owned certain interests in business entities as follows (collectively, the "Business Interests"):

49% membership interest in 280 Station, LLC ("280 Station")  
1.0% membership interest in Jack Rabbit, LLC ("Jack Rabbit")  
100% membership interest in AJK, LLC ("AJK")  
1.5% shareholder in BWK, Inc. ("BWK")

All or substantially all of the other ownership interests in each of the above entities are owned by the Decedent's father, Jack Kidd ("Jack"). Those other ownership interests in the above entities not owned by Jack are owned by one or more of the Decedent's brothers.

3. Your petitioner has been informed by Jack, in his capacity as president of BWK, that (a) substantially all of BWK's assets have been sold to an unrelated party for a total purchase price of approximately \$736,148.15 and (b) BWK desires to purchase and redeem the 1.5% interest in BWK owned by the Estate for a purchase price of the net sales proceeds (the "Proposed Redemption"). The purchase price offered to the Estate for the Proposed Redemption is equal to the Estate's pro rata share of the purchase price received by BWK in connection with the sale of substantially all of its assets.

4. In addition, BWK has expressed a desire to purchase all of the Decedent's interests in 280 Station, Jack Rabbit, and AJK from the Decedent's Estate for a total purchase price of \$400,092.00 (the "Proposed Purchase").

5. There is attached hereto as Exhibit A and incorporated herein by reference a copy of a purchase and redemption agreement between your petitioner and BWK dated November 22, 2016 (the "Purchase Agreement") for the Proposed Redemption and the Proposed Purchase. The Purchase Agreement is subject to approval by the Court.

6. The Purchase Agreement provides for a sales price for the Business Interests equal or greater to the value listed for such interests on the Inventory filed with this Court on February 16, 2016, which values were determined in each case by multiplying (i) the Decedent's percentage ownership interest in each such business and (ii) a multiple of EBITDA for such business.

7. The Decedent was married at the time of his death to your petitioner, and he had one child from a previous marriage who survived him, and no children who predeceased him. The following is the name, relationship, age, condition, and place of residence of the sole heir of the Decedent:

<u>Name, Relationship, Age, Condition</u>	<u>Place of Residence</u>
Michelle G. Kidd, wife, adult of sound mind	7021 N. Highfield Drive Birmingham, AL 35242
Chloe E. Kidd, daughter, minor	c/o Malea L. Martin (Chloe's mother & the Decedent's former spouse) Trussville, AL

8. The Decedent's surviving child, Chloe E. Kidd, is a minor, and the guardian *ad litem* appointed in this case to represent her interests has indicated that he has no objection to the Proposed Purchase.

9. Your petitioner avers and believes that the sale of the Decedent's Business Interests as described above is in the best interests of the Decedent's Estate as well as the best interest of the heirs of the Decedent's Estate. Among other things, it would relieve the Estate of the costs of operating ongoing businesses and would provide the Estate with liquidity for the payment of creditor claims, taxes, and the expenses of administration. The Business Interests do not currently provide any significant income to the Estate.

WHEREFORE, your petitioner prays as follows:

1. That this Court will take jurisdiction of this matter and exercise the equity jurisdiction of this Court.

2. That this Court, pursuant to Section 43-2-844 of the Code of Alabama (1975), as amended, will set a hearing on this petition at the earliest allowable date.

3. That this Court, at such hearing upon this petition, will approve this petition to sell the Business Interests and that your Honor will issue an order authorizing the sale of said property in accordance with the Purchase Agreement at as early a date as the law will permit.

Dated this 23 day of November, 2016.

Michelle G. Kidd

Michelle G. Kidd, Personal Representative of  
the Estate of Alan D. Kidd, Deceased

VERIFICATION

STATE OF ALABAMA

)

:

JEFFERSON COUNTY

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Before me, a notary public in and for said county in said state, personally appeared Michelle G. Kidd, who, being by me first duly sworn, deposes and says on oath that she has read the foregoing Petition and is informed and believes and, upon the basis of such information and belief, avers that the facts alleged therein are true and correct.

Subscribed and sworn to before me this 23<sup>rd</sup> day of November, 2016.

Jackie Couch

Notary Public

[NOTARIAL SEAL]

My commission expires:

JACKIE COUCH Notary Public, Alabama State At Large My Commission Expires May 7, 2019
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Attorney for petitioner:  
Brooke A. Everley  
Everley Law, LLC  
2100 First Avenue North, Suite 600  
Birmingham, Alabama 35203  
(205) 328-9445 x450



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# EXHIBIT A



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## PURCHASE AGREEMENT

This Purchase Agreement (the "Agreement") is entered into this 22<sup>nd</sup> day of November, 2016 (the "Effective Date"), by and between BWK, Inc., an Alabama corporation (the "Purchaser"), and Michelle G. Kidd, in her capacity as personal representative of the Estate of Alan D. Kidd, deceased (the "Seller").

### RECITALS

A. Alan D. Kidd (the "Decedent") died intestate on October 13, 2015. By Letters of Administration granted on December 15, 2015, Michelle G. Kidd was appointed as personal representative of the Estate of Alan D. Kidd (the "Personal Representative" of the "Estate") and, in such capacity, is sometimes referred to hereinafter as the "Seller."

B. At the time of his death, the Decedent owned certain interests in business entities as follows (collectively, the "Business Interests"):

49% membership interest in 280 Station, LLC ("280 Station")  
1.0% membership interest in Jack Rabbit, LLC ("Jack Rabbit")  
100% membership interest in AJK, LLC ("AJK")

and, in addition, the Decedent owned 1.5% of the outstanding stock of the Purchaser (the "Decedent's BWK stock").

C. The Seller desires to sell all of the Decedent's Business Interests and Decedent's BWK stock, and the Purchaser desires to purchase all of the Decedent's Business Interests and to purchase and redeem the Decedent's BWK stock, all upon the terms and conditions set forth in this Agreement.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Purchaser and the Seller hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by this reference.

2. Sale, Purchase, and Redemption. On the basis of the representations and warranties and subject to the terms and conditions set forth in this Agreement, the Seller agrees to sell the Business Interests and the Decedent's BWK stock to the Purchaser, and the Purchaser agrees to purchase the Business Interests and to purchase and redeem the Decedent's BWK stock from the Seller, for the purchase price specified in Section 3 and payable in accordance with Section 4.

3. Purchase Price. The aggregate purchase price for the Business Interests shall be Four Hundred Three Thousand Ninety-Two and no/100 Dollars (\$400,092.00), which shall be allocated among each of the Business Interests as the Seller and Purchaser shall mutually agree as soon as reasonably practicable following the Closing. The purchase price for the Decedent's BWK stock shall be equal to 1.5% of the net sales proceeds resulting from the Purchaser's recent sale of substantially all of its assets to The Mountain Lodge Hal, LLC, a Georgia limited liability company, which sale closed on November 10, 2016 for a total purchase price of approximately \$736,148.15. (The sum of the aggregate purchase price for the Business Interests and the purchase price for the Decedent's BWK stock is sometimes referred to hereinafter as the "Purchase Price.")

4. Closing; Closing Deliveries. The purchase and sale (the "Closing") of the Business Interests contemplated hereby shall take place on a date mutually agreeable to the parties as soon as reasonable practicable following the approval of this Agreement by the Judge of Probate of Shelby County, Alabama (the "Closing Date"). The following deliveries shall take place at the Closing:

(a) The Seller shall deliver to the Purchaser (i) an assignment in form and substance satisfactory to the Purchaser, conveying all right, title, and interest in and to each of the Business Interests, and (ii) a stock power and assignment separate from certificate, conveying all right, title, and interest in and to the Decedent's BWK stock.

(b) The Purchaser shall deliver to the Seller in immediately available funds in the amount of the Purchase Price.

5. Representations and Warranties.

(a) The Purchaser represents and warrants to the Seller that:

(i) The Purchaser is a corporation, duly organized, validly existing and in good standing under the laws of the State of Alabama and has all necessary corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby, and all requisite action required to be taken by the Purchaser, and/or each of 280 Station, Jack Rabbit, and AJK and their respective other members, to authorize the transactions contemplated by this Agreement have been taken, and this Agreement constitutes a valid and binding agreement enforceable against the Purchaser in accordance with the terms hereof.

(ii) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a breach or default under any agreement to which the Purchaser is a party or by which the Purchaser is bound, or under any decree, order, judgment or ruling of any court or governmental authority.

(iii) The execution, delivery and performance of this Agreement by the Purchaser will not violate any law, rule or regulation applicable to the Purchaser or its properties or assets.

(iv) The Purchaser is acquiring the Business Interests for its own account and not with a view to their distribution within the meaning of Section 2(11) of the Securities Act of 1933 or any successor law, and regulations and rules issued pursuant to that act or any successor law.

(b) The Seller represents and warrants to the Purchaser that:

(i) Subject to the approval of the Judge of Probate of Shelby County, Alabama as described in more detail in Section 6(a) below, the Seller has full power and authority to consummate the transactions contemplated herein, and this Agreement constitutes a valid and binding agreement enforceable against the Seller in accordance with the terms hereof.

(ii) The execution, delivery and performance of this Agreement by the Seller will not constitute a breach or default under any agreement to which the Seller is a party or by which the Seller is bound, or under any decree, order, judgment or ruling of any court or governmental authority.

(iii) The execution, delivery and performance of this Agreement by the Seller will not violate any law, rule or regulation applicable to the Seller or the Seller's properties or assets.

(iv) The Business Interests are owned of record and beneficially by the Seller free and clear of all liens, claims, pledges and encumbrances ("Encumbrances").

(v) At the Closing, the Seller will transfer to the Purchaser good and valid title to the Business Interests, free and clear of any Encumbrances.

## 6. Closing Conditions.

(a) Judge of Probate Approval. The Purchaser acknowledges and agrees that the approval of the Judge of Probate of Shelby County, Alabama must be obtained before the Closing can occur. As soon as reasonable practicable following the Effective Date of this Agreement, the parties hereto will make all filings with the Judge of Probate of Shelby County, Alabama and take all other actions reasonably necessary to consummate the transactions contemplated herein.

(b) Representations and Warranties. All of the Seller's representations and warranties in this Agreement must have been accurate in all material respects as of the Effective Date, and must be accurate in all material respects as of the Closing Date as if made on the Closing Date. All of the Purchaser's representations and warranties in this Agreement must have been accurate in all material respects as of the Effective Date, and must be accurate in all material respects as of the Closing Date as if made on the Closing Date.

7. Termination; Effect of Termination. If the approval of the Judge of Probate of Shelby County, Alabama has not been obtained within six months of the Effective Date, this Agreement will automatically terminate and, in such event, all further obligations of the parties under this Agreement will terminate.



8. Post-Closing Covenants.

(a) Registered Agent. The Decedent is currently listed as the registered agent of each of AJK and Jack Rabbit with the Office of the Secretary of State of the State of Alabama. As soon as reasonably practicable following the Closing, the Purchaser shall file, or shall cause to be filed, on behalf of each of AJK and Jack Rabbit an instrument for change of registered agent with the Office of the Secretary of State of the State of Alabama, removing the Decedent from such position.

(b) Company Loans and Guaranties. The Purchaser shall, and shall take all reasonable efforts to cause each of 280 Station, Jack Rabbit, and AJK to, have the Decedent removed from any personal guaranties made in connection with any loan or line of credit on behalf of each of the Purchaser, 280 Station, Jack Rabbit, and AJK.


9. Tax Matters. The Seller shall be responsible for, and shall timely pay, all income and other taxes attributable to the Business Interests and the Decedent's BWK stock through the Closing Date, as well as all income and other taxes payable with respect to the Purchase Price received in exchange for the Business Interests and the Decedent's BWK stock. Notwithstanding any other provision of this Agreement, the Purchaser shall take all reasonable efforts to cause each of the Purchaser, 280 Station, Jack Rabbit, and AJK to provide the Seller with information regarding their respective tax returns in a timely manner, as reasonably necessary for the Seller to protect its interests and comply with applicable laws and regulations.

10. Further Assurances. At any time and from time to time after the Closing Date, each of the parties hereto will execute and deliver such further instruments, and will do all things necessary or proper, as any other party hereto may reasonably request, in order to effectuate the purposes of this Agreement.

11. Notices. All notices, consents, requests, instructions, approvals, and other communications hereunder shall be in writing, shall be addressed to the receiving party's address set forth below or to such other address as a party may designate by notice hereunder, and shall be either (a) delivered by hand, (b) made by facsimile transmission or electronic mail with a copy by first class mail, (c) sent by recognized overnight courier, or (d) sent by certified mail, return receipt requested, postage prepaid:

If to the Purchaser: BWK, Inc.  
Attn: Jack Kidd  
6600 Walt Drive  
Birmingham, AL 35242  
Phone: (205) 936-1234  
Jackkidd81@yahoo.com

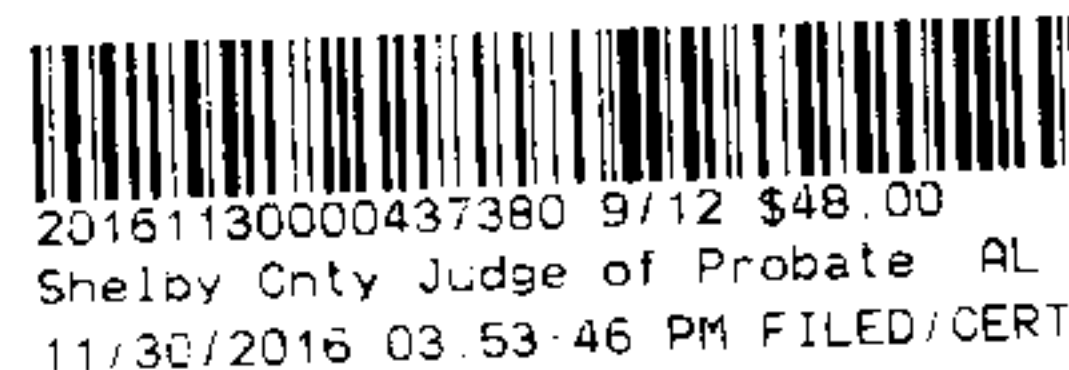
With a copy to: A. Eric Johnston  
2100 Corporate Drive, Suite 107  
Birmingham, AL 35242  
Phone: 205-408-8893  
eric@aericjohnston.com



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If to the Seller: Michelle G. Kidd, as personal representative of  
the Estate of Alan D. Kidd  
7021 N. Highfield Drive  
Birmingham, Alabama 35242  
Phone: 205-907-7182  
Momof3boyscns@gmail.com



With a copy to: Brooke A. Everley  
Everley Law, LLC  
2100 1<sup>st</sup> Avenue North, Suite 600  
Birmingham, AL 35203  
Phone: (205) 623-1259  
brooke@everleylaw.com

All notices, consents, requests, instructions, approvals, and other communications hereunder shall be deemed to have been received (i) if delivered by hand, at the time of the delivery thereof to the receiving party, (ii) if sent by facsimile transmission or electronic mail, at the time receipt has been acknowledged by electronic confirmation or otherwise, (iii) if sent by overnight courier, on the next business day following the day such notice is delivered to the courier service, and (iv) if sent by certified mail, on the third business day following the day such mailing is made.

12. No Broker or Commission Due. Neither party has dealt with any broker, finder or similar party, and no broker, finder nor a similar party is entitled to a commission in connection with this Agreement

13. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Alabama, without regard to the laws of Alabama regarding conflicts of laws principles.

14. Headings. All headings in this Agreement are employed exclusively for convenience and are not a part of the Agreement.

15. Binding Effect. The terms of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, legal representatives, and permitted assigns.

16. Waiver; Amendment. No waiver, modification or amendment of the terms of this Agreement shall be valid or binding except by an instrument in writing duly executed by all of the parties and identified as an amendment hereto, and then only to the extent set forth in such written waiver, modification, or amendment. Any failure by any party to the Agreement to insist upon the strict performance by any other party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

17. Severability. If any provision of this Agreement shall be held invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining

provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby, provided that the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or unenforceable, and subject to the proviso in the preceding sentence, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

18. Legal Representation. The parties acknowledge that the law firm of Everley Law, LLC ("Everley Law") is currently providing legal representation to Michelle G. Kidd in her capacity as personal representative of the Estate of Alan D. Kidd, deceased. Everley Law does not represent the interests of any other party to this Agreement in connection with the transactions contemplated herein. The other parties acknowledge that they have been advised of the foregoing and have had the opportunity to consult their own legal advisors in connection with the transactions contemplated by this Agreement.


19. Fees and Expenses. Except as otherwise provided herein, each of the parties hereto will pay its own fees and expenses (including attorneys' and accountants' fees, legal costs, and expenses) incurred in connection with this Agreement and the consummation of the transactions contemplated hereby and thereby

20. Integration. This Agreement embodies the entire agreement and understanding among the parties hereto and supersedes all prior agreements and understandings, if any, among and between the parties relating to the subject matter hereof. No representations, warranties or inducements have been made to the parties concerning this Agreement other than those representations, warranties, and covenants contained in this Agreement.

21. Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which, collectively, shall constitute one and the same instrument.

22. Interpretation. Each party to this Agreement has had the opportunity to have this Agreement reviewed by counsel and be advised by counsel as to the rights and obligations of each party. This Agreement shall not be construed or interpreted more strictly against one party than another on grounds that the Agreement or any draft thereof was prepared by another party or his or its counsel.

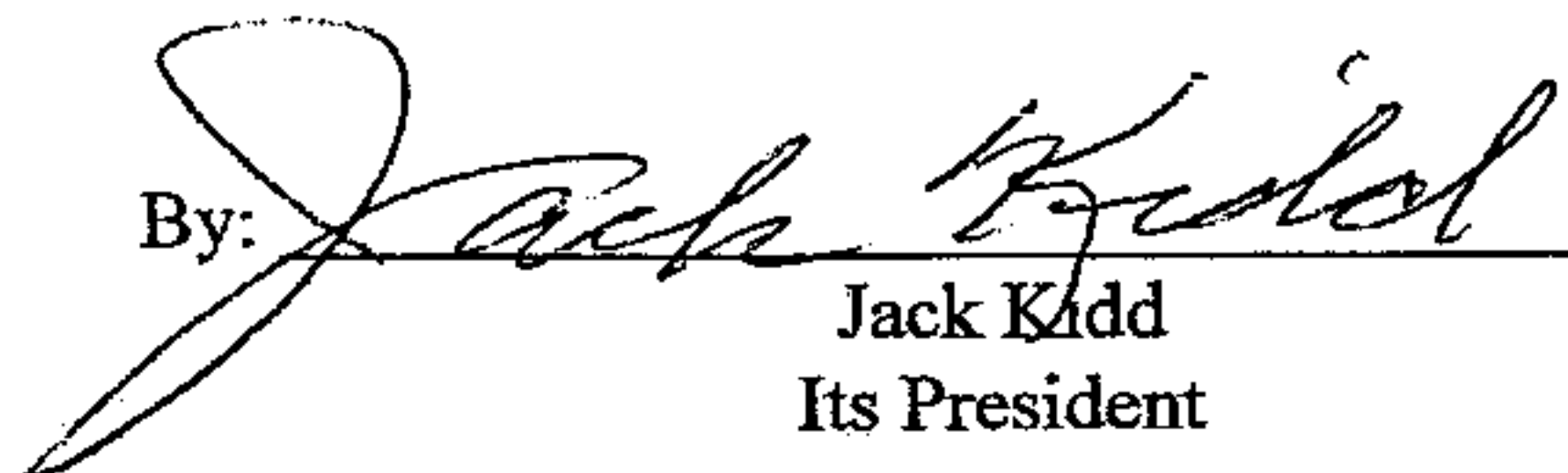
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IN WITNESS WHEREOF, the Purchaser and the Seller have executed this Agreement, or have caused this Agreement to be executed by its respective duly authorized representative, as of the Effective Date.

**PURCHASER:**

BWK, Inc.

By:  \_\_\_\_\_  
Jack Kidd  
Its President

**SELLER:**

  
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\_\_\_\_\_  
Michelle G. Kidd, as a personal representative  
of the Estate of Alan D. Kidd, deceased

**IN WITNESS WHEREOF**, the Purchaser and the Seller have executed this Agreement, or have caused this Agreement to be executed by its respective duly authorized representative, as of the Effective Date.

**PURCHASER:**

BWK, Inc.

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

Jack Kidd  
Its President

**SELLER:**



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*Michelle G Kidd*

\_\_\_\_\_  
Michelle G. Kidd, as a personal representative  
of the Estate of Alan D. Kidd, deceased