**IN THE UNITED STATES BANKRUPTCY COURT**
**CENTRAL DISTRICT OF ILLINOIS**
**PEORIA DIVISION**

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| **In re:** | ) | |
| **PAL HEALTH TECHNOLOGIES, INC.,** | ) | **Case No. 17-81712** |
| **Debtor.** | ) | **Chapter 11** |

**DEBTOR'S MOTION TO (A) APPROVE THE SALE OF ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF LIENS AND INTERESTS; (B) APPROVE PROPOSED BREAK-UP FEE; (C) APPROVE ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND RIGHTS; AND (D) SET A DATE FOR A SALE HEARING ON THIS MOTION**

PAL HEALTH TECHNOLOGIES, INC., debtor and debtor in possession (the "Debtor"), by and through its undersigned counsel, submits this motion (the "Motion") for an order pursuant to Sections 105(a), 363, 365, 1107(a), and 1108 of title 11 of the Bankruptcy Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006 and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"): (i) approving the sale of substantially all of the assets of the Debtor -- with the exception of accounts receivable, cash and cash equivalents, and other certain "excluded assets" – (collectively the "Assets") pursuant to the attached proposed Asset Purchase Agreement (**Exhibit A)** (the "APA") free and clear of all liens, claims and interests as defined in the APA, to PR MANUFACTURING ENTERPRISES LLC (the "Proposed Buyer"); (ii) approving the proposed buyer Break-Up Fee protection in the amount of $20,000.00 in favor of the Proposed Buyer contained in Section V.A.4.a. of the APA; (iii) approving the assignment of certain executory and other contract rights pursuant to the provisions contained in Section VI.4 of the APA; (iv) setting the hearing date of the Motion to approve the terms and sale price contained herein (the "Sale") on January 8, 2017 at a time convenient to this Court.

In support of the Motion, the Debtor states as follows:

**BACKGROUND**

8. On November 30, 2017 (the "Petition Date"), Debtor filed a voluntary petition in this Court for reorganization relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 - 1532, as amended (the "Bankruptcy Code"). Debtor continues to operate its business and manage its properties as debtor in possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

9. An official committee of unsecured creditors has not been established, and due to this being a "small business" debtor case the formation of a committee is not anticipated by the Debtor.

10. Debtor manufactured a line of orthotic and related health products. It ceased active manufacturing and acceptance of new orders in September 2017.

11. For several months, Debtor has actively solicited potential purchasers for all or a portion of its assets and business operations. It also approached a business broker about its potential prospects for a sale through additional marketing time and expenditures. The marketing/sale efforts are detailed in the attached affidavit of the Debtor's accountant Neil Gerber (**Exhibit B**) (the "Affidavit").

5. The Proposed Buyer has offered the sum of Two Hundred Seventy-Five Thousand Dollars ($275,000.00) for the Assets. As detailed in the APA, certain assets of the Debtor including accounts receivable, cash and cash equivalents would be excluded from the sale and are expected to produce additional funds for the creditors in this case.

6. In addition, Proposed Buyer shall have the right, prior to the closing of the Sale, to designate which executory contracts and unexpired leases the Debtor shall assume and assign to Buyer, from the list of Executory and Other Contract Rights contained in Attachment 4 to APA (the "Executory Contracts"). Such Executory Contracts are a part of the Assets proposed to be

transferred and assigned. Any and all cure costs associated with the Executory Contracts designated to be assumed and assigned, shall be satisfied from the proceeds of the Sale.

## JURISDICTION

7. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue in this district is proper pursuant to 28 U.S.C. §§1408 and 1409. The statutory predicates for the relief sought herein are Sections 105(a), 363, 365, 1107(a), and 1108 of the Bankruptcy Code and Rules 2002, 6004, 6006 and 9006 of the Bankruptcy Rules.

## SUPPORT FOR RELIEF REQUESTED

### A. The Sale is Supported by the Debtor's Reasonable Business Judgment.

8. Bankruptcy Code Section 363(b)(1) provides that the "trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." The decision to enter into an agreement out of the ordinary course of a debtor's business is to be based on the reasonable business judgment of the debtor. *See, In re Continental Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986); *see also, In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983).

9. This Court's power to authorize a sale under Section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible case by case approach. *See, In re Baldwin United Corp.*, 43 B.R. 888, 905 (Bankr. S.D. Ohio 1984); *see also, Matter of Irvin*, 950 F.2d 1318, 1320 (7th Cir. 1991). The key consideration is the Court finding that a good business reason exists for the sale. *See, In re Schipper*, 933 F.2d 513 (7th Cir. 1991); *see also, Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986). As noted in *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. 1988) (*citing Lionel Corp.*, 722 F.2d at 1070-71):

> [T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business . . . Whether the proffered business justification is sufficient depends on the case . . . the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtors, creditors and equity holders alike . . .

10. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand."); *see also, In re Integrated Resources, Inc.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the . . . [Debtor's] duty with respect to such sales is to obtain the highest price of greatest overall benefit possible for the estate.") (*quoting Cello Bay Co. v. Champion Int'l Corn. (In re Atlanta Packaging Prods., Inc.*), 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988).

11. Once a valid business justification is established, the business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interests of the company." *Integrated Resources*, 147 B.R. at 656. This Court should approve a use, sale, or lease of property under Section 363(b) of the Bankruptcy Code if a debtor has established some articulated business justification for the proposed transaction. *See, Walter*, 83 B.R. at 16; *see also, In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *see also, Schipper*, 933 F.2d at 515; *see also, Lionel Corp.*, 722 F.2d at 1071.

12. Bankruptcy courts in this circuit and elsewhere have approved sales of all of a debtor's assets outside of a chapter 11 plan. *Golf 255, Inc. v. Eggeman*, 2007 WL 781916, at *4 (S.D. Ill. March 14, 2007) (collecting cases); *see also In re Nicole Energy Servs., Inc.*, 385 B.R. 201, 260 (Bankr. S.D. Ohio 2008).

13. In *Golf 225*, the bankruptcy court approved the sale of all of the debtor's assets outside of a chapter 11 plan. There, the primary assets of the bankruptcy estate, a golf course and clubhouse, along with certain assets ancillary to the debtor's business operations, secured the approximate $2.1 million indebtedness owed by the debtor to the Bank. The Bank had brought foreclosure proceedings which were stayed by the filing of an involuntary bankruptcy against the debtor. *Golf 225*, 2007 WL 781916, at *1.

14. In analyzing the propriety of the bankruptcy court approving the sale of the debtor's assets, the *Golf 225* court held that in order to approve a sale of substantially all of the assets of a chapter 11 bankruptcy estate pursuant to Section 363(b)(1), prior to filing a plan and disclosure statement, a court must find that the following elements are satisfied: (i) accurate and reasonable prior notice must be given to all creditors and parties in interest; (ii) a sound business purpose for the sale must be clearly established by the record; (iii) the purchase price must be fair and reasonable; and (iv) the proponent must show that the sale will not unfairly benefit insiders or the prospective purchasers, or unfairly favor a creditor or class of creditors.

15. Here, each of the factors set forth by the *Golf 225* court have been or will be clearly satisfied:

(i) Notice: In addition to parties served through the court's electronic noticing system, counsel for Debtor will serve either a printed copy of the motion and the exhibits by first class mail or an electronic version of this motion and the exhibits upon all parties on the court's mailing matrix.

(ii) Sound Business Reason: Debtor believes that due to the nature of its business and its cashflow situation, both in the opinion of management and on the advice of its accountant, that a sale rather than an attempted plan of reorganization is in the best interest of all parties in interest including the unsecured claimholders

(iii) Fair and Reasonable Purchase Price: Debtor has marketed itself prior to the filing of the case and sought the advice of a business broker, and in the business judgment of its management the Debtor believes that the price is

both fair and reasonable and the highest achievable given the market and the circumstances of this case.

(iv) No Unfair Benefit: No employment of key employees of the Debtor is contemplated by the sale. The Debtor asserts that no unfair benefit is being granted to insiders or other classes of claims. The president of the Debtor is being compensated in the proposed amount of $25,000.00 for a seven year non-competition agreement, which was negotiated by the president through her own personal counsel, which the Debtor believes to be fair and reasonable given the length of time and other factors. All of the net proceeds from the sale of the Assets are anticipated to be held and disbursed to unsecured claimholders of the bankruptcy estate, as there are not believed to be any secured claimholders. The Debtor would only proceed with the Sale if a meaningful benefit is achieved for the bankruptcy estate.

16. Simply, the Debtor's decision to sell the Assets is based upon the reasonable exercise of Debtor's sound business judgment. The APA represents the highest offer thus far. As is made clear by the foregoing, the consideration to be received by Debtor for the Assets is fair and reasonable. Based upon the foregoing facts, Debtor respectfully submits that the decision to enter into the APA to sell the Assets resulted from the reasonable exercise of Debtor's business judgment.

17. Consequently, as the Sale is a reasonable exercise of Debtor's business judgment, and the Debtor respectfully requests that the Sale therefore be approved as being in the best interests of the bankruptcy estate.

18. Pursuant to procedure set by the Court notice will be issued to creditors, and if a competing offer for the Assets is received the Debtor will report same at the hearing on the Sale and take a position on whether or not an auction or other sale procedure is both practical and would be of benefit to the bankruptcy estate.

19. The terms of the APA were negotiated at arm's length and in good faith, will allow the Debtor to realize the highest value for the Assets and will maximize value to the Debtor's estate. Consequently, at a subsequent hearing, Debtor will request that the Court approve the Sale

of the Assets and the assumption and assignment by Debtor of the Executory Contracts to the Buyer pursuant to the terms and conditions contained in the APA.

20. Time is of the essence in approving and closing the Sale, and any unnecessary delay in closing the Sale could result in the collapse of the Sale. Accordingly, this Court should also waive the fourteen (14) day period staying any order to sell property of the estate imposed by Bankruptcy Rules 6004(h) and 6006(d).

**B. The Sale Should Be Free and Clear of All Liens, Claims, and Interests.**

21. Pursuant to Section 363(f) of the Bankruptcy Code, a debtor in possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept money satisfaction for such interest. *See*, 11 U.S.C. § 363(f); *see also, In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (as Section 363(f) written in disjunctive, court may approve sale "free and clear" provided at least one of the subsections is met).

22. Approving the sale of the Assets free and clear of all liens, encumbrances, claims, and interests is warranted because: (i) the Proposed Buyer has indicated that it will only go forward with Sale if it is free and clear of all liens, encumbrances, claims and interests; (ii) to the knowledge of the Debtor, there are presently no asserted liens, voluntary or involuntary, against the Assets; (iii) any other holders of liens, claims or interests in the Assets could be compelled to accept a money judgment for their interest in the Assets; and (iv) any alleged right of first refusal or similar

anti-alienation right is an interest that is the subject of a bona fide dispute. *See*, 11 U.S.C. § 363(f). Additionally, the liens and security interests of any creditor holding an asserted lien in response to this Motion on the Assets will either be satisfied at closing or attach to the proceeds in the same extent, validity, and priority as existed in and to the Assets. Consequently, approval of the sale of the Assets free and clear of all liens, encumbrances, claims and interests is in the best interests of Debtor's estate and its creditors.

**C. The Break-Up Fee is Reasonable.**

23. In the context of bankruptcy cases, it is appropriate to grant buyer protections to prospective purchasers. Buyer protections (including expense reimbursements and break-up fees) are designed to compensate a prospective purchaser for the costs and risk involved in preparing and proposing a bid that will establish a minimum standard for any potential competing bids. *See, Integrated Resources*, 147 B.R. at 658 (break-up fees are "important tools to encourage bidding and to maximize the value of the debtor's assets"); *see also, In re APP Plus, Inc.*, 223 B.R. 870, 874 (Bankr. E.D.N.Y. 1998) (break-up fees compensate a prospective purchaser "for the time, efforts, resources, lost opportunity costs and risks incurred").

24. Here, the Proposed Buyer anticipates additional costs in its due diligence and has incurred substantial attorney fees and other costs in preparation and negotiation of the APA. Such costs could easily be in excess of $20,000.

25. In light of the foregoing, in order to induce the Buyer to enter into the Agreement, the Proposed Buyer required (and the Debtor agreed to grant), a Break-Up Fee for reimbursement of its above described expenses in the amount of $20,000 in the event that this Court requires competitive bidding and the Proposed Buyer is not the successful purchaser.

26. The amount of the Break-Up Fee is not unreasonable in comparison to the size of the proposed transaction.

27. Because of the risks, expenses and complications associated with the proposed transaction, the Proposed Buyer would not enter into the APA without the protection of the Break-Up Fee. Therefore, absent the Break-Up Fee, the Proposed Buyer would not have submitted the proposed APA, which will confer significant value upon Debtor's estate by, among other things: (i) initiating the bidding process for the Assets if competing potential buyers do appear; (ii) establishing a bid standard or minimum for other bidders early in the bidding process; (iii) placing the Assets in a sales configuration mode to attract other bidders; and (iv) serving, by the Buyer's name and expressed interest, as a catalyst for other potential bids. In addition, the Break-Up Fee will reduce the likelihood that the Proposed Buyer will withdraw its proposal. Therefore, the Break-Up Fee are clearly in the best interests of Debtor's estate.

## CONCLUSION

WHEREFORE, the Debtor respectfully requests the entry of an Order pursuant to 11 U.S.C. §363(f) for the following: (i) approving the sale of substantially all of the assets of the Debtor -- with the exception of accounts receivable, cash and cash equivalents, and other certain "excluded assets" – (collectively the "Assets") pursuant to the attached proposed Asset Purchase Agreement (**Exhibit A)** (the "APA") free and clear of all liens, claims and interests as defined in the APA, to PR MANUFACTURING ENTERPRISES LLC (the "Proposed Buyer") for the sum of $275,000.00; (ii) approving the proposed buyer Break-Up Fee protection in the amount of $20,000.00 in favor of the Proposed Buyer contained in Section V.A.4.a. of the APA; (iii) approving the assignment of certain executory and other contract rights pursuant to the provisions contained in Section VI.4 of the APA; (iv) setting the hearing date of the Motion to approve the terms and sale price contained herein (the "Sale") on January 8, 2017 at a time

convenient to this Court. (v) that the stay provision of the Bankruptcy Rules 6004(h) and 6006(d) not apply to the order; and (vi) providing such other relief as is just and proper.

Dated: December 11, 2017

Respectfully Submitted,

PAL HEALTH TECHNOLOGIES, INC.,

BY: /s/ Sumner A. Bourne
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# ASSET PURCHASE AGREEMENT

THIS AGREEMENT (“Agreement”) is entered into by and among PAL Health Technologies, Inc., an Illinois Corporation and Debtor-In-Possession ("Seller"), Carole Schoenfeld (“Shareholder”) and PR Manufacturing Enterprises, LLC, an Illinois limited liability company ("Buyer"), and collectively (“Parties”).

WHEREAS, Seller was formerly engaged in the business of orthotic manufacturing (the "Business");

WHERAS, Buyer filed a petition under Chapter 11 of the United States Bankruptcy Code [11 U.S.C. §101 et seq. and the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Central District of Illinois, and is acting as a Debtor-In-Possession; and,

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets of the Business on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

**Section 1: Purchase and Sale.**

On the Closing Date (as hereinafter defined), Seller shall sell, deliver, transfer, assign and convey to Buyer, and Buyer shall purchase from Seller, all of Seller's right, title and interest in and to all of the assets of Seller, of every kind, nature and description and wherever situated, tangible and intangible, but excluding in all cases the following excluded assets hereinafter defined (“Excluded Assets”):Cash, cash equivalents, deposit accounts, accounts receivable, tax refund claims, records other than as defined below, refunds due on any insurance policies, deposits with any utility providers, landlord deposits, property leased from third parties, certain causes of action not specifically related to the Assets, including avoidance and related actions, arising under Sections 542, 544, 545, 546, 547, 548, 549, 550 and 553 of the Bankruptcy Code.

Said assets to be purchased and sold hereunder shall include, but shall not be limited to (other than the Excluded Assets defined previously): inventories; machinery and equipment; Intellectual Property (as defined below); general intangibles including, but not limited to, customer list, training and machine manuals, advertising and customer support materials, all computer software including accounting and record keeping software; furniture and fixtures; office supplies and equipment, including, but not limited to, all computers; prepaid expenses; Seller’s exclusive contract rights with respect to the system 3.0 material and lower extremity line, including but not limited to the “Platinum” custom ankle bracing system; open purchase orders from customers; customer deposits; claims; know-how; tradenames and trademarks; logos; operating data and records (defined as customer and supplier lists, credit information, and

correspondence); and all of Seller's rights to the name "PAL Health Technologies" and all derivations thereof (which assets are sometimes hereinafter referred to collectively as the "Operating Assets"). The Operating Assets are sometimes hereinafter referred to collectively as the "Assets."

For a period of two (2) years after Closing, Seller shall (a) reasonably maintain the other records (financial and employee), and (b) upon reasonable request by Buyer make available to Buyer any such excluded books, records and other documents, to which Buyer reasonably needs access for the purpose of responding to any employment, tax or other claims against the Assets, or for other similar purposes. The cost of copying any such books, records and other documents shall be at Buyer's sole cost and expense.

**Section II: Purchase Price and Closing Date.**

The total purchase price for the Assets (the "Asset Purchase Price") and payment to the Shareholder for her execution of the Noncompetition Agreement shall be a total of Three Hundred Thousand Dollars ($300,000) which shall be paid by Buyer to Seller and Shareholder at Closing as allocated hereinafter. The closing (the "Closing") of the transaction contemplated by this Agreement shall take place no later than five (5) days after the expiration of the Due Diligence Review Period (as hereinafter defined) , or on such earlier or later date as Seller and Buyer may mutually agree. The date of Closing, as determined in accordance with the foregoing, is referred to herein as the "Closing Date."

**Section III: Actions by Seller at Closing.**

At Closing, Seller shall take the following actions:

1. Seller shall execute and deliver to Buyer a document of transfer and assignment which is identical to Attachment 1 (the "Bill of Sale"), but subject to mutually agreeable additions and deletions to the schedules attached thereto, and all other documentation which may be necessary or desirable to effectively convey to Buyer all Assets to be sold pursuant to this Agreement.

2. Seller shall deliver to Buyer copies, certified as true and correct and showing the effective date(s) thereof, of all consents, authorizations, the Order of the Bankruptcy Court approving this sale and other documentation which may be necessary or desirable in order to complete this transaction without violating the provisions of any law or agreement.

3. Seller and Shareholder shall execute and deliver to Buyer a "Noncompetition Agreement" in the form attached as Attachment 2, but subject to mutually agreeable additions and deletions.

4. Seller shall execute and deliver to Buyer an "Assignment and Assumption Agreement" in the form attached as Attachment 3, but subject to mutually agreeable additions and deletions.

**Section IV: Actions by Buyer at Closing.**

At Closing, Buyer shall take the following actions:

1. Buyer shall tender cash, cashier's checks, or wired funds to Seller in the amount of Two Hundred and Seventy Five Thousand Dollars ($275,000.00) for the purchase of all of Seller's Assets.

2. Buyer shall tender cash, cashier's checks, or wired funds to Shareholder in the amount of $25,000.00 in consideration and in exchange for the Shareholder's execution of the Noncompetition Agreement.

3. If requested by Seller, Buyer shall deliver to Seller certified copies of all resolutions of Buyer necessary or desirable to authorize this Agreement and the transactions contemplated by it.

4. Buyer shall execute and deliver to Sellers the Noncompetition Agreement discussed above in Section III.

5. Buyer shall execute and deliver to Seller an "Assignment and Assumption Agreement" in the form attached as Attachment 3, but subject to mutually agreeable additions and deletions.

**Section V: Conditions to Closing.**

A. Conditions Precedent to Obligations of Buyer.

1. Proceedings Satisfactory.

All actions, proceedings, instruments, opinions and documents required to carry out this Agreement, shall be reasonably satisfactory to Buyer and its counsel. Seller shall have delivered to Buyer on the date of Closing such documents and other evidence as Buyer may reasonably request in order to establish the consummation of transactions relating to the execution, delivery and performance by Seller of this Agreement, the purchase, transfer and delivery of the Assets to be purchased hereunder, the taking of all corporate and other proceedings in connection therewith and the compliance with the conditions set forth in this Section V.A., in form and substance reasonably satisfactory to Buyer.

2. Representations and Warranties of Seller.

The representations and warranties made by Sellers in Section VI shall be true and correct in all material respects on and as of the Closing Date.

3. Compliance with Terms and Conditions.

All the terms, covenants, agreements and conditions of this Agreement to be complied with and performed by Sellers on or before the Closing Date shall have been complied with and performed in all material respects.

4. Bankruptcy Court Order of Approval.

Buyer shall have received an order from the Bankruptcy court with jurisdiction over Seller's bankruptcy which authorizes Seller to sell the Business to Buyer under the terms and conditions of the Agreement as set forth herein. ("Bankruptcy Court Sale Order"). The Bankruptcy Court Sale Order shall explicitly state the Business shall transfer the Assets to Buyer free and clear of all liens and encumbrances, specifically including, but not limited to, any pension withdrawal liability or other union related obligations of Seller.

Buyer understands that under the Bankruptcy Code that the Bankruptcy Court Sale Order will not be "final" until fifteen (15) days after entry by the Bankruptcy Court (pursuant to the rules and definitions contained in the Bankruptcy Code). The date the Bankruptcy Court Sale Order becomes final shall herein be referred to as the "Effective Date".

a. In the event Seller shall be compelled by the Bankruptcy Court to accept bids from third parties for the purchase and sale of the Business, and in the event Buyer does not place the winning bid for the Business, Buyer shall be entitled to reimbursement out of the proceeds of sale in the amount of Twenty Thousand Dollars ($20,000) to reimburse buyer for its costs in preparing this Agreement and the associated sale motion, pre-sale due diligence costs, and costs incurred in the bankruptcy proceeding.

5. Assumption of Exclusive Contracts

Buyer shall have received executed assignment agreements, if necessary, assigning all of Seller's rights under the exclusive contract agreements with respect to the System 3.0 material and lower ankle extremity line, including but not limited to the "Platinum" custom ankle bracing system, to Buyer. Said assignment agreements must provide for the continued exclusive use and exercise of these contract rights by Buyer.

If any of the conditions set forth in this Section V.A. are not satisfied, Buyer may

terminate this Agreement and be relieved of all further obligations. If this Agreement is terminated by Buyer, such termination shall not be deemed an election of remedies or a waiver of any of Buyer's rights to indemnification under this Agreement. However, if Buyer shall have the right to terminate this Agreement, it may nevertheless elect at its sole option to proceed with the Closing and such election shall not in any way be deemed a waiver of any of Buyer's rights to indemnification or set-off under this Agreement.

B. Conditions Precedent to Obligations of Sellers.

1. Proceedings Satisfactory.

All actions, proceedings, instruments, opinions and documents required to carry out this Agreement, shall be reasonably satisfactory to Seller and its counsel. Buyer shall have delivered to Seller on the date of Closing such documents and other evidence as Seller may reasonably request in order to establish the consummation of transactions relating to the execution, delivery and performance by Buyer of this Agreement, the purchase, transfer and delivery of the Assets to be purchased hereunder, the taking of all corporate and other proceedings in connection therewith and the compliance with the conditions set forth in this Section V.B., in form and substance reasonably satisfactory to Seller.

2. Representations and Warranties of Buyer.

The representations and warranties made by Buyer in Section VII shall be true and correct in all material respects on and as of the Closing Date.

3. Compliance with Terms and Conditions.

All the terms, covenants, agreements and conditions of this Agreement to be complied with and performed by Buyer on or before the Closing Date shall have been complied with and performed in all material respect.

If any of the conditions set forth in this Section V.B. are not satisfied, Seller may terminate this Agreement and be relieved of all further obligations. If this Agreement is terminated by Seller, such termination shall not be deemed an election of remedies or a waiver of any of Seller's rights to indemnification under this Agreement. However, if Seller shall have the right to terminate, he may nevertheless elect at his sole option to proceed with the Closing, and such election shall not in any way be deemed a waiver of any of Seller's rights to indemnification or set-off under this Agreement.

**Section VI: Representations and Warranties of Seller.**

Seller represents and warrants and covenants to Buyer as of the date of this Agreement and shall, by proceeding with the Closing, represent, warrant and covenant as of the close of

business on the Closing Date as follows:

1. Agreement Authorized and No Conflict.

All actions legally necessary to authorize Seller to enter into this Agreement have been taken, those necessary to enable Seller to carry out its terms will have been taken by Closing, and this Agreement and the agreements and transactions contemplated hereby are binding on Seller, and enforceable in accordance with their terms. This Agreement and the transactions contemplated hereby are not and will not be in conflict with and do not and will not violate the terms of any other agreement, law, regulation, or the like, to which any of the parties constituting Seller is subject.

2. Condition of Assets.

All of the Assets are fully operational and in good working order. With the exception of the Excluded Assets, the Assets are all the assets used by Seller to conduct the Business; and are all the assets necessary to conduct the Business lawfully and as previously conducted by Seller.

3. Title to Assets.

Seller has good marketable title to the Assets, subject to no judgments, liens, encumbrances, or other interests of any party whatsoever that have not been disclosed and are not expected to be extinguished by the Bankruptcy Court Sale Order.

4. Enforceability of Executory Contracts.

All executory contracts ("Contracts") used in the operation of the Business, identified in Attachment 4, are enforceable by Seller in accordance with their terms, are assignable to Buyer, and may be enforceable by Buyer in accordance with their terms upon assumption under the Bankruptcy Code and assignment to Buyer. No party to any of these Contracts is in non-monetary default under their terms. In addition, Seller does not have any knowledge or constructive notice of any non-monetary alleged default, or that any notice of default, potential default or termination has been sent or received by any party to these Contracts. Likewise, no event has occurred which would represent a non-monetary default under any of these Contracts. The preceding notwithstanding, Buyer shall have no obligation to assume any contracts, including the Contracts identified in Attachment 4, of Seller. The election to assume or reject contracts of Seller shall be made by Buyer in Buyer's sole discretion. Buyer hereby directs Seller to instruct counsel for Seller to file a motion with the Bankruptcy Court for assumption and assignment of the two Year Non-Competition/Confidentiality Agreement in favor of Seller from New York Orthopedic Manufacturing Corporation described on Attachment 4. By the Effective Date of the Bankruptcy Court Sale Order, should Buyer wish to receive an assignment of any of the other Contracts, it shall instruct counsel for Seller in writing to

file a motion with the Bankruptcy Court for assumption and assignment of the subject Contract.

5. Financial Statements and No Adverse Changes; No Liabilities.

The financial statements of Seller for its three most recently ended fiscal years, which have been provided to Buyer; present accurately and fairly the financial position of the company as of such dates and the results of its operations for such periods; are true, correct and complete with all respects; have been prepared in accordance with generally accepted accounting principles applied on a consistent basis; and since the end of the most recently ended such fiscal year, there has been no material adverse change in the condition, financial or otherwise, of Seller, the Assets, or the Business. No contingent liabilities as to either Seller or the Assets exist for which Buyer as transferee of the Assets would be liable, including, without limitation, sales, use, personal property and real estate taxes and federal tax liens that have not been disclosed and are not expected to be extinguished by the Bankruptcy Court Sale Order.

6. Documentation.

All records and documentation provided to Buyer in connection with this transaction are true and complete as of the date to which such records or documentation pertain, and the identity and description of the Seller and the Assets to be sold pursuant to this Agreement are true and correct. To Seller's knowledge after due inquiry, there is no fact or condition which has not been disclosed in writing to Buyer that materially adversely affects the Assets, the Business, or the ability of Seller to perform any of its obligations under this Agreement, whether such fact or condition arose prior to or after the dates of the records and documentation provided to Buyer in connection herewith.

7. Trademarks, Trade Names, etc.

Seller does not own or use any registered or unregistered copyrights, trademarks, trade names, service marks, service names, slogans or assumed names (nor are any of the same used or held for use) in connection with the conduct of the Business other than those listed on Attachment 5 hereto ("Trademarks"). To the best of Seller's knowledge, Seller exclusively owns all rights in and to the Trademarks free and clear of any adverse claims, liens and interest that have not been disclosed and are not expected to be extinguished by the Bankruptcy Court Sale Order. Seller has not licensed or authorized any other person or entity to use the Trademarks. Seller will transfer all of Seller's right, title and interest in the Trademark to Buyer hereunder, to the best of Seller's knowledge, free and clear of any adverse claims, liens and interest so that they may be used by Buyer and its successors and assigns for perpetuity without charge. To the best of Seller's knowledge, Seller is not required to pay any license fee, royalty or any other payment to use the Trademarks in its business, nor will any fee or payment be required of Buyer after or in connection with the transfer of the Trademarks at Closing. To the best of Seller's

knowledge, upon transfer of the Trademarks to Buyer, Buyer will have the right to transfer or assign the Trademarks to any subsequent third party free and clear of any adverse claims, liens and interest other than any which Buyer after the date of Closing suffers, permits or incurs with respect thereto. Attachment 5 lists (1) the owner or use of each such registered copyright, trademark, trade name, service mark, service name, slogan or assumed name, (2) any assignments thereof and any agreements relating to the use or sharing of the rights thereunder, and (3) any statutorily required filings made by Seller to permit it to make use of each such copyright, trade name, service mark, service name, slogan or assumed name. Subsequent to the date hereof, Seller will not enter into any amendment or modification of, terminate or consent to the termination of, or sell, assign, pledge or otherwise dispose of any part of its interest in any Trademarks without the prior written consent of Buyer. Except as set forth on Attachment 5, there is no claim pending or threatened against Seller with respect to the alleged infringement of any of the Trademarks, Seller does not know of any basis for any such claim, and no such claim has ever been made to or against Seller in the past.

**Section VII: Representations and Warranties of Buyer.**

Buyer represents, warrants and covenants to Seller as of the date of this Agreement and as of the Closing Date as follows:

1. Good Standing/Reinstatement.

The Parties recognized that Seller was administratively dissolved by the State of Illinois on or about December 11, 2015. Buyer is otherwise a duly organized and validly existing corporation under the laws of Illinois. Seller is in the process of applying for reinstatement with the Illinois Secretary of State Seller has adequate power and authority to enter into this Agreement and carry out its terms, and will be properly registered in the State of Illinois as of the Closing Date.

2. Agreement Authorized.

All actions legally necessary to authorize Buyer to enter into this Agreement have been taken, those necessary to enable Buyer to carry out its terms will have been taken by Closing, and this Agreement is binding on Buyer. This Agreement is not in conflict with and does not violate the terms of any other agreement, law, regulation, or the like, to which Buyer is subject.

3. Litigation.

Buyer is not a party to any litigation which might have a material adverse impact on this transaction. Likewise, Buyer is not aware of any pending or any threatened legal proceeding, claim or investigation that relates to or might have a material adverse impact on this transaction. The Parties recognize that demands and threats of legal action for

monetary defaults have been made by vendors and various union parties, which have been stayed by the bankruptcy filing and should not have a material adverse impact on this transaction due to the anticipated Bankruptcy Court Sale Order.

If Buyer assigns its rights hereunder to one or more Authorized Assignees (as hereinafter defined), the foregoing representations and warranties shall be deemed made by Buyer and each of the Authorized Assignees with respect to each of them as of the effective date of the assignments and again as of the Closing Date.

**Section VIII: Employees.**

Buyer is not obligated under this Agreement to retain any Employee of Seller.

**Section IX: Indemnification.**

Seller agrees to indemnify Buyer for any liability, damages and expenses incurred by Buyer as a result of any breach of any representation, warranty or covenant contained in this Agreement or applicable laws by Seller as a result of events occurring prior to Closing that relate to or affect the Assets or the conduct of the Business. Buyer agrees to indemnify the Seller and/or the Shareholder with respect to any liability, damages and expenses incurred by them as a result of any breach by Buyer of any representation, warranty or covenant contained in this Agreement, or as a result of any events occurring after the Closing that relate to the Assets or the conduct of Buyer's business. In the event Seller and/or the Shareholder on the one hand, or Buyer on the other, has a claim under this indemnity, it may offset the amount of such claim against any amount then owed by it to any one or more constituents of the other party under this or any other agreement.

**Section X: Due Diligence.**

1. Due Diligence Review.

The Buyer shall have until 5:00 p.m. (Central Time) on the twentieth ($20^{th}$) business day after the Effective Date of the Bankruptcy Court Sale Order (the "Due Diligence Review Period"), to conduct its due diligence review of all financial, legal, regulatory, business, operational matters and physical condition of the Business (the "Due Diligence Review"). Seller shall take such actions as the Buyer may reasonably request, including, but not limited to, permitting Buyer and its agents reasonable access to any information they may reasonably request in connection with its Due Diligence Review. The Buyer shall have the right, in its sole discretion, to terminate this Agreement, by written notice to Seller, at any time not later than three (3) business days after the end of the Due Diligence Review Period based on the Buyer's dissatisfaction with the Due Diligence Review, in which event this Agreement shall terminate and no party shall have any further rights or obligations with respect to this Agreement.

2. Inspection.

Buyer shall have the right until during the Due Diligence Review Period, at its own expense, to conduct such inspections and investigations as Buyer shall reasonably request (through its agents, employees, architects, contractors or engineers) with respect to the Operating Assets, at reasonable times upon at least twenty-four (24) hours prior notice to Seller.

**Section XI: Damage of Assets.**

Should the Assets or any material portion thereof be substantially damaged or destroyed prior to the Closing, then Buyer may, at Buyer's option, (i) elect to continue this Agreement in full force and effect, in which case Seller shall forthwith assign to Buyer all rights of Seller to the insurance recovery due by reason of said damage and the purchase price shall be reduced by the difference between the insurance proceeds paid and the cost to repair the Assets to their condition immediately prior to such damage or destruction; or (ii) elect to rescind and void this Agreement, and thereupon there shall be returned to Buyer all money, papers or documents deposited by Buyer, and there shall be returned to Seller all papers or documents deposited by Seller. After the Closing, the risk of loss shall be and is assumed by Buyer. There shall be no proration of insurance.

**Section XII. Change of Name and Cessation of Business.**

Since all names used by Seller in connection with the Business are being assigned to Buyer, Seller shall cease trading under these names and any names similar thereto commencing immediately after the Closing Date. Not later than ten (10) days after the Closing Date, Seller shall file with the Illinois Secretary of State an amendment to its Articles of Incorporation changing its name to a name that is not deceptively similar to PAL Health Technologies, Inc. In the event that Seller fails to file such amendment to its Articles of Incorporation by ten (10) days after the Closing Date, Seller authorizes Buyer, on Seller's behalf, to file an amendment to Seller's Articles of Incorporation changing Seller's name to a name selected by Buyer.

**Section XIII: Environmental Matters.**

Seller will, at its sole cost and expense, (i) comply with, or ensure compliance with, all applicable federal, state, local and foreign environmental laws or regulations, and with all agreements with governments, and court and administrative orders, pertaining to violations of any such environmental laws or regulations that are applicable to Seller ("Environmental Violation") on or before the Closing Date, and (ii) cure any Environmental Violation. Such environmental laws include, without limitation, the Resource Conservation and Recovery Act of 1976 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended. These obligations, and any liability that Seller have for any breach thereof, shall survive the Closing, and Buyer shall not assume any such obligation or liability of Seller.

In the event Buyer discovers or determines the existence of any Environmental Violation (including, without limitation, a spill, discharge or contamination) that existed as of and/or prior to the Closing Date or any act or omission occurring prior to the Closing Date, the result of which may require remedial action pursuant to any law or may be the basis for the assertion of any third-party claims, including claims of governmental entities, Buyer shall promptly notify Seller thereof and Seller shall, at its sole cost and expense, proceed with due diligence to take the appropriate action in response thereto. In the event that Seller fails to so proceed with due diligence, Buyer may, at its option, proceed to take the appropriate action and shall have the rights to indemnity as set forth in this Agreement.

**Section XIV: Non-Assumption.**

Buyer shall not assume by virtue of this Agreement or the transactions contemplated hereby any obligations or liabilities of any Seller of any kind whatsoever, including but not limited to any pension withdrawal liability or union related obligations of Seller.

**Section XV: Miscellaneous.**

1. Assignment.

Any reference to Seller herein is to each party constituting Seller, and the covenants, representations, warranties and obligations made and undertaken by them as Sellers, or if applicable, by any group of them, shall be joint and several. Any reference to Buyer herein shall mean Buyer, or, in the event of any assignment, its assignee(s).

2. Continued Access to Records

Seller shall have the right of access to the business records which they are delivering to Buyer for the purpose of defending itself against any claim by or against others, for tax purposes, or for any other legitimate reason.

3. Entire Agreement.

This document represents the entire agreement of the parties with respect to the transaction contemplated by it.

4. Other Actions.

Each party to this Agreement agrees to execute and deliver such additional documents and take such other actions as may be reasonably requested by another party to carry out the provisions and purposes of this Agreement.

5. Binding Effect.

This Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective heirs, personal representatives, executors, successors, transferees and assigns.

6. Representations and Warranties Survive Closing.

This Agreement, including the representations and warranties set forth in Sections VI and VII and the Indemnification set forth in Section X, shall survive the Closing.

7. Unenforceability of Provisions.

If unenforceable as written by a Court, arbitrator or the like having proper jurisdiction, such provision shall be interpreted in whatever manner is necessary to be deemed enforceable while retaining as closely as possible the original language and intent of the parties, and no such determination shall affect the validity or interpretation of the remaining terms of this Agreement.

8. Governing Law.

This Agreement, and all others relating hereto, including those the forms for which are attached as Attachments, shall be governed by and construed in accordance with the laws of the State of Illinois.

9. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one agreement. Photocopies, facsimile transmissions, or email transmissions of Adobe portable document format files (also known as "PDF" files) of signatures shall be deemed original signatures and shall be fully binding on the parties to the same extent as original signatures.

10. Finders or Brokerage Fees.

Each party to this Agreement represents and warrants to the other that such party has not hired a broker or similar agent with respect to this purchase and agrees to be solely responsible for defending against, and paying all fees, etc. to, any broker or similar person who claims that such party engaged him to render services in connection with this transaction.

(signatures on next page)

WHEREFORE, the parties have executed this Asset Purchase Agreement on the dates set forth next to their respective signatures.

PAL Health Technologies, Inc

Date:_____ By: _____
Its:_____

Date:_____ _____
Carole Schoenfeld
Individually

PR Manufacturing Enterprises, LLC

Date:_____ By: _____
Its: Manager

# ATTACHMENT 1

# BILL OF SALE ON NEXT PAGE

# BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS, that PAL Health Technologies, Inc., an Illinois corporation ("Grantor"), for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, does hereby sell, assign and transfer to PR Manufacturing Enterprises, LLC, an Illinois limited liability company ("Grantee"), all right, title and interest of Grantor in and to the "Operating Assets", as defined in that certain Asset Purchase Agreement dated _____, 2017, between Grantor and Grantee (the "APA"), to the extent such Assets are personal property and capable of being conveyed to Grantee pursuant to this Bill of Sale. Included among the Operating Assets are the following:

Inventories
Machinery
Equipment
Furniture
Fixtures
Office Supplies
Intellectual property
Contract rights with respect to the system 3.0 material and lower extremity line, including but not limited to the "Platinum" custom ankle bracing system
Trademark Application Pending for Mark "Hydrosport" ©
U.S. Trademark SN 86813212:
HYDROSPORT: Docket/Reference No. PAL-0001-TM

This Bill of Sale is made pursuant to the APA and shall be subject in all respects to the terms, conditions and provisions thereof.

IN WITNESS WHEREOF, the undersigned has duly hereunto set its hands as of this _____ day of _____, 2017.

PAL Health Technologies, Inc.

By:_____
Its _____

# ATTACHMENT 2

# NONCOMPETE AGREEMENT ON NEXT PAGES

# NON-COMPETITION AGREEMENT

THIS AGREEMENT, made and entered into by and between Carole Schoenfeld ("Shareholder"), shareholder of PAL Health Technologies, Inc. ("Company") and PR Manufacturing Enterprises, LLC, an Illinois limited liability company ("Buyer").

*WHEREAS*, Company has this date sold to Buyer substantially all of the operating assets of the Company; and

*WHEREAS*, the parties have negotiated for the grant to Buyer of this Covenant not to Compete within certain areas for a period of seven (7) years.

*NOW, THEREFORE*, in consideration of the mutual covenants and agreements between the parties, it is agreed that:

1. **Territory.** The territory shall be the United States of America (the "Territory").

2. **Term.** The term of this Agreement shall be for a period of seven (7) years from its date ("Term").

3. **Noncompetition Agreement.** Subject to the exceptions stated herein, neither the Company nor Shareholder, for the Term and within the Territory, shall, directly or indirectly (whether as partner or venturer, stockholder, member or in any other capacity as principal or agent or through any person, corporation, partnership, entity or employee acting as nominee or agent):

(a) conduct or engage in or be interested in or associated in a firm, partnership, company, corporation, limited liability company or other entity which conducts or engages in the business of sales or manufacture of orthotics;

(b) take any action, directly or indirectly, to finance, guarantee or provide any other material assistance to any person or persons, firm, partnership, company, corporation, limited liability company or other entity engaged in the orthotic business.

(c) directly or indirectly, whether as principal, partner, agent, employee, employer, consultant, stockholder, or investor, as a director or officer of any corporation, as a member or manager of any limited liability company or in any other manner or capacity whatsoever; (i) divert or attempt to divert from Buyer any business with any customer or account with which Shareholder or Company had any contact or association, which was under the supervision of Shareholder, or the identity of which was learned by Shareholder as a result of Shareholder's employment with the Company, or (ii) induce any salesman, distributor, manufacturer,

representative, agent or other person transacting business with Buyer or the Company to terminate its relationship or association with Buyer, or to represent, distribute or sell services or products in competition with services or products of Buyer, or (iii) induce or cause any employee of Company to leave the employ of Buyer.

4. **Trade and Business Secrets.** Shareholder, other than as required by law, will maintain the confidentiality of and not disclose to anyone other than Buyer any trade secret, business secret, customer list or other confidential information respecting the business of Company.

5. **Consideration.** The consideration for entering into this Agreement is that certain agreement dated _____, 2017 for the sale by Company as herein set forth.

6. **Severability and Divisibility.** The restrictions imposed on Shareholder and Company by this Agreement are divisible and may be enforced in part or in whole by the Buyer. If any provision hereof is held to be invalid or unenforceable for any reason, this shall not affect the validity or enforceability of the remaining provisions.

7. **Parties in Interest.** This Agreement shall be binding upon and inure to the benefit of each of the parties hereto, and its or their successors and permitted assigns, but Shareholder shall have no right to assign their obligations hereunder.

8. **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of Illinois.

9. **Counterparts.** This Agreement may be executed in one or more counterpart copies. Each counterpart copy shall constitute an agreement and all of the counterpart copies shall constitute one fully executed agreement. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

10. **Acknowledgment by Shareholder.** Shareholder, as evidenced by Shareholder's execution of this Agreement, hereby expressly acknowledges that the Term, Territory and non-competition covenant contained in this Agreement are reasonable and reasonably needed for the protection of Buyer. Further, Shareholder agrees that Buyer's rights hereunder are special and unique and that any violation thereof would not be adequately compensated by money damages and Buyer shall have the right to specifically enforce (including injunctive relief where appropriate) the terms of this Agreement.

(signature page to follow)

WHEREFORE, the parties have executed this Agreement the dates set forth next to the parties' respective signatures.

Date: _____, 2017

_____
Carole Schoenfeld

PAL Health Technologies, Inc.

Date:_____, 2017

By: _____
Its:_____

PR Manufacturing Enterprises, LLC

Date:_____, 2017

By: _____
Its: Manager

# ATTACHMENT 3

# ASSIGNMENT AND ASSUMPTION AGREEMENT ON NEXT PAGES

# ASSIGNMENT AND ASSUMPTION AGREEMENT

This **Assignment and Assumption Agreement** (the "Assignment") is entered into by and between PAL Health Technologies, Inc. ("Assignor"), an Illinois corporation and PR Manufacturing Enterprises, LLC ("Assignee"), an Illinois limited liability company.

**WHEREAS**, the Assignor desires to assign and transfer all of its rights and obligations pursuant to a Confidentiality Agreement with New York Orthopedic Manufacturing Corporation, a copy of which is attached hereto as Exhibit A (hereinafter the "Confidentiality Agreement"); and

**WHEREAS**, the Assignee desires to assume and accept the assignment of all of the Assignor's rights and obligations pursuant to the Confidentiality Agreement.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment and Assumption. Assignor transfers, assigns and sets over unto Assignee all rights and obligations pursuant to the Confidentiality Agreement.

2. to the Confidentiality Agree Assumption. Assignee hereby assumes all of Assignor's rights and obligations pursuant ment.

3. Effective Date. This Assignment and Assumption Agreement is effective as of the last date signed.

DATED: _____ DATED: _____

By:_____ By:_____
PAL Health Technologies, Inc. PR Manufacturing Enterprises, LLC

# ATTACHMENT 4

# LIST OF EXECUTORY CONTRACTS

## Equipment

1. Lessor: Mail Finance
   Property: Neopost Postage Machine
   Term Remaining: Expires 3/19/19
   Monthly Payment: $814.91

2. Lessor: CIT Technology
   Property: Avaya Telephone System
   Term Remaining: Month to Month
   Monthly Payment: $2,433.43

3. Lessor: CIT Technology
   Property: Additional Avaya Telephone Equipment
   Term Remaining: Month to Month
   Monthly Payment: $434.73

4. Lessor: Everbank Commercial Finance
   Property: Three Samsung Photocopiers
   Model SL-M5470 LX
   Model SL-M4080FX
   Model SL-M4080FX
   Term Remaining: Expires 7/3/2022
   Monthly Payment: $519.32

## Building/Real Estate

5. Lessor: Delaney Investments LLC
   Property: 1805 Riverway Drive
   Pekin, Illinois
   Term Remaining: Expires 7/31/18
   Monthly Payment: $18,251.10

## Other Contract Rights

Two Year Non-Competition/Confidentiality Agreement in favor of Seller from New York Orthopedic Manufacturing Corporation

# ATTACHMENT 5

# INTELLECTUAL PROPERTY

1. Trademark Application Pending for Mark "Hydrosport" ©
   U.S. Trademark SN 86813212:
   HYDROSPORT: Docket/Reference No. PAL-0001-TM

2. All intellectual property, registered or unregistered, including but not limited to all trade secrets, business secrets, and the trade names

**UNITED STATES BANKRUPTCY COURT**
**FOR THE CENTRAL DISTRICT OF ILLINOIS**
**PEORIA DIVISION**

| | | |
|---|---|---|
| IN RE: | ) | CHAPTER 11 |
| | ) | |
| PAL HEALTH TECHNOLOGIES, INC., | ) | CASE NO. 17-81712 |
| | ) | |
| Debtor. | ) | |

**AFFIDAVIT IN SUPPORT OF MOTION TO SELL**

IN SUPPORT of the motion of PAL HEALTH TECHNOLOGIES, INC., ("Debtor"), for entry of an order for sale of substantially all of its assets pursuant to 11 U.S.C. §363(f) filed with this Court, NEIL M. GERBER, makes the following statement of facts under oath:

1. I am a certified public accountant, and a shareholder in the accounting firm of Heinold-Banwart Ltd. whose office is located in East Peoria, Illinois. A substantial portion of my accounting practice is placing valuations on business, and their likely sale price.

2. Prior to the filing of the above bankruptcy proceeding, I acted as the principal accountant and as financial advisor to the Debtor.

3. In that capacity, I am very familiar with the finances of the Debtor and prepared financial reports (balance sheets, cash flow, and other reports) at its request.

4. I also provided financial advice to the Debtor in respect to its marketing for sale, and assisted in those efforts.

5. Starting in the summer of 2017, I assisted the management of the Debtor in making sales and other contacts in an effort to sell the Debtor's business and its assets.

6. These efforts included contact with a Chicago based business broker about the possibility of listing the business for sale.

7. The business broker contacted stated his opinion did not believe that the business and its assets could be successfully sold through a business broker -- due to the its cashflow situation, likely closure of active business, among other factors – and he declined to be engaged.

8. Additional potential interested parties were contacted, including a former employee and business competitors. These parties were supplied with financial statements, income tax returns, product history and other materials as requested.

9. The highest and best offer was made by the group identified in the sale motion, for an aggregate of $300,000 – including an amount allocated for a personal non-competition agreement by Debtor management.

10. Some parties contacted declined to make offers. The other offers made by parties contacted ranged from $50,000 to $200,000 – significantly less than the offer contained in the sale motion.

11. Due to the fact that the Debtor is no longer taking any new orders and its collection of outstanding accounts receivables is dwindling, in my opinion it will not be able to sustain its required post-bankruptcy cashflow obligations to maintain the assets of the business (rent, utilities, required clerical employees and insurance) for the sustained period of time that additional marketing would require.

12. Also, based on the feedback and lack of success in the marketing efforts during the past several months, I do not believe that a price higher than that currently offered is likely.

13. Further, the longer the Debtor is not a going concern its "brand" and customer goodwill will decline in value.

14. Based on the above narrative of the marketing efforts and the results thereof, the precarious cash position of the Debtor, and my opinion of the value of the Debtor in its current

condition, I believe that the sale proposed in the Debtor's motion for sale of substantially all of its assets that this affidavit supports is the maximum value likely to achieved for the benefit of creditors.

**I DECLARE AND CERTIFY UNDER THE PENALTIES OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.**

Dated: 12-11-17

Neil M. Gerber

Neil M. Gerber
Heinold-Banwart Ltd.
201 Clock Tower Drive
East Peoria, IL 61611
Telephone: (309) 694-4251
Email: ngerber@hbcpas.com