

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
West Palm Beach Division  
www.flsb.uscourts.gov

In re:

ECOSPHERE TECHNOLOGIES, INC.,

Case No. 18-25900-MAM  
Chapter 11

\_\_\_\_\_  
Debtor. /

In re:

Jointly Administered

SEA OF GREEN SYSTEMS INC.,

Case No. 18-25901-MAM  
Chapter 11

\_\_\_\_\_  
Debtor. /

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) AUTHORIZING AND SCHEDULING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES, SUBJECT TO HIGHER AND BETTER OFFERS; (B) APPROVING THE BIDDING PROCEDURES; (C) APPROVING THE FORM OF THE ASSET PURCHASE AGREEMENT; (D) SCHEDULING AN AUCTION TO ACCEPT HIGHER AND BETTER BIDS; AND (E) SCHEDULING HEARING TO APPROVE SALE ARISING OUT OF AUCTION**

Ecosphere Technologies, Inc. ("Ecosphere") and Sea of Green Systems, Inc. ("Sea of Green"), the Debtors and Debtors-in-Possession (the "Debtors" or "Sellers"), by and through undersigned counsel, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, Rules 2002(a)(2), (c), (i) and (k), 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure and Local Rules 2002-1(C)(2) and 6004-1, move this Court for the entry of an order (a) approving the sale of substantially all of the Debtors' assets free and clear of all liens and encumbrances, subject to higher and better offers; (b) approving the bidding procedures; (c) approving the form of the proposed asset purchase agreement; (d) scheduling an auction to accept higher and better bids; and (e) scheduling a hearing to approve sale arising out of auction (the "Motion"), and in support thereof state as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334.

2. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A) and (N).
3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a).
4. The statutory predicates for the relief sought herein are sections 363 and 105 of Title 11 of the U.S. Code (the “Bankruptcy Code”).

### **SUMMARY**

5. The Debtors respectfully request approval of the sale process through which the Debtors may (i) expose their assets to competitive bids, (ii) establish bidding procedures, and (iii) set various deadlines to accomplish a sale of substantially all of the Debtors’ assets.

6. As set forth in this Motion, the Debtors seek the following proposed deadlines in order to effectuate the proposed sale (the “Sale”):

- (a) Deadline to Submit Qualifying Bid Packet: **5:00 p.m. on April 1, 2019**
- (b) Deadline to Tender Deposit of \$500,000.00: **5:00 p.m. on April 1, 2019**
- (c) Deadline to Approve Qualified Bidders: **April 4, 2019**
- (d) Proposed Date for Auction and Hearing to Approve Sale: **April 15, 2019**
- (e) Proposed Closing of Sale: **On or before April 19, 2019**

### **FACTS**

7. Debtor, Ecosphere Technologies, Inc. is a Delaware corporation formed on August 9, 2006, based in Stuart, Florida, and is a technology licensing and manufacturing company that develops environmental solutions for global markets. Dennis McGuire Sr. is the Chief Executive Officer of Ecosphere.

8. Debtor Sea of Green Systems, Inc. is a Florida corporation formed on November 10, 2014, based in Stuart, Florida, and is a turn-key seller of growing systems that enable growers

to control and automate the factors that produce high quality, consistent crops. Corey McGuire is the Chief Executive Officer and Dennis McGuire Sr. is a Director of Sea of Green.

9. The Debtors intend to sell substantially all of their assets utilized in their business operations (the “Assets”)<sup>1</sup> pursuant to an asset purchase agreement (the “APA”) substantially in the form of the APA attached hereto as **Exhibit A**.

10. A summary of the terms of the APA are:

- (a) **Transfer of Purchased Assets – Section 2.1**. Upon the terms and subject to the conditions and provisions contained herein and in the Sale Procedures Order or the Sale Approval Order, at the Closing, Sellers shall sell, convey, transfer, assign and deliver to Buyer or cause to be sold, conveyed, transferred, assigned and delivered to Buyer, and Buyer, or its designated Affiliate, shall acquire and accept from Sellers, the Purchased Assets.
- (b) **Excluded Assets– Section 2.2**. Notwithstanding any other terms, provisions and conditions of the APA, Buyer shall not acquire any of the Excluded Assets. In the event that a question arises with regard to any item of property, tangible or intangible, and whether such item is intended to be included as a Purchased Asset being transferred to Buyer pursuant to the APA, if any such item is not specifically listed as an item of property included within the Purchased Assets, it shall be presumed that such item is an Excluded Asset, and is not intended to be transferred under the APA.
- (c) **Purchase Price – Section 2.3**. Upon the terms and subject to the conditions set forth herein, and provided Buyer is the Successful Bidder for the Purchased Assets at the Auction and completes the sale through Closing, Buyer shall pay to Sellers for the sale, transfer, assignment, conveyance and delivery of the

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<sup>1</sup> In this Motion, “Assets” shall mean the list of assets in Schedule 1.1 to the attached APA but shall not include the Excluded Assets listed on Schedule 1.2. For the sake of clarity, “Assets” in this Motion has the same meaning as “Purchased Assets” in the attached APA.

Purchased Assets, by delivery of cash payable by wire transfer of immediately available funds, less any Deposit, such successful bid for the Purchased Assets at Auction (the “Purchase Price”).

**RELIEF SOUGHT**

11. The Debtors propose a sale of the Assets, subject to higher and better offers, and free of all liens, claims and encumbrances pursuant to § 363(f) of the Bankruptcy Code (the “Sale”) with any liens, claims, or encumbrances attaching to the proceeds of the Sale.

12. This Court has statutory authority to authorize the sale of the Assets free and clear of liens pursuant to section 363(f) of the Bankruptcy Code. The trustee (i.e., the Debtors) may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if--

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 365(f)(5); *In re Bryan*, 2013 WL4716194, \*1 (Bankr. M.D.Ala. 2013) (“Pursuant to 11 U.S.C. § 363(f) the trustee may sell property of the estate ‘free and clear of any interest in such property of an entity other than the estate,’ *provided any one of the five disjunctive conditions are satisfied...*”) (emphasis added). In the instant case, the major lienholder, Brisben Water Solutions, LLC, has consented to the proposed sale, and therefore the 2<sup>nd</sup> prong of the above-numerated factors is satisfied.

13. Section 363(b)(1) of the Bankruptcy Code authorizes a trustee to “use, sell, or lease, other than in the ordinary course of business, property of the estate” after notice and a hearing. 11 U.S.C. §§ 363(b)(1), 704(a)(1). The standard applicable to a motion under Section 363(b)(1) of the Bankruptcy Code is whether the proposed sale serves a sound business purpose. *In re BDK Health Management*, 1998 WL 34188241, \*5 (Bankr. M.D.Fla. 1998). Courts have held that this standard is satisfied where: (1) any improper or bad faith motive, (2) price is fair and the negotiations or bidding occurred at arm's length, (3) adequate procedure, including proper exposure to the market and accurate and reasonable notice to all parties in interest. *In re Gulf States Steel Inc. of Alabama*, 285 B.R. 497, 514 (Bankr. N.D.Ala. 2002). In this instance, each of the factors are met.

14. Subject to the terms and conditions of the APA, the Debtors, in the sound exercise of their business judgment, have concluded that consummation of the Sale will best maximize the value of the Debtors’ estates for the benefit of the Debtors’ creditors.

15. In order to ensure the highest possible recovery for the Debtors’ estate, the Debtors propose a competitive Auction of the Assets, as contemplated in the Bidding Procedures set forth herein. Accordingly, the Debtors respectfully assert that ample business justification exists for the Sale.

16. The Debtors request that this Court conduct a finding, at the Sale Hearing, that the Purchaser is a good-faith purchaser entitled to the protections of Section 363(m) of the Bankruptcy Code. The Debtors further request that, after the Sale Hearing, this Court enter the Sale Approval Order authorizing and approving the APA executed by the Successful Bidder or the Backup

Bidder, as applicable, and authorize the Debtors' execution of, entry into, and consummation of the Successful Bidder's or Backup Bidder's, as applicable, APA.

17. The Debtors further request that the Court enter a finding that the Successful Bidder, as defined herein, constitutes a good faith purchaser of the Assets pursuant to 11 U.S.C. § 363(m) such that the reversal or modification on appeal of the sale of the Assets to the Successful Bidder shall not affect the validity of the Sale to the Successful Bidder whether or not the Successful Bidder knew of the pendency of the appeal.

#### **AUCTION PROCESS AND BIDDING PROCEDURES**

18. The Debtors believe that the process set forth below will insure that the estate realizes the highest and best possible value for the Assets.

19. Accordingly, the Debtors propose to sell the Assets at an auction (the "Auction") that will take place at the **Bankruptcy Court for the Southern District of Florida, 1515 N. Flagler Drive, 8<sup>th</sup> Floor, Courtroom A, West Palm Beach, FL, 33401 on April 15, 2019** or as otherwise determined by the Court.

20. The Debtors seek an order that the contemplated sale to the Successful Bidder (or Backup Bidder, as the case may be) be free and clear of all liens, claims and encumbrances. The Debtors propose that any liens transfer and attach to the net sale proceeds with the same validity, priority, force and effect that such liens had on the Assets immediately prior to the closing. The following liens exist as to the Assets:

- a. Brisben Water Solutions, LLC ("Brisben") has a perfected lien on the Purchased Assets listed on Schedule 1.1 to the APA.

**DEBTORS' SETTLEMENT WITH BRISBEN<sup>2</sup>**

21. By agreement of the Debtors and Brisben, Brisben will be able to credit bid in the amount of **\$6,903,055.90**, which is the approximate amount of its claim.<sup>3</sup>

22. Brisben's security interests in the Assets shall attach to the proceeds of the Sale, if any, and such proceeds shall be transferred to Brisben at the closing of the Sale (the "Closing").

23. If Brisben successfully credit bids for the Assets, it shall pay thirty-seven thousand, five hundred dollars and zero cents (\$37,500.00) to the Debtors' bankruptcy estates at the Closing; and if Brisben does not successfully credit bid for the Assets it shall pay, by way of a carve-out from Brisben's secured claim, one hundred and thirty-seven thousand, five hundred dollars and zero cents (\$137,500.00) to the Debtors' bankruptcy estates at the Closing.

**PROPOSED BIDDING PROCEDURES**

24. The proposed sale of the Assets is subject to higher and better offers up until the time of the hearing on this Motion. Should the Debtors receive any such higher and better offers by Qualified Bidders (as defined below), the Debtors will request the Court to conduct an auction at the time of the hearing on this Motion, subject to the following bidding procedures (collectively, "**Bidding Procedures**"):

(i) **Qualified Bid**: A qualified bid shall be a bid submitted by no later than **5:00 p.m. (Prevailing Eastern Time), April 1, 2019 ("Bid Deadline")** to: Aaron A. Wernick, Esq., Furr Cohen, P.A., Counsel for the Debtors, 2255 Glades Road, Suite

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<sup>2</sup> The settlement terms contained herein are a summary of the agreed-upon terms which are memorialized in a settlement agreement ("Agreement"), for which a Motion to Compromise Controversy will be filed. In the event of a conflict between the terms in this Motion and the terms of the Agreement, the Agreement shall prevail.

<sup>3</sup> Brisben has preserved its right to assert the full amount of the indebtedness owed which is over and above the \$6,903,055.90 it is entitled to credit bid. The Debtors anticipate that if there is an amount which exceeds the credit bid amount, that amount will equal no more than \$70,000.00.

301E, Boca Raton, Florida 33431, Telephone (561) 395-0500, awernick@furrcohen.com, accompanied by a deposit in the amount of \$500,000.00 in cleared funds and an executed asset purchase agreement in substantially the same form as the APA, together with a redlined copy of such definitive purchase documents marked against the APA (the “**Qualified Bid**”) (Any party submitting a Qualified Bid and meeting the other requirements set forth herein shall be a “**Qualified Bidder**”). Brisben is deemed a Qualified Bidder. No Qualified Bid shall be contingent upon financing or due diligence necessary to its consummation and each Qualified Bid must be payable in Cash. The bidder’s Qualified Bid must include the bidder’s address, telephone and email address where the bidder may be contacted.

(ii) **Deposit:** The deposit (“**Deposit**”) shall be in cash, cashier’s check, and/or wire transfer (“**Cash**”) in the amount of no less than Five Hundred Thousand Dollars (\$500,000.00), which must be received by Aaron A. Wernick, Esq., Furr Cohen, 2255 Glades Rd., Suite 301E, Boca Raton, FL 33431 by the Bid Deadline. Deposits will be held in escrow and will be returned to such bidder if such bidder is not either the Successful Bidder or Backup Bidder (as such terms are defined herein) within five (5) business days following the entry of the Sale Order (as defined herein). Any Qualified Bidder shall also provide to Debtors full disclosure of each entity that will be participating in such bid in order to satisfy the requirements enumerated in sections 363(m), 363(n), 365(b), and 365(f)(2) of the Bankruptcy Code.

(iii) **As is, Where is:** The Assets shall be sold on an “as is” and “where is” basis.

(iv) **Bidding Increments:** The Auction shall be conducted by the Court and shall be a forum in which the Qualified Bidders may make competing bids to purchase the Assets in minimum bid increments. The bidding at the Auction shall start in the amount of the highest and best Qualified Bid as disclosed by the Debtors to all Qualified Bidders prior to commencement of the Auction. Qualified Bidders shall



be permitted to submit and raise their bids until all Qualified Bidders cease bidding and raising their bids. Each competing bid must be in increments of at least \$100,000.00 greater than the immediately preceding competing bid and each competing bid must be payable in Cash. The Debtors shall recommend to the Court which Bids should be approved.

(v) **Modifications**: All bids subsequent to the Initial Overbid Amount, whether oral or written, shall be deemed to constitute valid modifications or amendments to the signed contract previously provided by such bidder.

(vi) **Successful Bidder**: At the conclusion of all bidding, the Court shall select the party who has submitted the highest or otherwise best offer to purchase the Assets (or any portion thereof) ("**Successful Bidder**") and the party who has submitted the second highest or otherwise best offer to purchase the Assets ("**Backup Bidder**").

(vii) **Bid Expiration Date**: All bids shall remain open and irrevocable until five (5) business days following the entry of the Sale Order.

(viii) **Bankruptcy Court Approval**: **ANY SALE SHALL BE SUBJECT TO APPROVAL OF THE BANKRUPTCY COURT.** Upon conclusion of the Auction, the Debtors shall submit a proposed order to the Court, authorizing and approving the transactions contemplated by the Successful Bidder Asset Purchase Agreement.

(ix) **Default**: In the event the Successful Bidder fails to close the Sale through no fault of the Debtors, it will forfeit its Deposit and the Assets shall be sold to the Backup Bidder that submitted the next highest and best bid, without any representations or warranties.

(x) **Free and Clear**: The sale shall be free and clear of all liens and encumbrances and any valid liens shall attach to the net sale proceeds, pursuant to Section 363(f).

(xi) **Closing**: Except as otherwise agreed to by the Sellers and Buyer, the closing of the sale of the Assets (“**Closing**”) shall take place at the law offices of Furr Cohen, 2255 Glades Rd., Suite 301E, Boca Raton, FL 33431, within five (5) business days of the entry of the Sale Order (as defined in the APA).

25. The Debtors submit that the Bidding Procedures described above are fair, reasonable and calculated to maximize the value of the Assets and create a competitive sale environment.

26. The Debtors shall notify all Qualified Bidders, no later than 5:00 p.m. (Prevailing Eastern Time) 3 days before the Auction that they may participate in the Auction.

27. Except as otherwise stated herein, each Deposit shall be maintained in the Furr Cohen, P.A. non-interest-bearing trust account and subject to the jurisdiction of this Court. Within five (5) business days from the entry of an order approving the Sale, the Debtor shall return, by check, all Deposits to all Qualified Bidders, except the Successful Bidder and the Backup Bidder. In the event that the Successful Bidder closes the Sale, the Debtors shall return, by check, the Backup Bidder’s Deposit within five (5) business days from the closing. In the event the Successful Bidder does not close, its deposit shall become property of the estate, and the Debtors shall close with the Backup Bidder, if any. In the event the Successful Bidder does not close and the Backup Bidder does not close, the Backup Bidder’s deposit shall become property of the estate.

28. All Qualified Bidders, the Successful Bidder, and the Back Up Bidder shall be deemed to have consented to the core jurisdiction of this Court and to have waived any right to a jury trial in connection with any disputes relating to the Auction and/or the Sale. All purchase

agreements shall be governed by and construed in accordance with the laws of the State of Florida. All Qualified Bidders, the Successful Bidder, and the Back Up Bidder shall be bound by their bids until the conclusion of the Auction.

HEARING TO APPROVE SALE

29. The Debtors request that the Court conduct a hearing to approve the Sale arising out of the Auction, immediately after completion of the Auction, on **April 15, 2019**. Once approved, the closing is planned to occur on or before **April 19, 2019**.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order (a) approving the sale of the Debtors' Assets (as defined herein) free and clear of all liens, claims, and encumbrances, subject to higher and better offers; (b) approving the bidding procedures; (c) approving the form of the proposed asset purchase agreement; (d) scheduling an auction to accept higher and better bids; (e) scheduling a hearing to approve sale arising out of auction; and (f) for such other and further relief as the Court deems just and proper.

PROOF OF SERVICE

I hereby certify that a true and correct copy of the foregoing were served on the Court CM/ECF notifications and the attached matrix this \_\_\_\_ day of \_\_\_\_\_, 2019.

RESPECTFULLY SUBMITTED,

Furr Cohen, P.A.  
*Attorneys for the Debtors*  
2255 Glades Road, Suite 301E  
Boca Raton, FL 33431  
Tel:(561)395-0500; Fax:(561)338-7532

By: /s/ Aaron A. Wernick  
Aaron A. Wernick  
Florida Bar No: 14059  
e-mail:awernick@furrcohen.com

Exhibit A  
Contract for Purchase and Sale

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**ASSET PURCHASE AGREEMENT**

by and between

**ECOSPHERE TECHNOLOGIES, INC.**

**SEA OF GREEN SYSTEMS INC.**

as “Sellers”

and

\_\_\_\_\_

as “Buyer”

Dated as of \_\_\_\_\_, 2019

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## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this “Agreement”), dated as of this \_\_\_\_\_ day of \_\_\_\_\_, 2019, is by and between \_\_\_\_\_ a \_\_\_\_\_, and/or their permitted assigns hereunder, (collectively, the “Buyer”), and **ECOSPHERE TECHNOLOGIES, INC.**, a Delaware corporation (“Ecosphere”), **SEA OF GREEN SYSTEMS INC.**, a Florida corporation (“Sea of Green”) (individually, “Ecosphere,” and “Sea of Green”, a “Seller,” and collectively, the “Sellers”).

### W I T N E S S E T H:

**WHEREAS**, Sellers have filed voluntary petitions for relief commencing Case No. 18-25900-MAM, jointly administered with Case No. 18-25901-MAM (collectively, the “Bankruptcy Case”), under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Florida (the “Court”);

**WHEREAS**, Sellers desire to sell, transfer, convey and assign to Buyer, and Buyer desires to purchase and acquire from Sellers the Purchased Assets (as defined herein), free and clear of all liens, claims and encumbrances, all as more specifically set forth herein; and

**WHEREAS**, the parties hereto contemplate that such Purchased Assets will be sold, transferred, conveyed and assigned to Buyer and/or its designee pursuant to Sections 363 and 365 of the Bankruptcy Code and in accordance with an order to be entered by the Court and this Agreement.

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

### ARTICLE 1 DEFINITIONS

**1.1 Defined Terms.** As used herein, the terms below shall have the following meanings:

“Affiliate” shall mean with respect to any Person, any other Person which directly or indirectly Controls, or is under common Control with, or is Controlled by, such Person and, if such Person is an individual, any member of the immediate family (including parents, parents-in-law, spouse and children) of such individual and any trust or estate for which such individual or one or more members of such immediate family serves as a trustee or in a similar capacity or in which such individual or one or more members of such immediate family has a substantial beneficial interest, and any Person who is Controlled by such member or trust.

“Agreement” has the meaning set forth above in the preamble to this Agreement.

“Assumed Liabilities” shall mean those Liabilities related to or arising from the Purchased Assets to the extent such obligations or liabilities (i) becoming due and payable or are otherwise subject to performance after the Closing Date or (ii) relating to time periods after the Closing Date, but not including any Excluded Liabilities or any other Liabilities of Seller.

“Auction” shall mean the auction conducted by the Court, per the Sale Procedures Order, of the Purchased Assets.

“Backup Bidder” shall mean the party designated by the Court that has submitted the second highest or otherwise best offer at the Auction.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Business Day” shall mean any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the State of Florida or is a day on which banking institutions located in such state are authorized or required by law or other governmental action to close.

“Buyer” has the meaning set forth in the preamble to this Agreement.

“Closing” shall have the meaning set forth in Section 3.1.

“Closing Date” shall have the meaning set forth in Section 3.1.

“Contracts” shall mean all oral or written contracts, agreements, licenses, distribution arrangements, sales and purchase agreements applicable to the Purchased Assets and/or the business operations of the Sellers.

“Control” and “Controlled” shall mean the possession directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise), provided that, in any event, any Person which owns, directly or indirectly, fifty-one percent (51%) or more of the securities having ordinary voting power or the election of directors of other governing body of a corporation or fifty-one percent (51%) or more of the partnership, membership or other ownership interest of any other Person (other than a limited partner of such Person) will be deemed to control such corporation or person.

“Court” has the meaning set forth in the Recitals.

“Excluded Assets” shall mean the assets of the Sellers not included in the Purchased Assets, as set forth on Schedule 1.2.

“Final Order” shall mean an Order of the Court that has not been reversed, stayed, modified or amended and as to which the time to appeal or petition for certiorari has expired and as to which no appeal or petition for certiorari is pending.

“Liability” shall mean any liens, claims, encumbrances, and other liabilities (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including any liability for Taxes.

“Person” shall mean any individual, corporation, partnership, limited liability company, trust, association, joint venture or other entity or any kind whatsoever.

“Personnel” shall mean all directors, officers and employees.

“Patent” shall mean each and every patent, patent application, patent disclosure, provisional application, and any utility patent resulting therefrom, certificate of invention, or application for certificate of invention, together with each and every extension, revision, registration, confirmation, reissue, division, continuation or continuation-in-part, re-examination, or renewal thereof, and any corresponding foreign filing claiming priority from any of the foregoing, each and every patent issuing or reissuing from any of the foregoing, and the inventions described and claimed in any of the foregoing.

“Purchase Price” has the meaning set forth in the Section 2.2.

“Purchased Assets” shall mean the assets of the Sellers set forth on Schedule 1.1 but shall in no event include any Excluded Assets.

“Representative” shall mean any attorney, accountant, agent, consultant or other representative.

“Sale Approval Order” has the meaning set forth in Section 4.2.

“Sale Approval Hearing” has the meaning set forth in Section 4.2.

“Sale Motion” has the meaning set forth in Section 4.1.

“Sale Procedures Order” shall mean the order of the Court granting the Sale Motion.

“Sellers” has the meaning set forth in the preamble to this Agreement.

“Software” shall mean any and all computer software owned or licensed by the Sellers.

“Successful Bidder” has the meaning set forth in Section 2.5.

“Tax(es)” shall mean any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

“Trademarks” shall mean trademarks, service marks, trade dress and logos, including registrations and renewals in connection therewith, and each and every word, slogan, design, picture or any other symbol used to identify any good and/or service including each and every registered and unregistered trademark and service mark anywhere in the world and each corresponding application and “intent to use” application related thereto, together with the goodwill and the business appurtenant thereto.

“Trade Secrets” shall mean all know-how, trade secret, confidential business information, including ideas, research and development, know how, formulas (secret or otherwise), compositions of matter, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, discoveries, test procedures and specifications, shop rights, the source code of all Software, technical information, process technology, plans, drawings, and blue prints that derive value (economic, strategic or otherwise) from not being generally known to and/or readily ascertainable by other Persons, and other similar intangible property.

“URL” shall mean an electronic address for an information source on the Internet, such as an ftp site, gopher server, or web page and known as a Universal (or Uniform) Resource Locator.

1.2 **Construction.** The headings and captions of the various Articles and Sections of this Agreement have been inserted solely for purposes of convenience, are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. Unless stated to the contrary, all references to Articles, Sections paragraphs or clauses herein shall be to the specified Article, Section, paragraph or clause of this Agreement, and all references to Exhibits and Schedules shall be to the specified Exhibits and Schedules attached hereto. All Exhibits and Schedules attached are made a part hereof. All terms defined herein shall have the same meaning in the Exhibits and Schedules, except as otherwise provided therein. All references in this Agreement to “this Agreement” shall be deemed to include the Exhibits and Schedules attached hereto. The terms “hereby”, “hereto”, “hereunder” and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. Whenever in this Agreement provision is made for the payment of attorneys’ fees, such provision shall be deemed to mean reasonable attorneys’ fees and paralegals’ fees. The term “including” when used herein shall mean “including, without limitation.” Wherever in this Agreement the singular number is used, the same shall



include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require.

## ARTICLE 2 PURCHASE AND SALE AGREEMENT

**2.1 Purchase and Sale of Assets.** Upon the terms and subject to the conditions and provisions contained herein and in the Sale Procedures Order or the Sale Approval Order, at the Closing, Sellers shall sell, convey, transfer, assign and deliver to Buyer or cause to be sold, conveyed, transferred, assigned and delivered to Buyer the Purchased Assets, free and clear of all Encumbrances, except the Assumed Liabilities.

**2.2 Excluded Assets; Excluded Liabilities.** Notwithstanding any other terms, provisions and conditions of this Agreement, Buyer shall not (i) acquire any of the Excluded Assets or (ii) assume, or otherwise be responsible, liable for, or obligated with respect to, any Liabilities or obligations of Sellers. In the event that a question arises with regard to any item of property, tangible or intangible, and whether such item is intended to be included as a Purchased Asset being transferred to Buyer pursuant to this Agreement, if any such item is not specifically listed as an item of property included within the Purchased Assets, it shall be presumed that such item is an Excluded Asset, and is not intended to be transferred hereunder.

**2.3 Assumed Liabilities.** From and after the Closing Date, Buyer shall assume and undertake to pay, perform, and discharge when due or required to be performed, the Assumed Liabilities.

**2.4 Purchase Price.** Upon the terms and subject to the conditions set forth herein, Buyer shall pay to Sellers, for the sale, transfer, assignment, conveyance and delivery of the Purchased Assets, by delivery of cash payable by wire transfer of immediately available funds, less any Deposit, \_\_\_\_\_ U.S. Dollars (\$) \_\_\_\_\_) (the "Purchase Price") at Closing.

**2.5 Deposit.** In accordance with the Sales Procedure Order, Buyer shall deposit Five Hundred Thousand U.S. Dollars (\$500,000.00) in cleared funds, as a deposit (the "Deposit"), with Sellers' bankruptcy counsel, Furr Cohen, P.A. If Buyer is the successful bidder at the Auction (the "Successful Bidder") and completes the sale through Closing, such Deposit will be credited against the Purchase Price at Closing. In the event Buyer is not the Successful Bidder or is not the Backup Bidder, such Deposit will be returned to Buyer no later than five (5) Business Days following entry of the final Sale Approval Order. In the event Buyer is the Successful Bidder (or is the Backup Bidder and the Successful Bidder fails to close) and this Agreement is subsequently terminated for any reason other than as set forth in Section 11.1(a), or the Buyer otherwise fails to close through no fault of the Sellers, then Sellers may retain such Deposit; *provided, however*, that the retention

of such Deposit shall not be in limitation of any other claims or rights to damages the Sellers may have under or in connection with this Agreement.

### ARTICLE 3 CLOSING

**3.1 Closing.** Upon the terms and conditions set forth herein and in the Sale Procedures Order and the Sale Approval Order, the closing of the transactions contemplated herein (the “Closing”) shall be conducted on April 19, 2019, or as otherwise mutually agreed. The date on which the Closing occurs in accordance with the previous sentence is referred to as the “Closing Date.”

**3.2 Deliverables at Closing.** At the Closing, and in connection with effecting and consummating the Closing, including, without limitation, the sale and purchase of the Purchased Assets and the delivery of the Purchase Price, Sellers and Buyer shall, on the Closing Date, deliver the following:

(a) Sellers shall deliver to the Buyer the following (in the case of items (i) and (ii) below, copies thereof for Buyer’s review prior to the Closing Date):

(i) as applicable, assignments, bills of sale, or such other instruments of sale, transfer, conveyance and assignment as necessary; and

(ii) possession and control of the Purchased Assets.

(b) Buyer shall deliver to Sellers:

(i) the Purchase Price; and

(ii) the various certificates, instruments and documents referred to in Section 8.2.

(c) After the Closing Date, Sellers shall deliver to Buyer such other instruments as shall be reasonably requested by Buyer to vest in Buyer title in and to the Purchased Assets free and clear of any liens in accordance with the provisions hereof.

**3.3 Transaction Expenses.** Except as expressly provided herein, each party shall bear its own costs and expenses, including attorney, accountant and other consultant fees, in connection with the execution and negotiation of this Agreement and the consummation of the transactions contemplated hereby.

**3.4 Taxes.** All Taxes arising from the sale or transfer of the Purchased Assets hereunder shall be paid by Buyer.

**3.5 Other Closing Matters.** Each of the parties shall use their reasonable efforts to take such other actions required hereby to be performed by it prior to or on the Closing Date.

#### **ARTICLE 4 COURT APPROVAL**

**4.1 Auction Procedures.** This Agreement is made subject to (a) the Court granting the Sellers' motion for approval of the contemplated sale, auction procedures, and the form of this Agreement (the "Sale Motion"); (b) overbid at the Auction; and (c) Court approval at the Sale Approval Hearing.

**4.2 Sale Approval.** Sellers shall seek a Court order approving the sale of the Purchased Assets (as contemplated by this Agreement) (the "Sale Approval Order") at the hearing to approve sale (the "Sale Approval Hearing"), to be conducted immediately after the conclusion of the Auction, as outlined in the Sale Procedures Order.

**4.3 Disclosures.** Sellers shall make adequate disclosures to the Court and its creditors and equity security holders of any contemplated transactions relating to the sale of the Purchased Assets involving insiders of Sellers, regardless of whether such transactions are included in the sale of the Purchased Assets.

#### **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers represent and warrant to Buyer that the statements contained in this section are correct and complete as of the date of this Agreement and will be correct and complete as of the Closing Date (as though made then and as though the Closing Date were substituted for the date of this Agreement throughout this Article 5).

**5.1 Authorization of Transaction.** Subject to the approval of the Court, this Agreement has been duly executed and delivered by Sellers and is a valid and binding obligation of Sellers, enforceable against them in accordance with its terms. Each agreement or instrument which has been or shall be entered into or executed and delivered by any Seller in connection with the transactions contemplated hereby has been (or will be), subject to the approval of the Court, duly authorized, executed and delivered by such Seller, and is (or will be when authorized, executed and delivered) subject to the approval of the Court, a valid and binding obligation of such Seller, enforceable against it in accordance with its terms.

**5.2 AS IS SALE. EXCEPT AS SPECIFICALLY SET FORTH IN THIS ARTICLE 5, THE SELLERS ARE NOT AND WILL NOT BE MAKING ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AND SELLERS FURTHER STATE THAT THE PURCHASED ASSETS AND THE ASSUMED**

**LIABILITIES BEING TRANSFERRED TO BUYER ARE AND WILL BE CONVEYED HEREUNDER “AS IS, WHERE IS” ON THE CLOSING DATE, AND IN THEIR THEN EXISTING CONDITION WITHOUT ANY REPRESENTATION OR WARRANTY BY SELLERS.**

**5.3 Brokers’ Fees.** No Seller has any Liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Buyer could become liable or obligated.

**ARTICLE 6  
REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Sellers to enter into this Agreement, Buyer hereby makes the following representations and warranties as of the date hereof to Sellers:

**6.1 Organization of Buyer.** Each Buyer is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or incorporation.

**6.2 Authorization.** Buyer has all necessary corporate power and authority to enter into this Agreement and has taken all corporate action necessary, to execute and deliver this Agreement, to consummate the transactions contemplated hereby and to perform its obligations hereunder, and no other corporate proceedings on the part of Buyer are necessary to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Buyer and is a valid and binding obligation of Buyer, enforceable against it in accordance with its terms (except to the extent that enforcement may be affected by applicable bankruptcy, reorganization, insolvency and similar laws affecting creditors’ rights and remedies and by general principles of equity (regardless of whether enforcement is sought at law or in equity)). Each agreement or instrument which has been or shall be entered into or executed and delivered by Buyer in connection with the transactions contemplated hereby has been (or will be) duly authorized, executed and delivered by Buyer, and is (or will be when authorized, executed and delivered) a valid and binding obligation of Buyer, enforceable against it in accordance with its terms (except to the extent that enforcement may be affected by laws relating to bankruptcy, reorganization, insolvency and similar laws affecting creditors’ rights and remedies and by general principles of equity (regardless of whether enforcement is sought at law or in equity)).

**6.3 No Violation.** The execution and delivery of this Agreement and the other agreements specified herein and the consummation of the transactions contemplated hereby and thereby do not and will not (i) violate any provision of the Articles of Incorporation, Bylaws or any other applicable organizational documents of Buyer or (ii) conflict with or violate any statute or law, or any judgment, decree, order, regulation or rule of any court or governmental authority,

binding upon or applicable to Buyer or by which the property or assets of Buyer, including the Purchased Assets, are bound or affected.

**6.4 BUYER'S DUE DILIGENCE. BUYER ACKNOWLEDGES AND UNDERSTANDS THAT, IN ENTERING INTO THIS AGREEMENT, BUYER IS RELYING UPON BUYER'S OWN DUE DILIGENCE INVESTIGATION AND EXAMINATION OF THE PURCHASED ASSETS AND THE ASSUMED LIABILITIES. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN ARTICLE 5 OF THIS AGREEMENT, SELLERS ARE NOT MAKING ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR QUALITY, WITH RESPECT TO ANY OF THE ASSETS BEING TRANSFERRED, OR AS TO THE CONDITION OR WORKMANSHIP THEREOF OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.**

#### **ARTICLE 7 ADDITIONAL COVENANTS**

Except as otherwise set forth in this Article 7, Sellers and Buyer covenant and agree with each other that from the date hereof through the Closing:

**7.1 General.** Each of the parties shall, upon the terms and subject to the conditions contained herein, pursue diligently and in good faith and use all reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or advisable under applicable laws and regulations to put, consummate and make effective the transactions contemplated hereby.

**7.2 Confidentiality.**

(a) Each party hereto acknowledges that the other party has legitimate and continuing proprietary interests in the protection of its Confidential Information (as defined herein) and that the parties have invested substantial sums and will continue to invest substantial sums to develop, maintain and protect such Confidential Information. Prior to and after the Closing, each party hereto agrees not to disclose, furnish or make accessible to anyone or use for its own benefit (other than as contemplated hereby) any Trade Secrets or other confidential or proprietary information (the "Confidential Information") of another party hereto relating to the Sellers, including but not limited to any Confidential Information of their respective owners, guarantors, and employees, the Buyer and/or their respective businesses or the other parties, including information obtained by or revealed to such party during any investigations, negotiations or review relating to this Agreement and any other document contemplated hereby or thereby or any past or future actions taken in connection with, pursuant to, in accordance with, or under this Agreement, including any business plans, marketing plans, financial information, strategies, systems, programs, methods, and computer programs. Confidential Information shall include all analyses,

compilations, data, studies, notes, interpretations, memoranda or other documents evaluating the transactions contemplated by this Agreement (collectively, “Protected Materials”) that have been or will be prepared by the Sellers and its Representatives in connection with the transactions contemplated by this Agreement. Buyer and Sellers acknowledge that in the event that the Buyer purchases the Purchased Assets pursuant to this Agreement, Buyer shall be permitted to use the Confidential Information strictly and directly contained within the Purchased Assets acquired by Buyer as the Buyer deems appropriate in its sole discretion, subject to: (i) Sellers’ and other Persons’ Post-Closing Rights of Access to Confidential Information (as defined in Section 10.4); and (ii) those duties and restrictions related to the use and disclosure of Confidential Information under applicable law, including, but not limited to, those duties and restrictions upon Buyer or any Affiliate or other Person designated to serve as “records owner” to fulfill Buyer’s obligations under Section 10.5.

(b) The Confidential Information shall be kept strictly confidential by the parties and shall not be disclosed to any Person except as in the opinion of outside counsel is required by applicable law and only after compliance with the procedures contained in this Article, except that the Buyer, on the one hand, and the Sellers, on the other hand, may disclose Confidential Information to the Buyer and its Representatives, in the case of disclosures by the Buyer, and to the Representatives of the Sellers, in the case of disclosures by the Sellers; *provided, however*, that, except as provided in subsection (d), any Person to whom Confidential Information is so disclosed shall (i) have a need to know such information for purposes of consummating the transactions contemplated by this Agreement and (ii) first agree to be bound by the provisions of this Article. Buyer shall provide Sellers with written evidence of such Representatives written agreement to be bound by the provisions of this Section 7.3 upon request thereof by Sellers. If any party becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information, the party subject to such legal process shall provide the other parties with prompt prior written notice of such requirement so that the other parties may seek a protective Order or other appropriate remedy. If such protective Order or other remedy is not obtained, the party subject to the legal process agrees to disclose only that portion of the Confidential Information that they are advised by outside counsel is legally required to be disclosed and to take all reasonable steps to preserve the confidentiality of the Confidential Information.

(c) The Sellers shall be responsible for any breach of this Section 7.3 by its Representatives, and the Buyer shall be responsible for any breach of this Section 7.3 by its Representatives.

(d) Notwithstanding any provision of this Agreement to the contrary, it is acknowledged and agreed by the parties that (i) this Agreement and any ancillary documents may be filed by the Sellers with the Bankruptcy Court and none of the restrictions contained in this Section 7.3 will be applicable to any documents so filed, and (ii) such of the Protected Materials

as counsel for the Sellers determines are required to be presented to the Bankruptcy Court at any hearing before the Bankruptcy Court may be disclosed at such hearing without violating this Article.

(e) Except as required by applicable law or otherwise provided herein, the schedules annexed hereto shall not be disclosed to the public without the prior written consent of each of the parties hereto.

(f) If this Agreement is terminated for any reason prior to Closing, the parties and their Representatives will promptly return to the other parties or destroy all Confidential Information obtained from the other parties (or their Representatives, as applicable) and all copies, extracts or other reproductions thereof in whole or in part. Notwithstanding the return or destruction of the Confidential Information, the parties will continue to be bound by the provisions of this Article.

(g) Notwithstanding anything in this Agreement to the contrary, the parties hereto expressly agree that the Sellers' obligations under this Article regarding Confidential Information shall mean and include only the Confidential Information of the Buyer, and the Buyer's obligations under this Article regarding Confidential Information shall mean and include only the Confidential Information of the Sellers, including but not limited to any Confidential Information of their respective owners, guarantors, and employees.

**7.3 Notification of Certain Matters.** Each party will give prompt written notice to the other party of any material adverse development causing a breach of any of its own representations and warranties in Article 5 and Article 6 above. No disclosure by any party pursuant to this Section 7.3, however, shall be deemed to prevent or cure any misrepresentation, breach of warranty or breach of covenant.

## ARTICLE 8 CONDITIONS TO OBLIGATION TO CLOSE

**8.1 Conditions to Obligation of Buyer.** The obligation of Buyer to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

- (a) The Court shall have issued the Sale Approval Order; and
- (b) The Sale Approval Order shall be a Final Order.

**8.2 Conditions to Obligation of Sellers.** The obligation of Sellers to consummate the transactions to be performed by it in connection with the Closing is subject to satisfaction of the following conditions:

- (a) The Court shall have issued the Sale Approval Order;
- (b) The Sale Approval Order shall be a Final Order;
- (c) Buyer shall have delivered a copy of the resolutions of its board of directors or such other applicable governing body authorizing the execution and delivery of this Agreement and the consummation of the transactions set forth herein. Such resolutions shall be certified by an authorized officer of Buyer and as being true and correct and in full force and effect as of the Closing Date;
- (d) The representations and warranties set forth in Article 6 above shall be true and correct in all material respects at and as of the Closing Date;
- (e) Buyer shall have performed and complied with all of its covenants hereunder in all material respects through the Closing Date;
- (f) All actions to be taken by Buyer in connection with consummation of the transactions contemplated hereby and all certificates, instruments and other documents required to effect the transactions contemplated hereby will be reasonably satisfactory in form and substance to Sellers; and
- (g) No action, suit or proceeding shall be pending or threatened before any court or quasi-judicial or administrative agency of any federal, state, local or foreign jurisdiction or before any arbitrator wherein an unfavorable injunction, judgment, order, decree, ruling or charge would (i) prevent consummation of any of the transactions contemplated by this Agreement, (ii) cause any of the transactions contemplated by this Agreement to be rescinded following consummation, or (iii) affect adversely the right of Buyer to own the Purchased Assets.

**8.3 Waiver.** Buyer may waive any condition specified in Section 8.1 and Sellers may waive any condition specified in Section 8.2 in a writing so stating at or prior to the Closing.

## **ARTICLE 9 RISK OF LOSS**

At Closing, all risk of loss, theft or damage with respect to the Purchased Assets, and all Liability therefore, shall pass to Buyer.

## **ARTICLE 10 POST-CLOSING COVENANTS**

**10.1 General.** In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the parties will take such further



action (including the execution and delivery of such further instruments and documents) as any other party reasonably may request, all at the sole cost and expense of the requesting party.

**10.2 Confidentiality.** The parties hereto acknowledge and agree that the confidentiality obligations set forth in Section 7.2 shall remain in full force and effect following the Closing or the earlier termination of this Agreement prior thereto.

**10.3 Litigation Support.** In the event and for so long as any party actively is contesting or defending against any action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand in connection with (i) any transaction contemplated under this Agreement or (ii) any fact, situation, circumstance, status, condition, activity, practice, plan, occurrence, event, incident, action, failure to act or transaction on or prior to the Closing Date involving Sellers, the other party will cooperate with the contesting or defending party and such party's counsel in the contest or defense, make available its Personnel, and provide such testimony and access to its books and records as shall be necessary in connection with the contest or defense, all at the sole cost and expense of the contesting or defending party.

**10.4 Further Assurances.** Following the Closing, each of the parties hereto shall execute and deliver, at the reasonable request of another party, such additional documents, instruments and assurances and take such further actions as such other party may reasonably request to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement. Buyer will execute such further instruments as, in the reasonable opinion of counsel for Sellers or their respective owners, may be necessary or convenient to protect Sellers' and their respective owner's rights and interests consistent with the terms and conditions of this Agreement.

## ARTICLE 11 TERMINATION

**11.1 Termination of Agreement.** This Agreement may be terminated prior to the Closing:

(a) By mutual written consent executed by both Buyer and Sellers (subject to the approval of the Court) at any time;

(b) Sellers may terminate this Agreement by giving written notice to Buyer at any time prior to the Closing if any event occurs which renders satisfaction of one or more of the conditions to Sellers' obligations set forth in Section 8.2 impossible.

**11.2 In the Event of Termination; Remedies.** If any party terminates this Agreement pursuant to this Article 11, all rights and obligations of the parties hereunder shall terminate without any Liability of any party to any other Party (except for any Liability of any party then in breach).

**ARTICLE 12  
MISCELLANEOUS**

**12.1 Assignment; Successors.** Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party without the prior written consent of all other parties to this Agreement. Subject to the approval of the Court, Sellers' consent to the assignment by Buyer of its rights pursuant to this Agreement, to any Affiliate of Buyer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, heirs, legatees, successors and permitted assigns, and no other Person shall have any right, benefit or obligation hereunder.

**12.2 Notices.** Any notice required to be given under this Agreement shall be given in writing and may be served either by personal delivery, facsimile, Federal Express or similar overnight delivery or by depositing the same in first class mail, postage prepaid, certified mail, addressed to the respective parties as indicated below, or such different address as a party may have fixed by notice hereunder:

If to Sellers, addressed to:

Dennis McGuire, Sr.  
3491 SE Gran Park Way  
Stuart, FL, 34997  
dmcguiresr@gmail.com  
772-834-5242

with a copy to:

Furr Cohen, P.A.  
2255 Glades Rd, Ste 301E  
Boca Raton, FL 33431  
Attn: Aaron A. Wernick, Esq.  
(561) 395-0500 (main)  
(561) 417-1569 (direct)  
Email: awernick@furrcohen.com

If to Buyer, addressed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel.: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tel.: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

or to such other place and with such other copies as any party may designate as to itself by written notice to the others.

Notices delivered personally shall be effective upon delivery. Notices transmitted by facsimile or overnight delivery shall be effective when received provided they are received during normal business hours of the recipient on a Business Day, and if not, the next Business Day. Notices delivered by mail shall be effective seventy-two (72) hours after mailing.

**12.3 Choice of Law.** This Agreement shall be construed and interpreted, and the rights of the parties determined in accordance with, the laws of the State of Florida. The parties hereto irrevocably submit to the exclusive jurisdiction of the Court (or any court exercising appellate jurisdiction over the Court) over any dispute arising out of or relating to this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith or any of the transactions contemplated hereby or thereby. Each party hereby irrevocably agrees that all claims in respect of such dispute or proceedings may be heard and determined in such dispute or proceedings may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum in connection therewith.

**12.4 Entire Agreement; Amendments and Waivers.** This Agreement, together with all exhibits and schedules attached or to be attached hereto constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other

provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

**12.5 Third Party Beneficiaries.** No Person other than the parties hereto, shall have any rights or claims under this Agreement.

**12.6 No Waiver.** The failure of either party hereto to seek redress for any breach, or to insist upon the strict performance, of any covenant or condition of the Agreement by the other shall not be, or be deemed to be, a waiver of the breach or failure to perform, nor prevent a subsequent act or omission in violation of, or not strictly complying with, the terms hereof from constituting a default hereunder.

**12.7 Multiple Counterparts.** This Agreement may be executed 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.

**12.8 Invalidity.** In the event that any one or more of the provisions, or any portion thereof contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, such invalidity, illegality or unenforceability shall not affect any other provision, or any portion thereof, of this Agreement or any other such instrument.

**12.9 Cumulative Remedies.** All rights and remedies of either party hereto are cumulative of each other and of every other right or remedy such party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

**12.10 Termination of Covenants, Representations, and Warranties.** The covenants, representations, and warranties made by Sellers herein shall terminate as of the Closing Date. Buyer shall have no right to seek indemnification subsequent to the Closing based on a breach of a representation and/or warranty made by Sellers herein or in any other document, certificate or instrument entered into by the Sellers in connection herewith unless such covenants, representations, and warranties were breached due to actual fraud of the Sellers.

**12.11 Representation by Counsel; Mutual Negotiation.** Each party has been represented by counsel of its choice in negotiating this Agreement. This Agreement shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the parties, at arm's length, with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any party.

*[Signature Pages Follow]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers, as of the day and year first above written.

**BUYER:**

**[ENTITY NAME]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SELLERS:**

ECOSPHERE TECHNOLOGIES, INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SEA OF GREEN SYSTEMS INC.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE 1.1**

**PURCHASED ASSETS**

1. Approved U.S. Patent No's: 7,699,994, 7,699,988, 7,785,470, 7,943,087, 8,318,027, 8,593,102, 8,721,898, 8,858,064, 8,936,392, 8,906,242, 8,968,577, 8,999,154, 9,034,180, 9,169,146, 9,266,752, 9,403,697; U.S. Patent, when issued, pertaining to Patent Application No. 14/627,874 filed February 20, 2015, relating to pressure rod anode; and U.S. Patent, when issued, pertaining to Patent Application No. 14/950,811 filed November 24, 2015, relating to the Ecos GrowCube™.
2. All U.S. Patents, when and if issued, for which Debtor, Dennis McGuire, any employees of Debtor or any subsidiaries have applied as of November 3, 2016.
3. All reissues, continuations, divisions, continuations in part, renewals, improvements or extension of the foregoing.
4. All royalties related to the foregoing.
5. The Ecos PowerCube® unit located in Stuart, Florida.
6. One completed Ecos GrowCube™ unit located at 236709 E. Lechelt Road, Kennewick, WA 99337-7545.
7. All warranties, increases, parts, renewals, additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, and all of the Debtor's books and records relating to any of the foregoing.
8. 25% of the limited liability company interest in Ecosphere Mining, LLC, a Delaware limited liability company.
9. 57,232,278 shares of Sea of Green Systems, Inc., a Florida corporation.
10. 30.6% of the limited liability company interests in Fidelity National Environmental Solutions, LLC, a Delaware limited liability company.

**SCHEDULE 1.2**

**EXCLUDED ASSETS**

1. Cash, cash equivalents, and bank balances of the Sellers.
2. Prepaids and deposits, including but not limited to deposits held by FPL, JLAC Holdings, Best Motorized Shades, and Guardian Manufacturing, Inc.
3. All accounts receivable existing as of the Closing Date.
4. Any and all causes of action and litigation rights, including but not limited to those under Chapter 5 of the U.S. Bankruptcy Code.
5. All trademarks, copyrights, URLs, and websites of the Sellers.
6. Misc. parts and raw materials [nuts, bolts, screws, fittings, etc.]
7. Office furniture, computers
8. Dodge Dakota pickup truck