**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

| | | |
|---|---|---|
| In re: | ) | |
| | ) | Chapter 11 |
| DATA COOLING TECHNOLOGIES LLC, | ) | |
| *et al.*,[1] | ) | Case Nos. 17-52170 and 17-52177 |
| | ) | (Jointly Administered) |
| Debtors. | ) | |
| | ) | Judge Koschik |
| | ) | |

**MOTION OF DATA COOLING TECHNOLOGIES LLC FOR AN ORDER (A) AUTHORIZING DATA COOLING TECHNOLOGIES LLC TO SELL ITS MEMBERSHIP INTEREST IN ARBORWEAR LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (B) GRANTING RELATED RELIEF**

Data Cooling Technologies LLC ("DCT"), one of the above-captioned debtors and debtors in possession, by and through its undersigned counsel, hereby moves the Court, pursuant to sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), for the entry of an order: (a) authorizing DCT to sell its membership interest in a privately-owned limited liability company, Arborwear LLC ("Arborwear"), pursuant to the terms of the agreements attached hereto as Exhibit A (collectively, the "Agreements"), free and clear of all liens, claims, encumbrances, and interests (collectively, the "Interests"); and (b) granting related relief.

In support of the Motion, DCT represents as follows:

## BACKGROUND

1. On September 8, 2017 (the "Petition Date"), DCT and Data Cooling Technologies Canada LLC (together, the "Debtors") each filed a voluntary petitions for relief under chapter 11

[1] The Debtors and the last four digits of each of the Debtors' tax identification numbers following in parentheses are: Data Cooling Technologies LLC (3425); and Data Cooling Technologies Canada LLC (3172).

of the Bankruptcy Code. The Debtors are continuing in possession of their property and are operating and managing their businesses, as debtors in possession, pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of the Debtors' chapter 11 cases and this Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of the chapter 11 cases, is set forth in detail in the Declaration of Gregory Gyllstrom in Support of Chapter 11 Petition and First Day Motions (the "Gyllstrom Declaration"), Docket No. 11, filed on the Petition Date and fully incorporated herein by reference.[2]

4. On November 30, 2017, the Court entered the Order (A) Authorizing the Sale of the Data Cooling Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; (B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Expense Reimbursement; (D) Approving Settlement and Release of Claims with KyotoCooling North America LLC; and (E) Granting Related Relief, Docket No. 211 (the "KCNA Sale Order"), which approved the sale of substantially all of DCT's Data Cooling Assets (as defined in the KCNA Sale Order) to KyotoCooling North America LLC ("KCNA").

5. On December 1, 2017, the Court entered the Order (A) Authorizing the Sale of the Thermotech Assets Free and Clear of All Liens, Claims, Encumbrances and Interests;

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Gyllstrom Declaration.

(B) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (C) Approving Expense Reimbursement; and (D) Granting Related Relief, Docket No. 212 (the "Thermotech Sale Order"), which approved the sale of substantially all of DCT's Thermotech Assets (as defined in the Thermotech Sale Order) to J&J Mission Critical LLC ("J&J").

6. Effective November 30, 2017, the sales to both J&J and KCNA closed (the "Closing Date"). The Debtors are now in the process of administering their remaining assets through the chapter 11 cases.

**The Arborwear Membership Interest**

7. In 2006, DCT made a $90,000 unsecured loan to Arborwear evidenced by the terms of a convertible promissory note. This note arrangement was similar to investment provided by the other investors in Arborwear at the time. Arborwear is a privately-owned Chagrin Falls, Ohio-based company that manufactures and sells heavy-duty canvas work pants, shirts, outerwear, and utility boots. DCT received periodic interest payments on its loan from Arborwear through June 30, 2016.

8. In August 2016, Arborwear converted each of its 2006 convertible promissory notes into equity, including DCT's $90,000 promissory note. As a result of this conversion, DCT's loan became 4.05% common stock in Arborwear (the "Membership Interest").

9. DCT now desires to sell the Membership Interest so that the investment may be liquidated for the benefit of its bankruptcy estate. In late fall 2017, A. Malachi Mixon, III and William M. Weber approached DCT's board with an offer to buy the Membership Interest for an aggregate price of $90,000 (to be split evenly between Mr. Mixon and Mr. Weber, with a $45,000 purchase price and 2.025% eventual ownership interest each, as reflected in the Agreements attached as Exhibit A). Mr. Mixon and Mr. Weber are each equity holders of DCT,

members of DCT's board of directors, and insiders (as such term is defined in the Bankruptcy Code) of DCT. Mr. Mixon and Mr. Weber are also already current investors and members in Arborwear. Mr. Weber's son is the manager of Arborware.

10. DCT is aware that the proposed transaction is an insider transaction but believes that it maximizes value for the estate. After receiving the offer from Mr. Mixon and Mr. Weber, Richard Szekelyi, the current Chief Restructuring Officer of DCT, conducted an independent analysis of Arborwear's financial statements, the potential value of the Membership Interest, and the offer from Mr. Mixon and Mr. Weber. Mr. Szekelyi concluded that the offer was a fair price. The disinterested members of DCT's board of directors, with Mr. Mixon and Mr. Weber recused, held a board meeting to evaluate the offer. The Board reviewed the offer and noted that it should be subject to market evaluation to the extent possible.

11. Arborware is a private company that is closely held, and certain contractual restrictions do not permit the Membership Interest to be offered for sale on the open market. Only current members of Arborwear may purchase other members' investments. Indeed, the Arborwear Operating Agreement (the "Operating Agreement") requires that any member of Arborwear selling its membership interest must notify the other members of Arborwear, and any such other members of Arborwear (or Arborwear itself) may offer to purchase the marketed membership interest for the same or a higher price than the original offer. Therefore, after DCT received the offer from Mr. Mixon and Mr. Weber to purchase the Membership Interest, DCT (through Arborware's manager) notified Arborwear and its other members of the potential sale of its Membership Interest (and proposed price) in accordance with the Operating Agreement via a letter dated October 26, 2017. As of the date of the filing of this Motion, DCT had not received any other offers from any other members of Arborwear (or Arborwear itself) to

purchase the Membership Interest at the same or a higher price. Finally, as required by the Operating Agreement, DCT has requested the consent of the manager of Arborwear (the "Manager") for the sale of the Membership Interest. The Manger provided his consent to the sale.

12. DCT submits that the proposed sale of the Membership Interest to Mr. Mixon and Mr. Weber represents the highest and best offer for the Membership Interest, as the offer from Mr. Mixon and Mr. Weber is currently the only viable offer to purchase the Membership Interest under the current circumstances. The proposed sale of the Membership Interest will allow DCT to efficiently and effectively liquidate one of the remaining valuable assets of the estate for the benefit of its creditors. Therefore, DCT respectfully requests that the Court: (a) authorize DCT to sell its membership interest in Arborwear to Mr. Mixon and Mr. Weber free and clear of all Interests; and (b) grant related relief as may be necessary or appropriate.

## BASIS FOR RELIEF

13. In the exercise of its sound business judgment, DCT has determined that the sale of the Membership Interest to Mr. Mixon and Mr. Weber is in the best interest of DCT's stakeholders and will enable DCT to maximize the value of the Membership Interest. DCT submits that the entry of an order authorizing the sale of the Membership Interest is warranted under these circumstances and is in furtherance of DCT's efforts to successfully administer its chapter 11 case.

### A. The Sale of the Membership Interest Represents a Sound Exercise of DCT's Business Judgment

14. Section 363(b) of the Bankruptcy Code specifically authorizes asset sales outside the ordinary course of business. See 11 U.S.C. § 363(b)(1) ("[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the

estate"). To approve the use, sale, or lease of property outside of the ordinary course of business, the Court must find some articulated business justification for the proposed action. See In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983); see also Stephens Industries, Inc. v. McClung, 789 F.2d 386, 391 (6th Cir. 1986); In re Nicole Energy Services, Inc., 385 B.R. 201, 230 (Bankr. S.D. Ohio 2008); In re Jillian's Entertainment Holdings, 327 B.R. 616, 617 (Bankr. W.D. Ky. 2005) (stating that the Lionel standard has been adopted by the vast majority of courts).

15. Generally, courts examine four factors when determining whether a sale of a debtor's assets should be approved: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. See Lionel, 722 F.2d at 1071 (setting forth the "sound business purpose" test); In re Abbotts Dairies of Pennsylvania, Inc., 788 F. 2d 143 (3rd Cir. 1986) (implicitly adopting the same test and adding a "good faith" requirement"). A debtor's showing of a sound business purpose need not be unduly exhaustive; rather, a debtor is "simply required to justify the proposed disposition with sound business reasons." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. Lionel, 722 F.2d at 1071.

16. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper.

Bankruptcy courts are "specialized court[s] of equity." In re Connolly North America, LLC, 802 F.3d 810, 814 (6th Cir. 2015); In re Fesco Plastics Corp., 996 F.2d 152, 154 (7th Cir. 1993); Pincus v. Graduate Loan Ctr. (In re Pincus), 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of a debtor's assets. This section "grants the bankruptcy court the power to take appropriate equitable measures needed to implement other sections of the Code." In re Dow Corning Corp., 280 F.3d 648, 656 (6th Cir. 2002) (citing In re Granger Garage, Inc., 921 F.2d 74, 77 (6th Cir.1990)). Under the current circumstances, there is ample business justification for the approval of the sale of the Membership Interest to Mr. Mixon and Mr. Weber. As a non-operating entity, DCT has no use for an investment in another company. Given that DCT is liquidating the balance of its assets for the benefit of its bankruptcy estate, a sale of the Membership Interest to a willing buyer makes business sense under the current circumstances. The sale of the Membership Interest will inure to the benefit of DCT's creditors, as it will further DCT's efforts to successfully administer its chapter 11 case. Therefore, the sale of the Membership Interest to Mr. Weber and Mr. Mixon represents the exercise of DCT's sound business judgment.

**B. The Sale of the Membership Interest Should Be Approved Under Section 363(f) of the Bankruptcy Code**

17. Pursuant to section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if (i) such a sale is permitted under applicable non-bankruptcy law, (ii) the party asserting such a lien, claim, or interest consents to such sale, (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property, (iv) the interest is the subject of a *bona fide* dispute, or (v) the party asserting the lien, claim or

interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); see In re Elliot, 94 B.R. 343, 345 (E.D. Pa. 1988). Section 363(f) of the Bankruptcy Code is drafted in the disjunctive. Consequently, satisfaction of any of the requirements enumerated therein will suffice to allow the sale of the Membership Interest free and clear of all liens and encumbrances,

18. Section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests." The term "any interest," as used in section 363(f), is not defined in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor, JV, 209 F. 3d 252, 259 (3d Cir. 2000). In Folger Adam Security, the Third Circuit specifically addressed the scope of the term "any interest" and observed that, while some courts have "narrowly interpreted that phrase to mean only *in rem* interests in Property," the trend in modern cases is towards "a broader interpretation which includes other obligations that may flow from ownership of the Property." Id. at 258; see also In re White Motor Credit Corp., 75 B.R. 944 (Bankr. N.D. Ohio 1987) (holding that section 363(f) precluded tort claims against asset purchaser). As the Fourth Circuit determined in In re Leckie Smokeless Coal Co., 99 F. 3d 573, 581-582 (4th Cir. 1996), section 363(f) is not limited to *in rem* interests. Therefore, a debtor "could sell [its] assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." Leckie, 99 F. 3d at 581-582; see also In re Appalachia Fuels, LLC, 503 F.3d 538 (6th Cir. 2007) (approving a sale free and clear of "claims" arising as coal commission sales).

19. KeyBank N.A. has been paid in full, and to DCT's knowledge, there are no other liens against the Membership Interest. Therefore, DCT submits that the sale of the Membership Interest will satisfy at least one of the five conditions of section 363(f) of the Bankruptcy Code. Namely, the Manager of Arborwear consents to the sale of the Membership Interest, and DCT is

not aware of any other holder of any other liens, claims, interests, or consent requirements relating to the Membership Interest. DCT accordingly requests authority to convey the Membership Interest free and clear of all Interests.

**C. The Sale Is in Good Faith Under Section 363(m) of the Bankruptcy Code, Meets the Higher Standard Imposed on a Sale to Insiders, and Is Not in Violation of Section 363(n) of the Bankruptcy Code**

20. Section 363(m) of the Bankruptcy Code provides:

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

11 U.S.C. § 363(m). Section 363(n) of the Bankruptcy Code, among other things, provides, in turn, that a trustee may avoid a sale under such section if the sale price was controlled by an agreement among potential bidders at the sale. While the Bankruptcy Code does not define "good faith," the Third Circuit in In re Abbotts Dairies of Pennsylvania, Inc., 788 F. 2d 143 (3rd Cir. 1986) has held that:

> [t]he requirement that a Buyer act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a Buyer's good faith status at a judicial sale involves fraud, collusion between the Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted); In re Made In Detroit, Inc., 414 F.3d 576, 581 (6th Cir. 2005) (following the Abbotts Dairies standard).

21. As explained above, the proposed sale of the Membership Interest is the product of good faith and free from inappropriate self-dealing. The sale of the Membership Interest was a negotiated, arm's length transaction, in which Mr. Mixon and Mr. Weber acted in good faith,

without collusion or fraud of any kind, and in compliance with the Abbotts Dairies standard. Neither Mr. Mixon, Mr. Weber, nor DCT has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or allow DCT to avoid the sale pursuant to section 363(n) of the Bankruptcy Code with respect to the transfer of the Membership Interest to Mr. Mixon and Mr. Weber. Indeed, Mr. Mixon and Mr. Weber recused themselves from the board meeting at which the sale of the Membership Interest was discussed.

22. The proposed sale to Mr. Mixon and Mr. Weber also satisfies the higher standard applied to sales to insiders. Where a sale would benefit an insider of a debtor, "the court is required to give heightened scrutiny to the fairness of the value provided by the sale and the good faith of the parties in executing the transaction." In re Family Christian, LLC, 533 B.R. 600, 626 (Bankr. W.D. Mich. 2015), citing Bayer Corp. v. MascoTech, Inc., (In re Autostyle Plastics, Inc.), 269 F.3d 726, 745 (6th Cir. 2001) ("Insider transactions are more closely scrutinized, not because the insider relationship makes them inherently wrong, but because insiders 'usually have greater opportunities for . . . inequitable conduct.'"). But sales to insiders are not automatically barred; "nothing within the Bankruptcy Code prohibits insiders from purchasing estate assets." Id., citing Sugarloaf Indus. and Mtg. Co. v. Quaker City Castings, Inc. (In re Quaker City Castings, Inc.), 337 B.R. 729, 2005 WL 3078607, at *6 (B.A.P. 6th Cir. Nov. 18, 2005).

23. The status of a potential purchaser as an insider does not cause such a party to lose its good faith status "unless they colluded with the debtor or engaged in conduct that was intended to control the sale price or take unfair advantage of other bidders." Quaker City Castings, Inc., 2005 WL 3078607, at *7. In Quaker City Castings, for example, even though the proposed asset sale was to insiders, the objecting parties could not present any evidence that the

insiders colluded improperly with the Debtors or gained an unfair advantage as a result of their insider status. Id. In another case where an insider sought to purchase stock of a debtor, the Court did not find that the insider "engaged in extortionate conduct or threatened anyone. . .[or] engaged in *any* fraud, collusion, or attempt to take grossly unfair advantage of other bidders" that would disqualify the insider as a good faith purchaser. In re Bakalis, 220 B.R. 525, 537-38 (Bankr. E.D.N.Y. 1998).

24. Similarly, there is no evidence that Mr. Mixon and Mr. Weber inappropriately manipulated or influenced the proposed sale of the Membership Interest in this case. While Mr. Mixon and Mr. Weber are current investors and members of the board of directors of DCT, their status within DCT does not automatically disqualify them as prospective purchasers of the Membership Interest. Mr. Mixon and Mr. Weber's offer was presented to Arborwear's other members, but no other members have provided an offer to purchase the Membership Interest at the same or higher. Because DCT is not permitted to offer the Membership Interest for sale on the open market and the Manager must consent to any sale of a membership interest in Arborwear, the offer from Mr. Mixon and Mr. Weber is reasonable under the circumstances, is not inappropriately influenced by Mr. Mixon and Mr. Weber's insider status, and is the best offer DCT has received for the Membership Interest. In addition, notwithstanding the private market issues, Mr. Szekelyi has determined that the offer is a fair price for the Membership Interest. In light of the foregoing, DCT requests that the Court find that Mr. Mixon and Mr. Weber have purchased the Membership Interest in good faith within the meaning of section 363(m) of the Bankruptcy Code, and is entitled to the protections of sections 363(m) of the Bankruptcy Code.

**D. Bankruptcy Rule 6004(h) Should Be Waived**

25. Rule 6004(h) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") provides that an order authorizing the use, sale, or lease of property is stayed until the

expiration of fourteen (14) days after entry of the order, unless the court orders otherwise. DCT, however, requests that the proposed order and the sale of the Membership Interest be effective immediately. It is in the best interests of DCT's estate to facilitate the closing of the sale of the Membership Interest efficiently, thereby expediting the receipt of related sale proceeds into the estate. Accordingly, DCT submits that the fourteen-day stay set forth in Bankruptcy Rule 6004(h) should be waived in connection with the sale of the Membership Interest.

26. For all of the reasons set forth above, DCT respectfully requests that the Court authorize and approve the sale of the Membership Interest as requested herein as an exercise of DCT's sound business judgment.

**Notice**

27. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion will be served on the following parties or, in lieu thereof, to their counsel, if known: (i) the United States Trustee for the Northern District of Ohio; (ii) the Official Committee of Unsecured Creditors; (iii) DCT's prepetition secured lender; (iv) the District Director of Internal Revenue; (v) the Arborwear Manager; (vi) all parties requesting notice in the chapter 11 cases. In addition, a notice of this motion will be provided to all creditors of DCT. In light of the nature of the relief requested herein, DCT submits that no other or further notice need be given.

**No Prior Request**

28. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, DCT requests that the Court enter an order, substantially in the form attached hereto as Exhibit B: (a) authorizing DCT to sell its Membership Interest in Arborwear to Mr. Mixon and Mr. Weber free and clear of all Interests; and (b) granting related relief as may be necessary or appropriate.

December 19, 2017

Respectfully submitted,

/s/ Sean D. Malloy

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COUNSEL FOR DEBTORS
AND DEBTORS IN POSSESSION

# EXHIBIT A

## MEMBERSHIP INTEREST PURCHASE AGREEMENT

This **MEMBERSHIP INTEREST PURCHASE AGREEMENT** ("Agreement") is entered into as of the 19th day of December, 2017 by and between **Data Cooling Technologies LLC**, a Delaware limited liability company (the "Company"), and **A. Malachi Mixon**, an individual (the "Purchaser").

### Background

WHEREAS, the Purchaser desires to purchase and the Company desires to sell its 4.05% membership interest in Arborwear, LLC, a Delaware limited liability company ("Arborwear") upon the terms and conditions contained herein; and

WHEREAS, the Purchaser and the Company understand that the operating agreement of Arborwear requires the consent of the manager of Arborwear (the "Manager") for any transfer of any membership interests, and that the Manager has consented to such transfer as contemplated herein.

### Statement of Agreement

In consideration of the mutual agreements set forth in this Agreement, the parties hereby agree as follows:

1. **Purchase of Units.** Subject to the terms and conditions of this Agreement, Company hereby sells and Purchaser hereby purchases 2.025% of the membership interest ("Units") in Arborwear. The purchase price for the Units will be Forty Five Thousand Dollars ($45,000) ("Purchase Price"), which shall be paid simultaneously with the transfer of the Units. The sale of the Units is subject to approval by the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court"), and the Purchase Price shall be payable in full fourteen days after the entry of the order approving the sale by the Bankruptcy Court (the "Sale Order").

2. **Representation and Warranties of Company.** Company hereby makes the following representations and warranties to Purchaser:

(a) The Company is authorized to sell the Units and transfer the units to Purchaser, subject to the approval of the Bankruptcy Court.

(b) Upon the entry of the Sale Order and the transfer of the Units to Purchaser, Purchaser will acquire good and marketable title to the membership units free and clear of any claims, liens, security agreements, restrictions, equities or encumbrances of any nature whatsoever. Company has not entered into any agreement with any person, organization, corporation or other entity (except for this Agreement) to sell, assign, transfer or in any way encumber the Units.

(c) Company (i) is duly organized, validly existing and in full force and effect under the laws of the state of Delaware, and (ii) is authorized to execute this Agreement and consummate the transaction contemplated herein and fulfill all of its obligations hereunder and such instruments, obligations and actions are valid and legally binding upon Company, enforceable in accordance with their respective terms. The execution and delivery of this Agreement and the performance of the obligations of Company hereunder will not (i) result in the violation of any law or any provision of Company's organizational documents, (ii) conflict with any order of any court or governmental

instrumentality binding upon Company, or (iii) conflict or be inconsistent with, or result in any default under, any contract, agreement or commitment to which Company is bound.

3. **Representations and Warranties of Purchaser.** Purchaser acknowledges, represent and warrant to the Company as follows.

(a) Purchaser acknowledges that all documents, records and books pertaining to this investment have been made available for inspection by them, and their attorney, accountant, or other advisors. Purchaser and/or their advisor(s) have had a reasonable opportunity to ask questions of and receive answers from the Company, Arborwear, or a person or persons acting on their behalf, concerning the merits and risks of an investment in the Units. All such questions have been answered to the full satisfaction of Purchaser.

(b) Purchaser (i) has adequate means of providing for his current needs and possible personal contingencies, (ii) have no need for liquidity in this investment, (iii) is able to bear the substantial economic risks of an investment in the Units for an indefinite period, (iv) at the present time, can afford a complete loss of such investment, and (v) does not have an overall commitment to investments which are not readily marketable that are disproportionate to Purchaser's net worth, and the Purchaser's investment in the Units will not cause such overall commitment to become excessive.

(c) Purchaser understands that, in reliance upon Purchaser's representations and warranties, the Units have not been registered under the Securities Act in reliance upon Sections 4(2), 4(6) and/or 3(b) and Regulation D promulgated thereunder. Purchaser was not offered or sold the Units, directly or indirectly, by means of any form of general solicitation or general advertising, including, but not limited to, the following: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio, or (ii) any seminar or meeting whose attendees had been invited by any general solicitation or general advertising.

(d) The Units are being purchased solely for each of Purchaser's own account for investment purposes only and not for the account of any other person and not for distribution, assignment or resale to others, and no other person will have a direct or indirect beneficial interest in such Units.

(e) Purchaser realizes that they may not be able to sell or dispose of the Units, as there will be no public market.

4. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by both parties.

5. **Governing Law.** This Agreement shall be enforced, governed and construed in all respects in accordance with the laws of the State of Ohio.

6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will constitute an original Agreement.

7. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. This Agreement is not intended and must not be construed

to create any rights in any parties other than Company and Purchaser, and no person may assert any rights as a third party beneficiary.

**IN WITNESS WHEREOF**, the undersigned have signed this Agreement as of the date set forth above.

**COMPANY:**

Data Cooling Technologies LLC

By: _____

Printed Name: Richard Szekelyi

Title: CRO

**PURCHASER:**

A. Malachi Mixon, III

_____

Printed Name: A. Malachi Mixon, III

Title: _____

# MEMBERSHIP INTEREST PURCHASE AGREEMENT

This **MEMBERSHIP INTEREST PURCHASE AGREEMENT** ("Agreement") is entered into as of the 19th day of December, 2017 by and between **Data Cooling Technologies LLC**, a Delaware limited liability company (the "Company"), and **William M. Weber**, an individual (the "Purchaser").

## Background

WHEREAS, the Purchaser desires to purchase and the Company desires to sell its 4.05% membership interest in Arborwear, LLC, a Delaware limited liability company ("Arborwear") upon the terms and conditions contained herein; and

WHEREAS, the Purchaser and the Company understand that the operating agreement of Arborwear requires the consent of the manager of Arborwear (the "Manager") for any transfer of any membership interests, and that the Manager has consented to such transfer as contemplated herein.

## Statement of Agreement

In consideration of the mutual agreements set forth in this Agreement, the parties hereby agree as follows:

1. **Purchase of Units.** Subject to the terms and conditions of this Agreement, Company hereby sells and Purchaser hereby purchases 2.025% of the membership interest ("Units") in Arborwear. The purchase price for the Units will be Forty Five Thousand Dollars ($45,000) ("Purchase Price"), which shall be paid simultaneously with the transfer of the Units. The sale of the Units is subject to approval by the United States Bankruptcy Court for the Northern District of Ohio (the "Bankruptcy Court"), and the Purchase Price shall be payable in full fourteen days after the entry of the order approving the sale by the Bankruptcy Court (the "Sale Order").

2. **Representation and Warranties of Company.** Company hereby makes the following representations and warranties to Purchaser:

(a) The Company is authorized to sell the Units and transfer the units to Purchaser, subject to the approval of the Bankruptcy Court.

(b) Upon the entry of the Sale Order and the transfer of the Units to Purchaser, Purchaser will acquire good and marketable title to the membership units free and clear of any claims, liens, security agreements, restrictions, equities or encumbrances of any nature whatsoever. Company has not entered into any agreement with any person, organization, corporation or other entity (except for this Agreement) to sell, assign, transfer or in any way encumber the Units.

(c) Company (i) is duly organized, validly existing and in full force and effect under the laws of the state of Delaware, and (ii) is authorized to execute this Agreement and consummate the transaction contemplated herein and fulfill all of its obligations hereunder and such instruments, obligations and actions are valid and legally binding upon Company, enforceable in accordance with their respective terms. The execution and delivery of this Agreement and the performance of the obligations of Company hereunder will not (i) result in the violation of any law or any provision of Company's organizational documents, (ii) conflict with any order of any court or governmental

instrumentality binding upon Company, or (iii) conflict or be inconsistent with, or result in any default under, any contract, agreement or commitment to which Company is bound.

3. **Representations and Warranties of Purchaser**. Purchaser acknowledges, represent and warrant to the Company as follows.

(a) Purchaser acknowledges that all documents, records and books pertaining to this investment have been made available for inspection by them, and their attorney, accountant, or other advisors. Purchaser and/or their advisor(s) have had a reasonable opportunity to ask questions of and receive answers from the Company, Arborwear, or a person or persons acting on their behalf, concerning the merits and risks of an investment in the Units. All such questions have been answered to the full satisfaction of Purchaser.

(b) Purchaser (i) has adequate means of providing for his current needs and possible personal contingencies, (ii) have no need for liquidity in this investment, (iii) is able to bear the substantial economic risks of an investment in the Units for an indefinite period, (iv) at the present time, can afford a complete loss of such investment, and (v) does not have an overall commitment to investments which are not readily marketable that are disproportionate to Purchaser's net worth, and the Purchaser's investment in the Units will not cause such overall commitment to become excessive.

(c) Purchaser understands that, in reliance upon Purchaser's representations and warranties, the Units have not been registered under the Securities Act in reliance upon Sections 4(2), 4(6) and/or 3(b) and Regulation D promulgated thereunder. Purchaser was not offered or sold the Units, directly or indirectly, by means of any form of general solicitation or general advertising, including, but not limited to, the following: (i) any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio, or (ii) any seminar or meeting whose attendees had been invited by any general solicitation or general advertising.

(d) The Units are being purchased solely for each of Purchaser's own account for investment purposes only and not for the account of any other person and not for distribution, assignment or resale to others, and no other person will have a direct or indirect beneficial interest in such Units.

(e) Purchaser realizes that they may not be able to sell or dispose of the Units, as there will be no public market.

4. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and may be amended only by a writing executed by both parties.

5. **Governing Law.** This Agreement shall be enforced, governed and construed in all respects in accordance with the laws of the State of Ohio.

6. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will constitute an original Agreement.

7. **Binding Effect.** This Agreement is binding upon and inures to the benefit of the parties and their respective successors and assigns. This Agreement is not intended and must not be construed

to create any rights in any parties other than Company and Purchaser, and no person may assert any rights as a third party beneficiary.

**IN WITNESS WHEREOF**, the undersigned have signed this Agreement as of the date set forth above.

**COMPANY:**

Data Cooling Technologies LLC

By: _____

Printed Name: Richard Szekelyi

Title: CRO

**PURCHASER:**

William M. Weber

_____

Printed Name: William M. Weber

Title: _____

# EXHIBIT B

**UNITED STATES BANKRUPTCY COURT**
**NORTHERN DISTRICT OF OHIO**
**EASTERN DIVISION**

| | | |
|---|---|---|
| In re: | ) | |
| | ) | Chapter 11 |
| DATA COOLING TECHNOLOGIES LLC, *et al.*,[1] | ) | |
| | ) | Case Nos. 17-52170 and 17-52177 |
| | ) | (Jointly Administered) |
| Debtors. | ) | |
| | ) | Judge Koschik |
| | ) | |

**ORDER (A) AUTHORIZING DATA COOLING TECHNOLOGIES LLC TO SELL ITS MEMBERSHIP INTEREST IN ARBORWEAR LLC FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS; AND (B) GRANTING RELATED RELIEF**

Upon consideration of the Motion of the Data Cooling Technologies LLC for an Order (a) Authorizing Data Cooling Technologies LLC to Sell its Membership Interest in Arborwear LLC Free and Clear of All Liens, Claims, Encumbrances and Interests, Docket No. __ (the

[1] The Debtors and the last four digits of each of the Debtors' tax identification numbers following in parentheses are: Data Cooling Technologies LLC (3425); and Data Cooling Technologies Canada LLC (3172).

"Motion"),[2] filed by Data Cooling Technologies LLC ("DCT"), one of the above-captioned debtors and debtors in possession, and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that this proceeding is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been given; and the Court having conducted a hearing, or provided an opportunity for a hearing, to consider the relief requested in the Motion; and it appearing that the relief requested under the Motion is in the best interests of DCT's estate and creditors; and objections, if any, having been withdrawn, resolved, or overruled by the Court; and after due deliberation and it appearing that sufficient cause exists for granting the requested relief:

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED in its entirety.

2. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Motion.

3. DCT, Mr. Weber, and Mr. Mixon are authorized to enter into the respective Agreements to sell the Membership Interest.

4. The Agreement is approved in all respects.

5. DCT is authorized to sell the Membership Interest to Mr. Weber and Mr. Mixon pursuant to the terms of the Agreement free and clear of all Interests.

[2] Capitalized but undefined terms shall have the meanings set forth in the Motion.

6. The Agreements were negotiated in good faith within the meaning of section 363(m) of the Bankruptcy Code, and at arm's length without collusion or fraud. Mr. Mixon and Mr. Weber are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

7. The 14-day stay imposed by Bankruptcy Rules 6004(h) is hereby waived with respect to the sale of the Membership Interest in accordance with this Order, and DCT may finalize such sale without reference to such stay.

8. DCT is authorized to execute and deliver such other instruments or documents, and take such other action as may be necessary or appropriate, to implement and effectuate the relief granted by this Order.

9. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

# # #

Prepared by:

/s/ Sean D. Malloy
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