

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF COLORADO

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 November 27, 2017 (the “**Agreement**,” a copy of which is attached hereto as **Exhibit 1**),<sup>1</sup> between the Debtor, as seller, and Niner Acquisition LLC (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 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.

Concurrently herewith, the Debtor is filing the *Motion for Entry of Order: (a) Approving Bid Procedures for the Sale of Substantially All of the Debtor’s Assets; (b) Scheduling an Auction and Sale Hearing to Consider the Sale and Approve the Form and Manner of Notice Related Thereto; (c) Approving Payment of Break-up Fee and Expense Reimbursement; (d) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and, (e) Granting Related Relief* (the “**Bid Procedures Motion**”), which seeks approval of certain bid procedures and bidder protections (the “**Bid Procedures**”) with respect to the Sale, scheduling an auction (the “**Auction**”) for the Purchased Assets and a hearing approving the sale of the Purchased Assets<sup>2</sup> (the “**Sale Hearing**”), and approving certain assignment procedures (the “**Assignment Procedures**”), for the assumption and assignment of certain executory contracts and unexpired leases related to the Purchased Assets, including any and all amendments, modifications and exercised options for renewal of terms relating to such executory contracts and unexpired

---

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

<sup>2</sup> Terms not otherwise defined herein shall have the meaning set forth in the Asset Purchase Agreement.

leases, and whose assignment is contemplated by the Sale (the “**Assumed Contracts and Leases**”), as more particularly set forth therein. 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, or to the highest and best bidder for such Purchased Assets at the Auction provided for in the Bid Procedures Motion and the Bid Procedures, to take place in accordance with the order to be entered by the Court on the Bid Procedures Motion (the “**Bid Procedures Order**”). 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, the Debtor’s sale process is in the best interests of the Debtor and its estate and creditors. The Sale will provide for the payment consisting of: (a) cash in an amount equal to the Obligations owed by Debtor to PMC (the “**PMC Obligations**”), as the term Obligations is defined in that certain Loan and Security Agreement, dated April 23, 2012, between Seller and PMC, as amended, modified or restated from time to time, and encompassing both prepetition and post petition obligations of Seller to PMC as of the Closing Date (the “**PMC Cash Amount**”);<sup>3</sup> (b) additional cash in the amount of \$100,000 (the “**Additional Cash Amount**”); plus (c) the assumption of the Assumed Liabilities.

### **Jurisdiction and Venue**

3. 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).

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

5. 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**

6. 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

---

<sup>3</sup> PMC has agreed that if the stalking horse bidder is the successful bidder for the Purchased Assets, PMC will credit the PMC Cash Amount in 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.

Bankruptcy Code.

7. 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**

8. 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, 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”.

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

- Entry of the Bid Procedures Order no later than **December 8, 2017**.
- Deadline to (a) submit competing bids, (b) object to sale, (c) object to assumption/assignment and cure claim no later than **1:00 p.m. (prevailing Mountain Time) on January 10, 2018**.
- Auction to be held at **1:00 p.m. (prevailing Mountain Time) on January 11, 2018**.
- A half day hearing on the Sale (the “**Sale Hearing**”) to be held between **January 15, 2018 and January 19, 2018 (or such other date thereafter as the Court may be available)**.
- Closing of Sale no later than **January 31, 2018**.

10. In light of the extensive marketing process already undertaken, the additional efforts that will be made during the proposed sale process, 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 or, alternatively, to a higher and better bidder for the Assets. The Debtor believes that the sale process provides sufficient time to fully expose the Purchased Assets for sale in the hope of achieving a competitive bidding process.

### **Prepetition Marketing and Sale Efforts**

11. The Debtor’s assets have been exposed to the market for at least ten 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.

12. 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 Purchaser on August 31, 2017.

13. Since August 31, 2017, the Debtor and an affiliate of the Purchaser have worked to complete due diligence and engage the existing lenders in attempt to work out a mutually beneficial solution. On November 27, 2017, the Debtor entered into an Asset Purchase Agreement with Niner Acquisition LLC as buyer and the initial "stalking horse" bidder.

14. Ultimately, after extensive negotiations, the Debtor and the Purchaser entered into the Agreement. As noted above, the consideration to be paid by Purchaser to Debtor for the Purchased Assets consists of: (a) cash in an amount equal to the PMC Obligations, as the term Obligations is defined in that certain Loan and Security Agreement, dated April 23, 2012, between Seller and PMC, as amended, modified or restated from time to time, and encompassing the PMC Cash Amount;<sup>4</sup> (b) the Additional Cash Amount); plus (c) the assumption of the Assumed Liabilities.

### **Continued Marketing Process**

14. W.G. Nielsen intends to streamline the due diligence process going forward. A data room is already and will continue to be available to interested parties who have, or will, execute confidentiality agreements acceptable to the Debtor. The Debtor will continue to respond to inquiries from prospective buyers through the bid deadline approved by the Court for alternative bidders to bid on the Purchased Assets. W.G. Nielsen will re-engage previous potential bidders, and will utilize its extensive personal/company database (consisting of years of complied leasehold buyers) to essentially re-market the Purchased Assets nationwide.

14. While the prepetition marketing and sale process was thorough, as discussed above, the Debtor will send, or will have sent, notice of the Sale Motion and Bid Procedures to all parties that the Debtor believes may be potentially interested in acquiring the Purchased Assets. To assist with this task, and to ensure that the highest and best price is obtained for the Purchased Assets, the Debtor seeks to retain W.G. Nielsen to continue as its marketing agent to solicit for further offers for the Purchased Assets. W.G. Nielsen was involved in the pre-petition marketing of the

---

<sup>4</sup> PMC has agreed that if the stalking horse bidder is the successful bidder for the Purchased Assets, PMC will credit the PMC Cash Amount in 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.

Purchased Assets, and will continue to be responsible for marketing the Purchased Assets. W.G. Nielsen has access to significant resources, ensuring that the Purchased Assets will continue to be marketed on a large scale.

15. In light of the prepetition marketing efforts, and anticipated post-petition marketing efforts, the Debtor believes that the intended sale process provides sufficient time to fully expose the Purchased Assets for sale in the hope of achieving a competitive bidding process. The Debtor believes that the consummation of the Sale to the Purchaser, or other successful bidder, will provide its creditors and other stakeholders with the best opportunity possible for maximizing the value of the Purchased Assets. 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**

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

17. 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 (a) cash in an amount equal to the PMC Obligations, as the term Obligations is defined in that certain Loan and Security Agreement, dated April 23, 2012, between Seller and PMC, as amended, modified or restated from time to time, and encompassing the PMC Cash Amount;<sup>5</sup> (b) the Additional Cash Amount); plus (c) the assumption of the Assumed Liabilities. *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) originals, or where not available, copies, of all Documents, Books and Records relating to the Business; (g) all of the rights of Seller under warranties, indemnities and all similar rights against third parties the extent related to the Business; (h) all insurance policies of Seller to the extent related to the Business; (i) deposits,

---

<sup>5</sup> PMC has agreed that if the stalking horse bidder is the successful bidder for the Purchased Assets, PMC will credit the PMC Cash Amount in 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.

prepaids, retainers and similar amounts made to vendors in connection with the Business relating to or arising in connection with any of the Assigned Contracts (collectively, “Deposits”); and (j) 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 Niner Acquisition LLC.
- 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. **Break Up Fee.** Subject to approval of the Bankruptcy Court, in consideration for the Purchaser having expended considerable time and expense in connection with the Agreement and the negotiation thereof and to compensate Purchaser as a stalking-horse bidder, in the event that the Debtor consummates an alternative transaction instead of the proposed Sale to the Purchaser under the terms of the Agreement, the Debtor shall pay Purchaser a break-up fee in the greater amount of either \$100,000 or 3% of the Purchase Price, and an expense reimbursement not to exceed \$50,000 (collectively, the “**Break-Up Fee**”). *See* Agreement § 5.12.
- f. **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.
- g. **Conditions.** The Closing is conditioned upon the occurrence of certain events customary for transactions of this kind, including payment in full of the PMC Cash Amount 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 ¶ 22. 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, ¶¶ R 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.

18. The Debtor believes that the sale of the Purchased Assets to the Purchaser or other successful bidder is in the best interests of the Debtor's estate and its creditors. The Debtor further believes that obtaining the stalking horse bid, marketing the Purchased Assets with the assistance of W.G. Nielsen, and holding the Auction on the date specified by the Court will result in the highest or otherwise best consideration for the Purchased Assets.

19. 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.

20. 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 or, if applicable, another bidder in the event that the Debtor receives a higher or otherwise better bid to the transaction set forth in the Agreement.

### **Relief Requested**

21. 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).

22. 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 (10<sup>th</sup> Cir. May 27, 2015) (citing *In re Caste, Inc.*, 312 B.R. 426, 428 (Bankr. D. Colo. 2004); *In re Martin*, 91 F.3d 389, 395 (3<sup>rd</sup> Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7<sup>th</sup> Cir. 1991)); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3<sup>rd</sup> Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386,

390 (6<sup>th</sup> Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2<sup>nd</sup> Cir. 1983).

23. 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 and has proposed Bid Procedures 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 up to the proposed deadline to submit competing bids for the Purchased Assets will provide a sufficient opportunity to generate any potential overbids and maximize recovery for the Debtor's creditors. Specifically, other potential buyers and parties that have expressed interest in the acquisition of the Purchased Assets will be served with this Sale Motion and/or notice thereof.

24. 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 or other successful bidder, 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**

25. 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).

26. 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). PMC has consented to the sale free and clear of its liens so long as the PMC Cash Amount paid to PMC in full, in cash, at the Closing. The Debtor



submits that each other 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 or other successful bidder(s), 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.

27. Accordingly, this Court should approve the sale of the Purchased Assets to the Purchaser or other successful bidder 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**

28. 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).

29. 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 (3<sup>rd</sup> 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.

788 F.2d at 147 (citations omitted).

30. 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. In addition, if a party other than the Purchaser is the successful bidder, the Debtor intends to make an appropriate showing at the Sale Hearing that the purchase agreement with the other successful bidder is a negotiated, arms' length transaction, in which the successful bidder at all times has acted in good faith under and otherwise in accordance with such standards.

31. The Debtor thus requests that the Court find that the Purchaser or the successful bidder 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**

32. 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 or the other successful bidder upon the closing of the transactions contemplated under the Agreement.

33. Pursuant to the Agreement, the Debtor 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.

34. The Purchased Contracts are those contracts or leases that are to be assumed by the Debtor and assigned to the Purchaser or the other successful bidder 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 or the other successful bidder, 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.

35. Pursuant to the Bid Procedures Motion, the Debtor proposes that an initial list (or lists) of Assigned Contracts be served on all counterparties to such contracts and leases no later than two (2) business days after entry of the Bid Procedures Order.

36. 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).

37. 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 (10<sup>th</sup> 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 (3<sup>rd</sup> 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 (4<sup>th</sup> Cir. 1980).

38. 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 or other successful bidder and, as stated above, will benefit the estate of Debtor.

39. As set forth above, with respect to Assigned Contracts to be potentially assumed

and assigned pursuant to the Sale Hearing, the Debtor has or will send the Cure Notices to all Counterparties in connection with the Court's approval of the Bid Procedures, thereby notifying such Counterparties of the potential assumption by the Debtor and assignment to the Purchaser or the successful bidder of the Assigned Contracts 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, in accordance with the provisions set forth in the Bid Procedures, shall be the amounts required to be paid pursuant to section 365(b)(1) of the Bankruptcy Code ("**Cure Amounts**"). The Bid Procedures Motion proposes that 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. Objections to the adequate assurance of future performance of a successful bidder (other than the Purchaser), may be raised at the Sale Hearing.

40. 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 or successful bidder) 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 successful bidder or Purchaser.

41. 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 Debtor shall bear and pay the entire amount of such cure costs.

42. The Purchaser or other successful bidder 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 or the other successful bidder shall provide evidence of its ability to provide adequate assurances to Counterparties to the Assigned Contracts at the Sale Hearing. Moreover, any successful bidder will be required to provide evidence that the bidder can provide adequate assurance of future performance with respect to Assigned Contracts at the time it submits its bid.

**Notice**

43. 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.

44. 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**

45. 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 or other successful bidder.

**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 or other successful bidder; (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 PMC Cash Amount to PMC at the 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: November 27, 2017.

MARKUS WILLIAMS YOUNG AND  
ZIMMERMANN LLC

*s/Matthew T. Faga*  
\_\_\_\_\_  
James T. Markus, #25065  
Matthew T. Faga, #41132  
1700 Lincoln Street, Suite 4550  
Denver, CO 80203  
Telephone: 303-830-0800  
Facsimile: 303-830-0809  
Email: [mfaga@markuswilliams.com](mailto:mfaga@markuswilliams.com)

*Counsel for the Debtor and Debtor-in-Possession*

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**NINER, INC.,**

**as SELLER,**

**and**

**NINER ACQUISITION LLC,**

**as BUYER**

**DATED AS OF**

**NOVEMBER 27, 2017**

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1 DEFINITIONS .....	1
ARTICLE 2 PURCHASE AND SALE .....	8
Section 2.1 Purchase and Sale of Assets .....	8
Section 2.2 Excluded Assets .....	9
Section 2.3 Assumed Liabilities.....	10
Section 2.4 Excluded Liabilities .....	10
Section 2.5 Exclusion of Assigned Contracts .....	11
Section 2.6 Non-Assignable Purchased Assets .....	11
Section 2.7 Purchase Price .....	12
Section 2.8 Closing .....	12
Section 2.9 Transactions to Be Effected at the Closing .....	12
Section 2.10 Allocation of Purchase Price.....	13
ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER .....	14
Section 3.1 Organization.....	14
Section 3.2 Due Authorization, Execution and Delivery; Enforceability .....	14
Section 3.3 No Conflicts; Consents .....	14
Section 3.4 Assets .....	14
Section 3.5 Material Contracts.....	15
Section 3.6 Legal Proceedings .....	16
Section 3.7 Compliance with Laws; Permits .....	16
Section 3.8 Environmental and Health and Safety Matters.....	16
Section 3.9 Taxes .....	17
Section 3.10 Intellectual Property .....	17
Section 3.11 Financial Advisors .....	18
Section 3.12 No Other Representations and Warranties.....	18
ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF BUYER .....	18
Section 4.1 Organization.....	18
Section 4.2 Due Authorization, Execution and Delivery; Enforceability .....	18
Section 4.3 No Conflicts; Consents .....	18
Section 4.4 Financial Advisors .....	19
Section 4.5 Sufficiency of Funds .....	19
Section 4.6 Solvency.....	19
Section 4.7 Legal Proceedings .....	19
Section 4.8 Independent Investigation.....	19
ARTICLE 5 COVENANTS.....	19
Section 5.1 Conduct of Business Prior to the Closing .....	19
Section 5.2 Access to Information .....	20
Section 5.3 Notice of Certain Events .....	21
Section 5.4 Confidentiality.....	21
Section 5.5 Governmental Approvals and Other Third-Party Consents .....	21
Section 5.6 Books and Records.....	22
Section 5.7 Closing Conditions.....	22
Section 5.8 Public Announcements.....	22
Section 5.9 Further Assurances .....	23
Section 5.10 Transfer Taxes.....	23
Section 5.11 Financing.....	23
Section 5.12 Nature of Transaction.....	23
Section 5.13 Supplements to Schedules.....	24

**TABLE OF CONTENTS**

(continued)

	<b>Page</b>
Section 5.14 Bankruptcy Matters.....	24
<b>ARTICLE 6 CONDITIONS TO CLOSING.....</b>	<b>26</b>
Section 6.1 Conditions to Obligations of All Parties .....	26
Section 6.2 Conditions to Obligations of Buyer .....	26
Section 6.3 Conditions to Obligations of Seller.....	27
<b>ARTICLE 7 TERMINATION.....</b>	<b>28</b>
Section 7.1 Termination by the Parties .....	28
Section 7.2 Effect of Termination.....	29
<b>ARTICLE 8 MISCELLANEOUS .....</b>	<b>30</b>
Section 8.1 Survival .....	30
Section 8.2 Expenses.....	30
Section 8.3 Notices .....	30
Section 8.4 Interpretation.....	31
Section 8.5 Headings.....	31
Section 8.6 Severability .....	31
Section 8.7 Entire Agreement .....	31
Section 8.8 Successors and Assigns.....	31
Section 8.9 No Third-Party Beneficiaries .....	31
Section 8.10 Amendment and Modification; Waiver.....	31
Section 8.11 Governing Law; Submission to Jurisdiction; Venue.....	32
Section 8.12 Specific Performance .....	32
Section 8.13 Limitation on Damages .....	32
Section 8.14 Disclosure Schedules .....	32
Section 8.15 Counterparts .....	32



## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of November 27, 2017, is entered into by and among Niner, Inc., a Colorado corporation ("Seller"), and Niner Acquisition LLC, a Delaware limited liability company ("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 of the Petition Date, and encompassing the prepetition and post-petition obligations of Seller to PMC.

"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.

"Additional Cash Amount" has the meaning set forth in Section 2.7(a).

"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.

“Bid Procedures Order” means the Order or Orders of the Bankruptcy Court to be entered pursuant to sections 363, and 365 of the Bankruptcy Code:

(i) establishing procedures and a timeline for the conduct of a competitive sale process and the solicitation of bids for the sale of substantially all of the Debtor’s assets or any portion thereof,

(ii) authorizing, but not directing, the Debtor, in consultation with its retained professionals and advisors, to conduct a sale of substantially all of its assets or any portion thereof in accordance with such approved procedures,

(iii) authorizing, but not directing, the Debtor to designate a stalking horse if the Debtor determines that it would benefit the sale and bidding process to do so and to grant such stalking horse the stalking horse protections or any portion thereof, in each case in the sole discretion of the Debtor and without further application to or Order of the Bankruptcy Court, but subject to the filing of a Notice of Designation of Stalking Horse,

(iv) scheduling an auction for the sale of any assets for which one or more qualified bid is received in accordance with the approved bidding procedures,

(v) establishing procedures for the conduct of such auction, and

(vi) scheduling a Sale Hearing.

“Break-Up Fee” has the meaning set forth in Section 5.12(d)(i).

“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,



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.

“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.

“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(c)(i).

“Escrow Holder” means Markus Williams Young & Zimmermann LLC.

“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: (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; (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.

“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. the failure of Buyer to obtain a commitment for financing on terms acceptable to Buyer no later than two business days prior to Closing;
- b. PMC altering, modifying, or amending the terms of the ABL unless agreed to by each of PMC, Buyer and Seller;
- c. Seller defaulting under the ABL or breaching any term of the ABL, regardless of PMC’s waiver of any such default or breach;
- d. Seller borrowing or procuring any additional debt or equity financing from PMC, or any other provider of capital, that, in aggregate, whether the funding originated from PMC or elsewhere, would cause Seller to exceed the Credit Limit plus the Overadvance;
- e. Seller’s failure to comply with limits on expenditures under the DIP Budget;
- f. If the sum of Seller’s cash less all Accrued Expenses is \$50,000 or less at the time of Closing;
- g. Seller’s actual Eligible Inventory prior to Closing is ten percent or more less than the amount set forth on Schedule 2.1(f);
- h. Seller’s Eligible Inventory at Closing is less than \$4.0 million;
- i. Seller’s total revenue, accounted for in a manner consistent with Seller’s current accounting practices, for the period of October 1, 2017 through December 31, 2017 is 7.0% or more less than the total revenue generated by Seller between October 1, 2016 and December 31, 2016;
- j. In accordance with generally accepted accounting principles and in a manner consistent with Seller’s traditional revenue recognition practices, Seller’s total revenue for the twelve months ending December 31, 2017 is less than \$12,545,961 [i.e., 90% of the 2016 total revenue];
- k. PMC Obligations at the time of Closing exceed \$3,750,000;
- l. The PMC Obligations less the Principal Amount Outstanding on the ABL and accrued non-default interest exceeds \$80,000;
- m. The departure of key personnel from Seller prior to Closing.

“Material Contracts” means each Assigned Contract to which Seller or any of its Affiliates is a signatory that relates to the Business or the Purchased Assets (i) which, if terminated or modified or

if it ceased to be in effect, would result in a Material Adverse Effect, (ii) that has annual payment obligations that are in excess of \$100,000 and which may not be cancelled on thirty (30) days' prior notice or less, (iii) that relates to indebtedness for borrowed money, whether incurred, assumed, guaranteed or secured by any asset, with an outstanding principal amount in excess of \$100,000, (iv) that relates to the acquisition of any business (whether by merger, sale of stock, sale of assets or otherwise), for consideration in excess of \$100,000, (v) that materially limits or restricts the operator of the Business from engaging in any line of business, in any geographic area or with any other person, (vi) that materially impacts the supply of raw materials, inputs, componentry or production process, or (vii) that provides for the assumption of any material liability of any other Person by Seller.

“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.

“Overadvance” means \$215,000.

“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 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);





(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; and

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

(l) cash in an amount equal to the Accrued Expenses (the "Retained Cash").

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 including the following (collectively, the "Excluded Liabilities"):

(a) any liabilities or obligations relating to or arising out of the Excluded Assets;

(b) all warranty claims for goods sold by Seller prior to Closing;

(c) all liabilities and obligations resulting from any (i) fine, (ii) penalty, (iii) claim for damages, (iv) health and safety violation, (v) regulatory order or (vi) breach of Law or Contract, in each case, due to Seller's acts or omissions prior to Closing as the operator or manager of the Business;

(d) any liabilities or obligations for Taxes: (i) relating to the Business, the Purchased Assets or the Assumed Liabilities for any taxable period or portion thereof ending on or prior to the Closing Date; and (ii) Taxes of Seller or an Affiliate of Seller not related to the Business;



(ii) At Closing, the Escrow Deposit shall be credited and applied toward the Purchase Price and the PMC Cash Amount.

(iii) If this Agreement terminates without a Closing, the Escrow Holder shall immediately disburse the Escrow Deposit as follows:

(1) to Seller if this Agreement is terminated pursuant to Section 7.1(c)(ii) or (iii); and

(2) to Buyer if this Agreement is terminated pursuant to Section 6.1, Section 7.1(a), Section 7.1(b), Section 7.1(c)(iv), Section 7.1(c)(v), or Section 7.1(d).

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 B with respect to the items listed in Section 2.9(a)(ii) through Section 2.9(a)(v) 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;

(iii) 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;

(iv) 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;

(v) 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; and

(vi) 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)(v)), Seller the following:

(i) The PMC Cash Amount, less the Escrow Deposit, directly to PMC by wire transfer in accordance with wire instructions provided by PMC to Buyer;



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.



(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





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 [corporate/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:



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



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.



(c) Stalking Horse Designation. Subject to the entry of the Bid Procedures Order authorizing Seller to designate one or more stalking horse purchaser(s) for the Assets or any portion thereof, Seller shall designate Buyer as a stalking horse purchaser (the "Stalking Horse") with the respect to the Purchased Assets and will file a Notice of Designation of Stalking Horse with the Bankruptcy Court as soon as practicable following the execution of this Agreement disclosing such designation and the Stalking Horse Protections granted by Section 5.12(d).

(d) Stalking Horse Protections. Subject to the entry of the Bid Procedures Order authorizing Seller to grant protections to a stalking horse purchaser, Seller hereby grants Buyer the following stalking horse protections (the "Stalking Horse Protections") to the extent authorized by the Bid Procedures Order:

(i) Break-Up Fee. Sellers shall pay to Buyer cash in an amount equal to the greater of \$100,000 or three percent of the Purchase Price (the "Break-Up Fee") only in the event that Seller consummates a sale or a transfer of all or a material portion of the Purchased Assets to a third party whose bid was (A) selected by the Seller as a higher and better bid through the approved sale and auction process pursuant to the Bid Procedures Order and (B) approved by the Bankruptcy Court. In the event that the Break-Up Fee is payable pursuant to the preceding sentence, (1) the Break-Up Fee shall be paid out of the cash sale proceeds received from a sale of Purchased Assets to such third party, and (2) no lien of any third party shall attach to the portion of the sale proceeds representing the Break-Up Fee. If the Break-Up Fee becomes due and payable, it shall be paid to Buyer within ten days of the event triggering payment of the Break-Up Fee and shall be treated as an allowed administrative expense claim in the Bankruptcy Case. The obligation to pay the Break-Up Fee shall be junior to the post petition liens and superpriority claims of PMC, but shall be senior to all other liens, security interests, and superpriority claims. The provisions of this Section 5.12(d)(i) shall survive any termination of this Agreement pursuant to Section 7.1(b).

(ii) Expense Reimbursement. Sellers shall reimburse Buyer for all actual and reasonable out of pocket fees and expenses, including reasonable attorney fees, incurred by Buyer in connection with this Agreement and the transactions contemplated thereby up to a cap of \$50,000. The payment of such amounts shall (A) be subject to the occurrence of the same circumstances that will trigger the payment of the Break-Up Fee, (B) be paid in cash in the same manner and at the same time as the Break-Up Fee is to be paid, and (C) shall be junior to the post petition liens and superpriority claims of PMC, but shall be senior to all other liens, security interests, and superpriority claims.

(iii) Bidding Increments. In the event more than one qualified bid is received by Sellers in accordance with the procedures approved by the Bid Procedures Order for the Purchased Assets or any portion thereof, and an auction is held with respect to the Purchased Assets or any portion thereof, bids during the auction must be in increments of at least \$200,000 greater than the existing bid for such assets, with the first such bid having to (A) include cash in an amount equal to the Break-Up Fee and amount required to be paid as expense reimbursement under this Agreement, plus (B) an overbid of at least \$100,000.

(e) 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





(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.

(h) 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.

(i) 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.

## 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) Seller shall provide a certificate, executed by an officer, attesting that the outstanding amount of the ABL does not exceed the borrowing base restrictions set forth in the ABL and attesting that Seller has not received any funds, whether from PMC or any additional source, that, in aggregate, would cause the Company to exceed the lending limits and borrowing restrictions set forth in the ABL.

(d) 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.



(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 to PMC the PMC Cash Amount, less the Escrow Deposit, shall have delivered to Seller the Additional Cash Amount, and shall have caused the Escrow Deposit to be delivered to PMC in accordance with Section 2.7, and Buyer 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 Closing has not occurred on or prior to January 31, 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;

(ii) 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;

(iii) 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;

(iv) 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

(v) There is any Material Adverse Effect.

(c) by Seller by written notice to Buyer if:

(i) There is no Material Adverse Effect and Buyer is not otherwise entitled to Terminate this Agreement in accordance with Section 7.1(b); or

(ii) 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)(ii) 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

(iii) 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; or

(iv) the board of directors of Seller shall have determined in good faith, after considering applicable Law and consulting with outside counsel, that such termination is required by its fiduciary obligations under applicable Law; or

(v) Seller consummates a sale or transfer of all or a material portion of the Purchased Assets to a third party whose bid was (A) selected by the Debtor as a higher and better bid through the approved sale and auction process pursuant to the Bid Procedures Order and (B) approved by the Bankruptcy Court.

(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, Section 5.12(d), ARTICLE 6, ARTICLE 7, Section 8.2, Section 8.3, Section 8.11, 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 8.2 Expenses; Attorneys' Fees. Except as otherwise expressly provided herein (including in Section 5.9), 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 8.3 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 8.3):

If to Seller: Niner, Inc.  
2330 East Prospect, Suite 1  
Attn: Chris Sugai, Chief Executive Officer  
Email: [chrissugai@gmail.com](mailto:chrissugai@gmail.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](mailto:jmarkus@markuswilliams.com)

If to Buyer: Niner Acquisition LLC  
210 University Blvd  
Suite 660  
Denver, Colorado 80206  
Attn: Brady Dolsen  
Email: [bdolsen@columbiabasinpartners.com](mailto:bdolsen@columbiabasinpartners.com)

with a copy to: Baker & Hostetler LLP  
1801 California Street  
Suite 4400  
Denver, Colorado 80202  
Attn: Lars Fuller  
Email: [lfuller@bakerlaw.com](mailto:lfuller@bakerlaw.com)

Section 8.4 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 8.5 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 8.6 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 8.7 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 8.8 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 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 8.9 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 8.10 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 8.11 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 8.12 Liquidated Damages as Sole Remedy of Buyer and Seller.

(a) THE PARTIES HERETO ACKNOWLEDGE THAT BUYER'S ACTUAL DAMAGES IN THE EVENT THAT THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT ARE NOT CONSUMMATED WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, THE PARTIES HERETO ACKNOWLEDGE THAT THE AMOUNT OF THE BREAK-UP FEE AS SET FORTH IN Section 5.12(d) OF THIS AGREEMENT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF BUYER'S DAMAGES, AND AS BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER, WHETHER AT LAW OR IN EQUITY, FOR ANY LIABILITY UNDER THIS AGREEMENT AND THE EXHIBITS AND DISCLOSURE



SCHEDULES HERETO OR ANY AGREEMENT, DOCUMENT OR INSTRUMENTS RELATED HERETO, INCLUDING THE FAILURE OF SELLER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY OF THE EXHIBITS OR DISCLOSURE SCHEDULES HERETO OR ANY AGREEMENT, DOCUMENT OR INSTRUMENTS RELATED HERETO.

(b) THE PARTIES HERETO ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT THAT THE TRANSACTIONS CONTEMPLATED IN THIS AGREEMENT ARE NOT CONSUMMATED WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, THE PARTIES HERETO ACKNOWLEDGE THAT THE AMOUNT OF THE ESCROW DEPOSIT AS SET FORTH IN Section 2.7(c) OF THIS AGREEMENT HAS BEEN AGREED UPON, AFTER NEGOTIATION, AS THE PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES, AND AS SELLER'S SOLE AND EXCLUSIVE REMEDY AGAINST BUYER, WHETHER AT LAW OR IN EQUITY, FOR ANY LIABILITY UNDER THIS AGREEMENT AND THE EXHIBITS AND DISCLOSURE SCHEDULES HERETO AND EACH AGREEMENT, DOCUMENT OR INSTRUMENTS RELATED HERETO, INCLUDING THE FAILURE OF BUYER TO PERFORM ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT OR ANY OF THE EXHIBITS OR DISCLOSURE SCHEDULES HERETO OR ANY AGREEMENT, DOCUMENT OR INSTRUMENTS RELATED HERETO.

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: *curtis svuli*

Title: *president*

**BUYER:**

NINER ACQUISITION LLC

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

Name: Brady Dolsen

Title: Manager



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 November 27, 2017, by and between Niner, Inc. and Niner Acquisition LLC to which these Schedules have been attached (the "Agreement"). Unless the context otherwise 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.*

**Niner, Inc.****Assets & Tangible Property Listing****Schedule 2.1 (a)**

Account	Debit	Credit	DR < CR >	TO BUYER
<b>1000 - Cash and Equivalents</b>				
1003 - FN Merchant Services	\$19,983.14		\$ 19,983.14	\$ 19,983.14
1004 - Paypal Deposit Account	\$892.22		\$ 892.22	\$ 892.22
1006 - Petty Cash	\$3,417.40		\$ 3,417.40	\$ 3,417.40
1008 - Wells Fargo Bank - Lockbox	\$62,760.92		\$ 62,760.92	\$ 62,760.92
1012 - First National - Operating Account	\$13,192.23		\$ 13,192.23	\$ 13,192.23
1013 - Retail Store Cash	\$269.33		\$ 269.33	\$ 269.33
1020 - Taiwan Bank Account - USD	\$8,935.05		\$ 8,935.05	\$ 8,935.05
1021 - Taiwan Bank Account - TWD	\$0.10		\$ 0.10	\$ 0.10
<b>Total - 1000 - Cash and Equivalents</b>	<b>\$97,450.39</b>	<b>\$0.00</b>		
<b>1100 - Accounts Receivable</b>				
1100 - Accounts Receivable	\$844,777.43		\$ 844,777.43	\$ 844,777.43
1110 - Allowance for Doubtful Accounts		\$35,220.35	\$ (35,220.35)	\$ (35,220.35)
1197 - Employee receivables	\$113,182.24		\$ 113,182.24	\$ 113,182.24
<b>Total - 1100 - Accounts Receivable</b>	<b>\$957,959.67</b>	<b>\$35,220.35</b>		
<b>1200 - Other Assets</b>				
1198 - Due from Employees	\$2,104.53		\$ 2,104.53	\$ 2,104.53
1199 - Loans to Officers	\$243,724.87		\$ 243,724.87	\$ 243,724.87
1205 - Other Receivable	\$62,882.89		\$ 62,882.89	\$ 62,882.89
1210 - Deposits on Account	\$263,289.16		\$ 263,289.16	\$ 263,289.16
1800 - Undeposited Funds	\$11,553.00		\$ 11,553.00	\$ 11,553.00
<b>Total - 1200 - Other Assets</b>	<b>\$573,534.45</b>	<b>\$0.00</b>		
<b>1220 - Prepaid Expenses</b>				
1220 - Prepaid Expenses	\$33,942.14		\$ 33,942.14	\$ 33,942.14
1221 - Prepaid Advertising	\$5,388.93		\$ 5,388.93	\$ 5,388.93
1222 - Prepaid Insurance	\$37,988.99		\$ 37,988.99	\$ 37,988.99
1223 - Software	\$16,462.61		\$ 16,462.61	\$ 16,462.61
1224 - Prepaid Loan Fees	\$231,839.30		\$ 231,839.30	\$ 231,839.30
1226 - Prepaid Shipping Inbound	\$2,561.22		\$ 2,561.22	\$ 2,561.22
<b>Total - 1220 - Prepaid Expenses</b>	<b>\$328,183.19</b>	<b>\$0.00</b>		
<b>1300 - Inventory Asset</b>				
1300 - Inventory Asset	\$8,374.09		\$ 8,374.09	\$ 8,374.09
1306 - Build Kits & Components	\$615,420.25		\$ 615,420.25	\$ 615,420.25
<b>1320 - Frames</b>				
1320 - Frames	\$554.60		\$ 554.60	\$ 554.60
1330 - Frame - Hardtails	\$247,250.20		\$ 247,250.20	\$ 247,250.20
1340 - Frames - Full Suspension	\$685,312.63		\$ 685,312.63	\$ 685,312.63
1345 - Frames - Cross	\$474,574.90		\$ 474,574.90	\$ 474,574.90
<b>Total - 1320 - Frames</b>	<b>\$1,407,692.33</b>	<b>\$0.00</b>		
<b>1350 - Complete Bikes</b>				
1351 - Complete Bikes - Hardtails	\$36,604.65		\$ 36,604.65	\$ 36,604.65
1352 - Complete Bikes - Full Suspension	\$405,400.10		\$ 405,400.10	\$ 405,400.10
1353 - Complete Bikes - Cross	\$101,631.31		\$ 101,631.31	\$ 101,631.31
<b>Total - 1350 - Complete Bikes</b>	<b>\$543,636.06</b>	<b>\$0.00</b>		
1360 - Forks	\$378,720.58		\$ 378,720.58	\$ 378,720.58
<b>1370 - Parts &amp; Accessories</b>				
1370 - Parts & Accessories	\$29.14		\$ 29.14	\$ 29.14
1371 - Misc Parts	\$156,249.92		\$ 156,249.92	\$ 156,249.92
1372 - Niner Clothing	\$68,946.40		\$ 68,946.40	\$ 68,946.40
1373 - Niner Merchandise	\$7,925.08		\$ 7,925.08	\$ 7,925.08
1374 - Niner Parts	\$285,623.99		\$ 285,623.99	\$ 285,623.99
1375 - Frames spare parts	\$278,056.72		\$ 278,056.72	\$ 278,056.72
<b>Total - 1370 - Parts &amp; Accessories</b>	<b>\$796,831.25</b>	<b>\$0.00</b>		
1378 - Wheelsets	\$381,982.25		\$ 381,982.25	\$ 381,982.25
1380 - Prepaid Inventory				

**Niner, Inc.****Assets & Tangible Property Listing****Schedule 2.1 (a)**

Account	Debit	Credit	DR <CR>	TO BUYER
29 - Inventory In Transit	\$6,836.14		\$ 6,836.14	\$ 6,836.14
Total - 1380 - Prepaid Inventory	\$6,836.14	\$0.00		
1398 - Inventory In Transit	\$3,689.12		\$ 3,689.12	\$ 3,689.12
Total - 1300 - Inventory Asset	\$4,143,182.07	\$0.00		
1400 - Property & Equipment				
1401 - Machinery and Equipment				
1401 - Machinery and Equipment	\$178,625.32		\$ 178,625.32	\$ 178,625.32
1402 - Computers	\$119,981.24		\$ 119,981.24	\$ 119,981.24
1404 - Storage Container	\$3,494.21		\$ 3,494.21	\$ 3,494.21
1405 - Trade Show Booth and Other	\$321,807.31		\$ 321,807.31	\$ 321,807.31
1408 - Shop Tools	\$14,686.87		\$ 14,686.87	\$ 14,686.87
1409 - Camera, Video & Other	\$15,183.42		\$ 15,183.42	\$ 15,183.42
1410 - Vehicles	\$215,615.22		\$ 215,615.22	\$ 215,615.22
1450 - Accumulated Depreciation PP&E		\$735,000.96	\$ (735,000.96)	\$ (735,000.96)
1560 - Test Frames and Components	\$279,153.24		\$ 279,153.24	\$ 279,153.24
1651 - Accumulated Depreciation - Test Frames and Components		\$221,905.51	\$ (221,905.51)	\$ (221,905.51)
1570 - Part Molds				
1570 - Part Molds	\$1,709,591.74		\$ 1,709,591.74	\$ 1,709,591.74
Total - 1570 - Part Molds	\$1,709,591.74	\$0.00		
1671 - Accumulated Depreciation - Part Molds		\$1,285,325.22	\$ (1,285,325.22)	\$ (1,285,325.22)
Total - 1401 - Machinery and Equipment	\$2,858,138.57	\$2,242,231.69		
1460 - Leasehold Improvements				
1460 - Leasehold Improvements	\$69,107.15		\$ 69,107.15	\$ 69,107.15
1461 - Accumulated Depreciation - LH		\$19,041.67	\$ (19,041.67)	\$ (19,041.67)
Total - 1460 - Leasehold Improvements	\$69,107.15	\$19,041.67		
1500 - Research and Development				
1501 - Capitalized R&D				
1502 - Air 9 Carbon	\$49,108.26		\$ 49,108.26	\$ 49,108.26
1505 - Air 9 Carbon SL	\$4,135.00		\$ 4,135.00	\$ 4,135.00
1506 - Rip 9 Carbon	\$11,776.00		\$ 11,776.00	\$ 11,776.00
1508 - Sir 9	\$5,001.03		\$ 5,001.03	\$ 5,001.03
1510 - Air 9 Alloy	\$29,871.24		\$ 29,871.24	\$ 29,871.24
1511 - EMD	\$3,404.48		\$ 3,404.48	\$ 3,404.48
1512 - Jet Carbon	\$110,079.26		\$ 110,079.26	\$ 110,079.26
1513 - RIP 9	\$2,016.88		\$ 2,016.88	\$ 2,016.88
1520 - Components	\$43,974.40		\$ 43,974.40	\$ 43,974.40
1669 - Accumulated Amortization - R&D		\$259,366.52	\$ (259,366.52)	\$ (259,366.52)
Total - 1501 - Capitalized R&D	\$259,366.55	\$259,366.52		
Total - 1600 - Research and Development	\$259,366.55	\$259,366.52		
1600 - Software				
1600 - Software	\$361,926.93		\$ 361,926.93	\$ 361,926.93
1609 - Acc. Amortization - Software		\$290,420.94	\$ (290,420.94)	\$ (290,420.94)
Total - 1600 - Software	\$361,926.93	\$290,420.94		
Total - 1400 - Property & Equipment	\$3,548,539.20	\$2,811,060.82		
1700 - Intellectual Property				
1771 - Patents	\$129,555.16		\$ 129,555.16	\$ 129,555.16
1772 - Trademarks	\$16,550.82		\$ 16,550.82	\$ 16,550.82
1779 - Accumulated Amortization - IP		\$44,788.04	\$ (44,788.04)	\$ (44,788.04)
Total - 1700 - Intellectual Property	\$146,105.98	\$44,788.04		

**NINER, INC.**

Listing of Leases  
Schedule 2.1 (b)

<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

**NINER, INC.**  
**Assigned Contracts**  
**Schedule 2.1 (c)**

Name	Type
KIRT VOREIS	PRO ATHLETE
REBECCA RUSCH	PRO ATHLETE
FORT COLLINS OFFICE	PREMESIS LEASE
TAIWAN OFFICE	PREMESIS LEASE





NINER, INC.  
 Listing of Patents  
 Schedule 2.1e

AHMT Ref.	Title	Application No.	Filing Date	Patent #	Issue Date	Nmer	Expiration
9ER07301	Bloyole Rear Suspenslon	12/116,077	6/6/2008	7934739	6/3/2011		
9ER07301CIP	Bloyole Rear Suspenslon	13/097,640	4/29/2011	8590914	11/26/2013	Appvd 10/21/13	6/12/2029
9ER07302	Bloyole Eccentric Bottom Bracket	12/030,133	2/12/2008	8561498	10/22/2013		
9ER09301	Crown-Holding Head Cap	11/950,582	2/8/2008	7703786	4/27/2010	Appvd 10/22/13	
9ER10301	Internal Cable Routing System	13/184,099	7/15/2011	8662519	3/4/2014		

NINER, INC.  
 Listing of Trademarks  
 Schedule 2.1e

Mark	USA	CTM	China	Taiwan	Japan
<b>CVA</b>					
Status	Registered	Registered	Registered	Registered	Registered
Reg #	4416714	11162012	6262012	6272012	2182013
Reg Date	10/16/2013				
Serial #	85505162	10993673	11133945	101036188	5555599
Filing Date	12/28/2011				
Renewal Due		6/26/2022	3/8/2024	7/16/2023	2/8/2023
<b>Stylized 9</b>					
Status	Registered	Registered	Pending	Registered	Registered
Reg #	4190371	11000197		101036189	5579600
Reg Date	8/14/2012	11/21/2012		8/27/2012	6/2/2013
Serial #	85505141		11133944		
Filing Date	12/28/2011		6/28/2012		
Renewal Due	8/14/2018	6/28/2022		7/16/2023	6/2/2023
<b>Niner Bikes</b>					
Status	Registered	Registered	Pending	Registered	Registered
Reg #	4267042	10993609		1588690	5579601
Reg Date	1/1/2013			7/16/2013	6/2/2013
Serial #	85505119		11133943		
Filing Date	12/28/2011	11/5/2012	6/28/2012		
Renewal Due		6/26/2022		7/16/2023	6/2/2023
<b>Pedal Damn It</b>					
Status	Registered	Registered	Pending	Registered	Registered
Reg #	4190384	10993442		1560241	5555600
Reg Date	8/14/2012	11/5/2012		1/16/2013	2/8/2013



**NINER, INC.**  
 Eligible Inventory  
 Schedule 2.1 (f)

**Niner Bikes**  
**PMC 4.1A Inventory Valuation - FoCo**  
**As of November 20, 2017**

Item	Display Name	Inv. Value	On Hand	Ave Cost
<b>1300 - Inventory Asset</b>				
1306	Buld Kits & Components	\$582,733	23,647	\$25
1320	Frames	\$1,183,947	2,186	\$542
1350	Complete Bikes	\$299,604	224	\$1,338
1360	Forks	\$334,657	1,666	\$201
1370	Parts & Accessories	\$702,675	62,603	\$11
1378	Wheelsets	\$345,987	1,541	\$225
<b>Total - 1300 - Inventory Asset</b>		<b>\$3,449,602</b>	<b>91,865</b>	<b>\$38</b>
<b>Total</b>		<b>\$3,449,602</b>	<b>91,865</b>	<b>\$38</b>

**Niner Bikes**  
**PMC 4.1B Inventory Valuation - KN, Presale, Warran**  
**As of November 20, 2017**

Item	Display Name	Inv. Value	On Hand	Ave Cost
<b>1300 - Inventory Asset</b>				
1306	Buld Kits & Components	\$207	22	\$9
1320	Frames	\$29,917	53	\$564
1350	Complete Bikes	\$29,864	17	\$1,757
1360	Forks	\$1,034	6	\$172
1370	Parts & Accessories	\$8,195	513	\$16
1378	Wheelsets	\$821	4	\$205
<b>Total - 1300 - Inventory Asset</b>		<b>\$70,037</b>	<b>615</b>	<b>\$114</b>
<b>Total</b>		<b>\$70,037</b>	<b>615</b>	<b>\$114</b>

\$3,519,639



**NINER, INC.**  
**Eligible Inventory**  
**Schedule 2.1 (f)**

**Niner Bikes**  
**PMC 6 Demo Listing**

Item	Quantity	Unit Cost	Total Cost	Weight	Volume	Value	Weight	Volume	Value	Weight	Volume	Value
1300 - Inventory Asset												
1330 - Complete Bikes	33.00	\$74,023										
1370 - Parts & Accessories	1.00	\$288										
1380 - Build Kits & Components	20.00	\$925										
Total - 1300 - Inventory Asset	\$0	\$54,000	\$75,835	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
			18.00			\$37,464						\$112,388
			19.00			\$37,464						\$328
			19.00			\$37,464						\$925
			70.00			\$37,464						\$113,259
			70.00			\$37,464						\$113,259

Total Demo \$ 113,259



**NINER, INC.**  
**Assumed Liabilities**  
**Schedule 2.3**

None.

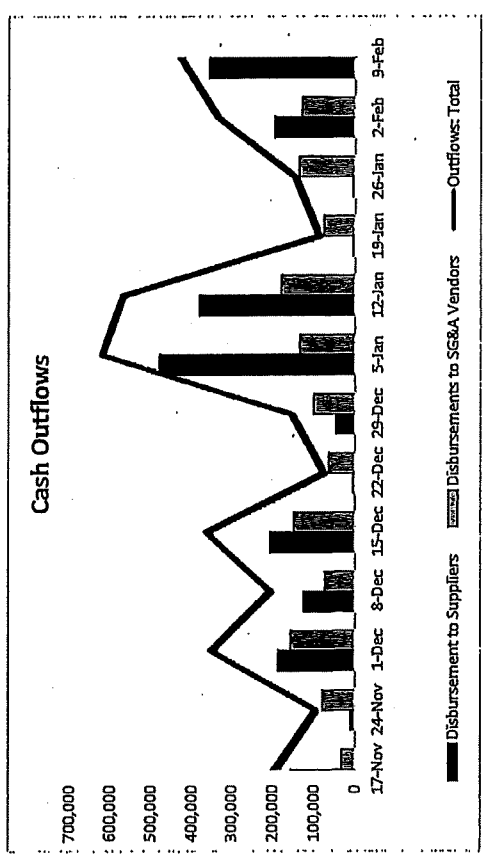




**NINER, INC.**  
Budget  
Schedule 2.6

**NINER, INC.**  
Schedule of Forecasted Cash Disbursements  
as of 10 Nov 2017

Proj Week	1	2	3	4	5	6	7	8	9	10	11	12	13
Cal Week	46	47	48	49	50	51	52	1	2	3	4	5	6
17-No	24-No	1-Dec	8-Dec	15-Dec	22-Dec	29-Dec	5-Jan	12-Jan	19-Jan	26-Jan	2-Feb	9-Feb	
Inventory Vendors													
Subtotal - Wires	56,399	4,444	41,534	126,773	49,791	5,000	-5,000	477,252	204,982	5,000	5,000	190,988	318,057
Subtotal - Checks	101,283	6,180	146,200	0	157,256	0	43,376	0	175,532	0	0	5,885	36,887
<b>Disbursement to Suppliers</b>	<b>157,682</b>	<b>10,624</b>	<b>187,734</b>	<b>126,773</b>	<b>207,047</b>	<b>5,000</b>	<b>48,376</b>	<b>477,252</b>	<b>380,514</b>	<b>5,000</b>	<b>5,000</b>	<b>196,873</b>	<b>354,944</b>
SG&A Vendors													
Payroll													
Payroll Taxes			20,500		25,500		20,500		30,500		20,500		
FedEx/FT/Trams Trade & UFS	23,078	0	0	14,535	13,586	5,000	5,000	19,528	20,000	20,000	20,000	20,000	20,000
Chase CC / FNMC / Amex	0	44,754	15,000	24,000	15,000	15,000	15,000	44,000	35,000	35,000	35,000	39,000	35,000
William Cheng sent/mo - Tung/mo		0			10,000				10,000				
Medical Insurance			24,925				24,925					24,925	
Rent			26,751				26,751					26,751	
Other		25,000		25,000		25,000							
West Town Savings Bank													
Bank & Credit Card Fees	3,600				3,600				2,500	1,100		10,000	
Misc. Disbursements	6,933	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Loan, Interest													
<b>Disbursements to SG&amp;A Vendors</b>	<b>33,611</b>	<b>79,754</b>	<b>158,206</b>	<b>73,535</b>	<b>150,886</b>	<b>65,000</b>	<b>101,530</b>	<b>135,204</b>	<b>181,200</b>	<b>76,100</b>	<b>136,530</b>	<b>130,676</b>	<b>65,000</b>
<b>Outflows: Total</b>	<b>198,226</b>	<b>100,378</b>	<b>355,940</b>	<b>210,308</b>	<b>367,933</b>	<b>80,000</b>	<b>159,906</b>	<b>622,456</b>	<b>571,714</b>	<b>91,100</b>	<b>151,530</b>	<b>337,549</b>	<b>429,944</b>





**NINER, INC.**  
**Material Contracts**  
**Schedule 3.5(a)**

Name	Type
KIRT VOREIS	PRO ATHLETE
REBECCA RUSCH	PRO ATHLETE
FORT COLLINS OFFICE	PREMESIS LEASE
TAIWAN OFFICE	PREMESIS LEASE



**NINER, INC.**  
Material Permits  
Schedule 3.7(b)

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



**NINER, INC.**  
Taxes  
Schedule 3.9 (a)

NONE.





**NINER, INC.**  
**Infringements**  
**Schedule 3.10 (c)**

NONE.