

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)	
)	
COMPETITION ACCESSORIES, LLC)	CHAPTER 11
)	
Debtor)	CASE NO. 17-91310-BHL-11
_____)	

DEBTOR’S MOTION FOR AN ORDER:
(I) AUTHORIZING AND SCHEDULING AN AUCTION FOR THE SALE OF
SUBSTANTIALLY ALL ASSETS RELATED TO THE DEBTOR’S BUSINESS FREE
AND CLEAR OF LIENS, INTERESTS, CLAIMS, AND ENCUMBRANCES;
(II) APPROVING BID PROCEDURES;
(III) APPROVING ASSET PURCHASE AGREEMENT OR SUBSEQUENT OVERBID;
AND (IV) ESTABLISHING THE FORM AND MANNER OF NOTICES RELATED
THERE TO; AND

NOTICE OF DEADLINE TO OBJECT TO PROPOSED BID PROCEDURES

Competition Accessories, LLC, as a debtor and debtor in possession (the “Debtor”), hereby moves the Court for entry of an order that (i) authorizes and schedules an auction (the “Auction”) to solicit bids for the sale (the “Sale”) of substantially all the Debtor’s assets free and clear of liens, interests, claims, and encumbrances; (ii) approves the bid procedures proposed hereby and attached hereto as **Exhibit A** (the “Bid Procedures”); (iii) approves the Asset Purchase Agreement attached hereto as **Exhibit B** (the “Stalking Horse APA”), or a subsequent overbid made pursuant to the terms of the Bid Procedures; and (iv) establishes the form and manner of the notice related to the above. In support of this motion (the “Motion”), the Debtor relies on and incorporates by reference the *Declaration of Chris L. McCarty in Support of Chapter 11 Petition and First-Day Motions* [Doc. 10] (the “First-Day Declaration”), and further states as follows:

I. Jurisdiction

1. The Court has jurisdiction over this case and the subject matter of this Motion pursuant to 28 U.S.C. §§ 1334 and 157(a) and the general order of reference issued by the United States District Court for the Southern District of Indiana on July 11, 1984.

2. Venue of this case in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409 and Rule S.D. Ind. B-1002-1(e) of the Local Rules of the United States Bankruptcy Court for the Southern District of Indiana (the “Local Rules”).

3. Resolution of this Motion is a core proceeding in which the Court is authorized to enter a final order by 28 U.S.C. § 157(b)(2)(A), (B), (K), (M) and (N).

4. The statutory bases for the relief sought in this Motion are 11 U.S.C. §§ 105(a), 363(b) and (f), 365, 506(a), 1107(a), and 1108. This Motion is brought pursuant to Rules 2002, 6003, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rules B-6004-1, B-6004-5, and B-6006-1.

II. Background

5. The Debtor is a Delaware limited liability company authorized to do business in Indiana, with its principal place of business being 900 Eastern Boulevard, Clarksville, Indiana 47129. It is an online retailer of powersports parts and accessories.

6. On August 29, 2017 (the “Petition Date”), the Debtor filed in this Court its voluntary petition for relief under chapter 11 of the Bankruptcy Code. Pursuant to 11 U.S.C. §§ 1107(a) and 1108, the Debtor continues to operate its business and manage its property as a debtor in possession.

7. As of the filing of this Motion, no official committee of unsecured creditors has been appointed, and no request for appointment of a chapter 11 trustee or examiner has been made.

8. As described more fully in the First-Day Declaration, the Debtor was formed in 2014 by the contribution of two separate online sellers of powersports parts and accessories. One of the Debtor's predecessors, S.W.T. Ecommerce, Inc. ("Ecommerce"), which contributed the website cheapcycleparts.com, was and is owned primarily by Chris L. McCarty, who became the Debtor's manager and who owns its landlord, Chris McCarty Company LLC ("McCarty Co.") under the Debtor's lease (the "Lease") of the premises of the Debtor's headquarters at 900 Eastern Boulevard, Clarksville, Indiana 47129. The other of the Debtor's predecessors, Naples Direct, LLC ("Direct"), which contributed the website compacc.com, was and is owned by Naples Ventures, LLC ("Ventures"). Ventures extended to the Debtor a \$500,000 line of credit and took and perfected a security interest in substantially all the Debtor's assets to secure the loan.

9. As a result of the Debtor's formation, Ecommerce and Direct became the members of the Debtor (owning 58.3% and 41.7% of its membership units, respectively), and Ventures became its secured creditor.

10. Thereafter, the Debtor consumed the funds available to it under the aforementioned line of credit, and, in July 2015, Ventures facilitated a second loan to the Debtor from Morgan Stanley Bank, N.A. (the "Morgan Stanley Loan"), and pledged a portfolio of securities as collateral.

11. By December 2016, the Debtor had exhausted the \$2.75 million available to it under the Morgan Stanley Loan, in part by the Debtor's ill-fated acquisition of a third website, cruisercustomizing.com, and became unable to pay its bills as they came due.

12. Prior to the Petition Date, the Debtor accumulated an obligation of nearly \$3.5 million to Ventures, the Debtor's only secured creditor, which obligation was secured by all the Debtor's prepetition assets.

13. In May 2017, after an informal restructuring plan failed, with suits having been filed against the Debtor by vendors, and with Ventures facing the nonconsensual liquidation of the collateral it pledged to secure the Morgan Stanley Loan, the Debtor, Ecommerce, and Ventures and Direct commenced negotiations which resulted in the Debtor's filing of this chapter 11 case, which, due to supermajority provisions in the Debtor's operating agreement, could not have been initiated without the consent of both Ecommerce and Direct.

14. As described in greater detail in the First-Day Declaration, those negotiations resulted in an agreement that, *inter alia*, Ventures would make a credit bid for all the Debtor's assets in the form of the Stalking Horse APA, and McCarty Co. would waive its right to demand a cure of the delinquency accumulated under the Lease through August 2017 (an amount no less than \$338,000) in the event that the stalking-horse bid by Ventures or its designee prevailed.

15. If Ventures prevails, it intends to cause the subsidiary it established to acquire the Debtor's assets, CA Acquisition, LLC (the "Proposed Purchaser"), to retain Mr. McCarty as its manager. There will be continuity of management, employees, information systems, and customer privacy protections. The new owner will be owned by Ventures, as

Direct is now, and so will have no greater access to customers' personally identifiable information than Direct does now.

16. Ventures is undersecured to a tremendous extent. It is owed approximately \$2,925,000, and has a perfected security interest covering all the Debtor's pre-petition assets. In contrast, the Debtor estimates the liquidation value of its assets to be approximately \$750,000. Given the Debtor's consistently unprofitable performance, it has questionable enterprise value. Of the Debtor's two websites, cheapcycleparts.com has performed better and, the Debtor believes, has a realistic chance to become profitable if it is able to reach arrangements with its vendors and shed associated trade debt and the debt to the suppliers of compacc.com by means of the sale proposed herein.

17. In light of the vast amount by which the Debtor's secured debt to Ventures exceeds the value of its assets, and because McCarty Co. is under no obligation to waive the delinquency owed it by the Debtor in the event that the Debtor's assets are sold to an outside bidder, and further because the sale of the Debtor's assets to a buyer not presently affiliated with the Debtor would likely require the appointment of a consumer privacy ombudsperson pursuant to 11 U.S.C. § 363(b)(1) and would entail significant associated expense, the Debtor has not specifically marketed the sale of its assets to parties other than Ventures. The Debtor believes that, due to the fierce competition among online powersports retailers which prevails in today's marketplace, such measures would be unavailing and a waste of estate assets.

18. Despite the Debtor's assessment that no cash bidder would be found to compete with the terms offered under the Stalking Horse APA, the Debtor proposes that bids be taken rather than that the Debtor's assets be sold by private sale, and believes that if any prospective bidder were to emerge, it would be nearly as likely to be identified and solicited by

the Debtor's unsecured creditors—who include the former operator of *cruisercustomizing.com* and dozens of producers and distributors of powersports merchandise—as it would by other means of publication. The Debtor's industry is, like most, dominated by a handful of players, and the Debtor's creditors have the relationships and incentive to spread the word of the Sale among potential bidders. In addition, the Debtor proposes to publish the notice attached hereto as **Exhibit D** (the "Public Notice") in the *Louisville Courier-Journal* not less than twice prior to the Bid Deadline, in order to further publicize the Sale and draw bidders to the Auction.

III. Relief Requested

19. In order to facilitate a productive bid solicitation and an orderly Auction for the sale of the Debtor's assets, the Debtor seeks an order that:

- a. authorizes and schedules the Auction;
- b. authorizes and approves the Bid Procedures;
- c. approves the Stalking Horse APA or a subsequent overbid consistent with the terms of the Bid Procedures;
- d. approves and orders the publication of the Public Notice in the *Louisville Courier-Journal* not less than twice prior to the Bid Deadline established by the Bid Procedures;
- e. approves the proposed *Notice of Auction, Bid Procedures, and Sale* attached hereto as **Exhibit C** (the "Proposed Notice"), or a similar notice with similar terms;
- f. provides that the Proposed Purchaser or other successful Qualified Bidder (as that term is defined by the Bid Procedures) at the Auction is entitled to the protections of 11 U.S.C. § 363(m) and is not, despite the insider relationship between the Debtor and the Proposed Purchaser, subject to the provisions of 11 U.S.C. § 363(n); and

g. waives the 14-day stay of effectiveness of the order approving the Sale contemplated by Bankruptcy Rules 6004(h) and 6006(d).

20. The Debtor further requests that the Court forbear from the appointment of a consumer privacy ombudsperson unless and until a Qualified Bid superior to the Stalking Horse APA is received.

A. Recitals Pursuant to Local Rule B-6004-5(b)¹

21. The relevant terms of the Stalking Horse APA and Bid Procedures include the following terms of sale:

a. The assets to be sold (the “Assets”) are all the Debtor’s assets excluding causes of action arising under chapter 5 of the Bankruptcy Code and any funds held by the Debtor’s attorneys in which the Debtor retains an equitable interest.

b. The proposed purchaser / stalking horse is CA Acquisition, LLC, as designee of Ventures.

c. The purchase price will be determined by the purchaser in accordance with the Bid Procedures. Ventures offers \$1,000,000.00, to be paid by means of a credit bid pursuant to 11 U.S.C. § 363(k), by which a portion of the secured claim of Ventures shall be offset against such purchase price. The proposed Sale does not involve a broker, so no transaction costs shall be deducted from the purchase price. However, given Ventures’s secured position, it is not anticipated that the Debtor’s estate will receive proceeds from the sale in any scenario.

d. The material contingencies to the sale include:

¹ The following provides a summary of certain terms of the Stalking Horse APA and Bid Procedures. To the extent of any inconsistencies, the terms of the Stalking Horse APA and Bid Procedures shall control.

i. that the Assets are to be sold free and clear of all liens, mortgages, taxes, claims, and levies of any kind except (a) those which the Stalking Horse APA specifically identifies as Assumed Liabilities and Permitted Encumbrances, principally unpaid administrative claims associated with this chapter 11 case; and (b) the cure claim of McCarty Co.;

ii. that, if and only if the Stalking Horse APA or a subsequent overbid by Ventures is approved, McCarty Co. shall waive its right to the cure of the amounts owed to it through August 31, 2017, under its Lease agreement with the Debtor; and

iii. that any proposed overbid must, in order to qualify as a Qualified Bid under the terms of the Bid Procedures, be accompanied by a nonrefundable Deposit equal to \$37,500.00, or 5.0% of the proposed purchase price, as set forth more particularly in the Bid Procedures.

e. Ventures is believed to be the only lien holder whose lien would be avoided in connection with the Sale.

f. The only executory contract to be assumed or rejected in connection with the sale is the Lease with McCarty Co.

g. The Assets have not been marketed for sale, and the Debtor has received no offer to purchase some or all of its assets other than the Stalking Horse APA.

h. Ventures is (i) the 100% owner of the proposed purchaser, and, as described more fully in the First-Day Declaration, (ii) the 100% owner of Naples Direct, LLC, which owns 41.7% of the membership units of the Debtor, and (iii) the largest creditor and the only secured creditor of the Debtor.

i. If the Stalking Horse APA is approved, the prospective purchaser thereunder (the “Proposed Purchaser”) is anticipated to have the following relationships with insiders of the Debtor:

i. the Proposed Purchaser will be owned by a subsidiary of the owner of one of the Debtor’s members;

ii. the Proposed Purchaser will rent its premises from an affiliate of one of the Debtor’s members;

iii. the Proposed Purchaser will obtain certain inventory from an affiliate of one of the Debtor’s members; and

iv. the Proposed Purchaser will be managed by the owner of one of the Debtor’s members.

j. No break-up fee is proposed if another bidder prevails at the sale.

k. No other entity expressed to the Debtor an interest in the purchase of all or a material portion of the Debtor’s assets in the ninety (90) days prior to the filing of the Motion.

l. The Bid Procedures are attached hereto as Exhibit A.

m. The Assets to be sold do contain personally identifiable information. The Bid Procedures require any prospective bidder to execute a confidentiality agreement which will prohibit, *inter alia*, the retention and further dissemination of any personally identifiable information which the Debtor may inadvertently disclose. If the Proposed Purchaser purchases the Assets, operations will continue as before the Sale, with continuity of management and operations and the maintenance of privacy and security measures and related vendors. If a bidder other than the Proposed Purchaser purchases the Assets, the Debtor will

consult with the Assistant United States Trustee to determine whether it is appropriate to move the Court for the appointment of a consumer privacy ombudsperson prior to the closing of the sale and the transfer of customer information.

n. The Debtor will file the schedules and statements required by Bankruptcy Rule 1007 substantially contemporaneously with the filing of this Motion. No creditors' committee or the equivalent existed prior to the Petition Date.

B. Proposed Notice of the Sale and Sale Procedures

22. By the Motion, the Debtor further seeks approval of the Proposed Notice, which contemplates the following schedule of events related to the Sale:

a. Consistent with Bankruptcy Rule 2002, this Motion has been served on: (i) the U.S. Trustee; (ii) all unsecured creditors of the Debtor whose pre-petition claims have not been satisfied pursuant to the Debtor's first-day motions; and (iii) Ventures, the Debtor's only secured creditor (collectively with the U.S. Trustee, the unsecured creditors, and any other party who formally or informally requests to receive notice, the "Notice Parties"). The Debtor's members were each intimately involved in the negotiations which precipitated this chapter 11 case and the Sale proposed by the Motion. McCarty Co. is affiliated with the Debtor and is the only counterparty to an unexpired lease or executory contract. The Debtor's manager is the Debtor's only priority creditor.

b. Objections to the Motion shall be filed by parties-in-interest no later than the day before the October 5, 2017, hearing on this Motion, which affords twenty-one (21) days' notice and opportunity to object, and accordingly satisfies the requirements of Bankruptcy Rule 2002(a)(2).

c. Upon the Court's entry at the October 5, 2017, hearing of the *Order: (I) Authorizing and Scheduling an Auction for the Sale of Substantially All Assets Related to the Debtor's Business Free and Clear of Liens, Interests, Claims, and Encumbrances; (II) Approving Bid Procedures; (III) Approving Asset Purchase Agreement or Subsequent Overbid; and (IV) Establishing the Form and Manner of Notices Related Thereto* attached hereto as **Exhibit D** (the "Sale Procedures Order"), the Debtor will serve the Proposed Notice and Bid Procedures on the Notice Parties.

d. Thereafter, the Notice Parties and other prospective bidders shall have twenty-one (21) additional days, until October 26, 2017, to submit a Qualified Bid pursuant to the Bid Procedures.

e. If no Qualified Bid other than the Stalking Horse APA is received, the Debtor shall move the Court for approval of the Sale to the Prospective Purchaser, which, by the terms of the Proposed Notice to be approved by the Sale Procedures Order, may and should be granted immediately and *ex parte*, given that the applicable notice requirements of such a sale will have been satisfied by the above measures. Such an approach should allow the sale to close at the end of October, and shortly thereafter, the dismissal of this chapter 11 case.

f. In the event that the Debtor receives a Qualified Bid other than the Stalking Horse APA, the Debtor will conduct the Auction on Thursday, November 2, 2017, one week after the Bid Deadline.

g. On Friday, November 3, the day after the Auction, the Debtor will move the Court for an order approving a Sale pursuant to the Prevailing Bid.

h. Any party who participates in the Auction, who has standing to object to its results, and who objects to the Debtor's conduct thereof or designation of the

Prevailing Bidder shall have until Monday, November 6, to file an objection to the proposed Sale, affording such objector two (2) business days plus the weekend to prepare and to propound such objection.

i. In the absence of objection to the results of the Auction, the Court may enter an order approving the Sale as early as Tuesday, November 7.

j. The sale order is proposed to be effective upon its entry and not stayed pursuant to the Bankruptcy Rules or otherwise, such that the Sale may close prior to the November 10, 2017, observed Veteran's Day holiday.

23. The Debtor submits that the form of the Proposed Notice complies with Local Rule B-2002-1(b) and provides adequate and sufficient notice of the relevant deadlines.

IV. Basis for Relief Requested

24. The Bankruptcy Code provides that a debtor in possession "may... sell... other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). However, the Bankruptcy Code does not provide a standard by which courts are to determine whether such sales are proper.

25. In the absence of clear direction from the Code, courts nearly uniformly apply the business judgment test to 363 sales, requiring an "articulated business justification." *See, e.g., Inst'l Creditors of Cont'l Air Lines v. Cont'l Air Lines (In re Continental Air Lines)*, 780 F.2d 1223, 1224 (5th Cir. 1986); *Stephens Indus. v. McClung (In re McClung)*, 789 F.2d 386, 390 (6th Cir. 1986). Our court of appeals has long since adopted this standard, *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (citing *Cont'l Air Lines*), and bankruptcy courts in the Seventh Circuit have applied it to allow "considerable discretion" and "great judicial deference" to the proponents of 363 sales, *In re Efoora, Inc.*, 472 B.R. 481,

488 (Bankr. N.D. Ill. 2012) (quotations omitted); accord *In re Telesphere Comm'ns, Inc.*, 179 B.R. 544 (Bankr. N.D. Ill 1994).

26. A sale of estate assets like that proposed by the Motion is appropriate if: (a) there is a sound business purpose for the sale, (b) proper notice has been given, (c) the proposed purchase price is fair and reasonable, and (d) the sale proponent and proposed purchaser have acted in good faith. *Schipper*, 933 F.2d at 515.

27. The first and third elements described above amount to a requirement that the sale proponent obtain the highest price, e.g. *Four B. Corp. v. Food Barn Stores (In re Food Barn Stores)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (observing that “a primary objective... [is] to enhance the value of the estate), but most courts articulate the standard with room for consideration of other factors, including the sale’s impact on the debtor’s employees, see *In re On-Site Sourcing, Inc.*, 412 B.R. 817, 825 (Bankr. E.D. Va. 2009).

28. Here, the Stalking Horse APA calls for a credit bid which (a) vastly exceeds the liquidation value of the Debtor’s assets, which overwhelmingly consists of whatever inventory the Debtor happens to own at any given time; and (b) would result in continuity of the Debtor’s operations in Clarksville, Indiana, where the Proposed Purchaser would continue to provide quality jobs for our region and occupy the newly redeveloped premises which Mr. McCarty built to suit it in an area of Eastern Boulevard that, by Mr. McCarty’s efforts, has been transformed from dilapidated (the long-vacant former Peddler’s Mall) to reinvigorated. Not only is the price proposed by the Stalking Horse APA likely to be the highest and best price available for the Debtor’s assets (though certainly the Bid Procedures and availability of an auction will put this to a market test), but approval of the sale will generate positive externalities for

important stakeholders, namely the Debtor's employees and the broader community in which it operates.

29. More fundamentally, given the secured position of Ventures, the unsecured creditors have no skin in the game; for all practical purposes, this is Ventures's Sale. Ventures's secured claim, which covers substantially all assets, is estimated by the Debtor to be just shy of \$3,000,000 (it is understood by the Debtor, and certainly will be a precondition of the entry of the Sale Procedures Order, that Ventures's Proof of Claim will be filed in the immediate future in order to allow its secured position to be vetted by parties in interest well in advance of the deadline to object to this Motion), against assets of the Debtor which have an estimated liquidation value of \$750,000. Ultimately, if an overbid is received, it is up to Ventures whether it chooses to submit a higher credit bid or to cash out its position and walk away.

30. Apart from Ventures's position, Mr. McCarty, via McCarty Co., has considerable leverage in the event of an overbid. Unless a prospective purchaser intends to vacate the Debtor's premises and bear the massive logistical headache and costs associated with transporting the Debtor's inventory and other assets from its present location, any prospective purchaser must reach terms with McCarty Co. concerning the assumption of the Lease and the cure of the enormous arrearage thereunder. Pursuant to the prepetition agreement described at length in the First-Day Declaration, McCarty Co. will waive this arrearage if the Prospective Purchaser consummates the Sale.

31. Despite the foregoing circumstances, bidding, rather than a private sale is proposed, primarily at the insistence of Ventures, but also to reassure the Court, the U.S. Trustee, and the unsecured creditors that the Sale is above-board, despite the insider relationship between the Debtor and Prospective Purchaser. Given the safeguards of the Bid Procedures and the

ample disclosure herein and in the First-Day Declaration of the pre-petition agreement among the Debtor's insiders which resulted in the Stalking Horse APA and this Motion, the Debtor submits that the Court has sufficient grounds to find and conclude that the proposed Sale is in good faith within the meaning of 11 U.S.C. § 363(m) and that the provisions of 11 U.S.C. § 363(n) are not applicable.

Conclusion

For the foregoing reasons, the Debtor submits that sufficient business justifications exist to sell the Assets to the Prospective Purchaser under the terms of the Stalking Horse APA or to any Qualified Bidder who prevails at the Auction. Further, the Debtor believes that, under the circumstances, the procedure established by the Bid Procedures and Proposed Notice ensures that the Sale will result in the greatest possible value to the Debtor and its stakeholders and will protect the interest of the unsecured creditors and the integrity of the bankruptcy system, while providing for an expedited disposition of these proceedings consistent with the Debtor's limited ability to fund administrative expenses in the absence of a DIP credit agreement.

PLEASE TAKE NOTICE that this Motion will come before the Court for a **hearing on October 5, 2017, at 10:00 a.m., prevailing Eastern time, in Room 103 of the Lee H. Hamilton Federal Building and U.S. Courthouse, 121 W. Spring St., New Albany, Indiana 47150.**

If you do not want the Court to enter an order approving the Bid Procedures and granting the other relief sought by this Motion, or if you want the Court to consider your views on the Motion, then on or before **October 4, 2017**, you or your attorney must file with the Court a written objection explaining your position.

Those not permitted to file electronically must deliver any objection by U.S. Mail, courier, overnight/express mail, or in person at

110 U.S. Courthouse
121 West Spring Street
New Albany, IN 47150

If you mail your objection to the Court, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also send a copy of your objection to:

- Ronald J. Moore, Assistant United States Trustee, 101 W. Ohio St., Ste. 1000, Indianapolis, IN 46204; and
- William P. Harbison, Counsel for the Debtor, 462 S. Fourth St., Ste. 2200, Louisville, KY 40202

If you or your attorney does not take these steps, the Court may decide that you do not oppose an order approving the relief sought by the Motion, and may enter an order granting that relief.

WHEREFORE, the Debtor respectfully requests entry of a Sale Procedures Order similar in substance and form to the proposed order attached hereto as Exhibit D, and for all other appropriate relief.

Respectfully submitted,

/s/ William P. Harbison _____

NEIL C. BORDY

WILLIAM P. HARBISON

SEILLER WATERMAN LLC

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Telephone: (502) 584-7400

Facsimile: (502) 583-2100

E-mail: bordy@derbycitylaw.com

E-mail: harbison@derbycitylaw.com

Proposed Counsel for the Debtor

CERTIFICATE OF SERVICE

On September 13, 2017, I filed the foregoing Motion electronically. Notice of the filing will be sent via the Court's CM/ECF system to the following:

- U.S. Trustee: ustpreion10.in.ecf@usdoj.gov
- Ronald J. Moore, Assistant U.S. Trustee: Ronald.Moore@usdoj.gov
- William E. Smith III, Counsel for Naples Ventures, LLC: wsmith@k-glaw.com
- Misti L. Beanland, Counsel for Ed Tucker Distributor, Inc.: beanland@mssattorneys.com
- Nicholas S. Gatto, Counsel for Naples Ventures, LLC: ngatto@hselaw.com
- Jacob V. Bradley, Counsel for Emarsys North America, Inc.: jacob.bradley@quarles.com

Furthermore, on September 13, 2017, I served a copy of the foregoing via first-class U.S. Mail, postage prepaid, upon those listed on the following page(s).

/s/ William P. Harbison

WILLIAM P. HARBISON

BID PROCEDURES

1. ***Solicitation Process; Distribution of Bid Procedures and Stalking Horse APA.*** Competition Accessories, LLC (“Debtor”), as chapter 11 debtor and debtor-in-possession in case number 17-91310-BHL-11 pending in the United States Bankruptcy Court for the Southern District of Indiana (“Court”), shall distribute these Bid Procedures and the Stalking Horse APA¹ as provided in Local Rule B-6004-5(d) and the order entered by the Court in connection with the Motion.

2. ***Eligibility of Bidders to Participate in Auction.*** In order to be eligible to bid for substantially all of Debtor’s assets (“Assets”) or otherwise to participate in the Auction (defined below), each bidder must be determined by Debtor to be a Qualifying Bidder (defined below). Debtor, in its sole discretion, shall have the right to determine whether a bidder is a Qualifying Bidder.

3. ***Qualification of Bidders.*** In order to be considered for status as a Qualifying Bidder, a bidder (other than CA Acquisition, LLC (“Proposed Purchaser”), or any other designee of Naples Ventures, LLC, which are deemed to each constitute a Qualifying Bidder) must deliver to William P. Harbison, SEILLER WATERMAN LLC, Counsel for the Debtor, at 462 South Fourth Street, Suite 2200, Louisville, Kentucky 40202, harbison@derbycitylaw.com, so as to be received before 5:00 p.m., prevailing Eastern Time, on October 26, 2017 (the “Bid Deadline”) a written offer (“Qualified Bid”) which meets the following criteria:

- a. The bid must be a good-faith, bona fide offer to purchase.
- b. The bid must be in writing signed by an authorized representative of the bidder.
- c. The form of the bid should be substantially similar to the Stalking Horse APA, marked to show any proposed revisions. (Any party wishing to have a copy of the Stalking Horse APA in Microsoft Word format should contact Counsel for Debtor, William P. Harbison, harbison@derbycitylaw.com.)
- d. The bid must state whether the bidder proposes to assume or reject the lease between Debtor and McCarty Co. and, if the former, the proposed terms by which the bidder will cure the default thereunder.
- e. The bid must be accompanied by a cashier’s check payable to Counsel for Debtor or by a wire transfer to such counsel’s trust account in an amount equal to ten percent (10%) of the proposed purchase price (“Deposit”). The Deposit must be in cash and U.S. Dollars. Wire transfer information can be obtained from Counsel for Debtor.

¹ Capitalized terms not defined herein shall have the meaning ascribed to them in the *Debtor’s Motion for an Order: (I) Authorizing and Scheduling an Auction for the Sale of Substantially All Assets Related to the Debtor’s Business Free and Clear of Liens, Interests, Claims, and Encumbrances; (II) Approving Bid Procedures; (III) Approving Asset Purchase Agreement or Subsequent Overbid; and (IV) Establishing the Form and Manner of Notices Related Thereto* (“Motion”).

f. The purchase price must be for payment in cash (U.S. Dollars).

g. The bid cannot have any financing contingencies that are not resolved by the Auction (defined below).

h. The bid must, prior to the Bid Deadline, provide evidence, reasonably acceptable to Debtor, demonstrating that the bidder has the legal capacity and financial resources sufficient to close the transaction prior to close of business on November 9, 2017, which evidence may include, without limitation, evidence of cash on hand, a binding financing commitment from an established and sound financial institution or investment fund and the identity and contact information of persons at the entity issuing such commitment letter.

i. The bidder must be willing and able to consummate its purchase of the Assets not later than November 9, 2017.

j. The bid must be accompanied by a completed Bidder Registration Statement substantially in the form of that attached hereto.

k. Copies of the bid and accompanying documentation must be received prior to the Bid Deadline by (i) Nicholas S. Gatto, HARTER SECREST & EMERY LLP, Counsel for Naples Ventures, LLC, 50 Fountain Plaza, Suite 1000, Buffalo, New York 14202, facsimile: (716) 853-1617; and (ii) William E. Smith, III, KIGHTLINGER & GRAY, LLP, Bonterra Building, Suite 200, 3620 Blackiston Boulevard, New Albany, Indiana 47150, facsimile: (812) 949-8556.

4. ***Access to Debtor's Proprietary Information.*** As conditions precedent to being provided access to Debtor's proprietary information, all prospective bidders must:

a. be determined by Debtor to have sufficient legal capacity and financial capability to submit a Qualifying Bid; and

b. execute and deliver to Counsel for Debtor a nondisclosure agreement in form and substance suitable to Debtor (bidders should contact Counsel for Debtor for a the form of such agreement).

Prospective bidders who satisfy the foregoing requirements will be provided with reasonable access to Debtor's books and records.

5. ***Presumption of Due Diligence and Absence of Representations.*** Each bidder shall be deemed to acknowledge that:

a. the bidder has had an opportunity to inspect and examine all pertinent documents, records, and all other due diligence information related to the Assets prior to making its bid;

b. the bidder relied solely upon that review and upon its own investigation and inspection, and not on any written or oral statements, representations, or warranties of Debtor, its Counsel, or Debtor's other agents and representatives; and

c. the Sale of the Assets is on an “As Is” and “Where Is” basis.

6. **Terms of Auction.** In the event that one or more Qualifying Bids are submitted, Debtor will conduct an auction Sale of the Assets (the “Auction”) on the following terms:

a. **Time, Date, and Location of Auction; Adjournment of Auction; Appearance of Qualifying Bidders at Auction.** The Auction will take place on November 2, 2017, commencing at 1:00 p.m., prevailing Eastern Time, at the offices of Counsel for Debtor, William P. Harbison, SEILLER WATERMAN LLC, 462 South Fourth Street, Suite 2200, Louisville, Kentucky 40202. In order for a Qualifying Bid to be considered, the corresponding Qualifying Bidder must appear in person at the Auction unless alternative arrangements are agreed upon in advance with Debtor.

b. **Permitted Attendees at Auction.** Unless otherwise ordered or directed by the Court, only Debtor, Naples Ventures, LLC, Proposed Purchaser, any other parties invited specifically by Debtor, and any Qualifying Bidders (and the representatives for each of the foregoing) shall be entitled to attend the Auction.

7. **Auction Bid Submission Procedures.** Auction bidding shall be subject to the following procedures:

a. Bidding will commence with the announcement of the Proposed Purchaser’s opening bid of \$1,000,000.00.

b. Any Qualifying Bidder may then submit a successive bid of not less than \$1,100,000.00.

c. Any Qualifying Bidder may then submit successive higher bids in minimum increments of not less than \$25,000.00 (the “Minimum Overbid Amount”).

d. Each successive bid submitted by any Qualified Bidder at the Auction must contain an actual cash purchase price which exceeds the then-existing highest bid by at least the Minimum Overbid Amount.

e. At commencement of the Auction, Debtor may announce procedural and related rules governing the Auction, including the time periods available to all Qualifying Bidders to submit successive bid(s).

f. All Qualifying Bids and successive bids at the Auction shall be irrevocable until sixty (60) days after the closing of the Sale of the Assets. Formal rejection by Debtor of a Qualifying Bid or any successive bid will not be deemed to have occurred unless and until (i) Debtor expressly rejects such bid or (ii) the Sale of the Asset to the bidder submitting the Prevailing Bid (defined below) is finally consummated.

g. The Auction shall continue until there is only one bid to purchase the Assets which Debtor determines, subject to Bankruptcy Court approval, is the highest and/or best Qualifying Bid (such bid being the “Prevailing Bid” and such bidder being the “Prevailing Bidder”). In making this decision, Debtor shall consider the amount of the purchase price, the

form of consideration being offered, the likelihood that such Qualifying Bidder will be able to close the transaction and the timing thereof, and the net benefits to Debtor's estate and its stakeholders. The Prevailing Bidder shall have such rights and responsibilities of the buyer, as set forth in the Bidder APA. Prior to the Sale Hearing, the Prevailing Bidder shall complete and execute the Bidder APA and all other agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made (collectively, the "Prevailing Bidder Sale Documents").

8. **Order Approving Sale.** Pursuant to Rule B-6004-5(e) of the Local Rules of the Court:

a. **Sale to Proposed Purchaser Pursuant to Stalking Horse APA.** If no Qualified Bid other than the Stalking Horse APA is received prior to the Bid Deadline, then the Court shall, without a hearing and without further notice or opportunity to object, enter an order approving the Sale to the Proposed Purchaser on such terms.

b. **Sale at Auction; No Change in Terms Except Price.** If the Auction results in a Sale with no change in terms other than the purchase price, then at the hearing on approval of the Sale, to be held not less than three (3) business days after the Auction, Debtor shall identify the Prevailing Bidder and the change in price, and the Court shall enter an order approving such Sale.

c. **Sale at Auction; Change in Terms Other Than Price.** If the Auction results in a Sale on terms different from those contained in the Stalking Horse APA, then at the hearing on approval of the Sale, to be held not less than three (3) business days after the Auction, Debtor shall identify the Prevailing Bidder and the change in terms, whereupon the Court shall consider whether the change in terms requires additional notice to parties who may be affected by such changes. If no additional notice is required, the Court shall enter an order approving such Sale. If additional notice is required, the Court shall prescribe the manner of such notice and shall enter the order approving such Sale only after such notice is given.

9. **Closing.** The closing of the Sale of the Assets shall take place at the offices of Counsel for Debtor, William P. Harbison, SEILLER WATERMAN LLC, 462 South Fourth Street, Suite 2200, Louisville, Kentucky 40202, or at such other mutually agreeable place, at a mutually agreeable time after the entry of the Sale Order but not later than November 9, 2017, unless the Court orders otherwise for cause. In the event of a Prevailing Bid, the balance of the purchase price shall be paid at closing by the Prevailing Bidder by wire transfer to the trust account of Counsel for Debtor.

10. **Failure of Prevailing Bidder to Consummate Purchase; Designation of Backup Bidder.** If for any reason the Prevailing Bidder fails to consummate its purchase of the Assets, Debtor may deem the bidder of the second highest and best bid for the Assets (such bidder being the "Backup Bidder") and such bid being the "Backup Bid") to have submitted the Prevailing Bid, and shall, without providing any party notice or opportunity to object, move the Court for an amended Sale Order designating the Backup Bid the Prevailing Bid and the Backup Bidder the Prevailing Bidder. Should the Backup Bidder be so designated the Prevailing Bidder, the Backup Bidder will be obligated to close the Sale on the terms of its Backup Bid.

11. ***Refund of Deposits.*** The Deposit of each bidder with the exception of the Prevailing Bidder and the Backup Bidder, if any, shall be refunded to such bidder upon the entry of an order approving the Sale of the Assets. The Deposit of the Backup Bidder shall be refunded upon the consummation of the Sale by the Prevailing Bidder.

12. ***Limited Recourse.*** No bidder shall have recourse, except as to the return of its Deposit in accordance with these procedures, against Debtor, its estate, Naples Ventures, LLC, the Proposed Purchaser, or their agents or representatives, for any act or omission arising out of or in connection with the Auction or the Sale of the Assets.

COMPETITION ACCESSORIES, LLC
BIDDER REGISTRATION FORM

BIDDER I.D.

Bidder:

Bidder's Address:

Bidder's Contact:

Bidder's Phone Number:

Bidder's Facsimile Number:

Bidder's E-mail Address:

Bidder's Tax ID Number:

ATTORNEY I.D.

Bidder's Attorney:

Bidder's Attorney's Address:

Bidder's Attorney's Phone Number:

Bidder's Attorney's Facsimile Number:

Bidder's Attorney's E-mail Address:

BANK REFERENCE

Bank:

Bank Address:

Bank Contact:

Bank Contact's Phone Number:

Bank Contact's Facsimile Number:

Bank Contact's E-mail Address:

BIDDER HAS READ AND UNDERSTANDS THE TERMS AND CONDITIONS OF THE ORDER ESTABLISHING BIDDING AND RELATED SALE PROCEDURES AND THE BID PROCEDURES, AND HEREBY CONSENTS AND AGREES TO COMPLY WITH AND BE BOUND BY SUCH TERMS AND CONDITIONS.

AGREED AND ACCEPTED, this _____ day of _____, 2017.

Bidder: _____

By: _____

Printed: _____

Title: _____

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, dated as of [_____], 2017 (this “**Agreement**”), is made and entered into by and among **CA ACQUISITION GROUP, LLC**, a Delaware limited liability company (“**Buyer**”), and **COMPETITION ACCESSORIES, LLC**, a Delaware limited liability company (“**Seller**”).

RECITALS:

A. Seller is engaged in the business of selling motorcycle parts, components, accessories, equipment, apparel and other items (the “**Business**”).

B. Seller filed a voluntary petition under chapter 11 of the Bankruptcy Code on August 29, 2017.

C. Seller desires to sell the Assets (as defined in Section 1.01), and to assign the Assumed Liabilities (as defined in Section 1.01), to Buyer, and Buyer desires to acquire the Assets and to assume the Assumed Liabilities, upon the terms and subject to the conditions set forth herein.

D. The transactions contemplated by this Agreement (the “**Transactions**”) will be consummated pursuant to a Sale Order to be entered in the Bankruptcy Case under Sections 105, 363, 365 and other applicable provisions of the Bankruptcy Code, and the Transactions and this Agreement are subject to the approval of the Bankruptcy Court.

NOW, THEREFORE, in consideration of the foregoing and of the representations, warranties, covenants, agreements and conditions contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

ARTICLE I

DEFINITIONS

1.01 Definitions. Capitalized terms used in this Agreement shall have the meanings assigned to them in this Section 1.01 or as may be set forth throughout this Agreement.

(a) “**Agreement**” shall have the meaning ascribed to it in the first paragraph of this Agreement.

(b) “**Alternative Proposal**” shall mean an alternative proposal or offer to purchase Assets received by Seller prior to the conclusion of the Approval Hearing.

(c) “**Assets**” shall mean all right, title and interest of Seller as of the Closing Date in and to all of Seller’ properties and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located and whether or not carried or reflected on the books and records of Seller, including without limitation, the following (but excluding the Excluded Assets): (1) the executory contracts and unexpired leases as listed on Schedule 1.01(c)(1), to be assumed as of the Closing by Seller pursuant section 365 of the

Bankruptcy Code, including all pre-payments, deposits and refunds thereunder and any assets maintained pursuant thereto or in connection therewith (the “**Assumed Contracts**”) (which Schedule 1.01(c)(1) shall be updated to include any post-petition contracts; provided that Buyer may advise Seller of any additions or deletions to Schedule 1.01(c)(1) within two Business Days prior to the hearing seeking entry of the Sale Order (the “**Approval Hearing**”)); (2) all tangible personal property and inventory, including the tangible personal property and inventory listed on Schedule 1.01(c)(2); (3) all transferable permits, authorizations and licenses issued to Seller by a Governmental Entity related to the operation of the Business (the “**Permits**”), including the Permits listed on Schedule 1.01(c)(3); (4) all intellectual property rights used in the Business (as owned or licensed by Seller) (the “**Intellectual Property Rights**”), including the Intellectual Property Rights listed on Schedule 1.01(c)(4); (5) all past, present and future claims of the Business (asserted or unasserted, contingent or fixed, known or unknown), against third parties (but no Liabilities arising therefrom); (6) copies or originals of all available books, files, documents and records owned or controlled by Seller (the “**Records**”); and (7) all goodwill directly arising from, related to or resulting from the Business.

(d) “**Assumed Liabilities**” shall solely mean: (1) the obligations of Seller related to or arising under the Assumed Contracts, Permits and Intellectual Property Rights that (A) accrue after the Closing from the ownership or assumption of such Assumed Contracts, Permits and Intellectual Property Rights after Closing by Buyer and (B) do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing Date; (2) costs and expenses, if any, necessary in connection with providing “adequate assurance of future performance” with respect to the Assumed Contracts (as provided by Section 365 of the Bankruptcy Code); (3) the pre-petition cure costs, if any, required as a condition to the assumption and assignment of any Assumed Contracts under Section 365 of the Bankruptcy Code; (4) obligations for outstanding administrative claims, if any, arising out of or related to the Assets as set forth on Schedule 1.01(d)(4), provided that in no event shall the obligation of Buyer under this Section 1.01(d)(5) exceed \$20,000.00 in the aggregate; and (5) those obligations listed on Schedule 1.01(d)(5).

(e) “**Bankruptcy Case**” shall mean the case commenced upon Seller’s filing of a voluntary petition for relief under the Bankruptcy Code on August __, 2017, whether such case continues under chapter 11 of the Bankruptcy Code or is converted to a case under chapter 7 of the Bankruptcy Code.

(f) “**Bankruptcy Code**” shall mean 11 U.S.C. § § 101 *et seq.*

(g) “**Bankruptcy Court**” shall mean the United States Bankruptcy Court for the Southern District of Indiana or any other court having jurisdiction over the Bankruptcy Case.

(h) “**Business Day**” shall mean any day that is not a Saturday, Sunday or other day on which banks are required or authorized by law to be closed in the city of New York.

(i) “**Buyer**” shall have the meaning ascribed to it in the first paragraph of this Agreement.

(j) “**Closing Documents**” shall mean those documents required to be delivered by Buyer or Seller pursuant to Section 3.02.

(k) “**Encumbrances**” shall mean any “interest” (as that term is used in section 363(f) of the Bankruptcy Code), any “claim” (as that term is defined in section 101(5) of the Bankruptcy Code), Lien, mortgage, deed of trust, pledge, assignment, security interest, encumbrance, lien (statutory or other), mechanic’s lien, hypothecation, deemed trust, action, easement, charge or otherwise, or claim of any kind or nature whatsoever, obligation, Liability, lease, covenant, easement, option, right of others, hypothecation, conditional sale agreement or restriction (whether on voting, sale, transfer, defenses, set-off or recoupment rights, disposition or otherwise), whether imposed by agreement, understanding, law, equity, or otherwise, including any of the foregoing created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of a financing statement naming the owner of the property as to which such lien relates as the debtor under the Uniform Commercial Code or any comparable law in any other jurisdiction.

(l) “**Environmental Law**” shall mean all applicable federal, state and local statutes, ordinances, rules, orders, judgments, injunctions, decrees, regulations and other provisions having the force of law, all judicial and administrative orders and determinations, and all common law concerning pollution or protection of human health and the environment, including, without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any hazardous or toxic substance or waste or any contaminant or pollutant regulated or otherwise creating Liability under Environmental Laws, including, without limitation, “hazardous substances” as defined by the Comprehensive Environmental Response Compensation and Liability Act, as amended, “toxic substance” as defined by the Toxic Substance Control Act, as amended, “hazardous wastes” as defined by the Resource Conservation and Recovery Act, as amended, “hazardous materials” as defined by the Hazardous Materials Transportation Act, as amended, thermal discharges, radioactive substances, PCBs, natural gas, petroleum products or by-products and crude oil.

(m) “**Environmental Liabilities**” means any and all environmental response costs (including costs of remediation), damages, natural resource damages, settlements, consulting fees, expenses, penalties, fines, orphan share, prejudgment and post-judgment interest, court costs, attorneys’ fees and other Liabilities incurred or imposed (i) pursuant to any order, notice of responsibility, directive (including requirements embodied in Environmental Laws), injunction, judgment or similar act (including settlements) by any Governmental Entity or court of competent jurisdiction to the extent arising out of any violation of, or remedial obligation under, any Environmental Laws which are attributable to the ownership or operation of the Assets or (ii) pursuant to any claim or cause of action by a Governmental Entity or other Person for personal injury, property damage, damage to natural resources, remediation or response costs to the extent arising out of any violation of, or any remediation obligation under, any Environmental Laws which is attributable to the ownership or operation of the Assets.

(n) “**Excluded Assets**” shall mean the assets of Seller set forth on Schedule 1.01(n).

(o) “**Excluded Liabilities**” shall mean all claims and Liabilities of Seller, whether known or unknown, direct or contingent, in litigation or threatened, or not yet asserted, other than the Assumed Liabilities.

(p) “**Governmental Entity**” shall mean any court, administrative or regulatory agency, commission or taxing authority or other foreign, federal, state or local governmental authority or instrumentality.

(q) “**Hazardous Substances**” means any pollutants, contaminants, toxic or hazardous substances, materials, wastes, constituents, compounds or chemicals that are requested by, or may form the basis of Liability under any Environmental Laws, including asbestos-containing materials.

(r) “**Landlord**” means Chris McCarty Company LLC, a Kentucky limited liability company.

(s) “**Law**” shall mean any domestic, foreign, federal, state, local or other law, statute, ordinance, writ, rule, regulation or governmental requirement of any kind, and the rules, regulations and orders promulgated thereunder and any final orders, decrees, judgments or injunctions of any regulatory agency, court or other Governmental Entity.

(t) “**Leased Real Property**” shall mean those portions of the real property located at 900 Eastern Blvd., Clarksville, Indiana 47129, which is owned by Landlord and leased to Seller.

(u) “**Liability**” means, with respect to any Person, any indebtedness or other liability or obligation of such Person of any kind, nature, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, in contract, tort, strict liability, or otherwise, including all costs and expenses relating to the foregoing.

(v) “**Parties**” shall mean Buyer and Seller.

(w) “**Permitted Encumbrances**” shall mean the following, to the extent not released pursuant to the Sale Order: (1) Encumbrances granted by Buyer at or after the Closing; (2) Encumbrances that arise under zoning, building codes, land use and other similar Laws, none of which would materially interfere with the ownership or Ordinary Course operation by Buyer of the Assets following the Closing in substantially the manner as owned and operated immediately prior to the execution of this Agreement; and (3) Encumbrances for real or personal property Taxes not yet due and payable.

(x) “**Person**” shall mean an individual, corporation, partnership, association, limited liability company, trust, joint venture, unincorporated organization or other legal entity.

(y) “**Purchase Price**” shall mean \$1,000,000.00, to be paid by setting off the full amount of the Purchase Price against amounts due to Buyer or Buyer’s Affiliate, Naples Ventures, LLC, in accordance with the Sale Order and Section 363(k) of the Bankruptcy Code.

(z) “**Sale Order**” shall mean the order of the Bankruptcy Court pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, as may be amended, modified or supplemented from time to time by the Bankruptcy Court, in such form and substance reasonably acceptable to Seller and Buyer containing provisions, including without limitation, (i) approving this Agreement, (ii) authorizing the sale of the Assets pursuant to Section 363 of the Bankruptcy Code, (iii) authorizing the assumption and assignment of the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, (iv) authorizing the Transactions and (v) providing that this Agreement and the Transactions are undertaken by Buyer and Seller at arm’s length, without collusion, and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, that Buyer and Seller are entitled to the protections of Section 363(m) of the Bankruptcy Code, and that the provisions of Section 363(n) of the Bankruptcy Code are not applicable.

(aa) “**Seller**” shall have the meaning ascribed to it in the first paragraph of this Agreement.

(bb) “**Taxes**” shall mean all taxes, charges, fees, levies, penalties or other assessments imposed by any United States federal, state, local, foreign or other taxing authority, including, but not limited to, income, gross receipts, license, stamp, occupation, premium, windfall profits, environmental (including taxes under Sec. 59A of the Internal Revenue Code of 1986, as amended), custom duty, capital stock or other equity, excise, real property, personal property, water and sewer charges, municipal utility district, ad valorem, sales, use, transfer, franchise, payroll, employment, withholding, severance, social security or other tax of any kind whatsoever, including any interest, penalties or additions attributable thereto, whether disputed or not.

(cc) “**Transfer Taxes**” shall mean any transfer, documentary, excise, sales, use, real property transfer or recording, gains, value-added, stamp, registration and other Tax, any conveyance fees, any recording charges and any other similar fees and charges (including penalties and interest in respect thereof) attributable, imposed on or payable in connection with the transactions contemplated by this Agreement.

1.02 Cross References. Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
Agreement	1.01(a)
Allocation Schedule	2.01(e)
Alternative Proposal	1.01(b)
Approval Hearing	1.01(c)

<u>Term</u>	<u>Section</u>
Assets	1.01(c)
Assignment and Assumption Agreement	3.02(a)(ii)
Assumed Contracts	1.01(c)
Assumed Liabilities	1.01(d)
Bankruptcy Case	1.01(e)
Bankruptcy Code	1.01(f)
Bankruptcy Court	1.01(g)
Business	Recitals
Business Day	1.01(h)
Buyer	1.01(i)
Closing	3.01
Closing Date	3.01
Closing Documents	1.01(j)
Encumbrances	1.01(k)
End Date	3.03(d)
Environmental Law	1.01(l)
Environmental Liabilities	1.01(m)
Excluded Assets	1.01(n)
Excluded Liabilities	1.01(o)
Governmental Entity	1.01(p)
Hazardous Substances	1.01(q)
Intellectual Property Rights	1.01(c)
Landlord	1.01(r)
Law	1.01(s)
Lease Assignment	3.02(a)(iii)
Leased Real Property	1.01(u)
Liability	1.01(v)
Ordinary Course	4.02(g)
Parties	1.01(w)
Permits	1.01(c)

<u>Term</u>	<u>Section</u>
Permitted Encumbrances	1.01(x)
Person	1.01(x)
Purchase Price	1.01(z)
Real Property	1.01(u)
Records	1.01(c)
Sale Order	1.01(aa)
Seller	1.01(bb)
Tax Claim	5.06(a)
Tax Returns	4.02(l)
Taxes	1.01(cc)
Transactions	Recitals
Transfer Taxes	1.01(dd)

ARTICLE II

PURCHASE AND SALE

2.01 Asset Acquisition.

(a) Assets. Subject to the terms, conditions and limitations contained in this Agreement and the Sale Order, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in and to the Assets (free and clear of Encumbrances other than Permitted Encumbrances, as set forth in the Sale Order).

(b) Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Assets shall not include the Excluded Assets.

(c) Assumed Liabilities. Subject to the terms, conditions and limitations contained in this Agreement and the Sale Order, Seller shall assign to Buyer and Buyer shall assume, pay, perform and discharge when due the Assumed Liabilities.

(d) Excluded Liabilities. Notwithstanding any other provision of this Agreement to the contrary, Buyer is assuming only the Assumed Liabilities and is not assuming any Excluded Liabilities, including any other claim against or Liability or obligation of any Seller of whatever nature, whether presently in existence or arising hereafter. All Excluded Liabilities shall be retained by and remain obligations and Liabilities of Seller, including without limitation: (1) all Liabilities related to any Excluded Assets; (2) all accounts payables unless specifically assumed in this Agreement as an Assumed Liability; (3) all indebtedness of Seller,

(3) all Liabilities for Taxes of Seller including any Taxes relating to or arising from the Business or one or more Assets prior to the Closing; (4) all Liabilities relating to, or resulting from, the employment or services or cessation of employment or services of any person employed or formerly employed by or providing services to Seller that arises or is based on action or conduct occurring at any time prior to or on the Closing Date including, without limitation, any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of Seller, (5) all Liabilities relating to any employee benefit plan or program of Seller, and (6) any Liability based on successor liability theories, including, without limitation, product liability claims.

(e) Purchase Price Allocation. Buyer and Seller agree that the Purchase Price, applicable Assumed Liabilities and other relevant items shall be allocated in accordance with an allocation schedule (the “**Allocation Schedule**”), a draft of which shall be delivered by Buyer to Seller within ninety (90) days following the Closing Date. If Seller notifies Buyer in writing that Seller objects to one or more items reflected in the Allocation Schedule, Seller and Buyer shall negotiate in good faith to resolve such dispute; provided, however, that if Seller and Buyer are unable to resolve any dispute with respect to the Allocation Schedule within one hundred twenty (120) days following the Closing Date, such dispute shall be resolved by an independent accounting firm selected by Buyer, with the fees and expenses of such accounting firm to be borne equally by Seller and Buyer. Buyer and Seller shall (and shall cause their respective controlled subsidiaries and affiliates to) file all tax returns and other Tax-related information reports in a manner consistent with the Allocation Schedule and not take any position inconsistent with such allocation schedule in any Tax-related audit, examination or other proceeding (whether administrative or judicial) unless required by applicable Law.

ARTICLE III

CLOSING AND TERMINATION

3.01 Closing. The closing of the purchase and sale of the Assets and the assumption of the Assumed Liabilities (the “**Closing**”) shall take place at the offices of Seiller Waterman LLC, located at Meidinger Tower, 22nd Floor, 462 S. Fourth St., Louisville, Kentucky 40202 (or at such other place as the Parties may mutually agree in writing). The Closing shall take place promptly, but in no event later than three (3) Business Days, after the closing conditions set forth in this Agreement (including the entry of the Sale Order by the Bankruptcy Court have been fulfilled, or such other day as may be mutually agreed to in writing by the Parties. The date of which the Closing occurs is referred to as the “**Closing Date**”, and this Agreement shall be deemed effective at 12:01 a.m., local time, on the Closing Date.

3.02 Deliveries at Execution and Closing.

(a) Deliveries by Seller at Closing. On the Closing Date, Seller shall deliver to Buyer:

(i) A bill of sale in a form and substance reasonably acceptable to Buyer, duly executed by Seller, transferring the Assets to Buyer;

(ii) an assignment and assumption agreement in form and substance reasonably acceptable to Buyer (the “**Assignment and Assumption Agreement**”), duly executed by Seller, effecting the assignment to and assumption by Buyer of the Assumed Liabilities;

(iii) with respect to the lease between Seller and Landlord for the Leased Real Property, an Assignment and Assumption of Lease in form and substance acceptable to Buyer (collectively, the “**Lease Assignment**”), duly executed by Seller and Landlord;

(iv) possession of all of the Assets;

(v) the Sale Order;

(vi) evidence, in form and substance reasonably satisfactory to Buyer, demonstrating that, effective as of the Closing, all of the Assets are released from any and all Encumbrances, other than the Permitted Encumbrances;

(vii) evidence, in form acceptable to Buyer, of the issuance of the Sale Order and the receipt of all approvals, consents and waivers that are listed on Schedule 4.02(e); and

(viii) all other instruments, agreements, certificates and documents required by Buyer to be delivered by Seller at or prior to the Closing pursuant to this Agreement.

(b) Deliveries by Buyer at Closing. On the Closing Date, Buyer shall deliver to Seller:

(i) the Purchase Price, by setting off the full amount of the Purchase Price against amounts due to Buyer or Buyer’s Affiliate, Naples Ventures, LLC, in accordance with the Sale Order and Section 363(k) of the Bankruptcy Code;

(ii) the Assignment and Assumption Agreement, duly executed by Seller;

(iii) the Lease Assignment, duly executed by Buyer; and

(iv) all other instruments, agreements, certificates and documents required by Seller to be delivered by Buyer at or prior to the Closing pursuant to this Agreement.

3.03 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing Date only as follows:

(a) by mutual written agreement of the Parties;

(b) by Seller if Buyer commits a material breach of this Agreement (and Seller is not then in material breach of this Agreement), or by Buyer if Seller commits a material breach of this Agreement (and Buyer is not then in material breach of this Agreement), in each case, only if the breaching Party is provided notice of termination of such breach and does not cure such breach within 10 Business Days from receipt of notice thereof by the non-breaching Party;

(c) by Buyer or Seller if the condition to Closing described in Section 6.01(a) has not been satisfied by October 30, 2017, only if the Party terminating this Agreement is not then in material breach of this Agreement;

(d) by Seller or Buyer or if for any reason the Closing has not occurred by November 30, 2017 (the “**End Date**”); provided, that, at the time of such termination, the terminating Party is not then in material breach of its obligations contained in this Agreement;

(e) by Seller or Buyer, if any condition set forth in Section 6.01 is not satisfied, and such condition is incapable of being satisfied by the End Date; provided, that, at the time of such termination, the terminating Party is not then in material breach (or if any Seller is the terminating Party, then no Seller shall then be in material breach) of its obligations contained in this Agreement;

(f) by Seller, if any condition set forth in Section 6.02 has not been satisfied, and such condition is incapable of being satisfied by the End Date; provided, that, at the time of such termination, Seller shall then be in material breach of its obligations contained in this Agreement;

(g) by Buyer, if any condition set forth in Section 6.03 has not been satisfied, and such condition is incapable of being satisfied by the End Date; provided, that, at the time of such termination, Buyer is not then in material breach of its obligations contained in this Agreement;

(h) by Seller, if (i) Seller executes a definitive agreement with a third party (other than Buyer) for an Alternative Proposal, and (ii) the Bankruptcy Court enters an order in the Bankruptcy Case approving such definitive agreement.

3.04 Effect of Termination; Remedies. If this Agreement is validly terminated, this Agreement shall forthwith become null and void and there will be no Liability or obligation on any part of Seller or Buyer except: (a) the provisions of Sections 7.02, 7.03, 7.05 and 7.13 and any other provision that expressly survives, or by its nature is intended to survive, the termination of this Agreement shall continue to apply and remain in full force and effect following any such termination; and (b) nothing contained herein shall relieve any Party from Liability for breach of its representations, warranties, covenants or agreements contained in this Agreement prior to such termination.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

4.01 Buyer's Representations. Buyer hereby represents and warrants to Seller as follows:

(a) **Organization and Due Authorization.** Buyer is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization. Buyer has full company power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution and consummation of this Agreement have been duly authorized by all necessary company action on the part of Buyer.

(b) **No Violation; Consents and Approvals.** Neither the execution and delivery by Buyer of this Agreement nor the consummation of the transactions contemplated hereby nor compliance by Buyer with any of the provisions hereof: (1) conflict with or result in a violation of (i) any provision of the organizational documents of Buyer or (ii) any judgment, order, writ, injunction, decree, statute, Law, ordinance, rule or regulation in any material respect binding upon Buyer; or (2) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under (i) any note, bond, mortgage, indenture, deed of trust, contract, commitment, arrangement, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which Buyer may be bound or to which any of Buyer's assets may be subject or affected in any material respect and that, in each case, is material to the business of Buyer, or (ii) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Entity.

(c) **Litigation.** There is no claim, action, lawsuit or proceeding, or to the knowledge of Buyer, any pending inquiry or investigation or any threatened claim, action, lawsuit, proceeding, inquiry or investigation, in each case, by or against or affecting Buyer which has had or can be reasonably expected to have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby.

(d) **Liability for Brokers' Fee.** Buyer has not employed any broker, finder, investment banker or other intermediary or incurred any Liability for any investment banking fees, financial advisory fees, brokerage fees, finders' fees or other similar fees in connection with this Agreement or the Transactions.

(e) **Consents, Approvals or Waivers.** Buyer's execution, delivery and performance of this Agreement (and any document required to be executed and delivered by Buyer on the Closing Date) is not and will not be subject to any consent, approval or waiver from any Governmental Entity or other Person (other than the Sale Order).

(f) **Bankruptcy.** There are no bankruptcy, insolvency, reorganization or receivership proceedings pending against, being contemplated by, or threatened against Buyer.

(g) **Limitations.** Buyer is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of properties and assets such as the Assets and assumption of liabilities such as the Assumed Liabilities as contemplated hereunder. Buyer acknowledges that Seller has given Buyer reasonable access to the key employees, documents and facilities of the Business. BUYER ACKNOWLEDGES AND AGREES THAT THE ASSETS ARE BEING SOLD ON AN “AS IS, WHERE IS” BASIS, “WITH ALL FAULTS” AND WITHOUT ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS AGREEMENT. Buyer agrees to accept the Assets and the Assumed Liabilities in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters. Without limiting the generality of the foregoing, Buyer acknowledges that Seller makes no representation or warranty with respect to any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future prospects or operations of the Business.

4.02 Seller’s Representations. Seller hereby represents and warrants to Buyer as follows:

(a) **Organization and Due Authorization.** Seller is duly incorporated, validly existing and in good standing under the Laws of the jurisdiction of its organization. Seller has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and the execution and consummation of this Agreement have been duly authorized by all necessary corporate action on the part of Seller.

(b) **No Violation; Consents and Approvals.** After giving effect to the Sale Order, neither the execution and delivery by Seller of this Agreement nor the consummation of the transactions contemplated hereby nor compliance by such Seller with any of the provisions hereof: (1) conflict with or result in a violation of (i) any provision of the organizational documents of such Seller or (ii) any judgment, order, writ, injunction, decree, statute, Law, ordinance, rule or regulation in any material respect binding upon such Seller; or (2) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Entity.

(c) **Litigation.** Except as set forth in Schedule 4.02(c), there is no claim, action, lawsuit or proceeding, or to the knowledge of Seller, any pending inquiry or investigation or any threatened claim, action, lawsuit, proceeding, inquiry or investigation, in each case, by or against or affecting any Seller which has had or can be reasonably expected to have a material adverse effect on the ability of any Seller to consummate the transactions contemplated hereby.

(d) **Liability for Brokers’ Fee.** Seller has not employed any broker, finder, investment banker or other intermediary or incurred any Liability for any investment banking

fees, financial advisory fees, brokerage fees, finders' fees or other similar fees in connection with this Agreement or the Transactions.

(e) **Consents, Approvals or Waivers.** Except for consents, approvals or authorizations of, or declarations or filings with, the Bankruptcy Court, Seller's execution, delivery and performance of this Agreement (and any document required to be executed and delivered by Seller on the Closing Date) is not and will not be subject to any consent, approval or waiver from any Governmental Entity or other Person.

(f) **Permits.** Schedule 4.02(f) sets forth a list of all material Permits required to conduct and operate the Business in a manner consistent with the ordinary course practices of Seller ("**Ordinary Course**").

(g) **Compliance with Laws.** Seller is and has been in compliance with all Laws applicable to its ownership and operation of the Assets and the Business, except where the failure to be in compliance would not have or be reasonably expected to have a material adverse effect.

(h) **Intellectual Property Rights.** Schedule 4.02(h) sets forth an accurate and complete list of all registered Intellectual Property Rights included in the Assets (which Schedule also sets forth any registered Intellectual Property Rights presently expired or otherwise abandoned). To the knowledge of Seller, there are no outstanding challenges to the ownership and use by Seller of the Intellectual Property Rights, nor any alleged infringements of such Intellectual Property Rights by third-parties. None of the Intellectual Property Rights included in the Assets has been licensed by Seller to any other Person.

(i) **Environmental.** Seller does not own any real property. The Leased Real Property constitutes the only real property that Seller currently uses in the operation of the Business. Seller's operation of the Business, including at or from Leased Real Property or any other property used by Seller in the operation of the Business, and Seller's use of the Assets, has complied in all respects with all applicable Environmental Laws. Seller has not received any notice from any Governmental Entity or third party of any violation of or failure to comply with any Environmental Laws with respect to the Business or the Leased Real Property, and (2) to the knowledge of Seller, the Leased Real Property is in compliance, in all material respects, with applicable Environmental Laws and no Environmental Liabilities exist on the Leased Real Property.

(j) **Taxes.** All Tax filings and returns ("**Tax Returns**") required to be filed by or on behalf of any Seller in respect of the Business or any Asset have been timely filed, and all such Tax Returns were true and correct in all material respects. All Taxes of Seller (or any predecessor of Seller) relating to the Business or any Asset required to have been paid were timely paid or (in respect of withholding or payroll Taxes) duly withheld and paid over.

(k) **Insurance.** All material property and liability insurance policies covering any of the Assets are in full force and effect, no written notice of cancellation, termination or revocation has been received by any Seller.

(l) **Assumed Contracts.** Seller has delivered to Buyer correct and complete copies of each Assumed Contract. Upon consummation of the Closing, each Assumed Contract is in full force and effect and valid and enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, moratorium, insolvency, fraudulent conveyance and similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles.

(m) **Service of Bankruptcy Documents.** Seller has appropriately and timely served all parties in interest with copies of the Sale and Bidding Procedures Motion and applicable notices.

ARTICLE V

COVENANTS

5.01 Cooperation and Efforts. From the date hereof until the Closing, the Parties agree (i) to use their respective commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable Laws to consummate the Transactions contemplated by this Agreement; (ii) to cooperate with each other in determining whether any filings are required to be made or any material consents are required to be obtained in any jurisdiction or from any Person in connection with the consummation of the transactions contemplated hereby and in making or causing to be made any such filings promptly and in seeking to obtain in a timely manner any such consent; and (iii) to use commercially reasonable efforts to take, or cause to be taken, all actions, to do, or cause to be done, all things to obtain as promptly as practicable the satisfaction of the conditions to the Closing of the transactions contemplated herein.

5.02 Insurance. To the extent that any insurance policies of Seller cover any loss, Liability, Claim, damage or expense relating to any Assets or Assumed Liabilities and such insurance policies continue after the Closing to permit claims to be made thereunder, Seller shall cooperate with Buyer in good faith in submitting and pursuing such Claims for the benefit of Buyer; provided that such cooperation shall not require (i) any Seller to make any payments or incur any material obligations, (ii) any efforts be made by any Chapter 7 trustee, should the Bankruptcy Case convert, or (iii) any efforts of Seller after any dissolution of Seller after the dismissal of the Bankruptcy Case.

5.03 Access to Information. From the date hereof until the Closing, Seller shall: (i) permit Buyer and its representatives to have reasonable access upon reasonable prior notice, during normal business hours, to the Assets, the employees of Seller and the Records relating to Seller and the Business as Buyer or its representatives request in connection with Buyer's evaluation of the Business; and (ii) request the employees, counsel, auditors and financial advisors of Seller to cooperate with Buyer and its representatives regarding the same. After the Closing Date, upon reasonable advance notice, Buyer will afford to Seller and its counsel, advisors and other agents reasonable access during normal business hours to the books and records of the Business to the extent necessary for financial reporting and accounting matters, employee benefits matters, the preparation and filing of any Tax Returns, reports or forms, the

defense of any Tax audit, or any reasonable business purpose related to the Excluded Assets or Excluded Liabilities, or in connection with addressing any other issues arising in connection with or relating to the Bankruptcy Case; provided that any such access shall not unreasonably interfere with the conduct of the business of Buyer or result in Buyer incurring any material expense. As and to the extent provided in the Sale Order, Buyer shall be entitled to destroy any such records after one year from the Closing Date. Until destroyed in accordance with the foregoing paragraph, Seller will hold in confidence, unless compelled to disclose by judicial or administrative process or by other requirements of Law, all confidential documents and information concerning Buyer or the Business as provided pursuant to this Section 5.03.

5.04 Maintenance of the Assets; Management of Liabilities. From the date hereof until the earlier of the termination of this Agreement or the Closing, and except (i) as ordered by the Bankruptcy Court or (ii) as expressly provided by this Agreement, Seller shall use commercially reasonable efforts to (1) maintain the Assets in the ordinary course, (2) comply in all material respects with all applicable Laws and all Assumed Contracts; (3) refrain from incurring any material Liability which would be an Assumed Liability hereunder and (4) except pursuing an Alternative Proposal in connection with the Bidding Procedures, otherwise refrain from taking any action that would reasonably be expected to cause the failure of any Closing condition contained herein, in each case without obtaining the Buyer's prior written authorization thereto. Additionally, from the date hereof until the earlier of the termination of this Agreement or the Closing, and except (i) as ordered by the Bankruptcy Court, Seller shall not sell, transfer, convey or otherwise dispose of any Asset (other than the sale of inventory in the ordinary course of business) without the prior written consent of Buyer (which may be withheld in its sole discretion).

5.05 Notice to Buyer. Seller shall promptly notify Buyer in writing of: (i) any written communication alleging that the consent of any Person is or may be required in connection with the Transactions; (ii) any material written communication from any Governmental Entity relating to the Transactions; and (iii) any incident, discovery, breach or the commencement of any actions, investigations or proceedings relating to Seller, any Asset or the Business that, if disclosed on the date of this Agreement, would have resulted in a breach of any representation, warranty or covenant of Seller.

5.06 Tax Matters.

(a) From and after the Closing, Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Assets (including access to books and records) as is reasonably necessary for the preparation and filing of any Tax Returns, the making of any election relating to Taxes, the preparation for any audit or examination by any Governmental Entity, and the prosecution or defense of any claim, suit or proceeding relating to any Tax. Seller and Buyer shall cooperate with each other in good faith in the conduct of any audit or other proceeding relating to Taxes involving the Assets or the Business (each, a "**Tax Claim**"), provided that Seller shall (and shall cause its affiliates to) (a) promptly notify Buyer of any notice received in respect to any Tax Claim, (b) promptly notify Buyer of any significant developments regarding such Tax Claim, (c) permit Buyer (if Buyer so chooses) to control the

defense and/or resolution of any Tax Claim if any resolution or settlement of such Tax Claim reasonably could be expected to have an effect on Buyer, any of Buyer's affiliates or any Asset for any taxable period, (d) take all actions and cooperation reasonably necessary in furtherance of the immediately preceding clause (c), and (e) not settle or otherwise resolve any Tax Claim without the prior written consent of Buyer.

(b) Seller shall be responsible for, and pay when due, all Transfer Taxes, if any. Buyer and Seller shall reasonably cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation in respect of any Transfer Taxes arising from the Transactions.

5.07 Employee Matters.

(a) Seller has provided or shall provide notice to all of their employees that complies with all provisions of all applicable laws, including those prohibiting discrimination and requiring notice to employees that their employment will end as of the Closing. Buyer will not be responsible for and will not assume any Liability for any notices, payments, fines or assessments due to any Person or Governmental Entity pursuant to any applicable Law with respect to the termination, discharge or layoff of employees by Seller on or before the Closing. Notwithstanding the provisions of Section 5.07(b), Seller acknowledges that Buyer does not intend to, and will not, assume any Liabilities with respect to Seller's employees (including, without limitation, Transferred Employees), all of which are Excluded Liabilities. Promptly as of Closing and in furtherance of the foregoing, Seller shall pay off all accrued and unpaid employee compensation and associated Taxes outstanding, due or payable, including any payments in connection with any accrued benefits or payroll taxes.

(b) Set forth on Schedule 5.07 is a list of employees of the Business which Seller and Buyer agree are key employees of the Business (the "**Key Employees**"). On or before Closing, Buyer shall extend offers of employment to the Key Employees. Any employee who is offered employment by Buyer and accepts such offer shall be hereinafter referred to as a "**Transferred Employee**"; provided, however, that nothing shall be construed to limit or restrict Buyer's ability to terminate the employment of the Transferred Employees following Closing or to maintain the terms of such employment, including any particular level of benefits. Seller shall reasonably cooperate with Buyer in connection with the hiring of the Transferred Employees. Buyer shall be responsible for employment-related liabilities with respect to the Transferred Employees, which accrue and are the result of events occurring after Closing.

ARTICLE VI

CONDITIONS TO OBLIGATIONS OF PARTIES

6.01 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Seller to consummate the Closing are subject to the satisfaction at or before Closing of the following conditions:

(a) On or before October 30, 2017, the Bankruptcy Court shall have entered the Sale Order in the Bankruptcy Case, and the Bankruptcy Court shall have waived the stay imposed by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure as to the Approval Order, authorizing the Transactions and approving this Agreement under Sections 105(a), 363 and 365 of the Bankruptcy Code, in form and substance reasonably acceptable to Seller and Buyer, and the Sale Order shall contain findings that Buyer acquired the Assets in good faith, for fair value, in an arm's length transaction, and as of the Closing Date the Sale Order shall be in full force and effect, shall not then be stayed, and shall not have been vacated, amended or reversed; and

(b) No injunction, stay or similar order issued by any Governmental Entity shall be in effect that restrains, enjoins, stays or prohibits the consummation of the Transactions.

6.02 Conditions to Obligations of Seller. The obligation of Seller to consummate this Agreement is subject to the fulfillment at or prior to the Closing of each of the following conditions (any or all of which may be waived in whole or in part by Seller):

(a) Representations and Warranties. Each representation and warranty of Buyer contained herein shall have been true and correct in all material respects as of the date hereof and as of the Closing Date.

(b) Covenants. Buyer shall have complied, in all material respects, with the covenants and agreements required by this Agreement to be performed prior to or at the Closing.

(c) Closing Documents. On or prior to the Closing Date, Buyer shall have delivered to Seller those Closing Documents required from Buyer (executed by Buyer as applicable) pursuant to Section 3.02(c).

6.03 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the fulfillment at or prior to the Closing Date of each of the following conditions (any or all of which may be waived in whole or in part by Buyer).

(a) Representations and Warranties. Each representation and warranty of Seller contained herein shall have been true and correct in all material respects as of the date hereof and as of the Closing Date.

(b) Covenants. Seller shall have complied, in all material respects, with the covenants and agreements required by this Agreement to be performed prior to or at the Closing.

(c) Closing Documents. On or prior to the Closing Date, Seller shall have executed and delivered to Buyer those Closing Documents required from Seller (executed by Seller as applicable) pursuant to Section 3.02(c).

ARTICLE VII

MISCELLANEOUS

7.01 Post-Closing Obligations. All representations and warranties and all covenants and agreements (which are to be performed prior to Closing) of each Party contained in this Agreement shall not survive the Closing, and such Party shall have no obligations thereof under this Agreement to any other Party after the Closing Date. All covenants and agreements which are to be performed after Closing by their express terms shall survive Closing pursuant to the terms thereof, or if no term is specified, for the applicable statute of limitations.

7.02 Confidentiality. From and after the Closing, Seller shall hold in confidence, and shall cause its agents and representatives to hold in confidence, any and all information, whether written or oral, concerning the Business, except to the extent that Seller can show that such information (a) is generally available to and known by the public through no fault of Seller or its agents or representatives; or (b) is lawfully acquired by Seller, from and after the Closing, from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or its agent or representatives is compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall promptly notify Buyer in writing and shall disclose only that portion of such information which Seller is advised by its counsel in writing is legally required to be disclosed, *provided that* Seller shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

7.03 Fees and Expenses. Except as otherwise provided in this Agreement, each of the Parties shall pay its own legal fees in connection with negotiating and entering into this Agreement, including with regard to any related proceedings before the Bankruptcy Court, whether or not the transactions contemplated hereby are consummated.

7.04 Further Assurances. Buyer or Seller, as applicable, shall execute and deliver, or cause to be executed and delivered, such documents as Buyer or Seller, as applicable, or their respective counsel may reasonably request to consummate the Transactions under this Agreement.

7.05 Notices. Unless otherwise specified, all notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by nationally recognized overnight courier, or facsimile transmission:

If to Seller to:

Competition Accessories, LLC
900 Eastern Blvd.
Clarksville, IN 47129
Attention: Christopher McCarty, Manager
Telephone: 812-670-9038
Email: chris@cheapcycleparts.com

with copies to:

Applegate Fifer Pulliam, LLC
428 Meigs Avenue, P.O. Box 1418
Jeffersonville, Indiana 47130
Attention: D. Keith Pulliam, Esq.
Email: kpulliam@afpfirm.com
Facsimile: 812-590-1228

and

Seiller Waterman LLC
Meidinger Tower, 22nd Floor
462 S. Fourth St.
Louisville, KY 40202
Attention: William P. Harbison
Email: harbison@derbycitylaw.com
Facsimile: 502-583-2100

If to Buyer, to:

CA Acquisition Group, LLC
8477 Bay Colony Drive, No. 502
Naples, Florida 34108
Attention: Robert DiRomualdo
Email: BDiRomualdo@naplesventures.com

with a copy to:

Harter Secrest & Emery LLP
1600 Bausch & Lomb Place
Rochester, New York 14604
Attention: James M. Jenkins
Email: jjenkins@hselaw.com
Facsimile: 585-232-2152

or to such other person or address as any Party shall specify by notice in writing to the other Parties. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so personally delivered, faxed, or delivered by overnight courier.

7.06 Entire Agreement. This Agreement, together with the Schedules and the Closing Documents, contain the entire understanding of the Parties with respect to their subject matter and supersedes all prior agreements and understandings, oral and written, with respect to its subject matter.

7.07 Severability. Should any provision of this Agreement for any reason be declared invalid or unenforceable by a court of competent jurisdiction, such decision shall not affect the validity or enforceability of any of the other provisions of this Agreement, which other provisions shall remain in full force and effect and be enforced to the fullest extent permitted by Law.

7.08 Binding Effect; Successors. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns, including, in the case of Seller any trustee appointed pursuant to chapter 7 of the Bankruptcy Code.

7.09 Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided, however, that no Party may assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the written consent of the other Party; and provided further that Buyer shall have the right to designate, no later than three (3) Business Days prior to the Closing Date, one or more wholly owned subsidiaries or controlled affiliates to take title to the Assets at the Closing, so long as Buyer remains liable for all of its obligations hereunder and provided such

designation does not violate any consent or other approval which has been obtained by any Seller.

7.10 No Third-Party Beneficiaries. This Agreement is not intended, and shall not be deemed, to confer upon or give any Person except the Parties and their respective successors and permitted assigns any remedy, claim, benefit, Liability, reimbursement, cause of action or other right under or by reason of this Agreement.

7.11 Counterparts. This Agreement may be executed by facsimile or PDF signature and in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.12 Interpretation. The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement.

7.13 Governing Law; Jury Waiver. This Agreement and any claim related directly or indirectly to this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of law thereof that would defer to the substantive laws of any other jurisdiction. The Parties agree that, during the period from the date hereof until the date on which the Bankruptcy Case is closed or dismissed, the Bankruptcy Court shall have exclusive jurisdiction to resolve any controversy, claim or dispute arising out of or relating to this Agreement or any other agreement entered into in connection herewith. **EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

7.14 Remedies. Neither the exercise of nor the failure to exercise a right of set-off or to give notice of a claim under this Agreement will constitute an election of remedies or limit the Parties in any manner in the enforcement of any other remedies that may be available to any of them, whether at law or in equity.

7.15 Amendments; Waivers. This Agreement may not be amended, modified or supplemented except pursuant to an instrument in writing signed by each of the Parties. Any failure of Seller to comply with any term or provision of this Agreement may be waived by Buyer at any time by an instrument in writing signed on behalf of Buyer and any failure of Buyer to comply with any term or provision of this Agreement may be waived by Seller at any time by an instrument in writing signed on behalf of Seller, but any such waiver or failure to insist upon strict compliance with such term or provision shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure to comply.

7.16 Terms Generally. As used in this Agreement (a) words in the singular shall be held to include the plural and vice versa, (b) words of one gender shall be held to include the other genders as the context requires, (c) the terms “hereof”, “herein” and “herewith” and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement and not to any particular provision of this Agreement, (d) references to articles, sections, paragraphs,

exhibits and schedules are references to the articles, sections, paragraphs, exhibits and schedules to this Agreement, unless otherwise specified, (e) the word “including” and words of similar import when used in this Agreement, shall mean “including, without limitation”, unless otherwise specified, (f) the word “or” shall not be exclusive, (g) the word “days” shall mean calendar days; (h) all references to “\$” and dollars shall be deemed to refer to United States currency unless otherwise specifically provided; and (i) any reference to “representatives” herein, with regard to any Party, shall include such Party’s legal and financial advisors.

7.17 Mutual Drafting. This Agreement is the result of the joint efforts of the Parties, each provision hereof has been subject to the mutual consultation, negotiation and agreement of the Parties, and there is to be no construction against any Party based on any presumption of such Party’s involvement in the drafting of this Agreement.

7.18 Conflicts. To the extent that any provision of this Agreement conflicts with the Sale Order or any other order of the Bankruptcy Court entered after the date hereof, the Sale Order or such other order shall govern and control.

* * * * *

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date hereof.

SELLER:

COMPETITION ACCESSORIES, LLC

By: _____
Christopher McCarty, Manager

BUYER:

CA ACQUISITION GROUP, LLC

By: _____
Robert DiRomualdo

Its: _____