

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF COLORADO**

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|-----------------------|---|-----------------------|
| In re |) | |
| |) | Case No. 17-20796-TBM |
| NINER, INC. |) | |
| EIN: 52-2448591 |) | Chapter 11 |
| Debtor-in-Possession. |) | |
| |) | |

MOTION FOR ENTRY OF ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS; (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, RIGHTS, ENCUMBRANCES AND OTHER INTERESTS PURSUANT TO BANKRUPTCY CODE SECTIONS 363(b), 363(f) and 363(m); (C) ASSUMING AND ASSIGNING CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO BANKRUPTCY CODE SECTION 365; AND, (D) GRANTING RELATED RELIEF

Debtor Niner, Inc., debtor and debtor-in-possession herein (the “**Debtor**”) in the above-referenced chapter 11 case (the “**Chapter 11 Case**”), files this motion (the “**Sale Motion**”) for the entry of an order: (a) approving the *Asset Purchase Agreement* dated February 16, 2018 (the “**Agreement**,” a copy of which is attached hereto as **Exhibit 1**),¹ between the Debtor, as seller, and Emersion International Limited (together with any agent, assignee affiliate or designee of Emersion International Limited, the “**Purchaser**”), as buyer, and authorizing the sale (the “**Sale**”) of substantially all of the assets of the Debtor (the “**Purchased Assets**”); (b) authorizing the sale of the Debtor’s assets free and clear of all liens, claims, rights, encumbrances, and other interests pursuant to §§ 363(b), 363(f), and 363(m) of Title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the “Bankruptcy Code”); (c) assuming and assigning certain executory contracts and unexpired leases (the “**Assumed Contracts and Leases**”) pursuant to § 365 of the Bankruptcy Code; and, (d) granting related relief. In support of this Sale Motion, the Debtor respectfully states as follows:

Preliminary Statement

1. By this Sale Motion, the Debtor seeks approval of the Sale of the Purchased Assets to the Purchaser, pursuant to the Agreement. The proposed Agreement contemplates that the Purchased Assets will be sold free and clear of liens, claims, encumbrances, rights, and other interests other than those liens and interests expressly permitted under the Agreement.

2. As discussed below, this sale is in the best interests of the Debtor and its estate and creditors. The Sale will provide for payment consisting of: (a) \$3,100,000 cash plus or minus the amounts determined under the following sentence (the “**Cash at Closing**”) and the

¹ All capitalized terms not defined herein have the meanings ascribed to them in the Agreement.

assumption of the Assumed Liabilities.² The Cash at Closing will be increased or decreased, as the case may be, by \$50,000 for each full increment of \$50,000 that the sum of Seller's actual Eligible Inventory and actual Eligible Accounts respectively either falls short of or exceeds the amount thereof set forth in Seller's ABL borrowing base certificate dated February 5, 2018. As a condition to Closing, the Cash at Closing shall be greater than the sum of the PMC Obligations and Accrued Expenses (defined below).

3. The Agreement requires that the Debtor and not the Purchaser shall be responsible for payment of the Debtor's unpaid post-petition ordinary course operating expenses in an amount not to exceed the amount set forth in the Budget attached to the approved debtor in possession financing agreement between PMC and Debtor (the "**Accrued Expenses**"). The Debtor estimates that the Accrued Expenses will be \$185,000.00 and that such amount will be held in the Debtor's debtor-in-possession operating account for such purposes.

Jurisdiction and Venue

4. The United States Bankruptcy Court for the District of Colorado (the "**Court**") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

6. The statutory predicates for the relief sought herein are sections 363, 365, 1107, and 1108 of Title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and L.B.R. 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Colorado (the "**Local Rules**").

General Background

7. On November 27, 2017 (the "**Petition Date**"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business as debtor and debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. No request has been made for the appointment of a trustee or an examiner in these cases, and no official committee has yet been appointed by the Office of the United States Trustee.

Sale of the Purchased Assets

9. The Debtor seeks approval of the sale (the "**Sale**") of substantially all of its assets, including, *inter alia*, certain described assets and tangible property, Assigned Contracts,

² PMC has agreed that if the sale to Purchaser is consummated, PMC will waive an amount equal to \$100,600 on account of prepetition default interest, plus \$40,000 on account of the closing fee in connection with the debtor in possession financing agreement between PMC and Debtor.

permits, intellectual property, claims and other personal property all as more fully set forth in the Agreement and fully defined therein as the “Purchased Assets”.

10. Pursuant to the Agreement, the Debtor and the Purchaser propose the following timeline:

- Objections to the Sale Motion due **Monday, February 26, 2018**.³
- A two-hour hearing on the Sale (the “**Sale Hearing**”) to be held on the earliest date possible on or after **Thursday, March 1, 2018 (as soon as the Court may be available)**.
- Closing of Sale no later than **March 15, 2018**.

11. In light of the extensive marketing process already undertaken, including the unsuccessful auction and terminated asset purchase agreement from the initial stalking horse bidder, and based upon the current financial condition of the business, the timing of the sale proposed herein is reasonable under the circumstances to effectuate a sale to either the Purchaser under the terms of the Agreement. The Debtor believes that the sale process has provided sufficient time to fully expose and market the Purchased Assets for sale in the hope of consummating a sale of the Purchased Assets.

Prepetition and Post-Petition Marketing and Sale Efforts

12. The Debtor’s assets have been exposed to the market for over thirteen months. The Debtor commenced the process of evaluating restructuring and sale options in early 2017 with the hiring of W.G. Nielsen & Co. (“**W.G. Nielsen**”) on January 5, 2017, and held their initial meeting. Under the terms of its agreement, W.G. Nielsen explored a sale transaction for the Debtor. Starting in February 2017, W.G. Nielsen contacted 223 potential capital sources all of whom are characterized as institutional investors or large strategic investors. On March 20, 2017, W.G. Nielsen partnered with Keystone Capital Markets, Inc. due to their experience within the mountain biking industry, to approach additional strategic and financial buyers. As of November 2017, W.G. Nielsen received 64 requests for further information. Debtor received 55 executed non-disclosure agreements and delivered a Confidential Information Memorandum and additional financial information via data room access to those 55 requestors. 43 parties engaged in diligence and entered the data room.

13. The initial timeline called for bids to be received by Friday, April 14, 2017, and the Debtor received 3 indications of interest. The Debtor also received 1 letter of intent by that date, which was later withdrawn. From May 22, 2017 through August 11, 2017, W.G. Nielsen re-approached the market contacting additional parties and reengaging with parties that had previously shown interest. W.G. Nielsen requested LOI’s and received LOI’s from 3 parties. After management presentations from 2 of those parties, LOI’s were submitted from July 14, 2017 through August 11, 2017. After further negotiation the Debtor executed an LOI with an affiliate of the previous initial stalking horse bidder on August 31, 2017.

³ Contemporaneously with this Sale Motion, the Debtor will file a motion seeking to shorten the deadline to file responses to ten days and setting a Sale Hearing on an expedited basis.

14. Between August 31, 2017 and the Petition Date, the Debtor and an affiliate of a potential purchaser completed due diligence and engaged the existing lenders in attempt to work out a mutually beneficial solution. After extensive negotiations, on November 27, 2017, the Debtor entered into an asset purchase agreement with Niner Acquisition LLC as buyer and the initial “stalking horse” bidder.

15. On the Petition Date, the Debtor filed a motion to approve bid procedures which was approved by this Court on December 13, 2017. An auction was scheduled for January 11, 2017.

16. No qualified overbids were received by the Debtor by the applicable bid deadline of January 10, 2018 at 1:00 p.m. Accordingly, no auction was held on January 11, 2018.

17. On January 17, 2018, the Court held the originally scheduled sale hearing, and the Debtor withdrew its original sale motion on the record and generally advised the Court of its ongoing efforts to sell the estate’s assets.

18. Since that hearing, the Debtor and W.G. Nielsen have continued their marketing efforts, and several parties continued or began conducting due diligence.

19. W.G. Nielsen continued to streamline the due diligence process. A data room was established and available to interested parties who executed confidentiality agreements acceptable to the Debtor. The Debtor continued to respond to inquiries from prospective buyers through the filing of this Sale Motion. W.G. Nielsen re-engaged previous potential bidders and utilized its extensive personal/company database (consisting of years of complied leasehold buyers) to re-market the Purchased Assets nationwide.

20. The Debtor and the Purchaser worked to complete due diligence, and on February 16, 2018, the Debtor entered into an Asset Purchase Agreement with Emersion International Limited, as the buyer. In the Debtor’s business judgment, the Agreement represents the highest and best sale option at this time.

21. The Debtor asserts the prepetition and post-petition marketing and sale process was thorough. In light of those efforts, the Debtor believes that the sale process has provided sufficient time to fully expose the Purchased Assets for sale. Except as otherwise provided in definitive documentation with respect to the Sale, all of the Debtor’s rights, title and interest in and to the Purchased Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the **“Claims and Interests”**).

Agreement with Purchaser

22. The Debtor believes that the consummation of the Sale to the Purchaser will provide its creditors and other stakeholders with the best opportunity possible for maximizing the value of the Purchased Assets.

23. The key terms of the Agreement and the proposed Sale Order, are summarized below. The description below only summarizes certain provisions of the Agreement and the Sale

Order as a convenience to the Court and parties in interest, and the terms of the Agreement control in the event of any inconsistency.

- a. **Purchase Price.** The total consideration to be paid by Purchaser to Debtor for the Purchased Assets consists of \$3,100,000 cash plus or minus the Cash at Closing and the assumption of the Assumed Liabilities. The Cash at Closing will be increased or decreased, as the case may be, by \$50,000 for each full increment of \$50,000 that the sum of Seller's actual Eligible Inventory and actual Eligible Accounts respectively either falls short of or exceeds the amount thereof set forth in Seller's ABL borrowing base certificate dated February 5, 2018. *See* Agreement § 2.7.
- b. **Purchased Assets.** The Purchased Assets include, (a) the Assets and Tangible Property described in Schedule 2.1(a); (b) the Leased Real Property described in Schedule 2.1(b); (c) the Assigned Contracts described in Schedule 2.1(c); (d) the Permits described in Schedule 2.1(d); (e) the Intellectual Property set forth on Schedule 2.1(e); (f) all of Seller's inventory, including but not limited to the Eligible Inventory set forth in Schedule 2.1(f); (g) all of Seller's accounts receivable, including but not limited to the Eligible Accounts set forth in Schedule 2.1(g); (h) originals, or where not available, copies, of all Books and Records relating to the Business other than those set forth in Section 2.2; (i) all of the rights of Seller under warranties, indemnities, and all similar rights against third parties the extent related to the Business to the extent assignable; (j) deposits, prepaids, retainers and similar amounts paid to vendors in connection with the Business; and (k) all Claims to the extent related to the Purchased Assets described in this Section 2.1(a) or the Assumed Liabilities, but specifically excluding all Claims arising under chapter 5 of the Bankruptcy Code (i) against counterparties who are party to (or Affiliates of a party to) any Assigned Contract, (ii) otherwise arising under or related to the Purchased Assets, or (iii) against Buyer (or Buyer's Affiliates); provided, that the Debtor shall retain the right to assert any such Claims as a defense or objection to proofs of claim asserted against the Debtor or its bankruptcy estate in the Chapter 11 Case. *See* Agreement § 2.1. The Purchased Assets do not include the Excluded Assets or Excluded Contracts. *See* Agreement § 2.2.
- c. **Identity of Purchaser.** The Purchaser is Emersion International Limited. Purchaser is permitted to assign its rights and delegate its obligations under the Agreement to an affiliate of the Purchaser prior or subsequent to Closing without the prior consent of Seller. Such assignment shall relieve the assigning party of any of its obligations under the Agreement provided that each agent, assignee and designee assumes all such obligations in writing and any each agent, assignee and designee will have all of the rights afforded to Purchaser under the Agreement. *See* Agreement § 8.9.

- d. **Assumption of Executory Contracts and Unexpired Leases.** The proposed sale contemplates that the Debtor may assume and assign to the Purchaser certain of the executory contracts and unexpired leases associated with the Purchased Assets (*i.e.*, the Assigned Contracts). *See* Agreement § 2.1.
- e. **Representations, Warranties and Covenants.** The Debtor made various representations customary for a transaction of this kind including, but not limited to, those relating to organization and good standing, authorization and validity, qualification, absence of conflicts, litigation, compliance with legal requirements, environmental matters, title to and use of assets and property, contracts, taxes, intellectual property, and financial statements and reports. *See* Agreement Article 3. The Purchaser has made certain representations, among others, relating to organization, good standing and authorization, absence of conflict, sufficiency of funds, solvency, litigation, and independent investigation. *See* Agreement Article 4.
- f. **Conditions.** The Closing is conditioned upon the occurrence of certain events customary for transactions of this kind, including payment in full of the PMC Obligations at Closing, the truthfulness of all representations and warranties, and all consents and approvals, including approvals of the Bankruptcy Court, having been obtained. *See* Agreement § 5.7.
- h. **Rule 6004/6006 Waiver.** The proposed Sale Order provides that, upon entry, the Sale Order will be immediately enforceable, notwithstanding Bankruptcy Rules 6004 and 6006. *See* Sale Order ¶ 21. As discussed herein, the sale and prompt consummation thereof are in the best interest of the Debtor and its estate in order to maintain and otherwise maximize the value of the Debtor's assets for the benefit of the estate and its stakeholders and to comply with certain timing deadlines as discussed above.
- i. **Successor Liability Findings.** The Sale Order provides that the Purchaser and its employees, officers, directors, advisors, lenders, affiliates, owners and successors and assigns shall not have any successor or vicarious liabilities. *See* Sale Order, ¶¶ Q and 7.
- j. **Record Transfer and Access.** The Agreement provides for the transfer to the Purchaser of all Files and Records. *See* Agreement § 2.1.

24. The Debtor believes that the sale of the Purchased Assets to the Purchaser is in the best interests of the Debtor's estate and its creditors. The Debtor further believes that the marketing the Purchased Assets with the assistance of W.G. Nielsen, the lack of any qualified bids before the previously scheduled auction, and the timing of the current Agreement is the highest or otherwise best consideration for the Purchased Assets.

25. The Debtor has examined the alternatives to a sale of the Purchased Assets and

has determined that, in light of the Debtor's financial situation, and value of the Purchased Assets, a more viable alternative to sale of the Purchased Assets does not exist. The Debtor determined that the sale of the Purchased Assets optimizes value for its estate and creditors, and preserves the Debtor as a going concern.

26. For the reasons stated above, and in light of the obvious benefits to the estate, the Debtor has determined, in the exercise of its business judgment, to consummate the proposal submitted under the Agreement with the Purchaser.

Relief Requested

27. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1).

28. A sale of the debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for doing so. *See, e.g., In re Allen*, 607 Fed.Appx. 840, No. 14-1242 (10th Cir. 2015) (citing *In re Caste, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004); *In re Martin*, 91 F.3d 389, 395 (3rd Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991)); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3rd Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2nd Cir. 1983).

29. The Debtor has proposed the sale of the Purchased Assets after thorough consideration of all viable alternatives and has concluded that the sale is supported by many sound business reasons. The Debtor has extensively marketed the Purchased Assets as described above designed to maximize the purchase price realized from the sale of the Purchased Assets. Further, the Debtor believes the prepetition and postpetition marketing of the Debtor provided a sufficient opportunity to generate any potential overbids and maximize recovery for the Debtor's creditors.

30. Based on the foregoing, the sale of the Purchased Assets is supported by sound business reasons and is in the best interests of the Debtor and its estate. Accordingly, the Debtor requests approval under section 363(b) of the Bankruptcy Code of the Sale to the Purchaser as set forth herein.

The Proposed Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, and Interests

31. 363(f) of the Bankruptcy Code provides:

The trustee 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 nonbankruptcy 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 a 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. § 363(f).

32. Section 363(f) is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the sale of the Purchased Assets free and clear of all of the applicable liens, claims and encumbrances, except with respect to any liens, claims and encumbrances permitted under the Agreement. *See Citicorp Homeowners Services, Inc. v. Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988).

33. The Debtor submits that each lien, claim, and encumbrance that is not an assumed liability satisfies at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such lien, claim, or encumbrance will be adequately protected by either being paid in full at the time of closing, or by having it attach to the sale proceeds, subject to any claims and defenses the Debtor may possess with respect thereto. The Debtor accordingly requests authority to convey the Purchased Assets to the Purchaser, free and clear of all liens, claims, and encumbrances except for the liens, claims, and encumbrances that expressly permitted under the terms of the Agreement, with such liens, claims, and encumbrances to attach to the sale proceeds, with the same validity (or invalidity), priority and perfection as existed immediately prior to the Sale, subject to the terms of the Agreement and the Sale Order.

34. PMC consents to the Sale free and clear of its liens on the condition the PMC Obligations are paid in full, in cash, at the Closing. The Final DIP Financing Order entered December 13, 2017 at Docket No. 55 (the “DIP Financing Order”) provides for payment of the PMC Obligations at Closing.

35. The remaining Cash at Closing minus the PMC Obligations and the Accrued Expenses shall be paid to West Town Bank at Closing. West Town Bank previously consented to a sale free and clear of its liens so long as its interests attach to the proceeds from the sale. The Agreement does not provide for an allocation of proceeds at Closing or attachment of West Town’s interests to the proceeds, and the Purchaser declined to allocate its Purchase Price as between PMC and West Town. The Debtor is unaware whether West Town would consent to the current Sale.

36. In the alternative, notwithstanding consent from West Town, the Debtor asserts the Sale is proper under 11 U.S.C. § 363(f)(4). West Town previously represented it had no objection to a sale but reserved the right to challenge payment of the proceeds to PMC at or after a closing. The DIP Financing Order provides that an amount equal to the PMC Obligations shall be paid to PMC at Closing, and the Debtor will honor that provision. This does not impact West

Town's allegations. A bona fide dispute exists as to the validity of the respective security interests in the proceeds from the Sale, and even absent consent, the Sale under the terms of the Agreement is permissible under 11 U.S.C. § 363(f)(4). *See In re Railyard Co.*, 572 B.R. 766 (Bankr. D.N.M. 2017) ("An interest is in bona fide dispute when there is an 'objective basis for . . . a legal dispute as to the validity' of the interest." (citations omitted); *see also Bartmann v. Maverick Tube Corp.*, 853 F.2d 1540, 1544 (10th Cir. 1988) (adopting the following definition of what constitutes a bona fide dispute: "the bankruptcy court must determine whether there is an objective basis for either a factual or a legal dispute as to the validity of debt."). "Any issues related to the validity of the interests can be decided later, in an adversary proceeding. *See Fed. R. Bank. P.* 7001(2); *In re Kinion*, 207 F.3d 751, 757 (5th Cir. 2000); *In re E-Z Serve Convenience Stores, Inc.*, 318 B.R. 631 (M.D.N.C. 2004)." *Railyard Co.*, 572 B.R. at 773. Here, the Debtor's interest in selling its assets at maximum value significantly outweighs the interests of West Town's potential dispute as to how the proceeds will be allocated as between PMC and West Town, if any.

37. Accordingly, this Court should approve the sale of the Purchased Assets to the Purchaser free and clear of liens, claims, and encumbrances under Bankruptcy Code section 363(f), and any potential claimants should be compelled to look exclusively to the proceeds of the sale for satisfaction of their claims.

**Good Faith Under Section 363(m) of the Bankruptcy Code;
Sale Not In Violation of Section 363(n) of the Bankruptcy Code**

38. 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).

39. 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. *See* 11 U.S.C. § 363(n). Although 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), 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.

Id. at 147 (citations omitted).

40. The Agreement was negotiated at arms' length and the Purchaser has acted in good faith, without collusion or fraud of any kind, and in compliance with the *Abbotts Dairies* standards. Neither the Debtor nor the Purchaser (to the best of the Debtor's knowledge) has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code or otherwise implicate section 363(n) of the Bankruptcy Code with respect to the consummation of the Sale or the transfer of the Purchased Assets to the Purchaser.

41. The Debtor thus requests that the Court find that the Purchaser has purchased the Purchased Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protections of sections 363(m) and (n) of the Bankruptcy Code.

Authorization of Assumption and Assignment of Assigned Contracts

42. As required by the Agreement, and in order to enhance the value to the Debtor's estate, the Debtor requests approval of the potential assumption and assignment of any agreement, indenture, contract, lease, deed of trust, royalty, license, option, instrument, or other written commitment that have been identified as Assigned Contracts to Purchaser upon the closing of the transactions contemplated under the Agreement.

43. Pursuant to the Agreement, the Purchaser is responsible for payment of all cure amounts required to be paid to the counterparties to the Purchased Contracts assumed and assigned (each a "Counterparty" and collectively, the "Counterparties") under section 365(b)(1) of the Bankruptcy Code.

44. The Purchased Contracts are those contracts or leases that are to be assumed by the Debtor and assigned to the Purchaser as part of the sale transaction under the Agreement. The Debtor further requests that the Sale Order provide that the Assigned Contracts will be assigned to, and remain in full force and effect for the benefit of, the Purchaser, notwithstanding any provisions in the Assigned Contracts, including those described in sections 365(b)(2) and (f)(1) and (3) of the Bankruptcy Code, that prohibit such assignment.

45. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if –

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under section 365(a), a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee --

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

46. Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession’s decision to assume an executory contract, courts have consistently applied a “business judgment” test when reviewing such a decision. *See, e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523, 550 (1953); *Matter of Talco, Inc.*, 558 F.2d 1369, 1173 (10th Cir. 1977); *In re J.H. Land & Cattle Co., Inc.*, 8 B.R. 237, 238 (Bankr. W.D. Okla. 1981); *In re Crescent Oil Co., Inc.*, 2010 WL 2721878, 3 (Bankr. D. Kan. 2010); *see also Nat’l Labor Relations Bd. v. Bildisco and Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3rd Cir. 1982) (stating that “the usual test for rejection of an executory contract is simply whether rejection would benefit the estate, the ‘business judgment’ test”). The business judgment standard mandates that a court approve a debtor’s business decision unless the decision is the product of “bad faith, whim or caprice.” *Lubrizon Enters v. Richmond Metal Finishes*, 756 F.2d 1043, 1047 (4th Cir. 1980).

47. A debtor satisfies the “business judgment” test when it determines, in good faith, that assumption of an executory contract will benefit the estate and the unsecured creditors. *In re FCX, Inc.*, 60 B.R. 405, 411 (Bankr. E.D.N.Y. 1986). The potential assumption and assignment of the Purchased Contracts, or any of the Lease Assets, set forth in the Agreement, will be a necessary part of the deal that Debtor has struck with the Purchaser and, as stated above, will benefit the estate of Debtor.

48. As set forth above, with respect to Assigned Contracts to be potentially assumed and assigned pursuant to the Sale Hearing, the Debtor has contemporaneously with filing the Sale Motion sent Cure Notices to all Counterparties, thereby notifying such Counterparties of the potential assumption by the Debtor and assignment to the Purchaser at the Sale Hearing. The

Cure Notices set forth the “cure” amounts owing on each of the Lease Assets, according to Debtor’s books and records and, shall be the amounts required to be paid pursuant to section 365(b)(1) of the Bankruptcy Code (“**Cure Amounts**”). Objections, if any, to either the Cure Amounts or the assumption or assignment of contracts and leases that are identified as Assigned Contracts to Purchaser or adequate assurance of future performance be filed on or before the objection deadline to the proposed sale.

49. Counterparties to Assigned Contracts will have a sufficient opportunity to file an objection to the proposed Cure Amounts set forth in the Cure Notices. To the extent no objection is filed with regard to a particular Cure Amount, such Cure Amount shall be binding on the applicable contract or lease Counterparty. The payment of the Cure Amounts specified in the Cure Notices (or a different amount either agreed to by the Debtor, or resolved by the Court as a result of a timely-filed objection filed by a contract or lease counterparty) will be in full and final satisfaction of all obligations to cure defaults and compensate the counterparties for any pecuniary losses under such contracts or leases pursuant to section 365(b)(1) of the Bankruptcy Code, unless the Debtor determines (with the consent of the Purchaser) that a particular lease or contract is not truly executory, and does not need to be cured to transfer the lease or contract to the Purchaser.

50. Cure Amounts disputed by any Counterparty will either be considered by the Court either at the Sale Hearing or at some later date as may be scheduled by the Court to determine contested objections regarding Cure Amounts, that have not been resolved in advance or at the Sale Hearing. With respect to payment of Cure Amounts, the Purchaser shall bear and pay the entire amount of such cure costs as set forth in the Agreement.

51. The Purchaser is responsible for providing evidence of “adequate assurances of future performance” to the extent required in connection with the assumption and assignment of any Assigned Contracts. The meaning of “adequate assurance of future performance” for the purpose of the assumption of executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See *Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989). See also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean an absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). If necessary, the Purchaser shall provide evidence of its ability to provide adequate assurances to Counterparties to the Assigned Contracts at the Sale Hearing.

Notice

52. A copy of this Motion will be provided to (a) the Office of the United States Trustee; (b) the twenty largest unsecured creditors of the Debtor; (c) all parties who are known by the Debtor to assert liens with respect to the Purchased Assets, if any; and (d) all parties who have timely filed requests for notice under Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtor respectfully submits that such notice is sufficient, and requests that the Court find that no further notice of the relief requested herein is required.

53. The Debtor requests, pursuant to Bankruptcy Rules 6004(h) and 6006(d), that the order approving this Sale Motion become effective immediately upon its entry.

Conclusion

54. The Debtor's proposed sale of the Purchased Assets as described in this Sale Motion is supported by sound business reasons, as set forth herein. The proposed sale is proper, necessary and serves the best interests of the Debtor, its estate and creditors, and all parties in interests. The Debtor thus requests that the Court approve the proposed Sale of the Purchased Assets free and clear of all interests, liens, claims, and encumbrances, as requested, to the Purchaser.

WHEREFORE, the Debtor respectfully requests that this Court grant this Sale Motion by entering the attached proposed order: (i) approving the Agreement and authorizing the sale of the Purchased Assets to the Purchaser; (ii) authorizing the sale of the Purchased Assets free and clear of all liens, claims, rights, encumbrances and other interests; (iii) authorizing and directing payment of the Cash at Closing; (iv) authorizing the assumption and assignment of Lease Assets that are identified as Purchased Contracts; (v) approving the form and manner of notice of this Sale Motion, and of the proposed sale and the assumption and assignment of Lease Assets that are identified as Purchased Contracts; and, (vi) granting such other and further relief as is just and proper.

Dated: February 16, 2018.

MARKUS WILLIAMS YOUNG AND
ZIMMERMANN LLC

s/Matthew T. Faga

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Counsel for the Debtor and Debtor-in-Possession

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February, 2018, a true and correct copy of the forgoing pleading was electronically filed and served via CM/ECF pursuant to L.B.R. 9036-1 on all parties against whom relief is sought and those otherwise entitled to service pursuant to the Fed. R. Bankr. P. and the L.B.R. as indicated below:

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s/ Serina Schaefer

Serina Schaefer

ASSET PURCHASE AGREEMENT
BY AND BETWEEN
NINER, INC.,
as SELLER,
and
EMERSION INTERNATIONAL LIMITED
as BUYER

DATED AS OF
FEBRUARY 16, 2018

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of February 16, 2018, is entered into by and among Niner, Inc., a Colorado corporation (“Seller”), and Emersion International Limited, a company incorporated under the laws of Hong Kong (“Buyer”).

RECITALS

A. On November 27, 2017 (the “Petition Date”), Seller filed a voluntary petition for relief commencing the bankruptcy case (the “Chapter 11 Case”) under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Colorado (the “Bankruptcy Court”).

B. Seller operates, among other things, the Business, as defined below.

C. Upon the terms and subject to the conditions contained in this Agreement, and as authorized under sections 363 and 365 of the Bankruptcy Code, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, all of the right, title, and interest of Seller in the Purchased Assets (as defined below), including Seller’s interests in the Business, and to assume from Seller the Assumed Liabilities, for operation of the Business.

In consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1 **DEFINITIONS**

The following terms have the meanings specified or referred to in this ARTICLE 1:

“ABL” means the Loan and Security Agreement entered into between PMC Financial Services Group, LLC and Seller on or about April 23, 2012, and including the Schedule thereto, and all agreements referenced and incorporated therein, as amended, modified or restated as set forth in the Final Order On Emergency Motion for: Entry of Interim and Final Orders (1) Approving Post-Petition Financing and Related Liens and Adequate Protection; (2) Approving Cash Collateral Use and Related Liens and Adequate Protection, and (3) Granting Related Relief entered by the Bankruptcy Court on December 13, 2017, Docket #55 in the Chapter 11 Case.

“Accrued Expenses” means Seller’s unpaid expenses as of Closing for ordinary course operational expenses accruing from the first day of the month of Closing to the date of Closing, and in each case no more than 30 days past due, for Seller’s employee obligations, information technology expenses, gas, water, electricity, or other utilities, in amounts not to exceed the amounts set forth for such expenses in the DIP Budget.

“Assets” means all property of Seller, whether real, personal, tangible, or intangible, and including all interests, titles, claims, demands, or rights.

“Affiliate” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the Preamble.

“Allocation Schedule” has the meaning set forth in Section 2.10.

“Assigned Contracts” means the Contracts in which Seller has an interest relating to the Business set forth in Schedule 2.1(c).

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bankruptcy Rules” means the Federal Rules of Bankruptcy Procedure, as in effect from time to time.

“Books and Records” means Documents, books, and records, including books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, suppliers lists, production data, quality control records and procedures, assay reports, environmental studies, reports and analyses, plans, sales records, tax records, strategic plans, material and research, including all technical records, files, papers, surveys and plans or specifications.

“Business” means the manufacture, distribution, and sale of bicycles, parts, and components thereof conducted by Seller.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in Denver, Colorado are closed for business.

“Buyer” has the meaning set forth in the Preamble.

“Chapter 11 Case” has the meaning set forth in the recitals.

“Claims” means all rights or causes of action (whether in law or equity), legal proceedings, obligations, demands, restrictions, warranties, guaranties, indemnities, consent rights, options, contract rights, rights of recovery, setoff, recoupment, indemnity or contribution, covenants and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including all “claims” as defined in section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 2.8.

“Closing Date” has the meaning set forth in Section 2.8.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidentiality Agreement” means that certain Non-Disclosure Agreement by and between Niner, Inc. and Buyer.

“Contract” means any agreement, indenture, contract, lease, deed of trust, royalty, license, option, instrument, or other written commitment.

“Credit Limit” has the meaning set forth in the ABL.

“Cure Amounts” means the amounts which must be paid or otherwise satisfied by Buyer, including pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and assignment of the Assigned Contracts to Buyer as provided herein as those amounts are allowed by the Bankruptcy Court, unless such amounts are otherwise agreed upon by Buyer and

the counterparty to the applicable Assigned Contract, including the Cure Amounts set forth on Schedule 3.5(b) (as may be supplemented or modified in accordance with this Agreement).

“Cut-Off Date” has the meaning set forth in Section 2.5.

“Debtor” means the Seller in its capacity as debtor in possession in the Chapter 11 Case.

“DIP Budget” has the meaning set forth in Section 2.6.

“Disclosure Schedules” means the Disclosure Schedules delivered by Seller concurrently with the execution and delivery of this Agreement and all references in this Agreement to a particular Schedule are references to Schedules in the Disclosure Schedules and not schedules to this Agreement.

“Documents” means all paper related to the Business in possession of Seller, all electronic data related to the Business stored on Seller’s computers, databases, or electronic files, or hosted by third party vendors on behalf of Seller.

“Dollars” and “\$” means the lawful currency of the United States.

“Drop Dead Date” has the meaning set forth in Section 7.1(b)(i).

“Eligible Accounts” has the meaning set forth in the ABL.

“Eligible Inventory” has the meaning set forth in the ABL.

“Employee Benefit Plan” means any “employee benefit plan” (as such term is defined in ERISA Section 3(3), whether or not ERISA applies), and any profit-sharing, bonus, incentive, stock option, stock purchase, stock ownership, pension, retirement, severance, termination, deferred compensation, excess benefit, supplemental unemployment, post-retirement medical or life insurance, welfare, incentive, sick leave, long-term disability, medical, hospitalization, life insurance, other insurance or employee benefit plan, whether formal or informal, oral or written, that, in each case, is sponsored, maintained or contributed to, or required to be contributed to, by Seller or any ERISA Affiliate or under which Seller has or any ERISA Affiliate has, or may have, any present or future liability.

“Encumbrance” means any lien, pledge, mortgage, deed of trust, security interest, charge, claim, easement, encroachment or other similar encumbrance.

“Environmental Claim” means any action, suit, claim, investigation or other legal proceeding alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (i) the presence, Release of, or exposure to, any Hazardous Materials, or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

“Environmental Law” means any applicable Law, Governmental Order or binding agreement with any Governmental Authority: (i) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, or the environment (including ambient air, soil, surface water or groundwater, or subsurface strata), or (ii) concerning the Release or presence of, exposure to, or the management, manufacture, use, containment, storage, recycling, reclamation, reuse, treatment, generation, discharge, transportation, processing, production, disposal or remediation of any Hazardous Materials.

“Environmental Notice” means any written directive, notice of violation or infraction, or notice or written communication from a Governmental Authority relating to actual or potential material liability arising under or material non-compliance with any Environmental Law or any material term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, consent, waiver, closure, exemption, decision or other action required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

“Escrow Agreement” means an escrow agreement between Escrow Holder, Buyer and Seller consistent with the terms of this Agreement, in form reasonably satisfactory to such parties, regarding the Escrow Deposit.

“Escrow Deposit” shall have the meaning provided for under Section 2.7(a).

“Escrow Holder” means Dinsmore & Shohl LLP.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means each entity that is treated as a single employer with Seller for purposes of Code section 414.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Contracts” means any Contract that is not an Assigned Contract.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Governmental Authority” means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authorities have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority and does not mean or include any Permit.

“Hazardous Materials” means: (i) any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, in each case, whether naturally occurring or man-made, that is hazardous, acutely hazardous, toxic, or words of similar import or regulatory effect under Environmental Laws, and (ii) any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation and polychlorinated biphenyls.

“Health and Safety Claim” means any action, suit, claim, investigation or other legal proceeding alleging liability of whatever kind or nature (including liability or responsibility for the costs of enforcement proceedings, investigations, governmental response, personal injuries, medical monitoring, penalties, indemnification and injunctive relief) arising out of, based on or resulting from: (i) the presence of, or exposure to, any workplace hazard, or (ii) any actual or alleged non-compliance with any Health and Safety Law or applicable implementing plan, agreement, or order.

“Health and Safety Law” means any applicable Law, Governmental Order or binding agreement with any Governmental Authority: (i) relating to workplace human health or safety, or (ii) human exposures, including the Federal Mine Safety and Health Act of 1977, as amended, the

Occupational Safety and Health Act of 1970, as amended, implementing regulations, and similar state laws.

“Health and Safety Notice” means any written directive, notice of violation or infraction, or notice or written communication from a Governmental Authority relating to actual or potential liability arising under or non-compliance with any Health and Safety Law.

“Intellectual Property” means any and all of the following in any jurisdiction used by Seller in the conduct of the Business: (i) trademarks and service marks, including all applications and registrations and the goodwill connected with the use of and symbolized by the foregoing; (ii) copyrights, including all applications and registrations, and works of authorship, whether or not copyrightable and including any content embedded in social media accounts; (iii) trade secrets and confidential know-how; (iv) patents and patent applications; (v) websites and internet domain name registrations; (vi) all frame molds, models, specifications, drawings, renderings, schematics, design and production details; (vii) all rights in intellectual property related to the Business held by third parties, including frame manufacturers; and (viii) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing.

“Intellectual Property Contracts” means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, permissions and other Contracts (including any right to receive or obligation to pay royalties or any other consideration), whether written or oral, relating to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted to which Seller is a party.

“Key Personnel” shall have the meaning specified in Section 6.2(k).

“Knowledge” of Seller means the actual knowledge of Chris Sugai, after making reasonable inquiry of other relevant officers and employees of Seller, but without the requirement to make any inquiries of third parties or Governmental Authorities or to perform any search of any public records.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

“Leased Real Property” means real property leased by Seller and held for use in connection with the Business.

“Loss” or “Losses” means actual out-of-pocket losses, damages, liabilities, costs or expenses, including reasonable attorneys’ fees.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is materially adverse to the Business, results of operations, financial condition, or assets of the Business taken as a whole, including refusal of Seller’s suppliers to ship to Buyer under similar trade terms as provided to Seller in the six months prior to the Petition Date. “Material Adverse Effect” shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to any action required or permitted by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer. “Material Adverse Effect” shall also include:

- a. Seller defaulting under the ABL or breaching any term of the ABL, regardless of PMC’s waiver of any such default or breach, other than Seller’s failure to realize the sale milestone set out in Section 3(h)(ii) of the DIP Post Petition Financing Addendum;
- b. Seller’s failure to comply with limits on expenditures under the DIP Budget;

- c. Seller's cumulative 2018 net revenues as of the month end immediately preceding the date of Closing is less than 15% of the amounts thereof for the comparable period(s) of 2017. The departure from Seller prior to Closing of any of the Key Personnel

"Material Contracts" means each Assigned Contract as well as any other contract, agreement or understanding to which Seller or any of its Affiliates is a party that relates to the Business or the Purchased Assets which, if terminated or modified or if it ceased to be in effect, would result in a Material Adverse Effect.

"Material Permits" has the meaning set forth in Section 3.7(b).

"Order" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"Permits" means all permits, licenses, franchises, approvals, authorizations and consents required to be obtained from Governmental Authorities and held for use in connection with the Business.

"Permitted Encumbrances" means: (i) Encumbrances for Taxes not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, (ii) mechanics', carriers', workers', repairers' and similar Encumbrances arising or incurred in the ordinary course of business, (iii) environmental or health and safety regulations by any Governmental Authority, (iv) terms and conditions of, and Encumbrances created by, any Assigned Contract that has been disclosed in the Disclosure Schedules, (v) Encumbrances that arise solely by reason of acts of, or with the written approval of, Buyer, (vi) Encumbrances not created by Seller that affect the underlying interest of any Leased Real Property, (vii) any set of facts an accurate up-to-date survey would show, and (viii) any other Encumbrance that would not be materially adverse to the conduct of the Business.

"Person" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"Petition Date" has the meaning set forth in the recitals.

"PMC" means PMC Financial Services Group, LLC.

"PMC Obligations" means the "Obligations," as that term is defined in the ABL.

"Principal Amount Outstanding" means the outstanding unpaid amount loaned by PMC to Seller for use in Seller's operations, but shall not include any interest, fees, or other charges.

"Purchase Price" has the meaning set forth in Section 2.7(a).

"Purchased Assets" has the meaning set forth in Section 2.1.

"Release" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, abandonment, disposing or allowing to escape or migrate into or through the environment (including, without limitation, ambient air (indoor or outdoor), surface water, groundwater, land surface or subsurface strata or within any building, structure, facility or fixture).

"Representative" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“Sale Order” means an Order or Orders of the Bankruptcy Court issued pursuant to sections 363, and 365 of the Bankruptcy Code, authorizing and approving, among other things, (a) the sale, transfer and assignment of the Purchased Assets to Buyer in accordance with the terms and conditions of this Agreement, free and clear of all Claims and Encumbrances (except for Permitted Encumbrances), (b) the assumption and assignment of the Assigned Contracts in connection therewith and (c) that Buyer is a “good faith” purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

“Seller” has the meaning set forth in the Preamble.

“Tangible Property” means all tangible personal property listed on Schedule 2.1(a) and, to the extent not included therein, any tangible personal property included in the Purchased Assets.

“Tax” or “Taxes” means (i) all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, health and safety, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties, unclaimed property and escheat obligations, or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties, and (ii) any liability for the payment of any amounts of the type described in clause (i) as a result of the operation of Law or any express or implied obligation to indemnify any other Person.

“Tax Return” means any return, document, declaration, report, election, estimated tax filing, claim for refund, declaration of estimated Tax, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transfer Taxes” has the meaning set forth in Section 5.9.

“Transition Permit” has the meaning set forth in Section 5.4(b).

“Water Rights” means water rights owned or leased by Seller or its Affiliates and held for use in connection with the Business.

ARTICLE 2 PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Subject to the terms and conditions set forth in this Agreement and in the Sale Order, at the Closing, Seller shall irrevocably sell, assign and transfer to Buyer, and Buyer shall purchase from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller’s right, title, and interest in, to and under the following Assets and Tangible Property (the “Purchased Assets”):

- (a) the Assets and Tangible Property, including but not limited to the items described in Schedule 2.1(a);
- (b) the Leased Real Property described in Schedule 2.1(b);
- (c) the Assigned Contracts described in Schedule 2.1(c);

(d) the Permits described in Schedule 2.1(d) under the heading “Transferred Permits”;

(e) the Intellectual Property, including but not limited to the items set forth on Schedule 2.1(e);

(f) all of Seller’s inventory, including but not limited to the Eligible Inventory set forth in Schedule 2.1(f);

(g) all of Seller’s accounts receivable, including but not limited to the Eligible Accounts set forth in Schedule 2.1(g);

(h) Seller’s other general intangibles set forth on Schedule 2.1(h);

(i) originals, or where not available, copies, of all Books and Records relating to the Business other than those set forth in Section 2.2;

(j) all of the rights of Seller under warranties, indemnities, and all similar rights against third parties the extent related to the Business to the extent assignable;

(k) any and all deposits, prepaids, retainers and similar amounts paid to vendors relating to or in connection with the Business; and

(l) all Claims to the extent related to the Purchased Assets described in this Section 2.1 or the Assumed Liabilities, but specifically excluding all Claims arising under chapter 5 of the Bankruptcy Code (i) against counterparties who are party to (or Affiliates of a party to) any Assigned Contract, (ii) otherwise arising under or related to the Purchased Assets, or (iii) against Buyer (or Buyer’s Affiliates); provided, that the Debtor shall retain the right to assert any such Claims as a defense or objection to proofs of claim asserted against the Debtor or its bankruptcy estate in the Chapter 11 Case.

Section 2.2 Excluded Assets. Other than the Purchased Assets, Buyer expressly acknowledges and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the “Excluded Assets”). For greater certainty, Excluded Assets include the following assets and properties of Seller:

(a) the Excluded Contracts;

(b) the organizational documents, minute books, stock books, stock certificates, stock ledgers, corporate seal, Tax Returns, books of account or other records having to do with the corporate ownership, organization of Seller, qualification to do business, or existence of Seller, all employee-related or employee benefit-related files or records, and any other Books and Records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;

(c) any Claims of Seller’s estate under chapter 5 of the Bankruptcy Code or analogous state statutes including Claims under section 547, 548, 549 or 550 of the Bankruptcy Code;

(d) all Employee Benefit Plans and all assets and Contracts associated with the Employee Benefit Plans;

(e) the rights which accrue or will accrue to Seller under this Agreement and the documents and instruments delivered in connection herewith and all cash and non-cash

consideration payable and deliverable to Seller under this Agreement or any such documents or instruments;

(f) any depository, checking or other account maintained by Seller at any bank or financial institution;

(g) all rights and Claims arising out of, relating to or reasonably necessary to enforce or enjoy the benefits of any Contract that is not an Assigned Contract or any other Excluded Asset, including any security or other deposit, refund, rebate, credit or payment due Seller thereunder;

(h) all pending litigation or proceedings and all rights, claims, counterclaims, offsets and causes of action asserted or which could be asserted, including, without limitation, as a defense to any of the proofs of claim filed in the Chapter 11 Case;

(i) all equipment and property of any contractor or third party located on any of the Purchased Assets and not owned by Seller;

(j) all insurance policies of Seller to the extent related to the Business except for those policies included in Assigned Contracts; and

(k) the Assets, properties, and rights set forth in Schedule 2.2(k).

Section 2.3 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume, pay, satisfy, perform and discharge when due only the following liabilities and obligations of Seller with respect to the Purchased Assets and the Business (collectively, the “Assumed Liabilities”):

(a) all liabilities and obligations relating to the ownership or operation of the Purchased Assets accruing after the Closing Date;

(b) all liabilities and obligations under any of the Assigned Contracts arising after the Closing Date;

(c) all Cure Amounts;

(d) all liabilities and obligations for Taxes: (i) relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period or portion thereof after the Closing Date; and

(e) all liabilities and obligations listed in Schedule 2.3.

Section 2.4 Excluded Liabilities. Other than the Assumed Liabilities and Permitted Encumbrances, Buyer shall not assume and shall not be responsible to pay, satisfy, perform or discharge any liabilities or obligations of Seller with respect to the Purchased Assets or the Business, whether known, unknown, direct, indirect, absolute, contingent or otherwise, or arising out of facts, circumstances or events in existence on or prior to Closing (collectively, the “Excluded Liabilities”).

Section 2.5 Exclusion of Assigned Contracts. From the date hereof until two Business Days prior to the Sale Hearing (the “Cut-Off Date”), Buyer shall have the right, upon written notice to Seller, to exclude any Contract from the Assigned Contracts, or supplement the list of Assigned Contracts to include any Contract that should have been listed on Schedule 2.1(c) (in each case, subject to the requirements of sections 365(a) and 365(f) of the Bankruptcy Code), for any reason. Any Contract so excluded by Buyer shall be deemed to no longer be an Assigned Contract and shall be deemed an Excluded Asset. Any Schedules hereto shall be amended to reflect any changes made

pursuant to this Section 2.5 and Buyer shall have no obligation to pay the Cure Amount (if any) associated with any Contract that is excluded from the Assigned Contracts pursuant to this Section 2.5.

Section 2.6 DIP Budget. The DIP Budget shall be the budget of expenditures set forth on Schedule 2.6.

Section 2.7 Purchase Price.

(a) Escrow Deposit. Within two Business Days after the entry of the Sales Order, Seller and Buyer shall enter into the Escrow Agreement and Buyer shall deposit \$100,000 with the Escrow Holder, as an earnest money deposit (as deposited, together with interest accrued thereon, the "Escrow Deposit"). The Escrow Deposit will be held in trust without interest and shall be disbursed only upon joint direction of Buyer and Seller or upon court order. The Escrow Deposit shall be held by Escrow Holder in a segregated escrow account in accordance with the terms and conditions of the Escrow Agreement and this Agreement. Seller and Buyer shall bear equally the fees and costs of the Escrow Holder. At Closing, the Escrow Deposit shall be credited and applied toward the Purchase Price. If this Agreement terminates without a Closing, the Escrow Holder shall immediately disburse the Escrow Deposit as follows to Seller if this Agreement is terminated pursuant to Section 6.1, Section 6.3 and/or Section 7.1(c), and to Buyer if this Agreement is terminated pursuant to Section 6.1, Section 6.2, Section 7.1(a), Section 7.1(b) and/or Section 7.1(d).

(b) Price. The aggregate consideration for the Purchased Assets (the "Purchase Price") shall consist of \$3,100,000 cash (including the Escrow Deposit) plus or minus the amount determined under the following sentence (the "Cash at Closing") and the assumption of the Assumed Liabilities. The Cash at Closing will be increased or decreased, as the case may be, by \$50,000 for each full increment of \$50,000 that the sum of Seller's actual Eligible Inventory and actual Eligible Accounts respectively either falls short of or exceeds the amount thereof set forth in Seller's ABL borrowing base certificate dated February 5, 2018.

(c) Wiring Instructions. No later than three Business Days prior to Closing, Seller shall deliver to Buyer a statement indicating wire transfer instructions for delivery of the Escrow Deposit and the balance of the Cash at Closing. By 12:00 p.m., Denver, Colorado time on the Closing Date, the Escrow Holder shall deliver the Escrow Deposit and Buyer shall deliver the balance of the Cash at Closing as specified in Section 2.9(b)(i) below.

Section 2.8 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated herein, including the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities (the "Closing"), shall take place electronically via email beginning at 9:00 a.m., Denver, Colorado time, on the first day on which the conditions to Closing set forth in ARTICLE 6 have been satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date) or at such other time or on such other date or at such other place as Seller and Buyer may mutually agree upon in writing (the day on which the Closing takes place being the "Closing Date").

Section 2.9 Transactions to Be Effected at and Following the Closing.

(a) At the Closing, Seller shall deliver to Buyer the following, substantially in the applicable form attached hereto as Exhibit A with respect to the items listed in Section 2.9(a)(ii) through Section 2.9(a)(vi) below:

(i) a true and correct copy of the Sale Order;

(ii) a duly executed bill of sale pursuant to which Seller's right, title, and interest in, to, and under all of the Purchased Assets not otherwise assigned at Closing shall be assigned to Buyer or its designee;

(iii) duly executed assignments covering any Purchased Assets which are owned of record by officers, subsidiaries or other Affiliates of Seller for Seller's benefit rather than by Seller itself, pursuant to which all of their right, title and interest in and to such assets is assigned to Buyer or its designee;

(iv) duly executed assignments, pursuant to which Seller's right, title, and interest in, to and under all of the Purchased Assets that are Leased Real Property not otherwise assigned at Closing shall be assigned to Buyer or its designee;

(v) duly executed assignments and bills of sale, pursuant to which Seller's right, title, and interest in, to and under the Purchased Assets that are Tangible Property not otherwise assigned at Closing shall be assigned to Buyer or its designee;

(vi) duly executed assignments, pursuant to which all of the Purchased Assets that are Assigned Contracts or Permits, in each case, that may be transferred at Closing in accordance with applicable Law, not otherwise assigned at Closing shall be assigned to Buyer or its designee;

(vii) all login information, usernames, and passwords to the Intellectual Property of the Seller, including social media accounts and website information; and

(viii) all other agreements, documents, instruments or certificates required to be delivered by Seller at or prior to the Closing pursuant to Section 6.2.

(b) At the Closing, Buyer shall deliver to, or on behalf of (in the case of Section 2.9(b)(ii)), Seller the following:

(i) That portion of the Cash at Closing that is equal to the PMC Obligations directly to PMC by wire transfer in accordance with wire instructions provided by PMC to Buyer, with the remainder of the Cash at Closing directly to the Seller by wire transfer in accordance with wire instructions provided by Buyer or as otherwise set out in the Sale Order; the Cure Amounts required to be paid by Buyer in accordance with the terms hereof to the counterparties of the applicable Assigned Contracts;

(ii) duly executed assumption agreements substantially in the form attached as Exhibit B hereto, pursuant to which the Assumed Liabilities not otherwise assigned at Closing shall be assigned to Buyer;

(iii) all other agreements, documents, instruments or certificates required to be delivered by Buyer at or prior to the Closing pursuant to Section 6.3.

Section 2.10 Allocation of Purchase Price. Within thirty days after the Closing Date, Buyer shall deliver to Seller a schedule allocating the Purchase Price among the assets comprising the Purchased Assets in accordance with Treasury Regulation 1.1060-1 (or any comparable provision of state or local Tax law) or any successor provision (the "Allocation Schedule"). The Allocation Schedule shall be subject to the approval of Seller, which approval shall not be unreasonably withheld or delayed. The Allocation Schedule shall be reasonable and shall be prepared, and subsequently adjusted, in accordance with section 1060 of the Code and the Treasury Regulations promulgated thereunder. The Allocation Schedule shall be deemed final unless Seller notifies Buyer in writing that Seller objects to one or more items reflected in the Allocation Schedule within thirty (30) days after delivery of the Allocation Schedule to Seller. In the event of any such objection, Buyer and Seller

will work expeditiously and in good faith in an attempt to resolve such dispute within a further period of fifteen (15) days after the date of notification by Seller to Buyer of such dispute, failing which the dispute shall be submitted for determination to an independent national firm of certified public accountants mutually agreed to by Seller and Buyer (and, failing agreement between Seller and Buyer on the firm of certified public accountants within a further period of five (5) Business Days, such independent national firm of certified public accountants shall be Ernst & Young LLP). The determination of the firm of certified public accountants shall be final and binding upon the parties hereto and shall not be subject to appeal. The firm of certified public accountants shall be deemed to be acting as experts and not as arbitrators. The fees and expenses of such accounting firm shall be borne equally by Seller, on the one hand, and Buyer, on the other. Seller and Buyer shall report and file all Tax Returns (including any amended Tax Returns and claims for refund) consistent with the Allocation Schedule (as it may be subsequently adjusted) and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Seller and Buyer shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. Not later than thirty (30) days prior to the filing of their respective Forms 8594 (and analogous state law forms) relating to the Closing, Seller and Buyer shall deliver to the other a copy of its Form 8594 (and such analogous state law forms). Seller and Buyer agree to notify and provide the other party with reasonable assistance in the event of an examination, audit or other proceeding relating to Taxes or any other filing with a Governmental Authority regarding the Allocation Schedule. Notwithstanding the preceding sentence, Seller and Buyer may settle any proposed deficiency or adjustment by any Governmental Authority based upon or arising out of the allocation of the Purchase Price and other applicable items among the Purchased Assets, and neither Buyer nor Seller shall be required to litigate before any Governmental Authority any proposed deficiency or adjustment by any Governmental Authority challenging any final Allocation Schedule. Notwithstanding anything in this Agreement to the contrary, this Section 2.10 shall survive the Closing without limitation. Seller and Buyer acknowledge and agree that this Section 2.10 pertains to the allocation of the Purchase Price for Tax purposes, but not for any other purpose.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller represents and warrants to Buyer as follows:

Section 3.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Colorado. Seller is duly qualified to do business as a foreign corporation, and is in good standing under the Laws of, each state in which failure to be so qualified would be materially adverse to the conduct of the Business.

Section 3.2 Due Authorization, Execution and Delivery; Enforceability. Subject to the entry of the Sale Order by the Bankruptcy Court, Seller has the corporate power and authority to enter into this Agreement and the other agreements contemplated hereby, and to perform its obligations hereunder and thereunder and has taken all necessary action required for the due authorization, execution, delivery and performance by it of this Agreement and the transactions contemplated hereby. Subject to the entry of the Sale Order by the Bankruptcy Court, the execution and delivery by Seller of this Agreement, the performance by Seller of its obligations hereunder and the consummation by Seller of the transactions contemplated hereby have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by Seller and, subject to the entry of the Sale Order by the Bankruptcy Court, constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 3.3 No Conflicts; Consents. Except as set forth in Schedule 3.3, subject to the Sale Order having been entered by the Bankruptcy Court, the execution, delivery and performance by Seller of this Agreement, and the consummation of the transactions contemplated hereby, do not: (a) result in a violation or breach of any provision of Seller's articles of incorporation or bylaws, (b) result in a violation or breach of any material Governmental Order applicable to Seller, or (c) require the consent of any Person under, conflict with, result in a material violation or breach of, constitute a material default or an event that, with or without notice or lapse of time or both, would constitute a material default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel, any Assigned Contract. No consent, approval, Permit, Governmental Order (other than in connection with the Chapter 11 Case), declaration or filing with, or notice to, any Governmental Authority or other Person is required by or with respect to Seller in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, except (x) as set forth in Schedule 3.3, (y) entry of the Sale Order by the Bankruptcy Court, and (z) such consents, approvals, Permits, Governmental Orders, declarations, filings or notices which, in the aggregate, would not be materially adverse to the conduct of the Business.

Section 3.4 Assets.

(a) The following Schedules in this Section 3.4(a) are a true and complete list of the respective items indicated below, except where the failure to be a true and complete list would not result in a Material Adverse Effect:

(i) Schedule 2.1(a) sets forth the Assets and Tangible Property held or used in connection with the Business.

(ii) Schedule 2.1(b) sets forth the Leased Real Property held or used in connection with the Business.

(iii) Schedule 2.1(c) sets forth the Assigned Contracts held or used in connection with the Business.

(iv) Schedule 2.1(d) sets forth the Permits held or used in connection with the Business.

(v) Schedule 2.1(e) sets forth the Intellectual Property held or used in connection with the Business.

(vi) Schedule 2.1(f) sets forth the Eligible Inventory held or used in connection with the Business as of the date of the execution of this Agreement.

(b) Seller owns an undivided interest in and to the Assets.

(c) Seller has a valid and enforceable leasehold or subleasehold interest in the Leased Real Property set forth in Schedule 2.1(b).

(d) The Purchased Assets constitute all of the material Assets and Tangible Property used in the Business (i) as it is currently conducted other than the Excluded Assets and (ii) that are necessary to conduct the Business in all material respects as it is currently conducted.

(e) Seller has, and subject to the Sale Order shall convey to Buyer at the Closing, good and marketable title to all of the Purchased Assets, in each case free and clear of all Encumbrances (other than Permitted Encumbrances).

Section 3.5 Contracts.

(a) Schedule 3.5(a) lists all of the material Contracts of Seller necessary to conduct the Business in all material respects as it is currently conducted.

(b) Schedule 3.5(b) sets forth Seller's estimate, based on reasonable inquiry, as of the date hereof, of the Cure Amounts associated with each Assigned Contract.

Section 3.6 Legal Proceedings. There are no actions, suits, claims or other legal proceedings pending, in each case before a Governmental Authority, or to Seller's Knowledge threatened, against Seller relating to the Business, which would be materially adverse to the conduct of the Business.

Section 3.7 Compliance with Laws; Permits.

(a) Buyer has not been given notice or been charged with any material violation of any Law of any Governmental Authority. To Seller's Knowledge, Seller is not in material violation of any Law. No material investigation or review by any Governmental Authority is pending or, to Seller's Knowledge, threatened, against Seller or any of its assets and properties, nor has any Governmental Authority indicated to Seller an intention to conduct the same. Seller has complied in all material respects with all applicable Laws in the operation of the Business and ownership and use of the Purchased Assets.

(b) Schedule 3.7(b) sets forth the material Permits necessary for the operation of the Business as presently being conducted (the "Material Permits"). Except as set forth on Schedule 3.7(b), the Material Permits have been duly obtained and Seller is not in material default or material breach of any such Material Permit.

(c) None of the representations and warranties contained in this Section 3.7 shall relate to or be deemed to relate to environmental matters or health and safety (which are governed exclusively by Section 3.8, tax matters (which are governed exclusively by Section 3.9) or intellectual property matters (which are governed exclusively by Section 3.10).

Section 3.8 Environmental and Health and Safety Matters.

(a) To Seller's Knowledge, (i) Seller is in material compliance with all Environmental Laws and Health and Safety Laws, except where the failure to be in such compliance would not be expected to be materially adverse to the conduct of the Business, and Seller has not received any Environmental Notice, Environmental Claim, Health and Safety Notice or Health and Safety Claim relating to the Business or the Purchased Assets, which either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Schedule 3.8(b) sets forth each of the material Environmental Permits necessary for the operation of the Business, each of which is in full force and effect. Seller has obtained and is in material compliance with all Environmental Permits listed in Schedule 3.8(b).

(c) To Seller's Knowledge, there has been no Release of Hazardous Materials in contravention of Environmental Laws or that would be materially adverse to the conduct of the Business.

(d) Seller has not entered into, and to Seller's Knowledge, the Purchased Assets are not otherwise subject to (i) any consent decree, order, judgment or judicial order relating to compliance with Environmental Laws or Environmental Permits or the investigation, sampling, monitoring, treatment, remediation, removal or cleanup of Hazardous Materials, and no litigation is pending with respect thereto, or (ii) any environmental indemnification in connection

with any threatened or asserted claim by any third party for any liability under any Environmental Law or relating to any Hazardous Materials.

(e) Seller has not entered into, and to Seller's Knowledge, the Purchased Assets are not otherwise subject to (i) any consent decree, administrative order, judgment or judicial order relating to compliance with Health and Safety Laws, or (ii) any indemnification in connection with any threatened or asserted claim by any third party for any liability under any Health and Safety Law.

Section 3.9 Taxes.

(a) Except as set forth in Schedule 3.9(a), (i) all Taxes due and owing by Seller with respect to the Purchased Assets have been duly and timely paid in full, (ii) no Tax deficiencies are being proposed in writing or have been assessed by any Governmental Authority with respect to the Purchased Assets that remain outstanding or unsatisfied, (iii) there are no Tax liens on any of the Purchased Assets for which Seller would be responsible, other than liens for Taxes not yet due and payable, (iv) no federal, state, local or foreign audits or administrative or judicial proceedings are presently pending, or threatened in writing, with regard to any Taxes or Tax Returns with respect to the Purchased Assets

(b) The representations and warranties set forth in this Section 3.9 are the exclusive representations and warranties made by Seller with respect to Taxes.

Section 3.10 Intellectual Property.

(a) Schedule 3.10(a) sets forth an accurate and complete list of (i) all trademarks, tradenames, and patents (A) owned by Seller, (B) licensed by Seller, (C) used by Seller in the Business, or (D) registered or pending applications for registration of any trademarks, tradenames, or patents described in clause (A) in any jurisdiction, (ii) all domain names of Seller, (iii) websites and internet domain name registrations; (iv) all frame molds, models, specifications, drawings, renderings, schematics, design and production details; (v) all of Seller's rights in intellectual property related to the Business held by third parties, including frame manufacturers; and (vi) all other intellectual property and industrial property rights and assets, and all rights, interests and protections that are associated with, similar to, or required for the exercise of, any of the foregoing. Except as set forth in Schedule 3.10(a), Seller does not own, license or use any registered copyrights in connection with the Business.

(b) Except as would not be materially adverse to the conduct of the Business, (i) Seller owns or has the right to use all Intellectual Property used in the ordinary course of the Business and (ii) all required filings and fees owed by Seller related to Seller's Intellectual Property have been timely filed with and paid to the relevant Governmental Authorities.

(c) Except as set forth in Schedule 3.10(c), to Seller's Knowledge: (i) the conduct of the Business, as currently conducted, does not infringe, misappropriate, dilute or otherwise violate the Intellectual Property of any other Person; and (ii) no other Person is infringing, misappropriating or otherwise violating any Intellectual Property of Seller.

(d) The Intellectual Property set forth on Schedule 3.10(a) is all of the Intellectual Property necessary to operate the Business as presently conducted.

(e) There are no actions, suits, claims or other legal proceedings pending, in each case before a Governmental Authority, or to Seller's Knowledge threatened: (i) alleging any infringement, misappropriation, dilution or violation of the Intellectual Property of any Person by

Seller in connection with the Business or (ii) challenging the validity, enforceability, registrability or ownership of any of Seller's Intellectual Property.

(f) The representations and warranties set forth in this Section 3.10 are the exclusive representations and warranties made by Seller with respect to Intellectual Property.

Section 3.11 Financial Advisors. No agent, broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

Section 3.12 No Other Representations and Warranties. Except for the representations and warranties contained in this ARTICLE 3 (including the related portions of the Disclosure Schedules), Seller has not and no Affiliate or Representative of Seller, or any other Person, has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information furnished or made available to Buyer and its Representatives (including any projections, information, documents or material made available to Buyer, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business or any representation or warranty arising from statute or otherwise in law.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

Section 4.1 Organization. Buyer is an exempted company incorporated under the laws of the Cayman Islands duly organized, validly existing and in good standing under the Laws of such jurisdiction.

Section 4.2 Due Authorization, Execution and Delivery; Enforceability. Buyer has the requisite company power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder and the consummation by Buyer of the transactions contemplated hereby have been duly authorized by all requisite company action. This Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 4.3 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement, and the consummation of the transactions contemplated hereby, do not: (a) result in a violation or breach of any provision of the organizational documents of Buyer, (b) result in a violation or breach of any material Governmental Order applicable to Buyer, or (c) require the consent of any Person under, conflict with, result in a material violation or breach of, constitute a material default or an event that, with or without notice or lapse of time or both, would constitute a material default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel, any material contract of Buyer. No consent, approval, Permit, Governmental Order (other than in connection with the Chapter 11 Case), declaration or filing with, or notice to, any Governmental Authority or other Person is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Section 4.4 Financial Advisors. No agent, broker, finder, investment banker or other Person is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

Section 4.5 Solvency. Immediately after giving effect to the transactions contemplated hereby, Buyer shall be solvent and shall: (a) be able to pay its debts as they become due, (b) own property that has a fair saleable value greater than the amounts required to pay its debts (including a reasonable estimate of the amount of all contingent liabilities), and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated hereby with the intent to hinder, delay or defraud either present or future creditors of Buyer or Seller. In connection with the transactions contemplated hereby, Buyer has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 4.6 Legal Proceedings. There are no actions, suits, claims or other legal proceedings pending against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

Section 4.7 Independent Investigation. Buyer has conducted its own independent investigation, review and analysis of the Business and the Purchased Assets. Buyer acknowledges and agrees that: (a) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer has relied upon its own investigation and the express representations and warranties of Seller set forth in ARTICLE 3 (including the related portions of the Disclosure Schedules), and (b) none of Seller, any Affiliate or Representative of Seller or any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller.

ARTICLE 5 COVENANTS

Section 5.1 Conduct of Business Prior to the Closing. From the date hereof until the Closing:

- (a) Seller shall use its commercially reasonable efforts to:
 - (i) maintain and preserve intact the current organization, business and franchise of the Business and to preserve the rights, franchises, goodwill and relationships of the customers, lenders, suppliers, regulators and others having business relationships with the Business; and
 - (ii) pay all Taxes when due with respect to the Purchased Assets required to be paid by Seller and not allow the Purchased Assets to become subject to a lien for Taxes required to be paid by Seller, other than for Taxes not yet due and payable.
- (b) Except (i) as expressly required or permitted by this Agreement, (ii) as required pursuant to applicable Laws or any Governmental Authority, (iii) as consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), or (iv) as required to respond reasonably and prudently to an emergency or disaster (including the right to take forthwith any action required to insure the safety and integrity of the Business), Seller shall not:

- (i) acquire any business;

(ii) sell, transfer, dispose of, lease, encumber, relinquish or abandon any of the Purchased Assets, except sales and other dispositions in the ordinary course of business;

(iii) outside the ordinary course of business, enter into any Contract that would reasonably be likely to become an Assigned Contract;

(iv) incur any indebtedness for borrowed money that will constitute an Assumed Liability other than indebtedness under the Loan Agreement, short-term indebtedness, letters of credit or sureties in the ordinary course of business;

(v) make any loans or advances that will be a Purchased Asset to any Person or assume or guarantee the liabilities of any Person that will constitute an Assumed Liability;

(vi) settle, offer or propose to settle, compromise, assign or release any material proceeding brought against Seller in respect of or in connection with the Business or the Purchased Assets;

(vii) enter into any agreement creating a joint venture or partnership or effecting a business combination or other similar arrangement with another Person in respect of the Business or the Purchased Assets;

(viii) pay or promise to pay any wage or salary increase, bonus, deferred compensation, consulting amount, or other amount to any employee, officer, director, or contractor that increases Seller's expenditures or liabilities to any employee, officer, director, or contractor outside the ordinary course of business or beyond the amounts of the Petition Date; and

(ix) attempt or agree to do any of the foregoing matters listed in clauses (i) through (viii) above.

Section 5.2 Access to Information. From the date hereof until the Closing, Seller shall: (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business or the Purchased Assets, (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business or the Purchased Assets as Buyer or any of its Representatives may reasonably request, and (c) instruct the Representatives of Seller to use commercially reasonable efforts to cooperate with Buyer in its access to and inspection of the Purchased Assets and the Business; provided, however, that any such access or inspection shall be conducted at Buyer's sole risk and at Buyer's sole cost and expense during normal business hours upon at least two (2) Business Days' prior written notice to Seller, under the supervision of Seller's personnel, in compliance with all of Seller's health, safety and environmental regulations and procedures, and in such a manner as not to interfere with the normal operations of the Business. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any information to Buyer if such disclosure would, in Seller's discretion: (x) cause significant competitive harm to Seller and/or the Business if the transactions contemplated by this Agreement are not consummated, (y) jeopardize any attorney-client or other privilege, or (z) contravene any applicable Law, fiduciary duty or binding agreement entered into prior to the date of this Agreement. Prior to the Closing, without the prior written consent of Seller, Buyer shall not contact any suppliers to, or customers of, the Business, and Buyer shall have no right to perform invasive or subsurface investigations of any properties. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided under this Agreement.

Section 5.3 Notice of Certain Events. Seller and Buyer agree that, subject to applicable Law, each shall provide the other prompt notice in writing of:

(a) any notice or communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(b) any material notice or communication from any Governmental Authority in connection with the transactions contemplated by this Agreement;

(c) any material proceeding commenced or threatened against it which relates to the consummation of the transactions contemplated by this Agreement, other than the Chapter 11 Case; and

(d) any failure by it to comply with or satisfy in any material respect any covenant, condition or agreement to be complied with or satisfied under this Agreement; provided that the giving of any such notice shall not in any way (i) change or modify the representations and warranties of the parties hereto or the conditions in their favor contained in this Agreement or otherwise affect the remedies available to Seller or Buyer under this Agreement, (ii) have any effect on the satisfaction of any of the conditions to closing set forth in ARTICLE 6, or (iii) be deemed to amend or supplement the Disclosure Schedules.

Section 5.4 Governmental Approvals and Other Third-Party Consents.

(a) Each party hereto shall, as promptly as possible, use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement, except for consents, authorizations, orders and approvals with respect to Permits that cannot be obtained until after the Closing. Each party shall reasonably cooperate with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) With respect to the Permits, Buyer will meet with the relevant state and federal agencies with respect to the modification, transfer, replacement or reissuance, as applicable, of such Permits, which shall occur following Closing. Each party shall use commercially reasonable efforts to cause the modification, transfer, replacement or reissuance, as applicable, of the Permits promptly following Closing, provided that Seller shall not be obligated to pay any consideration in connection therewith and/or to incur any third-party expenses or reimbursement obligations to Buyer in doing so. Following the Closing, Seller shall, to the extent permitted by Law, maintain each Permit (each a "Transition Permit") in full force and effect until each such Permit has been modified, transferred, replaced or reissued, as applicable, and Seller shall allow Buyer to own, use, develop and operate the Purchased Assets under each such Transition Permit until such time as each such Transition Permit has been modified, transferred, replaced or reissued, as applicable, provided that Seller shall not be obligated to pay any consideration in connection therewith and/or to incur any third party expenses or reimbursement obligations to Buyer in doing so. Following the Closing, if Seller receives a notice of violation or of any other Loss under any Transition Permit prior to the transfer or reissuance of such Transition Permit, which is based on or arises out of the activities or operations of Buyer after Closing, Seller will promptly notify Buyer, and Buyer shall be responsible for contesting or curing such violation and for any Loss, obligation or liability associated therewith. Buyer shall indemnify Seller for any obligations or liabilities associated with any such notice of violation of a Transition Permit or Loss related thereto following Closing. Notwithstanding anything in this Agreement to the contrary, this Section 5.4 shall survive the Closing without limitation.

(c) Seller and Buyer shall use commercially reasonable efforts to give all notices to, and obtain all consents or waivers from, all third parties that are described in Schedule

3.3; provided, however, that (i) the foregoing shall not require Seller or Buyer to give notices to (other than the notices provided for in Section 5.13(b)(ii)), or obtain consents or waivers from, any non-Debtor parties to Assigned Contracts regarding assignments thereof to Buyer and (ii) neither Seller nor Buyer shall be obligated to pay any consideration therefor to any third party from whom consent or approval is requested, other than customary filing fees.

Section 5.5 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of seven (7) years after the Closing, Buyer shall: (i) retain the Books and Records (including personnel files) of the Business relating to the period prior to Closing, and (ii) upon reasonable notice, afford the Representatives of Seller (and any trustee or liquidating trustee appointed in the Chapter 11 Case) reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to Buyer's personnel and employees, to Buyer's computer service and other equipment, and to those portions, and only those portions, of such Books and Records as relate to the period prior to Closing and, if required by Buyer, subject to Seller executing a non-disclosure agreement with respect to such information, in form and substance acceptable to the parties hereto, acting reasonably.

(b) Buyer shall not be obligated to provide Seller with access to any books or records (including personnel files) pursuant to this Section 5.5 where such access would violate any Law. Notwithstanding anything in this Agreement to the contrary, this Section 5.5 shall survive the Closing without limitation.

Section 5.6 Closing Conditions. From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE 6 for which it is responsible.

Section 5.7 Public Announcements. Seller and Buyer shall consult with each other prior to issuing any press releases or otherwise making public statements with respect to this Agreement or the transactions contemplated by this Agreement and, to the extent practicable, shall provide the other party with an opportunity to review and comment on all such press releases or statements prior to the release thereof. To the extent that any such press release or public statement is required by applicable Law, by a rule of a stock exchange on which a party's shares (or those of any of its Affiliates) are listed or traded or by a Governmental Authority, the press release or public announcement shall, to the extent practicable, be issued or made after consultation with the other party hereto and taking into account such other party's comments, provided that such consultation does not, and reasonably would be expected not to, cause non-compliance with any such Law or rule. If such advance consultation is not reasonably practicable or legally permitted, to the extent permitted by applicable Law, the disclosing party shall provide the other party with a copy of any written disclosure made by such disclosing party as soon as practicable thereafter.

Section 5.8 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to vest title to the Purchased Assets in Buyer, carry out the provisions hereof and give effect to the transactions contemplated by this Agreement, in each case, at the sole cost and expense of the requesting party. Without limiting the generality of the foregoing, during the thirty (30) day period following the Closing, Buyer shall afford the Representatives of Seller reasonable access, during normal business hours, to Buyer's property for the purpose of recovering and/or removing any of the Excluded Assets remaining on such property. Notwithstanding anything in this Agreement to the contrary, this Section 5.8 shall survive the Closing without limitation.

Section 5.9 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement (including any real property transfer Tax and any other similar Tax) (all such Taxes collectively, "Transfer Taxes") shall be borne and paid by Buyer when due. Buyer shall, at its own expense, timely file any Tax Return with respect to Transfer Taxes (and Seller shall cooperate with respect thereto as necessary). Each of Buyer and Seller agrees to timely sign and deliver (or to cause to be timely signed and delivered) such certificates or forms as may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) any Transfer Taxes.

Section 5.10 Nature of Transaction.

(a) Seller is selling, and Buyer is acquiring, the Purchased Assets "AS IS", "WHERE IS" and "WITH ALL FAULTS, LIMITATIONS AND DEFECTS (HIDDEN AND APPARENT)" and subject only to the representations and warranties contained in ARTICLE 3, without any other representation or warranty of any nature whatsoever and without any guarantee or warranty (whether express or implied), including as to title, quality, merchantability or fitness for Buyer's intended use or a particular purpose or any use or purpose whatsoever.

(b) Further, except as set forth in this Agreement, neither Seller nor any director, officer, manager, employee, agent, consultant, or Representative of Seller, nor any other Person has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Purchased Assets, any part of the Purchased Assets, the financial performance of the Purchased Assets, or the physical condition of the Purchased Assets.

(c) Buyer acknowledges and agrees that it is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of property and assets such as the Purchased Assets as contemplated hereunder. Buyer acknowledges and agrees that it has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement.

(d) Buyer and Seller further acknowledge that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Seller and Buyer after good-faith arms'-length negotiation.

(e) Buyer has relied, and shall rely, solely upon its own investigation of all such matters and the representations, warranties and covenants contained in ARTICLE 3.

(f) Following the Closing, each of the parties hereto hereby agrees and acknowledges that (a) the parties hereto hereby disclaim all Losses and responsibility for any representation or warranty (including any representation or warranty set forth in ARTICLE 3 or ARTICLE 4 or any express or implied warranty, any warranty as to accuracy or completeness or any warranty as to fitness for a particular purposes), omission, agreement, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to the other party hereto or its Affiliates or Representatives or any other Person (including any opinion, information, projection, or advice that may have been or may be provided, directly or indirectly (including on or by access to any online data room), to the other party hereto or its Affiliates or Representatives by any director, officer, manager, employee, agent, consultant, or Representative of such party); (b) Seller makes no representations or warranties to Buyer regarding the probable success, profitability or value of any of the Purchased Assets; and (c) no party hereto shall have any liability with respect to, and no party hereto shall be permitted nor shall it assert any indemnification claim, liability or Loss with respect to, the foregoing matters, whether pursuant to this Agreement, common law, or otherwise.

Section 5.11 Transitional Contract Rights. In the event Buyer elects to close notwithstanding Seller's inability to assign any Assigned Contracts, and/or in the event Buyer identifies any Material Contracts other than Assigned Contracts that are critical, in Buyer's judgment, to the successful operation of the Business immediately following the Closing (collectively, "Critical Contracts"), then with respect thereto, Buyer will meet with the relevant Critical Contract counterparties with respect to the modification, transfer, replacement or reissuance, as applicable, of such Critical Contracts, which shall occur following Closing. Each party shall use commercially reasonable efforts to cause the modification, transfer, replacement or reissuance, as applicable, of the Critical Contracts promptly following Closing, provided that Seller shall not be obligated to pay any consideration in connection therewith and/or to incur any third-party expenses or reimbursement obligations to Buyer in doing so. Following the Closing, Seller shall, to the extent permitted by Law, maintain each Critical Contract in full force and effect until each such Critical Contract has been modified, transferred, replaced or reissued, as applicable, and Seller shall allow Buyer to own, use, develop and operate the Purchased Assets under each such Critical Contract until such time as each such Critical Contract has been modified, transferred, replaced or reissued, as applicable, provided that Seller shall not be obligated to pay any consideration in connection therewith and/or to incur any third party expenses or reimbursement obligations to Buyer in doing so. Following the Closing, if Seller receives a notice of violation or of any other Loss under any such Critical Contract prior to the transfer or reissuance of such Critical Contract, which is based on or arises out of the activities or operations of Buyer after Closing, Seller will promptly notify Buyer, and Buyer shall be responsible for contesting or curing such violation and for any Loss, obligation or liability associated therewith. Buyer shall indemnify Seller for any obligations or liabilities associated with any such notice of violation of a Critical Contract or Loss related thereto following Closing. Notwithstanding anything in this Agreement to the contrary, this Section 5.11 shall survive the Closing without limitation.

Section 5.12 Supplements to Schedules. Prior to the Cut-Off Date, Seller shall have the right from time to time to supplement, modify or update the Disclosure Schedules upon written notice to Buyer. Upon receipt of any such supplement, modification or update that in the reasonable judgment of Buyer would cause the condition set forth in Section 6.2(a) to not be satisfied at the Closing, Buyer shall have ten (10) Business Days from the date of receipt to object to such supplement, modification or update and, in the event of such an objection, the Disclosure Schedules shall not be deemed to have been supplemented, modified or updated with respect to such objected to item; provided, however, that if Buyer fails to so object within the ten (10)-Business Day period or accepts any portion of the supplement, modification or update, such supplement, modification or update (or portion with respect to which Buyer does not object) shall be deemed to supplement, modify or update the Disclosure Schedules and Seller shall not be deemed to have breached or violated any of its respective representations, warranties, covenants or agreements in this Agreement with respect thereto.

Section 5.13 Bankruptcy Matters.

(a) Proceed in Good Faith. Seller shall proceed promptly and in good faith using commercially reasonable efforts to obtain a Sale Order meeting the requirements specified in Section 5.13(d) below and in such further form and substance satisfactory to Buyer in its sole discretion.

(b) Compliance.

(i) Seller shall comply with all of its obligations under the Sale Order (after the entry of such Sale Order by the Bankruptcy Court).

(ii) Seller shall use commercially reasonable efforts to comply with all requirements under the Bankruptcy Code and Bankruptcy Rules in connection with obtaining approval of the transactions contemplated by this Agreement.

(iii) Seller shall move to assume and assign to Buyer the Assigned Contracts that are executory contracts capable of being assumed and assigned pursuant to section 365 of the Bankruptcy Code and shall provide notice thereof to (A) all counterparties to such contracts, (B) any third party beneficiary to such contracts as reasonably requested by Buyer (which third party beneficiaries shall be identified by Seller using its commercially reasonable best efforts), (C) any other Person that Buyer reasonably requests, and (D) any other Person as may be required by applicable Bankruptcy Rules and any applicable local rules of the Bankruptcy Court. Seller has the right to reject any Contract that is not an Assigned Contract in accordance with the Bankruptcy Code.

(c) Environmental Matters. Nothing in the Sale Order or this Agreement releases, discharges, nullifies, precludes, or enjoins the enforcement of any environmental liability to any Governmental Authority that any Person would be subject to as the owner or operator of the Purchased Assets after the Closing Date. Nothing in the Sale Order shall authorize the transfer or assignment to Buyer of any governmental (i) license, (ii) permit, (iii) registration, (iv) authorization or (v) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements under non-bankruptcy Law governing such transfers or assignments. Notwithstanding the foregoing sentence, nothing in the Sale Order shall: (A) be interpreted to deem Buyer as the successor to the Debtor under any successor liability doctrine with respect to any liabilities under environmental statutes or regulations for penalties for days of violation prior to the Closing Date or for liabilities relating to off-site disposal of waste by the Debtor prior to the Closing Date; (B) create for any Governmental Authority any substantive right that does not already exist under Law; or (C) be deemed or construed to be an admission of liability by the Debtor.

(d) Sale Order. This Agreement and the transactions contemplated hereby are contingent upon and subject to approval of the Bankruptcy Court through the entry of a Sale Order. The Sale Order will provide, among other things, that pursuant to sections 363 and 365 of the Bankruptcy Code:

(i) the Purchased Assets shall be sold to Buyer free and clear of all Encumbrances (except for Permitted Encumbrances and Assumed Liabilities);

(ii) to the extent that (A) there are restrictions on the sale, assignment, transfer, conveyance or delivery, or attempted sale, assignment, transfer, conveyance or delivery, to Buyer of any Purchased Asset or (B) the same would require the consent, authorization, approval or waiver of a Person who is not a party to this Agreement or an Affiliate of a party to this Agreement (including any Governmental Authority), then (1) such consent, authorization, approval or waiver is not required and/or (2) the Purchased Asset subject to such consent, authorization, approval or waiver shall be assigned or transferred regardless of any such restriction or necessary consent, authorization, approval or waiver and that there shall be no breach or adverse effect on the rights of Seller or Buyer for the failure to obtain any such consent, authorization, approval or waiver or otherwise comply with such restriction;

(iii) the transactions contemplated by this Agreement were negotiated at arm's length, that Buyer acted in good faith in all respects and Buyer shall be found to be a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code;

(iv) the terms and conditions of the sale of the Purchased Assets to Buyer as set forth herein are approved;

(v) Seller is authorized and directed to consummate the transactions contemplated by this Agreement and to comply in all respects with the terms of this Agreement;

(vi) Buyer and Seller did not engage in any conduct that would allow the transactions contemplated by this Agreement to be set aside pursuant to section 363(m) of the Bankruptcy Code; and

(vii) the Sale Order is binding upon any successors to Seller, including any trustees in respect of Seller or the Purchased Assets in the case of any proceeding under chapter 7 of the Bankruptcy Code.

(e) If the Sale Order is appealed, Buyer and Seller shall use their respective commercially reasonable efforts to defend such appeal at their own cost and expense.

(f) Seller further covenants and agrees that the terms of any plan of reorganization or liquidation, or any order of dismissal, submitted to the Bankruptcy Court by Seller shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement.

Section 5.14 Name Change. As soon as possible following the Closing, and in any event not later than 30 days thereafter, Seller shall make such corporate filings and take such other actions as may be necessary to change its corporate name to something other than Niner, Inc.

ARTICLE 6 CONDITIONS TO CLOSING

Section 6.1 Conditions to Obligations of All Parties. The obligations of Seller and Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of the following condition: no Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement or causing the transactions contemplated by this Agreement to be rescinded following completion thereof and there shall not have been enacted or made applicable any Law that makes the transactions contemplated by this Agreement illegal or otherwise prohibited.

The foregoing condition is for the exclusive benefit of Seller and Buyer and any such condition may be waived in whole or in part by Seller and Buyer at or prior to the time of Closing by each delivering to the other a written waiver to that effect. Delivery of any such waiver shall be without prejudice to any rights and remedies at law and in equity Seller or Buyer may have, including any claims Seller or Buyer may have for breach of covenant, representation or warranty by the other party, and also without prejudice to Seller's and Buyer's rights of termination in the event of non-performance of any other conditions in whole or in part.

Section 6.2 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in ARTICLE 3 shall be true and correct in all material respects.

(b) There shall be no Material Adverse Effect as of the Closing Date and Seller shall have delivered to Buyer a certificate executed by Chris Sugai attesting that no Material Adverse Effect has occurred.

(c) Buyer shall have received a Phase I Environmental Site Assessment of the Leased Real property which meets the "All Appropriate Inquiries" standard of the U.S. Environmental Protection Agency and is otherwise satisfactory to Buyer in its sole discretion.

(d) Buyer shall have completed its due diligence investigation of Seller not later than 48 hours prior to the hearing of the Bankruptcy Court scheduled to approve the Sale Order and shall be satisfied with the results of such investigation in its sole discretion.

(e) There shall be in effect any and all Permits (which may include Transition Permits) which are necessary for Buyer to conduct business immediately following the Closing.

(f) Seller shall have duly performed and complied in all material respects with all material agreements, covenants and conditions required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date and Seller shall have delivered to Buyer a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to Seller's agreements, covenants and conditions.

(g) Seller shall have delivered to Buyer a certificate from Chris Sugai certifying that attached thereto are true and complete copies of the constituent documents of Seller, all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(h) Buyer shall have received a certificate of good standing for Seller from the Secretary of State of the State of Colorado.

(i) Seller shall have delivered to Buyer duly executed counterparts of each other document, certificate and instrument set forth in Section 2.9(a) to be executed and delivered by Seller.

(j) The Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to Buyer in its sole and absolute discretion, and, as of the Closing Date the Sale Order shall be in full force and effect and shall not have been reversed, vacated, or stayed, and shall not have been amended, supplemented, or otherwise modified in any material respect without the prior written consent of Buyer.

(k) The Sale Order shall be non-appealable and not otherwise subject to review, reversal, modification or amendment, by appeal or writ of certiorari. Notwithstanding anything herein to the contrary, the parties may, in their sole and absolute discretion, complete the transactions contemplated by this Agreement prior to the Sale Order becoming a final non-appealable order of the Bankruptcy Court, *but only* to the extent the Sale Order provides that Buyer is a "Good Faith Purchaser" pursuant to section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded to such purchasers by that section of the Bankruptcy Code.

(l) The Assigned Contracts shall have been assumed by Seller, as applicable, and assigned to Buyer pursuant to sections 365(a) and 365(f) of the Bankruptcy Code.

(m) Buyer and each of Seller's key personnel listed on Schedule 6.2(k) ("Key Personnel") shall have made mutually satisfactory arrangements for such persons' employment with Buyer from and after the Closing.

(n) Seller shall have paid and shall have demonstrated to Buyer's satisfaction that it has paid, all administrative expenses (as such term is defined for purposes of the Bankruptcy Code) which shall have accrued through the time of Closing.

(o) Seller shall have delivered to Buyer a certificate executed by Chris Sugai attesting that all Closing Conditions have been satisfied.

The foregoing conditions are for the exclusive benefit of Buyer and any such condition may be waived in whole or in part by Buyer at or prior to the time of Closing by delivering to Seller a written waiver to that effect executed by Buyer. Delivery of any such waiver shall be without prejudice to any rights and remedies at law and in equity Buyer may have, including any claims Buyer may have for breach of covenant, representation or warranty by Seller, and also without prejudice to Buyer's rights of termination in the event of non-performance of any other conditions in whole or in part.

Section 6.3 Conditions to Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in ARTICLE 4 shall be true and correct in all material respects as of the Closing Date as if made on and as of such date (except to the extent such representations and warranties speak as of an earlier date, then as of such date) and Buyer shall have delivered to Seller a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to Buyer's representations and warranties.

(b) Buyer shall have duly performed and complied in all material respects with all material agreements, covenants and conditions required by this Agreement to be performed or complied with by Buyer prior to or on the Closing Date and Buyer shall have delivered to Seller a certificate dated the Closing Date executed by a senior officer to the foregoing effect with respect to its agreements, covenants and conditions.

(c) Seller shall have received a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of the constituent documents of Buyer, all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby.

(d) Seller shall have received a certificate of good standing for Buyer from the Secretary of State of Buyer's jurisdiction of incorporation or organization, as applicable.

(e) Buyer shall have delivered the Cash at Closing as specified in Section 2.7 and shall have delivered evidence to Seller that the Cure Amounts have been or will be paid.

(f) Buyer shall have delivered to Seller duly executed counterparts of each other document, certificate and instrument set forth in Section 2.9(b) to be executed and delivered by Buyer.

(g) Buyer shall have delivered to Seller evidence reasonably satisfactory to Seller that Buyer has satisfied the covenants set forth in this Agreement. The Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to Seller, and no Governmental Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

(h) The Sale Order shall be non-appealable and not otherwise subject to review, reversal, modification or amendment, by appeal or writ of certiorari. Notwithstanding anything herein to the contrary, the parties may, in their sole and absolute discretion, complete the transactions contemplated by this Agreement prior to the Sale Order becoming a final non-

appealable order of the Bankruptcy Court, *but only* to the extent the Sale Order provides that Buyer is a “Good Faith Purchaser” pursuant to section 363(m) of the Bankruptcy Code and is entitled to all of the protections afforded to such purchasers by that section of the Bankruptcy Code.

(i) The Assigned Contracts shall have been assumed by Seller, as applicable, and assigned to Buyer pursuant to sections 365(a) and 365(F) of the Bankruptcy Code.

The foregoing conditions are for the exclusive benefit of Seller and any such condition may be waived in whole or in part by Seller at or prior to the time of Closing by delivering to Buyer a written waiver to that effect executed by Seller. Delivery of any such waiver shall be without prejudice to any rights and remedies at law and in equity Seller may have, including any claims Seller may have for breach of covenant, representation or warranty by Buyer, and also without prejudice to Seller’s rights of termination in the event of non-performance of any other conditions in whole or in part.

ARTICLE 7 TERMINATION

Section 7.1 Termination by the Parties. This Agreement may be terminated at any time prior to the Closing Date:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:
 - (i) the Bankruptcy Court has not entered the Sale Order on or before March 9, 2018;
 - (ii) the Closing has not occurred on or prior to March 15, 2018 (the “Drop Dead Date”), except that the right to terminate this Agreement under this Section 7.1(b)(i) shall not be available to Buyer if Buyer’s failure to fulfill any of Buyer’s covenants or obligations or if the breach of any of Buyer’s representations and warranties under this Agreement, as applicable, has been the cause of, or resulted in, the failure of the Closing to occur by the Drop Dead Date;
 - (iii) any of the conditions set forth in Section 6.1 or Section 6.2 shall not have been satisfied or waived by the Drop Dead Date or is incapable of satisfaction by the Drop Dead Date, provided that Buyer is not then in breach of this Agreement so as to cause any of the conditions in Section 6.1 or Section 6.2 not to be satisfied;
 - (iv) the Sale Order, once entered, is changed in a manner that is materially adverse to Buyer without the consent of Buyer in its reasonable discretion;
 - (v) Seller seeks to have the Bankruptcy Court enter an order dismissing the Chapter 11 Case of Seller or converting it to a case under chapter 7 of the Bankruptcy Code, or if the Bankruptcy Court enters an order dismissing the Chapter 11 Case of Seller or converting the Chapter 11 Case of Seller to a case under chapter 7 of the Bankruptcy Code, or appoints a trustee in Seller’s Chapter 11 Case or an examiner with enlarged powers relating to the operation of Seller’s businesses, and such dismissal, conversion or appointment is not reversed or vacated within three Business Days after the entry thereof; or
 - (vi) There is any Material Adverse Effect.

(c) by Seller by written notice to Buyer if there is no Material Adverse Effect and Buyer is not otherwise entitled to Terminate this Agreement in accordance with Section 7.1(b) and:

(i) the Closing has not occurred on or prior to the Drop Dead Date, except that the right to terminate this Agreement under this Section 7.1(c)(i) shall not be available to Seller if any of the provisions of Section 7.1(b) have occurred or are applicable, or if Seller's failure to fulfill any of Seller's covenants or obligations or if the breach of any of Seller's representations and warranties under this Agreement, as applicable, has been the cause of, or resulted in, in whole or in part, the failure of the Closing to occur by the Drop Dead Date; or

(ii) any of the conditions set forth in Section 6.3 shall not have been satisfied or waived by the Drop Dead Date or is incapable of satisfaction by the Drop Dead Date, provided that Seller is not then in breach of this Agreement so as to cause any of the conditions in Section 6.3 not to be satisfied.

(d) by Buyer or Seller in the event that:

(i) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement or causing the transactions contemplated by this Agreement to be rescinded following completion thereof, and such Governmental Order shall have become permanent, final and non-appealable;

(ii) there shall be enacted or made applicable any Law that makes the transactions contemplated by this Agreement illegal or otherwise prohibited; or

(iii) a court issues a final non-appealable order that prevents Seller from selling the Purchased Assets to Buyer.

Section 7.2 Effect of Termination.

(a) In the event of termination by either party hereto of this Agreement pursuant to this ARTICLE 7, written notice thereof shall as promptly as practicable be given to the other party and thereupon this Agreement shall terminate and the transactions contemplated hereby shall be abandoned without further action by the parties hereto. In the event of the termination of this Agreement pursuant to Section 7.1(a) or Section 7.1(d), except as provided in Section 7.2(b), this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto. Upon termination of this Agreement, all filings, applications and other submissions made pursuant to the transactions contemplated by this Agreement shall, to the extent practicable, be withdrawn from the Government Authority to which they were made.

(b) Notwithstanding any other provisions of this Agreement, if this Agreement is terminated (whether by a party or automatically or otherwise), the provisions of Section 5.7, ARTICLE 6, ARTICLE 7, Section 8.2, Section 8.4, Section 8.12, and Section 8.13 (subject to any time limitations referred to therein) shall survive such termination and remain in full force and effect, along with any other provisions of this Agreement which expressly or by their nature survive the termination hereof.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Survival. Each and every representation, warranty, covenant, and agreement contained in this Agreement or in any instrument delivered pursuant to this Agreement shall expire and be of no further force and effect as of the Closing and no party hereto shall thereafter have any liability whatsoever with respect thereto; provided, however, that the covenants contained in this

Agreement that by their terms are to be performed (in whole or in part) by the parties hereto following the Closing shall survive in accordance with their respective terms. Following the Closing Date with respect to the representations, warranties, and agreements contained in this Agreement or in any instrument delivered pursuant to this Agreement and, with respect to the covenants contained in this Agreement or in any instrument delivered pursuant to this Agreement, following the applicable survival date of such covenant, such representation, warranty, covenant, and agreement contained in this Agreement or in any instrument delivered pursuant to this Agreement shall terminate and be of no further force or effect and no party hereto shall have any liability with respect thereto.

Section 8.3 Expenses; Attorneys' Fees. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred. In the event that Buyer or Seller brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, each party in that action or proceeding shall bear its own attorneys' fees, costs and expenses (including all court costs and reasonable attorneys' fees).

Section 8.4 Notices. All notices, requests, consents, claims, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt), (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested), (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient, or (d) when received by the addressee if mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.4):

If to Seller: Niner, Inc.
2330 E. Prospect, Suite A
Fort Collins, Colorado 80525
Attn: Chris Sugai, Chief Executive Officer
Email: chris@ninerbikes.com

with a copy to: Markus Williams Young & Zimmermann
1700 Lincoln Street
Suite 4550
Denver, Colorado 80203
Attn: James T. Markus
Email: jmarkus@markuswilliams.com

If to Buyer: Emersion International Limited
Room 2401, 24/F
101 King's Road
Hong Kong
Attn: Treasurer
Email: treasurer@emersionintl.com

with a copy to: Dinsmore & Shohl LLP
1775 Sherman Street
Suite 2500
Denver, CO 80203
Attn: Charles F. Hertlein, Jr.
Email: charles.hertlein@dinsmore.com

Section 8.5 Interpretation. For purposes of this Agreement: (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”, (b) unless the context otherwise requires, the word “or” is not exclusive, and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to Articles and Sections mean the Articles and Sections of this Agreement, (ii) to Schedules mean the Schedules attached to the Disclosure Schedules, (iii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time, if applicable, to the extent permitted by the provisions thereof, and (iv) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. Each of the individuals executing this Agreement and any agreement, document or instrument related hereto is doing so on behalf of the applicable entity, in his or her capacity as an authorized representative of such entity and is not doing so in his or her individual capacity.

Section 8.6 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.7 Severability. Any term, provision, or paragraph of this Agreement which is determined in any jurisdiction to be prohibited, unenforceable, illegal, void, voidable, or unenforceable shall not affect any other term or provision of this Agreement so long as the economic or legal substance of the transactions contemplated hereby does not constitute a Material Adverse Effect.

Section 8.8 Entire Agreement. This Agreement and the Confidentiality Agreement constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter.

Section 8.9 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Seller may not assign its rights or delegate its obligations hereunder without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer may assign this Agreement to an affiliate of Buyer prior to or subsequent to Closing without the prior consent of Seller. Buyer may assign its rights and delegate its obligations hereunder without the prior written consent of Seller. Assignment and delegation shall relieve the assigning party of any of its obligations hereunder provided that each such assignee and delegate assumes all such obligations in writing.

Section 8.10 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 8.11 Amendment and Modification; Waiver. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in

writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 8.12 Governing Law; Submission to Jurisdiction; Venue. This Agreement shall be construed and interpreted, and the rights of the parties shall be determined, in accordance with the Laws of the State of Delaware, without giving effect to any provision thereof that would require the application of the substantive Laws of any other jurisdiction and, to the extent applicable, the Bankruptcy Code. With the exception of any appeals, (a) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any Claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (b) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated.

Section 8.13 Limitation on Damages. In no event shall any party be liable to any other party for any punitive, incidental, consequential, special or indirect damages, including loss of future revenue or income, loss of business reputation or opportunity relating to the breach or alleged breach of this Agreement or diminution of value or any damages based on any type of multiple.

Section 8.14 Disclosure Schedules. The information in the Disclosure Schedules constitutes exceptions or qualifications to representations and warranties of Seller as set forth in this Agreement. Any disclosure made in the Disclosure Schedules shall be deemed to be disclosures made with respect to all representations and warranties contained in this Agreement to the extent reasonably apparent on their face, regardless of whether or not a specific cross-reference is made thereto. No disclosure on the Disclosure Schedules relating to a possible breach or violation of any Contract or Law shall be construed as an admission or indication that a breach or violation exists or has actually occurred. Capitalized terms used in the Disclosure Schedules that are not defined therein shall have the meaning given them in this Agreement.

Section 8.15 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Any party's failure to provide an original signature shall not affect the validity, enforceability, and binding effect of this Agreement.

Section 8.16 Non-Recourse. No past, present or future stockholder, director, officer, employee, or incorporator of Seller or Buyer shall have any liability for any obligation or liability of Seller or Buyer, as the case may be, under this Agreement or for any claim, counter-claim, cause of action or demand based on, in respect of, or by reason of, the transactions contemplated by this Agreement.

Section 8.17 Advice of Counsel. Each of Seller and Buyer acknowledges that it has discussed with its counsel, and has obtained adequate information concerning the relevant implications, advantages, and risks of, and reasonably alternatives to, the waivers, permissions and other provisions of this Agreement.

[Signature Page Follows]

The parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

NINER, INC., a Colorado corporation

By: 

Name: CHRIS SUHAI

Title: CEO

BUYER:

EMERSION INTERNATIONAL LIMITED,
a company incorporated under the laws of Hong
Kong

By: _____

Name:

Title:

The parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

NINER, INC., a Colorado corporation

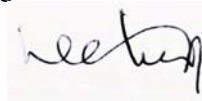
By: _____

Name:

Title:

BUYER:

EMERSION INTERNATIONAL LIMITED,
a company incorporated under the laws of Hong
Kong

A handwritten signature in black ink, appearing to read "Daisy Cheng", is written over a light pink rectangular background.

By: _____

Name: Daisy Cheng

Title: Chief Representative

SCHEDULES
TO
ASSET PURCHASE AGREEMENT

These Schedules have been prepared by Niner, Inc., a Colorado corporation, as Seller pursuant to that certain Asset Purchase Agreement dated as of February 16, 2018, by and between Niner, Inc. and Emersion International Limited to which these Schedules have been attached (the "Agreement"). Unless the context requires, all capitalized terms herein have the same meanings given to such terms in the Agreement.

The section numbers of these Schedules correspond to the first or principal section of the Agreement to which the information contained therein relate. However, because an item of information may apply to multiple sections of the Agreement, all information contained herein shall be deemed to have been disclosed under and incorporated into any section herein to which such information is relevant. Section headings are provided for convenience only.

Unless otherwise stated, all statements made herein are made as of the date of the execution of the Agreement.

Where an agreement or other item has been summarized or described in these Schedules, such summary or description does not purport to be a complete statement of all of the material terms of such agreement or other item. Document summaries herein are provided solely for the benefit of the Buyer and merely supplement the disclosure, read as a whole, provided in such documents.

Nothing herein constitutes an admission of any liability or obligation on the part of Seller, or an admission against its interests. The inclusion of any schedule herein or any exhibit hereto should not be interpreted as indicating that any determination has been made that the agreement or other matter disclosed in the schedule is necessarily "material" to Seller, the Business or the Purchased Assets. Also, matters reflected in these Schedules are not necessarily limited to matters required by the Agreement to be reflected herein; such additional matters are included for informational purposes. Except as otherwise set forth in the Agreement, no representation or warranty is intended to be expressed and should not be implied by these Schedules. The Buyer acknowledges that certain information contained in these Schedules may constitute material confidential information relating to Seller which may not be used for any purpose other than that contemplated in the Agreement.

Schedule 2.1(a)
Assets and Tangible Property

Niner Bikes
Assets and Property Listing
as of February 1, 2018

| Account | Debit | Credit | DR <CR> | REMAINS WITH SELLER | TO BUYER |
|---|------------------------|---------------------|----------------|---------------------|----------------|
| Current Assets | | | | | |
| 1100 - Accounts Receivable | | | | | |
| 1100 - Accounts Receivable | \$ 923,689.79 | | \$ 923,689.79 | | \$ 923,689.79 |
| 1110 - Allowance for Doubtful Accounts | | \$ 35,220.35 | \$ (35,220.35) | | \$ (35,220.35) |
| 1197 - Employee receivables | \$ 96,275.04 | | \$ 96,275.04 | | \$ 96,275.04 |
| Total - 1100 - Accounts Receivable | \$ 1,019,984.83 | \$ 35,220.35 | | | |
| 1200 - Other Assets | | | | | |
| 1198 - Due from Employees | \$ 2,218.58 | | \$ 2,218.58 | | \$ 2,218.58 |
| 1199 - Loans to Officers | \$ 232,633.97 | | \$ 232,633.97 | | \$ 232,633.97 |
| 1205 - Other Receivable | \$ 61,407.96 | | \$ 61,407.96 | | \$ 61,407.96 |
| 1210 - Deposits on Account | \$ 594,270.38 | | \$ 594,270.38 | | \$ 594,270.38 |
| Total - 1200 - Other Assets | \$ 890,630.89 | \$ - | | | |
| 1220 - Prepaid Expenses | | | | | |
| 1220 - Prepaid Expenses | \$ 31,876.03 | | \$ 31,876.03 | | \$ 31,876.03 |
| 1221 - Prepaid Advertising | \$ 937.50 | | \$ 937.50 | | \$ 937.50 |
| 1222 - Prepaid Insurance | \$ 34,377.15 | | \$ 34,377.15 | | \$ 34,377.15 |
| 1223 - Software | \$ 21,237.94 | | \$ 21,237.94 | | \$ 21,237.94 |
| 1224 - Prepaid Loan Fees | \$ 221,757.55 | | \$ 221,757.55 | \$ 221,757.55 | |
| 1226 - Prepaid Shipping Inbound | \$ 400.00 | | \$ 400.00 | | \$ 400.00 |
| Total - 1220 - Prepaid Expenses | \$ 310,688.17 | \$ - | | | |
| 1300 - Inventory Asset | | | | | |
| 1300 - Inventory Asset | \$ 8,374.09 | | \$ 8,374.09 | | \$ 8,374.09 |
| 1306 - Build Kits & Components | \$ 517,867.08 | | \$ 517,867.08 | | \$ 517,867.08 |
| 1320 - Frames | | | | | |
| 1320 - Frames | \$ 554.60 | | \$ 554.60 | | \$ 554.60 |
| 1330 - Frame - Hardtails | \$ 202,394.11 | | \$ 202,394.11 | | \$ 202,394.11 |
| 1340 - Frames - Full Suspension | \$ 597,084.98 | | \$ 597,084.98 | | \$ 597,084.98 |
| 1345 - Frames - Cross | \$ 285,637.58 | | \$ 285,637.58 | | \$ 285,637.58 |
| Total - 1320 - Frames | \$ 1,086,071.27 | \$ - | | | |
| 1360 - Complete Bikes | | | | | |
| 1351 - Complete Bikes - Hardtails | \$ 24,028.34 | | \$ 24,028.34 | | \$ 24,028.34 |
| 1352 - Complete Bikes - Full Suspension | \$ 251,690.27 | | \$ 251,690.27 | | \$ 251,690.27 |
| 1353 - Complete Bikes - Cross | \$ 31,080.18 | | \$ 31,080.18 | | \$ 31,080.18 |
| Total - 1360 - Complete Bikes | \$ 306,798.79 | \$ - | | | |
| 1360 - Forks | \$ 435,418.97 | | \$ 435,418.97 | | \$ 435,418.97 |
| 1370 - Parts & Accessories | | | | | |
| 1370 - Parts & Accessories | \$ 29.14 | | \$ 29.14 | | \$ 29.14 |
| 1371 - Misc Parts | \$ 135,357.48 | | \$ 135,357.48 | | \$ 135,357.48 |
| 1372 - Niner Clothing | \$ 61,892.55 | | \$ 61,892.55 | | \$ 61,892.55 |
| 1373 - Niner Merchandise | \$ 7,598.83 | | \$ 7,598.83 | | \$ 7,598.83 |
| 1374 - Niner Parts | \$ 273,697.04 | | \$ 273,697.04 | | \$ 273,697.04 |
| 1375 - Frames spare parts | \$ 288,590.11 | | \$ 288,590.11 | | \$ 288,590.11 |
| Total - 1370 - Parts & Accessories | \$ 787,186.16 | \$ - | | | |
| 1378 - Wheelsets | \$ 292,763.94 | | \$ 292,763.94 | | \$ 292,763.94 |
| Total - 1300 - Inventory Asset | \$ 3,414,069.29 | \$ - | | | |

| | | | | |
|--|----|--------------|--------------|-------------------|
| Property, Plant & Equipment | | | | |
| 1400 - Property & Equipment | | | | |
| 1401 - Machinery and Equipment | | | | |
| 1401 - Machinery and Equipment | \$ | 178,625.32 | \$ | 178,625.32 |
| 1402 - Computers | \$ | 119,981.24 | \$ | 119,981.24 |
| 1404 - Storage Container | \$ | 3,494.21 | \$ | 3,494.21 |
| 1405 - Trade Show Booth and Other | \$ | 321,807.31 | \$ | 321,807.31 |
| 1408 - Shop Tools | \$ | 14,686.87 | \$ | 14,686.87 |
| 1409 - Camera, Video & Other | \$ | 15,183.42 | \$ | 15,183.42 |
| 1410 - Vehicles | \$ | 215,615.22 | \$ | 215,615.22 |
| 1450 - Accumulated Depreciation PP&E | | \$ | 744,725.83 | \$ (744,725.83) |
| 1550 - Test Frames and Components | \$ | 282,760.82 | \$ | 282,760.82 |
| 1551 - Accumulated Depreciation - Test Frames and Components | | \$ | 226,977.21 | \$ (226,977.21) |
| 1670 - Part Molds | | | | |
| 1570 - Part Molds | \$ | 1,711,691.74 | \$ | 1,711,691.74 |
| Total - 1670 - Part Molds | \$ | 1,711,691.74 | \$ | - |
| 1571 - Accumulated Depreciation - Part Molds | | \$ | 1,328,492.16 | \$ (1,328,492.16) |
| Total - 1401 - Machinery and Equipment | \$ | 2,883,848.16 | \$ | 2,300,186.20 |
| 1480 - Leasehold Improvements | | | | |
| 1460 - Leasehold Improvements | \$ | 69,107.15 | \$ | 69,107.15 |
| 1461 - Accumulated Depreciation - LHI | | \$ | 19,688.31 | \$ (19,688.31) |
| Total - 1480 - Leasehold Improvements | \$ | 69,107.15 | \$ | 19,688.31 |
| 1600 - Research and Development | | | | |
| 1601 - Capitalized R&D | | | | |
| 1502 - Air 9 Carbon | \$ | 49,108.26 | \$ | 49,108.26 |
| 1505 - Air 9 Carbon GL | \$ | 4,135.00 | \$ | 4,135.00 |
| 1506 - Rip 9 Carbon | \$ | 11,776.00 | \$ | 11,776.00 |
| 1508 - Or 9 | \$ | 5,001.03 | \$ | 5,001.03 |
| 1510 - Air 9 Alloy | \$ | 29,871.24 | \$ | 29,871.24 |
| 1511 - EMD | \$ | 3,404.48 | \$ | 3,404.48 |
| 1512 - Jet Carbon | \$ | 110,079.26 | \$ | 110,079.26 |
| 1513 - RIP 9 | \$ | 2,016.88 | \$ | 2,016.88 |
| 1520 - Components | \$ | 43,974.40 | \$ | 43,974.40 |
| 1569 - Accumulated Amortization - R&D | | \$ | 259,366.52 | \$ (259,366.52) |
| Total - 1601 - Capitalized R&D | \$ | 269,388.66 | \$ | 269,388.62 |
| Total - 1600 - Research and Development | \$ | 269,388.66 | \$ | 269,388.62 |
| 1600 - Software | | | | |
| 1600 - Software | \$ | 363,546.93 | \$ | 363,546.93 |
| 1609 - Acc. Amortization - Software | | \$ | 297,174.06 | \$ (297,174.06) |
| Total - 1600 - Software | \$ | 363,546.93 | \$ | 297,174.06 |
| Total - 1400 - Property & Equipment | \$ | 3,656,888.78 | \$ | 2,878,424.08 |
| 1700 - Intellectual Property | | | | |
| 1771 - Patents | \$ | 129,555.16 | \$ | 129,555.16 |
| 1772 - Trademarks | \$ | 16,550.82 | \$ | 16,550.82 |
| 1779 - Accumulated Amortization - IP | | \$ | 46,391.44 | \$ (46,391.44) |
| Total - 1700 - Intellectual Property | \$ | 146,106.88 | \$ | 48,391.44 |
| Total Assets & Property | | | | |
| | | \$ | 8,378,078.08 | \$ 221,767.66 |
| | | | | \$ 8,167,320.61 |

Schedule 2.1(b)
Leased Real Property

| <u>Property Address</u> | <u>Tenant</u> | <u>Landlord</u> |
|---|------------------------|---|
| 2330 E. Prospect Rd., Ste. A Fort Collins, CO 80525 | Niner, Inc. | DMIG, LLC P.O. Box 609 Del Mar, CA 92014 |
| No 573-1 Jian Kuo Road Wu Chu Li Da Jia District Taichung City, Taiwan R.O.C. | Niner Taiwan Office | Liao Hsin Nong No.: 208 Dur Xing Road Dajia District, Taichung City Taiwan |

Schedule 2.1(c)
Assigned Contracts

| <u>Name</u> | <u>Type</u> |
|---------------------|----------------|
| Kirt Voreis | Pro Athlete |
| Rebecca Rusch | Pro Athlete |
| Fort Collins Office | Premises Lease |
| Taiwan Office | Premises Lease |

Clif Bar Sponsorship

Subject to supplement in accordance with the Asset Purchase Agreement.

Schedule 2.1(d)
Permits



None.


Schedule 2.1(e)
Intellectual Property



Listing of Patents

| <u>AHMRT Ref.</u> | <u>Title</u> | <u>Application No.</u> | <u>Filing Date</u> | <u>Patent #</u> | <u>Issue Date</u> | <u>Niner</u> | <u>Expiration</u> |
|-------------------|----------------------------------|------------------------|--------------------|-----------------|-------------------|--------------------|-------------------|
| 9ER07301 | Bicycle Rear Suspension | 12/116,077 | 5/6/2008 | 7934739 | 5/3/2011 | | 1/17/2029 |
| 9ER07301CIP | Bicycle Rear Suspension | 13/097,640 | 4/29/2011 | 8590914 | 11/26/2013 | Apprvd 10/21/13 | 6/12/2029 |
| 9ER07302 | Bicycle Eccentric Bottom Bracket | 12/030,133 | 2/12/2008 | 8561498 | 10/22/2013 | | 6/25/2031 |
| 9ER09301 | Crown-Holding Head Cap | 11/350,582 | 2/8/2006 | 7703786 | 4/27/2010 | Apprvd 10/22/13 | 7/15/2028 |
| 9ER10301 | Internal Cable Routing System | 13/184,099 | 7/15/2011 | 8662519 | 3/4/2014 | | 5/29/2032 |

Listing of Trademarks

| Mark | USA | CTM | China | Taiwan | Japan |
|--|---------------------|------------|--------------|---------------|--------------|
| CVA  | | | | | |
| Status | Registered | Registered | Registered | Registered | Registered |
| Reg # | 4416714 | 010993673 | 11133945 | 01588688 | 5555599 |
| Reg Date | 10/15/2013 | 11/9/2012 | 3/7/2014 | 7/16/2013 | 2/8/2013 |
| Serial # | 85505162 | 010993673 | 11133945 | 101036188 | 5555599 |
| Filing Date | 12/28/2011 | 6/26/2012 | 6/28/2012 | 6/27/2012 | 6/27/2012 |
| Renewal Date | 8&15 Due 10/15/2019 | 6/26/2022 | 3/6/2024 | 7/15/2023 | 2/8/2023 |
| Stylized 9  | | | | | |
| Status | Registered | Registered | Registered | Registered | Registered |
| Reg # | 4190371 | 011000197 | 11133944 | 01588689 | 5579600 |
| Reg Date | 8/14/2012 | 11/23/2012 | 8/21/2014 | 7/16/2013 | 5/2/2013 |
| Serial # | 85505141 | 011000197 | 11133944 | 101036189 | 5579600 |
| Filing Date | 12/28/2011 | 6/28/2012 | 6/28/2012 | 6/27/2012 | 6/27/2012 |
| Renewal Date | 8&15 Due 8/14/2018 | 6/28/2022 | 8/21/2023 | 7/15/2023 | 5/2/2023 |
| Niner Bikes | | | | | |
| Status | Registered | Registered | Registered | Registered | Registered |
| Reg # | 4267042 | 010993509 | 22972945 | 01588690 | 5579601 |

| Mark | USA | CTM | China | Taiwan | Japan |
|---|--------------------|------------|------------|------------|------------|
| Reg Date | 1/1/2013 | 11/9/2012 | Pending | 7/16/2013 | 5/2/2013 |
| Serial # | 85505119 | 010993509 | 22972945 | 10136190 | 5579601 |
| Filing Date | 12/28/2011 | 6/26/2012 | 3/1/2017 | 6/27/2012 | 6/27/2012 |
| Renewal Date | 8&15 Due 1/1/2019 | 6/26/2022 | | 7/15/2023 | 5/2/2023 |
| Pedal Damn It | | | | | |
| Status | Registered | Registered | Registered | Registered | Registered |
| Reg # | 4190364 | 010993442 | 11133942 | 01560241 | 5555600 |
| Reg Date | 8/14/2012 | 11/9/2012 | 11/14/2013 | 1/16/2013 | 2/8/2013 |
| Serial # | 85505082 | 010993442 | 11133942 | 10136191 | 5555600 |
| Filing Date | 12/28/2011 | 6/26/2012 | 6/28/2012 | 6/27/2012 | 6/27/2012 |
| Renewal Date | 8&15 Due 8/14/2018 | 6/26/2022 | 11/13/2023 | 1/15/2023 | 2/8/2023 |
| CYA | | | | | |
|  | | | | | |
| Status | Registered | | | | |
| Reg # | 4213080 | | | | |
| Reg Date | 9/25/2012 | | | | |
| Serial # | 85505200 | | | | |
| Filing Date | 12/28/2011 | | | | |
| Renewal Date | 8&15 Due 9/25/2018 | | | | |
| The Big Revolution | | | | | |
| Status | Renewed | | | | |
| Reg # | 3331235 | | | | |
| Reg Date | 11/6/2007 | | | | |
| Serial # | 78667929 | | | | |
| Filing Date | 7/11/2005 | | | | |
| Renewal Date | 11/6/2027 | | | | |
| NINERD | | | | | |
| Status | Registered | | | | |
| Reg # | 4595668 | | | | |
| Reg Date | 9/2/2014 | | | | |
| Serial # | 86040259 | | | | |
| Filing Date | 8/16/2013 | | | | |
| Renewal Date | 8&15 Due 9/2/2020 | | | | |
| Pedal Damn It | | | | | |
| Status | Registered | | | | |
| Reg # | 4678836 | | | | |
| Reg Date | 1/27/2015 | | | | |
| Serial # | 86317766 | | | | |
| Filing Date | 6/23/2014 | | | | |
| Renewal Date | 8&15 Due 1/27/2021 | | | | |
| Stylized 9 | | | | | |

| Mark | USA | CTM | China | Taiwan | Japan |
|--|--------------------|------------|-------|------------|------------|
|  | | | | | |
| Status | Registered | | | | |
| Reg # | 4678837 | | | | |
| Reg Date | 1/27/2015 | | | | |
| Serial # | 86317769 | | | | |
| Filing Date | 6/23/2014 | | | | |
| Renewal Date | 8&15 Due 1/27/2021 | | | | |
| 9 NINER  | | | | | |
| Status | | Registered | | Registered | Registered |
| Reg # | | 008463986 | | 01312612 | 5352468 |
| Reg Date | | 5/27/2010 | | 6/1/2008 | 9/10/2010 |
| Serial # | | 008463986 | | 096045107 | 5352468 |
| Filing Date | | | | 9/21/2007 | 2/5/2010 |
| Renewal Date | | 7/31/2019 | | 5/31/2018 | 9/10/2020 |

Domains:

www.ninerbikes.com

<https://www.instagram.com/ninerbikes/>

<https://www.facebook.com/ninerbikes/>

twitter: @Ninerbikes

Vimeo: Niner Bikes

Gmail: @ninerbikes.com

<https://www.youtube.com/user/RealNinerBikes>

| Domain Name | Owner | Miscellaneous Notes |
|------------------------|-------------|---|
| 29BIKES.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| 29ERMOUNTAINBIKE.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| 29ERMOUNTAINBIKES.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| 29ERWHEELS.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| 29WHEELS.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINER.IT | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINER.TW | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBICYCLES.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBIKE.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBIKE.ORG | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBIKES.BIZ | Chris Sugai | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBIKES.INFO | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBIKES.ORG | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERBIKES.US | Chris Sugai | Registrant E-Mail: Chris@ninerbikes.com |
| NINERMOUNTAINBIKES.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERREVOLUTION.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| NINERWHEELS.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |
| THEBIGREVOLUTION.COM | Niner Bikes | Registrant E-Mail: Chris@ninerbikes.com |

All Seller content embedded in the social media accounts listed on Schedule 2.1(c).

Schedule 2.1(f)
Eligible Inventory

To be provided at closing.

Schedule 2.1(g)
Eligible Accounts

To be provided at closing.

Schedule 2.1(h)
Other General Intangibles

Chris Sugai - Loan Agreements (5)

Kenneth Gensel - Promissory Note

OZLink -- Warehouse Management Software

Catia -- Engineering Design Software

DropBox

Docusign

Go-To-Meeting

LinkedIn

Webroot Spyware Blocker

Facebook

Twitter

Instagram

YouTube

Vimeo

Stratus Information Systems

All content in all social media accounts

Schedule 2.2(k)
Excluded Assets

All Cash Accounts

Unamortized Prepaid Loan Fees

Schedule 2.3
Assumed Liabilities

None.

Schedule 2.6 DIP Budget

NINER, INC.
13-Week Cash Flow Forecast (DIP Budget)
February 5, 2018

| Line of Credit: | WK. 1 2/5/2018 | WK. 2 2/16/2018 | WK. 3 2/23/2018 | WK. 4 3/2/2018 | WK. 5 3/9/2018 | WK. 6 3/16/2018 | WK. 7 3/23/2018 | WK. 8 3/30/2018 | WK. 9 4/6/2018 | WK. 10 4/13/2018 | WK. 11 4/20/2018 | WK. 12 4/27/2018 | WK. 13 5/4/2018 |
|--|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|---------------------|---------------------|--------------------|
| Beginning Balance | \$2,680,058 | \$2,623,183 | \$2,647,127 | \$2,916,441 | \$2,957,584 | \$2,927,573 | \$3,008,328 | \$2,932,652 | \$2,892,183 | \$2,984,922 | \$2,984,118 | \$2,902,642 | \$2,979,352 |
| Draws | (\$150,000) | (\$163,637) | (\$368,077) | (\$644,594) | (\$82,070) | (\$188,704) | (\$40,000) | (\$688,207) | (\$189,593) | (\$222,743) | (\$115,138) | (\$538,630) | (\$412,306) |
| Receipts/Collections | \$206,875 | \$138,993 | \$126,763 | \$628,441 | \$112,080 | \$108,010 | \$115,876 | \$962,736 | \$98,854 | \$213,547 | \$206,614 | \$462,820 | \$356,827 |
| LOC Interest Charges | \$0 | \$0 | \$0 | (\$25,000) | \$0 | \$0 | \$0 | (\$24,000) | \$0 | \$0 | \$0 | \$0 | (\$28,000) |
| Net Cash Flow | \$56,875 | (\$25,944) | (\$269,314) | (\$41,143) | \$30,010 | (\$80,754) | \$75,876 | \$40,469 | (\$92,739) | (\$9,196) | \$91,476 | (\$76,710) | (\$78,679) |
| Ending Balance | \$2,623,183 | \$2,647,127 | \$2,916,441 | \$2,957,584 | \$2,927,573 | \$3,008,328 | \$2,932,652 | \$2,892,183 | \$2,984,922 | \$2,984,118 | \$2,902,642 | \$2,979,352 | \$3,058,031 |
| Gross Availability: | | | | | | | | | | | | | |
| Beginning Balance | \$2,580,975 | \$2,832,512 | \$2,833,272 | \$2,782,643 | \$2,637,726 | \$2,922,448 | \$2,902,503 | \$2,864,491 | \$2,749,495 | \$2,905,978 | \$2,875,398 | \$2,872,765 | \$2,919,104 |
| Change in AR | \$13,422 | (\$10,394) | (\$1,222) | \$170,926 | \$17,414 | \$20,238 | \$14,922 | \$213,288 | (\$57,430) | (\$50,686) | \$50,875 | (\$58,870) | \$158,319 |
| Change in INV | \$238,115 | \$11,153 | (\$49,407) | (\$315,943) | \$267,308 | (\$40,181) | (\$52,633) | (\$328,284) | \$213,922 | \$20,406 | (\$53,507) | \$105,209 | (\$31,746) |
| Total Change in AR + INV | \$251,537 | \$759 | (\$50,629) | (\$144,917) | \$284,722 | (\$19,945) | (\$38,012) | (\$114,996) | \$156,493 | (\$30,581) | (\$2,633) | \$46,339 | \$126,573 |
| Gross Available | \$2,832,512 | \$2,833,272 | \$2,782,643 | \$2,637,726 | \$2,922,448 | \$2,902,503 | \$2,864,491 | \$2,749,495 | \$2,905,978 | \$2,875,398 | \$2,872,765 | \$2,919,104 | \$3,045,676 |
| Net Availability: | | | | | | | | | | | | | |
| Net Availability | \$209,329 | \$186,145 | (\$133,798) | (\$319,858) | (\$5,125) | (\$105,824) | (\$98,160) | (\$142,887) | (\$75,043) | (\$118,720) | (\$20,877) | (\$80,248) | (\$12,354) |
| Net Availability + Over Advance | \$424,329 | \$401,145 | \$81,202 | (\$104,858) | \$209,875 | \$109,176 | \$146,840 | \$72,313 | \$136,057 | \$68,280 | \$185,123 | \$154,752 | \$202,646 |
| Cash Outflows | | | | | | | | | | | | | |
| Subtotal - Wires | \$0 | \$2,500 | \$288,582 | \$401,301 | \$15,444 | \$5,000 | \$5,000 | \$349,046 | \$34,944 | \$10,000 | \$95,138 | \$421,600 | \$300,000 |
| Subtotal - Checks | \$68,336 | \$0 | \$72,495 | \$58,153 | \$14,176 | \$0 | \$0 | \$58,885 | \$104,640 | \$28,643 | \$0 | \$0 | \$0 |
| Disbursements to Suppliers | \$96,336 | \$2,500 | \$361,077 | \$459,454 | \$29,620 | \$5,000 | \$5,000 | \$407,931 | \$139,593 | \$38,943 | \$65,138 | \$421,600 | \$300,000 |
| Disbursements to SG&A Vendors | \$59,231 | \$163,800 | \$35,000 | \$185,130 | \$52,450 | \$183,764 | \$35,000 | \$180,336 | \$50,000 | \$183,800 | \$50,000 | \$116,030 | \$112,306 |
| Total Cash Outflows | \$155,567 | \$166,300 | \$396,077 | \$644,584 | \$82,070 | \$188,764 | \$40,000 | \$588,267 | \$185,593 | \$222,743 | \$115,138 | \$539,630 | \$412,306 |

Schedule 3.3
No Conflicts; Consents

None.

Schedule 3.5(a)
Material Contracts

| <u>Name</u> | <u>Type</u> |
|---------------------|----------------|
| Kirt Voreis | Pro Athlete |
| Rebecca Rusch | Pro Athlete |
| Fort Collins Office | Premises Lease |
| Taiwan Office | Premises Lease |

Clif Bar Team

Medical Insurance

Medical Insurance Stop Loss Policy

Dental/Vision Insurance

401K Plan

Insurance Premium Financing

Commercial Package Policy

Commercial Umbrella Policy

Auto Insurance

Management Liability Policy (D&O)

Foreign Credit Policy

Ocean Cargo Policy

Freight Forwarder & Customs Broker

IP Licensing

Netsuite -- ERP Subscription Service

Valogix -- Purchasing Management Software

OZLink -- Warehouse Management Software

Catia -- Engineering Design Software

Solidworks -- Engineering Design Software

DropBox

Docusign

Go-To-Meeting

LinkedIn

Webroot Spyware Blocker

Server Maintenance Outsourcing

Facebook

Twitter

Instagram

Youtube

Vimeo

Stratus Information Systems

Promissory Note -- Chris Sugai (CEO)

Promissory Note -- Kenneth Gensel (CFO)

Loan & Security Agreement (ABL Revolving LOC)

SBA Term Loan

American Express (company & employees)

Chase Bank

Employment Contract -- Kenneth Gensel

Employment Contract -- Jeff Young

Loan Agreements -- Chris Sugai (5)

Promissory Note -- Kenneth Gensel

All content in all social media accounts

Schedule 3.5(b)
Cure Amounts

| <u>Name</u> | <u>Amount</u> |
|---------------------|---------------|
| Fort Collins Office | \$10,642 |

Schedule 3.7(b)
Material Permits

| <u>Jurisdiction</u> | <u>Permit Type</u> | <u>Permit</u> |
|---------------------|-----------------------|---------------|
| California | Seller's Permit | 100567872 |
| Colorado | Sales Tax License | 03508859-0000 |
| Fort Collins | Sales/Use Tax License | 52657 |

Schedule 3.8(b)
Material Environmental Permits

None.

Schedule 3.9(a)
Taxes

None.

Schedule 3.10(a)
Intellectual Property

See Schedule 2.1(e).

Schedule 3.10(c)
Infringements

None.

Schedule 6.2(k)
Key Personnel

Chris Sugai - CEO
Kenneth Gensel - CFO, VP finance
Jeff Young - VP of Sales
George Parry - Engineering and Production Manager
Barrett James - Product Manager
Scott Lampe - Director of Operations