

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF ILLINOIS

In re:	)	Chapter 11 Proceeding
	)	Case No. 17-31471-lkg
SCHANTZ MANUFACTURING, INC.,	)	
	)	
Debtor.	)	
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**DEBTOR’S MOTION (A) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE; (B) ESTABLISHING SALE AND BIDDING PROCEDURES; AND (C) APPROVING EXPENSE REIMBURSEMENT**

COMES NOW Schantz Manufacturing, Inc., (the “**Debtor**” or the “**Seller**”) by and through undersigned counsel, and for its *Motion (A) Authorizing Sale Of Assets Free And Clear Of All Liens, Claims, And Encumbrances Pursuant To Section 363 Of The Bankruptcy Code; (B) Establishing Sale And Bidding Procedures; And (C) Approving Expense Reimbursement* (the “**Motion**”), states to the Court as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 1334 and 157 and 11 U.S.C. §§ 363 and 365.
2. This is a core proceeding under 11 U.S.C. § 157(b)(2)(A), (N), and (O).
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

**BACKGROUND**

4. On September 27, 2017 (the “**Petition Date**”), Debtor and its related entity filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the

**“Bankruptcy Code”**), in the United States Bankruptcy Court for the Southern District of Illinois. The Debtor is continuing to operate its businesses as a debtor in possession.

5. The Debtor is a leader in the custom trailer manufacturing business specializing in units for the food service industry.

6. The Debtor employs approximately 15 employees.

7. The following creditors currently claim secured positions in Debtor’s assets:

- a) **First Mid-Illinois Bank and Trust (“First Mid”)**. First Mid has two loans with the Debtor: (a) a Business Manager Account dated May 17, 2011 in the original principal amount of \$500,000.00 (“AR Loan”) secured by a first lien on the accounts receivable sold to Lender under the term of the AR Loan and further secured by a first lien in the business assets of the Debtor. The approximate current outstanding balance of the AR Loan is \$223,514.90 as of August 31, 2017; (b) a promissory note dated May 19, 2011 in the original principal amount of \$1,450,000.00 (“Real Estate Loan”) secured by a first lien on the real estate located at 13480 US Hwy 40, Highland, IL 62249<sup>1</sup> and further secured by a first lien in the business assets of the Debtor. The approximate current outstanding balance of the Real Estate Loan is \$1,177,246.00 as of August 31, 2017;
- b) **FC Partners LLC (“FC”)**. Secured loan in the principal amount of \$500,000.00 secured by a junior lien in the business assets of the Debtor. FC has filed a claim in the amount of \$407,677.00.

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<sup>1</sup> The real estate at 13480 US Hwy 40, Highland, IL 62249 is owned by Schantz Holdings, LLC the debtor is case number 17-31472 currently pending before the court.

c) **Knight Capital Funding (“Knight”)**. Secured loan in the principal amount of \$208,000.00 secured by a junior lien in the business assets of the Debtor.

Based on the Debtor’s valuation of the assets, the Knight claim is unsecured.

d) **Internal Revenue Service (“IRS”)**. The IRS filed a tax lien against the Debtor in the amount of \$151,948.00 claiming a lien on all of the Debtor’s assets. Based on the Debtor’s valuation of the assets, the IRS lien is unsecured.

8. The Debtor believes that the sale of substantially all of its assets as a going concern pursuant to §363 of the Bankruptcy Code to the highest and best bidder is in the best interest of the Debtor, its creditors, and other parties in interest.

9. The Debtor has sustained operational losses for the last two years and lacks the financial resources or capital structure to reorganize absent a sale.

10. The Debtor’s primary secured lender has frozen the Debtor’s operating credit facility and indicated it will not entertain any restructuring involving additional credit.

11. The Debtor and Schantz Holdings LLC (the “**Real Estate Seller**”), an entity affiliated with Debtor that owns the real estate leased to Debtor out of which Debtor operates that is commonly known as 13480 U.S. Hwy. 40, Highland, Illinois 62249 (the “**Acquired Real Estate**”), have entered into an Asset and Real Estate Purchase Agreement, dated November 6, 2017 (the “**Agreement**”) with Craftsmen Industries, Inc. (“**Buyer**”) for the purchase of substantially all of the Debtor’s operating assets (the “**Acquired Assets**”), including, but not limited to, its equipment, inventory, work in progress, customer list, tangible personal property, intellectual property rights, accounts, deposits and general intangibles, and for the purchase of

the Acquired Real Estate from the Real Estate Seller, all as more particularly described in the Agreement. The Buyer intends to continue business operations in the Debtor's current location.

12. A copy of the Agreement is attached hereto as Exhibit A. An electronic version may be obtained from counsel for the Debtor upon request. The parties may modify the terms of the Agreement prior to the hearing to consider the Motion.

### **THE PROPOSED SALE**

13. Buyer is the market leader in design, engineering, and production of marketing vehicles, large-format graphics, and industrial fabrication specializing in three primary areas: experiential vehicles, large-format graphics and industrial fabrication. Buyer is a closely held, disinterested third party unrelated to the Debtor.

14. Buyer proposes to purchase the Acquired Assets and the Acquired Real Estate (as more fully and completely described in the Agreement) for an aggregate purchase price of \$1,525,000.00, plus forgiveness of outstanding existing debtor-in-possession financing obligations, plus assumption of any Assumed Obligations, each as defined in the Agreement (the "**Purchase Price**"), the allocation of which between the Acquired Assets and the Acquired Real Estate shall be subject to agreement among Debtor, Real Estate Seller and the Buyer. Buyer reserves the right to increase its bid. The precise value of the Purchase Price will depend on the amount of the final bid, amount of outstanding existing debtor-in-possession financing obligations and the amount of any Assumed Obligations set forth in the Agreement. The Debtor will provide the amounts comprising the Purchase Price to any person submitting a Competing Bid upon request.

**OPERATIONAL LOSSES AND FINANCIALS**

15. The Debtor has sustained losses throughout 2017. The Debtor is a manufacturing business which requires a strong capital base and available cash for its operations. The Debtor cannot continue to fund its operations without adequate financing or a capital base.

16. The market in which the Debtor operates is small and niche based. The Debtor is familiar with most, if not all, potential buyers. The Debtor intends to circulate this Motion to each of those parties to gauge their interest in participating in the bidding process.

17. The proposed sale has been negotiated at arms-length and constitutes a good faith offer to purchase in accordance with section 363(m) of the Bankruptcy Code.

**BREAK UP FEE/EXPENSE REIMBURSEMENT**

18. In consideration of Buyer's agreement to be bound by the terms of the Agreement, the Debtor has agreed, subject to Court approval, to reimburse Buyer for certain expenses incurred by Buyer in connection with the Proposed Sale under certain terms and conditions as set forth in the Agreement. In summary, Purchaser shall be entitled to fees and out-of- pocket expenses (including legal, accounting, escrow and other fees and expenses) incurred by Buyer in connection with this bankruptcy case and the execution and delivery of the Agreement and other legal work concerning acquisition of the assets. Additionally, the Buyer shall be entitled to an additional fee in the event that (a) the Debtor consummates an Alternative Transaction, (b) the Debtor files a plan of reorganization contemplating the sale or retention of the Assets by the Debtor in a manner substantially inconsistent with the terms of the Agreement, or (c) a plan of reorganization for the Debtor that does not contemplate all of the transactions contemplated by the Agreement is confirmed (collectively referred to as "**Expense Reimbursement**"). The Expense Reimbursement shall be in the total amount of \$50,000.00.

19. The Expense Reimbursement is a necessary and justifiable expense of the Debtor's estate for the implementation of the transactions contemplated by the Agreement. The Debtor requests that the Court approve payment of the Expense Reimbursement under the conditions set forth in the Agreement.

20. Additionally, any Debtor-in-Possession loan approved by the Court must be assumed and paid in full by any competing buyer.

21. The Expense Reimbursement is reasonable in amount and would fairly compensate Buyer for the substantial time and effort it has invested and the risks it has assumed and for time and effort Buyer will incur prior to the Sale Hearing in performing additional due diligence and negotiating with third parties. The Debtor believes that Buyer's agreement to purchase the Acquired Assets and the Acquired Real Estate, as evidenced by the Agreement, is critical to arranging an orderly sale of the Acquired Assets and the Acquired Real Estate and obtaining the highest realizable price. If Buyer had not committed its resources to the sale process, the Debtor may have been forced to resort to a less orderly process with higher costs and the risk of a smaller recovery for its estate. Buyer's offer also benefits the bankruptcy estate by creating a form of purchase agreement and by establishing the "floor" amount of the purchase price.

22. Accordingly, Buyer's efforts have provided material benefits to the Debtor's estate that justify payment of the Expense Reimbursement.

**APPROVAL OF SALE AND BIDDING PROCEDURES**

23. The Debtor requests approval of the following procedures governing the Sale Hearing and the submission of any bid (a “**Competing Bid**”) by parties interested in purchasing the Acquired Assets:

- a) **The Sale Hearing.** At the Sale Hearing, the Debtor will seek entry of an order, inter alia, authorizing and approving the sale of the Acquired Assets (i) if no other Qualifying Bid is received for the Acquired Assets, to the Buyer pursuant to the terms and conditions set forth in the Agreement or (ii) if a Qualifying Bid is received by the Debtor for the Acquired Assets, to the Buyer or such other Person submitting a Qualifying Bid whom the Debtor determines submitted the Highest or Best Bid (the “**Prevailing Party**”), subject to a final determination by the Bankruptcy Court at the Sale Hearing. The Debtor’s determination of the Highest or Best Bid is without prejudice to Buyer’s right and the right of any other Person who submitted a Qualifying Bid to challenge such determination at the Sale Hearing. The Debtor shall not contest any argument by Buyer that it has standing to contest the Highest or Best Bid selected by the Debtor. All objections to the Proposed Transaction shall be filed no later than five (5) business days prior to the Sale Hearing.
- b) **Bid Requirements for Qualified Bidders.** Prior to receipt by a prospective Bidder of any non-public information (including, without limitation, business and financial non-public information and access to representatives of Seller) from Seller, each Bidder will be required to execute an appropriate confidentiality agreement. Each Bid that satisfies the criteria set forth in paragraph A below, and also is not excluded pursuant to paragraph B below, constitutes a “**Qualifying Bid.**”
  - A. A competing Bid will not be considered by Seller or the Bankruptcy Court unless such competing Bid (i) is submitted to Seller in writing (in form and substance substantially similar to the Agreement except purchase price amount and identity of the Bidder, marked to show changes), (ii) expressly provides that it will remain open and be irrevocable in accordance with its terms through the entry of the Sale Order, (iii) is for an amount equal to, or greater than the aggregate of the sum of (I) the initial bid of \$1,525,000.00; and (II) up to \$50,000.00 (representing the amount of the Expense Reimbursement; and (III) an additional \$100,000.00; and (iv) provides for assumption and repayment of any DIP Loan to Buyer; and (v) includes a good faith cash deposit of \$100,000.00 (the “**Deposit**”).
  - B. A Bid will not be considered by Seller or the Bankruptcy Court if: (i) such Bid contains financing or due diligence contingencies of any kind; (ii) such Bid consists of any form of consideration other than cash

consideration, payable by wire transfer of immediately available funds to the account or accounts designated in writing by Seller; (iii) such Bid is not received by Seller and Buyer by 5:00 p.m. (CST) on December 1, 2017 (the “**Bid Deadline**”); (iv) such Bid does not contain evidence that the Person submitting it has received debt and/or equity funding commitments or available cash sufficient in the aggregate to finance the purchase contemplated thereby; or (v) such Bid is otherwise determined by the Seller to be made in bad faith and such determination is not reversed by a Final Order of the Bankruptcy Court.

- c) **Auction.** If one or more Qualifying Bids are submitted in accordance with the Bidding Procedures Order, Seller will conduct the Auction as set forth in the Agreement. Seller shall keep Buyer, secured lenders, and any Official Committee of Unsecured Creditors (the “**Committee**”) informed on a current basis of the status of all Qualifying Bids. As soon as practicable prior to the Auction, Seller shall provide to Buyer, all Persons who submitted Qualifying Bids, the secured lenders, and any Committee a summary of each Qualifying Bid received. On the business day before the Sale Hearing at 10:00 a.m. (CST), Seller shall conduct the Auction at the offices of Carmody MacDonald PC 120 South Central Avenue, Suite 1800, Clayton, Missouri 63105, at which time and place Buyer and all Persons who submitted Qualifying Bids shall have the right to submit further Bids in writing (in form and substance substantially similar to the Agreement, marked to show changes). Only the Buyer and any Persons who submitted a Qualifying Bid may submit Bids at the Auction. Any Bid submitted at the Auction must be higher than the immediately preceding Bid in increments of not less than \$50,000.00 in cash; provided, however, any Bid submitted at the Auction by Buyer (which may include a Subsequent Bid) shall be deemed increased by the dollar amount of the Expense Reimbursement for purposes of determining whether it constitutes the Highest or Best Bid. No matching Bids will be permitted. Seller shall have the right to select the highest or best Bid from Buyer and any other Person who submitted a Qualifying Bid (the “**Highest or Best Bid**”), which will be determined by the Debtor and the secured lenders by considering, among other things: (A) the number, type, and nature of any changes to the Agreement requested by each Bidder; (B) the extent to which such modifications are likely to delay closing of the sale of the Acquired Assets and the cost to Seller of such modifications or delay, including potential decrease in purchase sale price of Seller’s Assets if not sold by the Closing Date; (C) the total consideration to be received by Seller; (D) the likelihood of the Bidder’s ability to close a transaction and the timing thereof; and (E) the net benefit to the estate, taking into account Buyer’s rights to the Expense Reimbursement. If a Qualifying Bid is determined to be the Highest or Best Bid, the Deposit made by the Person submitting such Qualifying Bid shall immediately be nonrefundable and shall be applied against the purchase price to be paid by such Person at the closing of the transaction approved by the Bankruptcy Court. Unless otherwise agreed to by Buyer, only the Persons who submitted Qualified Bids, the Buyer, Seller, the secured lenders, any Committee, and the United States Trustee may attend in the Auction.



If the prevailing party fails to perform its obligations pursuant to the terms of its Highest or Best Bid (and if Debtor is not in material breach of its obligations thereunder): (i) its Deposit shall be retained by the Debtor as liquidated damages; and (ii) the next highest bidder at the auction shall be deemed the new prevailing party and shall close in accordance with its last bid at the Auction. The Deposit shall be returned to any Competitive Bidder submitting a Competing Bid following the closing of the sale.

- d) **Assigned Contracts.** Not later than ten (10) business days before the Sale Hearing (such date, the “**Cure Notice Deadline**”), Buyer shall provide a notice (the “**Cure Notice**”) to each non-debtor party to an Assigned Contract set forth in Schedule 2.1(a)(v) [see below] to the Agreement, which Cure Notice shall, among other things, (A) provide notice of the proposed assumption and assignment of the Assigned Contract to Buyer, (B) contain a calculation of the Cure Amount, as hereinafter described, and (C) provide notice of the deadline to object to the Cure Notice, which deadline shall be four (4) business days before the Sale Hearing. To the extent that any Assigned Contract is subject to a cure pursuant to section 365 of the Bankruptcy Code, Buyer shall be responsible for such cure and pay any amounts related to such cure obligations (the “**Cure Amounts**”). Buyer shall be responsible for paying all costs and expenses accrued under any Assigned Contract subsequent to the Closing Date.

Notwithstanding anything in the Agreement to the contrary, Buyer may revise Schedule 2.1(a)(v) to the Agreement to remove or add any Lease or Contract from Schedule 2.1(a)(v) to the Agreement and exclude from or include in, as applicable, the definition of Assigned Contracts, such Lease or Contract by (i) in the case of the removal of any Lease or Contract from Schedule 2.1(a)(v) to the Agreement, by providing written notice to Seller not later than two (2) business days prior to the Sale Hearing, and (ii) in the case of the addition of any Lease or Contract from Schedule 2.1(a)(v) to the Agreement, by providing written notice to Seller not later than the Cure Notice Deadline, in which case Seller shall provide a Cure Notice to the other parties to any such Lease or Contract by the Cure Notice Deadline, and Seller shall use all reasonable efforts to obtain any necessary Bankruptcy Court approval for the assumption and assignment to Buyer of such additional Assigned Contracts. Further, all other schedules to this Agreement may be updated from time to time prior to the Sale Hearing upon mutual agreement between the Sellers and Buyer.

A list of the Assigned Contracts (as set forth on Schedule 2.1(a)(v)) shall be described in sufficient detail to provide adequate notice to the non-debtor party to such Assigned Contracts. Upon revision of Schedule 2.1(a)(v) by Buyer, as described above, Seller shall add any Assigned Contracts to the exhibit or remove Assigned Contracts from the exhibit, as applicable. Such exhibit shall set forth the Cure Amounts under each of such Assigned Contracts as determined by Seller based on the Books and Records. In cases in which Seller is unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00. At least twenty-one (21) days prior to the Sale Hearing the Debtor shall file and schedule

for hearing a Motion to Assume Certain Executory Contracts (“Assumption Motion”) referenced in Schedule 2.1. The Assumption Motion shall set forth the relevant cure amounts and shall be final and binding on all parties to the Assigned Contracts and not be subject to further dispute or audit.

**SALE OF ASSETS PURSUANT TO SECTION 11 U.S.C. §363**

24. Debtor requests that the Court authorize the sale of the Acquired Assets pursuant to Section 363 of the Bankruptcy Code free and clear of all liens, encumbrances, claims (as such term is defined in Section 101(5) of the Bankruptcy Code), security interests of whatever kind or nature, mortgages, pledges, charges, licenses, options, rights of recovery, judgments, orders and decree of any court or foreign or domestic governmental entity, interest, or tax (whether secured or unsecured, choate or inchoate, liquidated or unliquidated, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, or known or unknown), including but not limited to all claims for successor liability and/or claims pursuant to exposure to asbestos, with such liens, claims, and encumbrances to attach to the sale proceeds.

25. Section 363(b) of the Bankruptcy Code authorizes the sale of property of the estate other than in the ordinary course of business after notice and a hearing. A sale of assets outside the ordinary course of business is a matter within the Court’s discretion. Courts generally permit a debtor to sell property of the estate outside of the ordinary course where the proposed sale is a sound exercise of the debtor’s business judgment and when such sale is for fair and reasonable consideration and is in good faith. *See In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Channel One Commc’n, Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990); *In re Apex Oil Co.*, 92 B.R. 847, 866 (Bankr. E.D. Mo. 1988).

26. The Debtor has determined that, in its business judgment, the sale of the Acquired Assets to Buyer in accordance with the Agreement (or to another bidder making a higher and

better offer for the Acquired Assets in accordance with the Proposed Bidding Procedures) is in the best interests of the Debtor's Chapter 11 estate and the creditors, and provides the best chance for maintaining operations and jobs for the Debtor's employees. The Debtor has determined in its business judgment that the Proposed Sale is necessary because, given the current limitations on its financing, a sale pursuant to section 363 presents the only means by which the Debtor may realistically hope to realize a going concern value for its assets and the continuation of its business.

27. Furthermore, fulfilling the Debtor's obligations to its existing customers is key to the future stability of the Debtor's business. For any new owner of the Debtor's assets to consider a fair bid, the work in progress and pipeline of future work of customers must be intact. For this reason, the Debtor believes that prompt consummation of the Proposed Sale is critical.

28. The Proposed Sale of the Acquired Assets is for fair and reasonable consideration, is in good faith, does not unfairly benefit any insiders or creditors of the Debtor, and will maximize the value of the Debtor's estate.

### **SALE FREE AND CLEAR OF ALL LIENS**

29. Section 363(f) of the Bankruptcy Code authorizes a debtor to use, sell, or lease property of the estate outside of the ordinary course of business free and clear of any interest in such property. Under the Proposed Sale, except as specifically provided in the Agreement, the Acquired Assets are to be sold free and clear of all liens, encumbrances, claims (as such term is defined in section 101(5) of the Bankruptcy Code), security interests of whatever kind or nature, mortgages, pledges, charges, licenses, options, rights of recovery, judgments, orders and decree of any court or foreign or domestic governmental entity, interest, or tax (whether secured or unsecured, choate or inchoate, liquidated or unliquidated, filed or unfiled, scheduled or

unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, or known or unknown), including but not limited to all claims for successor liability and/or claims for exposure to asbestos, with any such liens, claims, and encumbrances to attach to the net sale proceeds with the same validity, priority, force, and effect that such liens, claims, and encumbrances had on such assets prior to the closing of the Proposed Sale.

30. Alternatively, in the event that a Competitive Bidder makes a higher and better offer for the Acquired Assets, the Acquired Assets are to be sold to such party free and clear of all liens, encumbrances, claims (as such term is defined in section 101(5) of the Bankruptcy Code), security interests of whatever kind or nature, mortgages, pledges, charges, licenses, options, rights of recovery, judgments, orders and decree of any court or foreign or domestic governmental entity, interest, or tax (whether secured or unsecured, choate or inchoate, liquidated or unliquidated, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, or known or unknown), including but not limited to all claims for successor liability, with any such liens, claims, and encumbrances to attach to the net sale proceeds with the same validity, priority, force, and effect that such liens, claims, and encumbrances had on such assets prior to the closing of the transaction.

31. Certain lenders to Debtor hold valid, properly perfected liens upon and security interest in the Assets.

32. Under Section 363(f)(2) of the Bankruptcy Code, a sale free and clear of such liens is permissible if, among other things, (i) applicable nonbankruptcy law permits sale of such property free and clear of such interest, or (ii) the secured lienholders consent. In this case, the

Debtor has the consent of the senior secured creditor and the amount of that creditor's claim exceeds the value of the assets.

**ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES PURSUANT TO SECTION 365 OF  
THE BANKRUPTCY CODE**

33. The assumption and assignment of certain executory contracts and unexpired leases are an integral part of the Proposed Sale and should be approved by the Court. Section 365(a) of the Bankruptcy Code authorizes a debtor in possession to assume an executory contract or unexpired lease subject to the Court's approval. Section 365(b) of the Bankruptcy Code requires the debtor in possession to satisfy certain requirements at the time of assumption if a default exists under the contract to be assumed.

34. The standard for determining whether an executory contract or unexpired lease should be assumed is the debtor's "business judgment" that assumption is in its economic best interests. *In re Food Barn Stores, Inc.*, 107 F.3d 558, 567 n.16 (8th Cir. 1996).

35. The Debtor requests that the Court approve the assumption and assignment of those executory contracts and unexpired leases set forth on Schedule 2.1(a)(v) to the Agreement. The Debtor will establish at the hearing to consider this Motion that adequate business justifications exist that merit judicial approval of the proposed assumptions and assignments.

36. The Debtor will promptly cure any and all defaults under contracts of leases actually assumed and assigned at the time of the assumption and assignment.

37. Following entry of the Sale Order, the Debtor shall serve all parties to executory contracts and unexpired leases with a copy of this Motion (exclusive of exhibits, but with a notice that copies of the exhibits may be obtained from counsel for the Debtor upon request) and the Sale Order.

**ALLOCATION AND PAYMENT OF SALE PROCEEDS**

38. The Debtor requests that the Court approve payment of the proceeds received from the Prevailing Party as follows:

- a) First, payment in full of all DIP Financing, if any;
- b) Second, in the event that Buyer is not the Prevailing Party, in payment of the Expense Reimbursement;
- c) Third, payment to the secured creditors in order of priority;
- d) Fourth, any and all remaining sums to the Debtor, to be distributed through further order of this Court.

**NOTICE**

39. Notice of this Motion has been provided to (a) the United States Trustee; (b) all creditors; (c) those parties requesting notice in this case; (d) those persons and entities known to the Debtor as having expressed a bona fide interest in the purchase of the Assets; and (e) any other interested parties known to the Debtor.

**CONCLUSION**

WHEREFORE, the Debtor hereby respectfully requests:

- a) Entry of an Order: (i) approving the Sale and Bidding Procedures as set forth in the Motion; (ii) authorizing the Debtor to sell the Acquired Assets to Buyer pursuant to the Agreement or, alternatively, in the event that Buyer is not the Prevailing Party, approving the sale of the Acquired Assets to the Prevailing Party and the payment of the Expense Reimbursement to Buyer, free and clear of all liens, encumbrances, claims (as such term is defined in section 101(5) of the Bankruptcy Code), security interests of whatever kind or nature, mortgages, pledges, charges, licenses, options, rights of recovery, judgments, orders and decree

of any court or foreign or domestic governmental entity, interest, or tax (whether secured or unsecured, choate or inchoate, liquidated or unliquidated, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, or known or unknown), including but not limited to all claims for successor liability, withdrawal liability, and/or claims pursuant to collective bargaining agreements and union pension plans (except as specifically provided in the Agreement), with such liens, claims, and encumbrances to attach to the sale proceeds; (iii) providing that neither Buyer nor Buyer's shareholders may be held liable for any claims arising from collective bargaining agreements and union pension plans under successor liability, alter ego, control group, withdrawal liability, or any other theory, (iv) approving the assumption and assignment of executory contracts and unexpired leases included among the Acquired Assets; and (v) authorizing the Debtor to take each of those steps outlined in the Agreement, or in the event that Buyer is not the Prevailing Party, those steps outlined in the Prevailing Party's form of purchase contract, to close the sale; and

b) Such further relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

CARMODY MacDONALD P.C.

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*Counsel for Debtor*

**ASSET AND REAL ESTATE  
PURCHASE AGREEMENT**

**by and between**

**Craftsmen Industries, Inc., as Buyer,**

**and**

**Schantz Mfg Inc., as Asset Seller,**

**Schantz Holdings LLC, as Real Estate Seller**

**and**

**Michael A. Schantz, as Sellers' Representative**

**November 6, 2017**

**EXHIBIT A TO SALE MOTION**



## **ASSET PURCHASE AGREEMENT**

THIS ASSET AND REAL ESTATE PURCHASE AGREEMENT (this "Agreement") is made and entered into effective as of November 6, 2017, by and between CRAFTSMEN INDUSTRIES, INC., a Missouri corporation, or its assign(s) (the "Buyer"), and SCHANTZ MFG INC., an Illinois corporation (the "Asset Seller"), SCHANTZ HOLDINGS LLC, an Illinois limited liability company (the "Real Estate Seller" and together with the Asset Seller, collectively, jointly and severally, the "Sellers" and individually a "Seller"), and MICHAEL A. SCHANTZ, an individual resident of the State of Illinois ("Sellers' Representative").

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

### **ARTICLE I**

#### **DEFINITIONS AND RULES OF CONSTRUCTION**

1.1 Definitions. Unless otherwise defined herein, terms used herein shall have the meanings set forth on Exhibit A attached hereto and incorporated herein by this reference.

1.2 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement:

- (a) the singular includes the plural;
- (b) "includes" and "including" are not limiting;
- (c) "may not" is prohibitive and not permissive; and
- (d) "or" is not exclusive.

### **ARTICLE II**

#### **PURCHASE AND SALE OF ASSETS AND REAL ESTATE**

2.1 Purchase and Sale of Assets.

(a) Subject to the terms and conditions set forth in this Agreement, for the consideration specified in Section 3.1, at the Closing, Asset Seller shall sell, contribute, convey, assign, transfer and deliver to Buyer, free and clear of all Liens, Claims, and other interests and encumbrances (whether arising prior to or subsequent to the petition for a Chapter 11 Case) (except for the Assumed Obligations and Permitted Liens) to the fullest extent allowed by Law, and Buyer shall purchase, acquire and take assignment and delivery of all properties, assets, rights, titles and interests of every kind and nature, owned, licensed or leased by Asset Seller (including indirect and other forms of beneficial ownership) as of the Closing Date, whether tangible or intangible, real or personal and wherever located and by whomever possessed, including all of the following assets (all of the assets to be sold, assigned, transferred and delivered to Buyer hereunder herein called the "Acquired Assets"; provided, that the Acquired Assets shall not include the Excluded Assets retained by Asset Seller pursuant to Section 2.4):

- (i) all billed and unbilled accounts, notes and credit card receivables (whether current or noncurrent) and all causes of action specifically pertaining to the collection of the foregoing;

## **EXHIBIT A TO SALE MOTION**

(ii) all purchase orders not specifically excluded and related credit protections;

(iii) all promotional allowances and vendor rebates and similar items;

(iv) all Intellectual Property, along with all goodwill associated therewith and the business symbolized thereby, all income, royalties, products, proceeds, damages and payments due or payable to Asset Seller as of the Closing or thereafter, including damages and payments for past, present or future infringements, misappropriations or other causes of actions thereof, the right to sue and recover for past infringements, misappropriations or other causes of actions thereof and any and all corresponding rights that, now or hereafter, may be secured throughout the world and all copies and tangible embodiments of any such Intellectual Property in Asset Seller's possession or control;

(v) all of Asset Seller's rights existing under the Assigned Contracts (for the avoidance of doubt, a list of such Assigned Contracts is set forth in Schedule 2.1(a)(v)), as determined by Buyer, to the extent that such Assigned Contracts (A) have been entered into after the petition for a Chapter 11 Case and assigned by Asset Seller pursuant to documentation acceptable to Buyer, (B) have been assumed prior to the date of the Sale Order pursuant to an Order of the Bankruptcy Court and assigned by Asset Seller to Buyer pursuant to the Sale Order or other Order of the Bankruptcy Court, or (C) are assumed and assigned by Asset Seller pursuant to Section 2.1(b);

(vi) all safety deposit boxes, lock boxes and the like;

(vii) all owned machinery, equipment (including all transportation and office equipment), fixtures, trade fixtures, computer and information technology equipment and related data, telephone systems and furniture owned by Asset Seller wherever located, including all such items which are located in any Facility;

(viii) all Inventory;

(ix) all owned office supplies, production supplies, spare parts, other miscellaneous supplies, and other tangible property of any kind wherever located, including all property of any kind located in any building, office or other space leased, owned or occupied by Asset Seller or in any warehouse where any of Asset Seller's properties and assets may be situated;

(x) all security and other deposits and advances and prepaid assets and other current assets, including any Tax receivables and Tax refunds;

(xi) all claims, including Claims, deposits, prepayments, warranties, guarantees, refunds, reimbursements, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent);

(xii) the right to receive and retain mail, accounts, notes and credit card receivables payments and other communications;

(xiii) the right to bill and receive payment for products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(xiv) all Books and Records;

(xv) all advertising, marketing and promotional materials;

## EXHIBIT A TO SALE MOTION

(xvi) all transferrable Permits, licenses, certifications and approvals from all permitting, licensing, accrediting and certifying agencies, and the rights to all data and records held by such permitting, licensing and certifying agencies;

(xvii) all goodwill as a going concern and all other intangible properties;

(xviii) all telephone numbers;

(xix) all of Asset Seller's and Real Estate Seller's rights to be indemnified except to the extent such rights relate to Excluded Assets;

(xx) all rights under insurance policies, including, without limitation, rights to proceeds and rights to make claims for coverage;

(xxi) all security deposits relating to Assigned Contracts; and

(xxii) all causes of action, including Avoidance Actions.

(b) Notwithstanding anything in this Agreement to the contrary, Buyer may revise Schedule 2.1(a)(v) to remove or add any Lease or Contract from Schedule 2.1(a)(v) and exclude from or include in, as applicable, the definition of Assigned Contracts, such Lease or Contract by (i) in the case of the removal of any Lease or Contract from Schedule 2.1(a)(v), by providing written notice to Asset Seller not less than two (2) Business Days prior to the Sale Hearing, and (ii) in the case of the addition of any Lease or Contract from Schedule 2.1(a)(v), by providing written notice to Asset Seller not less than one (1) Business Day prior to the Cure Notice Deadline, in which case Asset Seller shall provide a Cure Notice to the other parties to any such Lease or Contract by the Cure Notice Deadline, and Asset Seller shall use all reasonable efforts to obtain any necessary Bankruptcy Court approval for the assumption and assignment to Buyer of such additional Assigned Contracts. Further, all other schedules to this Agreement may be updated from time to time prior to the Sale Hearing upon mutual agreement between the Sellers and Buyer.

**2.2 Purchase and Sale of Real Estate.** Subject to the terms and conditions hereof, and contingent upon the purchase by Buyer of the Acquired Assets, effective as of the Closing Date and simultaneously with the conveyance of the Acquired Assets by Asset Seller to Buyer, Real Estate Seller shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase from Real Estate Seller, Real Estate Seller's right, title and interest in and to the real estate located in Madison County, Illinois, commonly known as 13480 U.S. Hwy. 40, Highland, Illinois 62249, as more fully described on Schedule 2.2 attached hereto and incorporated herein by reference, together with all improvements thereon free and clear of all Liens, Claims, and other interests and encumbrances (whether arising prior to or subsequent to the petition for a Chapter 11 Case) (except for the Assumed Obligations and Permitted Liens) to the fullest extent allowed by Law (the "Acquired Real Estate") pursuant to the Warranty Deed.

### **2.3 Assumption of Liabilities.**

(a) Subject to the terms and conditions set forth in this Agreement, including Section 2.5 hereto, Buyer shall only assume from Sellers and thereafter be responsible for the payment, performance or discharge of the Liabilities and obligations of Asset Seller arising under or in connection with the Assigned Contracts after the Closing Date (the "Assumed Obligations").

(b) Section 2.3(a) shall not limit any claims or defenses Buyer may have against any party other than Sellers. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any Third Party against Buyer or Sellers.

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2.4 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the following assets of Sellers shall be retained by Sellers and are not being sold or assigned to Buyer hereunder (all of the following are referred to collectively as the “Excluded Assets”):

- (a) any and all rights of Sellers under this Agreement;
- (b) all Contracts and Leases other than the Assigned Contracts listed on Schedule 2.1(a)(v) (taking into account any revisions to Schedule 2.1(a)(v) made by Buyer pursuant to Section 2.1(b)) including, but not limited to, those Contracts and Leases specifically set forth on Schedule 2.4(b) (the “Excluded Contracts”);
- (c) all rights to proceeds under any director and officer liability insurance policies of Sellers for claims arising prior to the Closing;
- (d) any asset set forth on Schedule 2.4(d); and
- (e) all assets maintained pursuant to or in connection with any Employee Benefit Plan.

2.5 No Other Liabilities Assumed. Sellers acknowledge and agree that pursuant to the terms and provisions of this Agreement, Buyer will not assume, or in any way be liable or responsible for, any Liability of either Seller (including Liabilities relating to the pre-petition or post-petition operation of the Business, the Excluded Assets or to the Acquired Assets (and the use thereof) or any outstanding checks), whether relating to or arising out of the Business, the Excluded Assets or the Acquired Assets or otherwise, other than the Assumed Obligations. In furtherance and not in limitation of the foregoing, except as specifically set forth in Section 2.3, neither Buyer nor any of its Affiliates shall assume, and shall not be deemed to have assumed, any Liability of any kind or nature whatsoever of either Seller resulting from, arising out of, relating to, in the nature of, or caused by (a) any Indebtedness, (b) any Excluded Asset or Excluded Contract, (c) Taxes or escheat obligations of any kind or nature, (d) any Claim arising out of facts, events, circumstances, actions or inactions occurring on or prior to the Closing, (e) any Employee Benefit Plan, (f) any Environmental Liabilities, (g) any employees of either Seller and any former employees or any retirees of either Seller, or any dependents or beneficiaries thereof, (h) any breach of contract, breach of warranty, tort, infringement or other violation of the rights of another Person (including any Intellectual Property rights) or any lawsuits or violations of Law, (i) any other obligation of either Seller or any predecessor or Affiliate of either Seller whatsoever or any ERISA Affiliate other than the Assumed Obligations, (j) any Liability or obligation with respect to gift cards, gift certificates or the like, or (k) any Liability of either Seller arising under the WARN Act (whether prior to or after Closing), if any, including any such Liabilities arising out of or resulting in connection with the Closing and/or the consummation of the transactions contemplated by this Agreement (collectively, any such obligations, the “Excluded Liabilities”).

2.6 Deemed Consents. Sellers shall request that by providing notice of its intent to assume and assign any Contract or Lease, that the Bankruptcy Court deem the non-debtor party to such Contract or Lease to have consented to the sale if, and to the extent that, pursuant to the Sale Order or other Order of the Bankruptcy Court, Asset Seller is authorized to assume and assign to Buyer and Buyer is authorized to accept such Assigned Contracts pursuant to section 365 of the Bankruptcy Code.

2.7 Obligations in Respect of Assigned Contracts. To the extent that any Assigned Contract is subject to a cure pursuant to section 365 of the Bankruptcy Code, Buyer shall pay any amounts related to such cure obligations (the “Cure Costs”) from the Purchase Price. Buyer shall be responsible for paying all costs and expenses accrued under any Assigned Contract subsequent to the Closing Date.

2.8 Post-Closing Assignment of Contracts. With respect to any Contract or Lease which is not set forth on Schedule 2.1(a)(v) and provided such Contract or Lease has not been rejected by either Seller

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pursuant to section 365 of the Bankruptcy Code, upon written notice(s) from Buyer, as soon as practicable, Sellers shall take all actions reasonably necessary to assume and assign to Buyer pursuant to section 365 of the Bankruptcy Code any Contract(s) and Lease(s) set forth in Buyer's notice(s), and any applicable costs incurred subsequent to the Closing Date shall be borne by Buyer. The covenant set forth in Section 2.8 shall survive the Closing, subject to the rights of Asset Seller under Section 2.1(b). Notwithstanding anything in this Agreement to the contrary, on the date any Contract or Lease is assumed and assigned to Buyer pursuant to this Section 2.8, such Contract or Lease shall be deemed an Assigned Contract and deemed scheduled on Schedule 2.1(a)(v) under the appropriate heading for all purposes under this Agreement.

### ARTICLE III

#### BASIC TRANSACTION

##### 3.1 Payment of Purchase Price.

(a) In consideration of the sale, transfer, conveyance and assignment of the Acquired Assets and the Acquired Real Estate to Buyer at the Closing and the assumption and assignment to Buyer of the Assigned Contracts, Buyer shall provide Sellers with consideration totaling One Million Five Hundred Twenty-Five Thousand Dollars and No Cents (\$1,525,000.00) (the "Purchase Price") in the form of the following:

(i) payment, for the benefit of Sellers, to Carmody MacDonald, P.C. for Sellers' post-petition legal fees related to the Chapter 11 Cases, in an aggregate amount not to exceed \$40,000.00;

(ii) payment, for the benefit of Sellers, to Denali Business Support Services, for Sellers' post-petition business consulting fees in the amount of \$127,000.00;

(iii) payment(s) to certain key vendors of the Business necessary for Buyer's continuation of the Business, as determined in Buyer's sole and absolute discretion, and payment of any Cure Costs, in an aggregate amount not to exceed \$150,000.00;

(iv) forgiveness by Buyer of the principal amount and all accrued interest of any loans made by Buyer to Sellers for working capital purposes necessary for the continued operations of the Business prior to Closing; and

(v) the balance of the Purchase Price remaining shall be payable by Buyer to Sellers at Closing by certified check or wire transfer of immediately available funds to such account or accounts as directed in writing by Sellers (the "Closing Payment").

In the event the payment(s) made pursuant to Section 3.1(a)(iii) are less than \$150,000.00, one-half (1/2) of the balance shall be remitted to the Asset Seller and one-half (1/2) of the balance shall be retained by the Buyer.

(b) Any payments made by Buyer to Sellers pursuant to this Section 3.1 shall be allocated between the Sellers and among the Acquired Assets and Acquired Real Estate in accordance with Section 12.5.

3.2 Further Assurances. From time to time after the Closing and without further consideration, (a) upon the request of Buyer, Sellers shall execute and deliver such documents and instruments of conveyance and transfer as Buyer may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets or the Acquired Real Estate as contemplated hereby and to vest in Buyer title to the Acquired Assets and the Acquired Real Estate transferred hereunder, or to otherwise

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more fully consummate the transactions contemplated by this Agreement, and (b) Buyer, upon the request of either Seller, shall execute and deliver such documents and instruments of contract or lease assumption as either Seller may reasonably request in order to confirm Buyer's Liability for the Assumed Obligations or otherwise to more fully consummate the transactions contemplated by this Agreement.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLERS AND SELLERS' REPRESENTATIVE

4.1 Sellers' and Sellers' Representative's Representations and Warranties. Sellers and Sellers' Representative, jointly and severally, represents and warrants to Buyer to the best Knowledge of Sellers that the statements contained in this Article IV are correct and complete as of the Closing Date, except as expressly set forth in the schedules relating to this Article IV (the "Disclosure Schedules"). The information disclosed in any numbered part of the Disclosure Schedule shall be deemed to relate to and to qualify only the particular representation or warranty set forth in the corresponding numbered section in this Agreement and shall not be deemed to relate to or to qualify any other representation or warranty unless the applicability of such disclosure to such other representation or warranty is reasonably apparent on its face. The mere listing (or inclusion of a copy) of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty has to do with the existence of the document or other item itself).

4.2 Validity of Agreement. Subject to any necessary authorization from the Bankruptcy Court, each Seller has full power and authority to execute and deliver the Transaction Documents to which such Seller is a party and to consummate the transactions contemplated hereby and thereby. All Transaction Documents to which each Seller is a party have been duly executed and delivered by such Seller, except such Transaction Documents as are required by the terms hereof to be executed and delivered by such Seller after the date hereof, in which case such Transaction Documents will be duly executed and delivered by such Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of such Seller, enforceable against such Seller in accordance with their terms.

4.3 Organization, Standing and Power. Each Seller is duly organized, validly existing and in good standing under the Laws of the State of Illinois and is qualified to do business in every jurisdiction in which such Seller is required to be qualified. Subject to any necessary authorization from the Bankruptcy Court, each Seller has all requisite corporate power and authority to own, lease and operate its properties, to carry on the Business as now being conducted, to execute and deliver the Transaction Documents, subject to Bankruptcy Court authorization and to perform its obligations thereunder, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time, and to general equitable principles.

4.4 No Conflicts. Subject to the approval of the Bankruptcy Court, including pursuant to the entry of the Sale Order, none of the execution, delivery or performance of this Agreement and the Transaction Documents by a Seller will (a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of such Seller's Articles of Incorporation or Bylaws or Articles of Organization or Operating Agreement, as applicable, (b) result in the creation or imposition of any Lien upon any of the properties or assets of such Seller, or (c) result in a violation or breach of any term or provision of any Law or Order applicable to such Seller, other than such violations or breaches which would not materially and adversely affect the validity or enforceability of this Agreement or the Transaction Documents.

4.5 No Consents. No consent, approval or action of, filing with or notice to any Governmental Authority is required to be obtained by either Seller in connection with the execution, delivery and

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performance of this Agreement or any of the Transaction Documents, or the consummation of the transactions contemplated hereby or thereby, except (a) for consents, approvals or actions of and filings with or notice to the Bankruptcy Court and (b) where the failure to obtain any such consent, approval or action, to make any such filing or to give any such notice would not materially and adversely affect the ability of such Seller to consummate the transactions contemplated by this Agreement or any of the Transaction Documents or to perform its obligations hereunder or thereunder or have a Material Adverse Effect on the condition of the Business.

4.6 Legal Proceedings. Except as set forth on Schedule 4.6 and except for Claims that will not attach to the Acquired Assets or the Acquired Real Estate, by virtue of entry of the Sale Order:

(a) Other than the Chapter 11 Cases, there are no Proceedings pending or, to the Knowledge of Sellers, threatened against, relating to, or affecting either Seller with respect to the Business, any of the Acquired Assets or the Acquired Real Estate that would (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Transaction Documents, or (ii) have a Material Adverse Effect on the Business or the Acquired Real Estate; and

(b) Except for Orders of the Bankruptcy Court, there are no Orders outstanding against Seller.

4.7 Title to Property. Subject to receipt of the approval of the Bankruptcy Court pursuant to the Sale Order, Asset Seller has, or at the Closing will have, the right to deliver to Buyer good and marketable title to, or a valid leasehold interest in, all of the Acquired Assets free and clear of all liens, claims and interests (other than Permitted Liens). Subject to receipt of the approval of the Bankruptcy Court pursuant to the Sale Order, Real Estate Seller has, or at the Closing will have, the right to deliver to Buyer good and marketable fee simple title to the Acquired Real Estate free and clear of all liens, claims and interests (other than Permitted Exceptions).

4.8 Brokers. Except as set forth on Schedule 4.8, neither Seller has incurred any Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

4.9 Intellectual Property. Except as set forth on Schedule 4.9, Asset Seller (a) owns and possesses all right, title and interest in and to (or has the right to use pursuant to a license or other permission) the Intellectual Property; (b) has no obligation to compensate any Person for the right to use any of the Intellectual Property (except, in the case of Intellectual Property that is licensed, for obligations pursuant to the applicable license agreement); (c) has not granted to any Person any license, option or other similar rights in or to any of the Intellectual Property; (d) has not received any written notice from any Person that challenges the validity or enforceability of any of the Intellectual Property; (e) has not received any notice from any Person challenging Asset Seller's ownership of, or right to use, any of the Intellectual Property; and (f) to the Knowledge of Sellers, no Person is infringing upon or has misappropriated any of the Intellectual Property.

4.10 Limitations. Except as expressly provided herein or in the Sale Order approving this Agreement, the Buyer agrees and acknowledges that all transfers of the Acquired Assets and the Acquired Real Estate are "as is" and "where is", and acknowledges and agrees that the Seller makes no representation of any kind whatsoever with respect to the Acquired Assets, the Acquired Real Estate or otherwise, express or implied, including but not limited to any representation or warranty regarding the title or condition of the Acquired Assets or the Acquired Real Estate, or the fitness, desirability, or the merchantability thereof or suitability thereof for any particular purpose, the current or future tax liability, assessment or valuation of any of the Acquired Assets or the Acquired Real Estate, the compliance of any of the Acquired Assets or the Acquired Real Estate in their current or future state with applicable laws or

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the actual projected income or operating expense of the Business, the Acquired Assets or the Acquired Real Estate.

4.11 Contracts. Sellers have made available to Buyer a correct and complete copy of each Assigned Contract listed on Schedule 2.1(a)(v) and each Excluded Contract listed on Schedule 2.4(b), and such Contracts and Leases shall collectively include all of Asset Seller's material Contracts and Leases. In addition, all Contracts and Leases of Asset Seller existing as of the date hereof are included on Schedule 2.1(a)(v) as Assigned Contracts or Schedule 2.4(b) as Excluded Contracts, and if any additional Contracts or Leases, that are not included on Schedule 2.1(a)(v) or Schedule 2.4(b), are determined after the date hereof to constitute Contract or Leases, Buyer shall have the right, in its sole discretion, to add such Contract or Lease to Schedule 2.1(a)(v).

4.12 Environmental. (a) Each Seller is presently, and has been, in material compliance with all Environmental Laws applicable to such Seller, the Business, the Acquired Assets and the Acquired Real Estate, (b) no Seller has generated, manufactured, refined, transported, treated, stored, handled, disposed, transferred, produced or processed any Hazardous Materials at or upon the Acquired Real Estate, except in compliance with all applicable Environmental Laws, and (c) there has been no Release of, or to the Knowledge of Sellers, any Threat of Release of, any Hazardous Material at or upon the Acquired Real Estate that requires or may require reporting, investigation, assessment, cleanup, remediation or any other type of response action pursuant to any Environmental Law. Neither Seller has (w) entered into or been subject to any consent decree, compliance order or administrative order with respect to the Acquired Real Estate ; (x) received notice under the citizen suit provisions of any Environmental Law; (y) received any request for information, notice, demand letter, administrative inquiry or formal or informal complaint or claim with respect to any Environmental Liability; or (z) been subject to or threatened with any governmental or citizen enforcement action with respect to any Environmental Law.

4.13 Insurance. Schedule 4.13 lists all insurance coverage carried by Sellers with respect to the Acquired Assets, the Acquired Real Estate and the Business. Each such policy is in full force and effect, provides coverage adequate for the industry and business in which Sellers operate, and includes coverages for potential Environmental Liabilities. Sellers have not received any notice from any insurance company of any defect or inadequacies in the insurable Acquired Assets, the Acquired Real Estate or any part thereof adversely affecting the insurability thereof, nor, to the Knowledge of Sellers, is there a valid basis for any such notice.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

5.1 Organization. Buyer is validly existing and in good standing under the Laws of the State of Missouri and has the full power and authority to execute, deliver and perform this Agreement and to consummate all transactions contemplated hereby.

5.2 Authority. The execution, delivery and performance by Buyer of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on the part of Buyer and do not and will not violate any provisions of its organizational documents, any applicable Law or any agreement or instrument by which it is bound or Order binding upon it. This Agreement constitutes a valid and binding agreement of Buyer, enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors' rights generally from time to time in effect, and to general equitable principles.

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5.3 No Conflicts or Violations. The execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by Buyer do not and shall not (a) conflict with or result in any breach of any of the terms, conditions or provisions of, (b) constitute a default under, (c) result in a violation of, (d) give any Third Party the right to modify, terminate or accelerate any obligation under, or (e) require any authorization, consent, approval, exemption or other action by or notice or declaration to, or filing with, any court or administrative or other Governmental Authority, under any agreement or instrument to which Buyer is bound or affected, or any Law to which Buyer is subject or any Order to which Buyer is subject.

5.4 Brokers. Buyer has incurred no Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby.

5.5 Confidentiality. In the event the transactions contemplated hereby are not consummated for any reason, without limiting the other rights and/or remedies of the parties, the Buyer shall promptly return to the Seller, or destroy, all documents and other materials and all copies of the foregoing that were furnished to the Buyer to date in connection with its due diligence investigation of the Seller, its assets or the Seller's business, as provided therein.

5.6 Investigation. The Buyer has or will make its own investigation concerning the physical condition of the Acquired Assets, the Acquired Real Estate and the Business, the condition of title or any other matter pertaining to the Acquired Assets and the Acquired Real Estate; and, other than the specific representations made by the Sellers pursuant to this Agreement, the Buyer is not relying on any representations, warranties or inducements of either Seller (or any agent of either Seller) with respect to the physical condition of the Acquired Assets or the Acquired Real Estate, the condition of title to the Acquired Assets or the Acquired Real Estate or any other matter pertaining to the Acquired Assets, the Acquired Real Estate or the Business.

5.7 No Other Representations or Warranties. Except for the representations and warranties and covenants contained in this Agreement, Buyer does not make any other express or implied representation or warranty with respect to the transactions contemplated hereby, and Buyer disclaims any other representations or warranties, whether made by it or any of its Affiliates, officers, directors, employees, agents or representatives.

## ARTICLE VI

### COVENANTS OF SELLER; OTHER AGREEMENTS

#### 6.1 Consents and Approvals.

(a) Each Seller and the Buyer shall use commercially reasonable efforts (i) to obtain all necessary consents and approvals, as reasonably requested by Buyer, to consummate the purchase and sale of the Acquired Assets and the Acquired Real Estate and the assumption and assignment of the Assigned Contracts, as well as assignment of the Assumed Obligations, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including obtaining the Bidding Procedures Order and the Sale Order, (ii) to make, as reasonably requested by Buyer, all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Sellers or any of their Affiliates pursuant to any applicable Law in connection with this Agreement and the transactions contemplated hereby and (iii) to obtain, as requested by Buyer, all required consents and approvals (if any) necessary to assign and transfer Sellers' Permits to Buyer at Closing and, to the extent that one or more of Sellers' Permits are not transferable, to assist Buyer in obtaining replacements therefor. In the event that certain of Sellers' Permits, or any Contract, Lease or other license or agreement necessary for the operation of the Business as presently conducted are not transferable or replacements therefor are not obtainable on or before the Closing, but such Permits,

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Contracts, Leases or other licenses or agreements are obtainable after the Closing, Sellers shall, to the extent reasonably practicable, continue to use such commercially reasonable efforts in cooperation with Buyer after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits, Contracts or other licenses or agreements after Closing and shall do all things necessary to give Buyer the benefits that would be obtained under such Permits, Contracts, Leases or other licenses or agreements, in each case at Sellers' sole cost and expense.

(b) Each of the parties shall give any other notices to, make any other filings with, and use reasonable best efforts to obtain, any other authorizations, consents and approvals of any Governmental Authority in connection with the matters contemplated by this Agreement.

6.2 Access to Information and Acquired Assets. Sellers agree that, prior to the Closing Date, Buyer and its representatives (including its accountants, advisors, consultants and legal counsel) shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of Sellers, have reasonable access during normal business hours to all Acquired Assets and shall be entitled to make such reasonable investigation of the properties, businesses and operations of Asset Seller and such examination of the Books and Records and financial condition of Sellers as it reasonably requests and to make extracts and copies to the extent necessary of the Books and Records.

6.3 Right to Evaluate Real Estate; Repair and Indemnity. Sellers agree that, prior to the Closing Date, Buyer and its representatives (including its accountants, advisors, consultants and legal counsel) shall, upon reasonable notice and so long as such access does not unreasonably interfere with the business operations of Sellers, have the right, at Buyer's sole cost and expense, to access the Acquired Real Estate and perform inspections, tests, reports, and such other analyses, inquiries, and investigations as Buyer in its sole discretion shall deem necessary or appropriate. After making such tests and inspections, Buyer agrees to promptly restore the Acquired Real Estate to its condition prior to such tests and inspections (which obligation shall survive any termination of this Agreement); provided, however, that Buyer shall not be required to restore or remedy any pre-existing physical defects. As soon as practicable following the date of this Agreement, Sellers shall provide Buyer and its representatives with copies of all books, records, contracts, leases, permits, inspections, reports, surveys, and other documentation concerning the Acquired Real Estate.

6.4 Title, Appraisal and Survey Matters. Buyer shall order a commitment for title insurance from St. Louis Title LLC, 7701 Forsyth Blvd. #200, St. Louis, MO 63105 (the "Title Company") with respect to the Acquired Real Estate, with a zoning coverage endorsement, comprehensive coverage endorsement, public street endorsement, and such other endorsements required by Buyer, all such endorsements being in such form as Buyer shall reasonably require in its sole discretion (the "Endorsements"), which commitment shall be in the amount of the portion of the Purchase Price allocated to the Acquired Real Estate and shall show Real Estate Seller as the owner of the Acquired Real Estate (the "Title Commitment"). Buyer, in Buyer's sole discretion, may also order an appraisal of the Acquired Real Estate (the "Appraisal") and a current survey of the Acquired Real Estate (the "Survey"). Buyer shall have until the Closing Date for examination of the Title Commitment, the Appraisal, the Survey, and any other inspections, tests, and reports regarding the Acquired Real Estate (collectively, the "Real Estate Reports") and to make any objections thereto, and the Closing Date may be extended by mutual agreement of Buyer and Sellers to allow the Real Estate Seller the opportunity to cure such objections. The exceptions disclosed on Schedule B – Part II of the Title Commitment that are approved in writing by Buyer shall constitute "Permitted Exceptions" hereunder. If any of Buyer's objections to the Real Estate Reports are not cured (by removal, disposal, endorsement over, or otherwise) within twenty (20) days after Real Estate Seller's receipt of said objections to the reasonable satisfaction of Buyer, then Buyer shall have the right to elect to either: (i) waive such objection(s) and consummate the transaction contemplated by this Agreement without adjustment to the Purchase Price or (ii) terminate this

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Agreement, in which event neither party shall have any further obligations to the other party, except for any rights and obligations that expressly survive termination of this Agreement.

**6.5 Conduct of the Business Pending the Closing.** Except as otherwise expressly contemplated by this Agreement, from the date hereof until the Closing Date, Sellers shall: (a) conduct the Business in the Ordinary Course of Business; (b) use commercially reasonable efforts to preserve intact the Business, to keep available the services of its current employees and agents and to maintain its relations and goodwill with its suppliers, customers, distributors and any others with whom or with which it has business relations; (c) maintain and operate the Acquired Assets and the Acquired Real Estate in the Ordinary Course of Business and repair and continue normal maintenance, normal wear and tear excepted; (d) continue to operate the Business in all material respects in compliance with all Laws applicable to Sellers or the Business; (e) continue to (i) conduct the Business, (ii) operate the billing and collection policies and procedures with respect to the Business, (iii) maintain the books and records of the Business in the Ordinary Course of Business (iv) maintain the employees of Asset Seller unless Buyer consents in writing to termination of any employee by the Asset Seller; (e) promptly advise Buyer in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect; (f) not sell, lease transfer, mortgage, encumber, alienate, dispose of the Acquired Assets or the Acquired Real Estate or create any Lien on any of the Acquired Assets or the Acquired Real Estate; (g) not institute new methods of accounting that will vary materially from the methods used by Sellers as of the date of this Agreement except as may be required by GAAP; (h) not enter into any Contract, Lease or purchase order not in the Ordinary Course of Business; (i) not sell Inventory (A) other than in the Ordinary Course of Business, (B) at a discount other than discounts consistent with past practice, or (C) in bulk; and (j) not take any action inconsistent with this Agreement or with the consummation of the Closing.

**6.6 Notification of Certain Matters.**

(a) Sellers shall give notice to Buyer, within twenty-four (24) hours of Knowledge of Sellers of the occurrence of the event giving rise to a notice obligation pursuant to this Section 6.6(a), of (i) the occurrence or nonoccurrence of any event that causes or would be likely to cause, directly or indirectly, any Material Adverse Effect on either Seller, or (ii) any material failure of either Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder. Notwithstanding the foregoing, the delivery of any notice pursuant to this Section 6.6(a) shall not (x) be deemed to amend or supplement any of the Disclosure Schedules, (y) be deemed to cure any breach of any representation, warranty covenant or agreement or to satisfy any condition or (z) limit or otherwise affect the remedies available hereunder to the party receiving such notice.

(b) Sellers shall add Buyer, and Buyer's counsel, to each Seller's so-called "Rule 2002 notice list" and otherwise provide notice to Buyer of all matters that are required to be served on either Seller's creditors pursuant to the Bankruptcy Code and Rules.

**6.7 Further Assurances.** Buyer and each Seller shall each execute all documents and take all actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby. Buyer and each Seller shall each use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article VIII and Article IX, respectively, of this Agreement.

**6.8 Bankruptcy Actions.**

(a) On or before November 3, 2017, each Seller shall file with the Bankruptcy Court a motion seeking to approve the transaction contemplated hereby (the "Sale Motion"), which motion shall seek the Bankruptcy Court's approval of this Agreement, such Seller's performance under this Agreement and, with respect to the Asset Seller, the assumption and the assignment of the Assigned Contracts (and to the extent contested by a Contract counterparty, Buyer's providing evidence thereof), pursuant to section

**EXHIBIT A TO SALE MOTION**

365 of the Bankruptcy Code. Buyer shall take such actions as are reasonably requested by either Seller to assist such Seller in obtaining a finding by the Bankruptcy Court that the Buyer is deemed to have purchased the Acquired Assets and the Acquired Real Estate in good faith pursuant to section 363(m) of the Bankruptcy Code and that it has the necessary qualifications to show adequate assurance of future performance with respect to the Assigned Contracts as required by section 365 of the Bankruptcy Code.

(b) A list of the Assigned Contracts (as set forth on Schedule 2.1(a)(v)) shall be described in sufficient detail to provide adequate notice to the non-debtor party to such Assigned Contracts. Upon revision of Schedule 2.1(a)(v) by Buyer pursuant to Section 2.1(b), Asset Seller shall add any Assigned Contracts to the exhibit or remove Assigned Contracts from the exhibit, as applicable. Such exhibit shall set forth the Cure Amounts under each of such Assigned Contracts as determined by Asset Seller based on the Books and Records of the Asset Seller. In cases in which the Asset Seller is unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00.

(c) Prior to the hearing on the Sale Motion, each Seller will provide Buyer with a reasonable opportunity to review and comments upon the proposed form of each Sale Order, which shall be in form and substance satisfactory to Buyer.

#### 6.9 Exclusivity; Solicitation.

(a) Buyer and each Seller acknowledge that under the Bankruptcy Code the sale of Acquired Assets and the Acquired Real Estate is subject to approval of the Bankruptcy Court. Buyer and each Seller acknowledge that to obtain such approval, each Seller must demonstrate that such Seller has taken reasonable steps to obtain the highest or best price possible for the Acquired Assets or the Acquired Real Estate, as applicable, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Acquired Assets or the Acquired Real Estate, as applicable, to responsible bidders, entertaining higher or better offers from responsible bidders and, if necessary, conducting an Auction.

(b) Each Seller represents that, other than the transactions contemplated by this Agreement, such Seller is not a party to or bound by any agreement with respect to a possible merger, sale, restructuring, refinancing or other disposition of all or any material part of the Business, the Acquired Assets or the Acquired Real Estate.

(c) In consideration for substantial expenditures of time, effort and expense undertaken and continuing by the Buyer in connection with the preparation, negotiation, and execution of this Agreement and additional Transaction Documents, Sellers acknowledge and agree that the Buyer shall be the stalking horse bidder at the Auction or Auctions, as applicable; provided that consistent with their fiduciary duties to elicit the highest and best offers for the Acquired Assets and the Acquired Real Estate and to conduct the Auction(s), Sellers may solicit, encourage and negotiate higher or better offers for the Acquired Assets and the Acquired Real Estate as proposed in the Sale Motions, and provided further that Sellers may (A) in response to an acquisition proposal for some or all of the Acquired Assets or the Acquired Real Estate that was not solicited after the date hereof, participate in negotiations or discussions with, request clarifications from, or furnish information to, any qualified person which makes such acquisition proposal, and (B) continue discussions and negotiations and continue to provide information to any qualified person, group or other entity with which either Seller has been conducting such discussions or negotiations.

6.10 Other Bids. Buyer acknowledges that both before and after filing of the Sale Motions, Sellers may solicit bids ("Bids") from Third Parties (each Third Party submitting a Bid, a "Bidder"), for the sale of all or substantially all of the Acquired Assets or the Acquired Real Estate, on terms and conditions substantially the same in all respects to this Agreement (or improved terms) and in accordance with the procedures approved by the Bankruptcy Court and Section 8.3(c) below.

**EXHIBIT A TO SALE MOTION**

6.11 Excluded Assets and Liabilities; Indemnification. Following the Closing, Sellers and Sellers' Representative, jointly and severally, agree to indemnify, defend, protect, and save and hold Buyer harmless with respect to the Excluded Assets and Excluded Liabilities or any Claims resulting from a breach of any representation, warranty or covenant hereof by either of the Sellers or by Sellers' Representative. Sellers' and Sellers' Representative's obligations under this section shall be an administrative expense priority obligation under section 507(a)(2) of the Bankruptcy Code.

6.12 Taxes.

(a) On or prior to the Closing (or after the Closing when due and payable, to the extent such Taxes are due and payable after the Closing), Sellers shall pay all sales taxes, use taxes, real estate taxes, payroll taxes, and other Taxes which will be owed by either Seller and attributable to periods prior to the Closing.

(b) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges due and which may be payable by reason of the sale of the Acquired Assets or the Acquired Real Estate or the assumption of the Assumed Obligations under this Agreement or the transactions contemplated herein shall be borne, jointly and severally, and timely paid by Sellers, and Sellers shall prepare and timely file all Tax Returns required to be filed in connection with such payments.

**ARTICLE VII**

**COVENANTS OF BUYER**

7.1 Assumed Obligations. Subsequent to the Closing, Buyer agrees to be responsible for the payment and performance of the Assumed Obligations.

7.2 Operation. Buyer shall be obligated to discharge, pay, perform and satisfy all of the duties, liabilities and obligations arising, from and after the Closing, from the ownership, maintenance, operation, use, development, sale or leasing of, or other operation of business with respect to the Acquired Assets, the Acquired Real Estate and the Assigned Contracts.

7.3 Further Assurances. Buyer shall execute such documents and take such further actions as may be reasonably required to carry out the provisions of this Agreement and the transactions contemplated hereby. Buyer shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in Article IX of this Agreement.

All of Buyer's covenants set forth in this Article VII and under Article XII shall survive the Closing.

**ARTICLE VIII**

**CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER**

The obligations of Buyer under this Agreement are, at the sole option and discretion of Buyer, subject to satisfaction of the following conditions precedent on or before the Closing Date.

8.1 Cross-Contingency. Buyer's ability to purchase the Acquired Assets, and Asset Seller's ability to sell the Acquired Assets pursuant to Section 2.1(a) hereof, shall be a condition precedent to any obligation of Buyer to purchase the Acquired Real Estate.

8.2 Warranties True as of Both Present Date and Closing Date; Covenants.

(a) All of the representations and warranties of Sellers shall be true and correct in all material respects on and as of the Closing Date (except for representations and warranties made as of a

**EXHIBIT A TO SALE MOTION**

specified date, which shall be true and correct as of that date) with the same force and effect as though made on and as of the Closing Date.

(b) Each Seller shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by such Seller on or prior to the Closing Date.

**8.3 Bankruptcy Conditions.** With respect to each Seller:

(a) The Sale Motions shall have been filed in the Bankruptcy Court on or before November 3, 2017. The Sale Order shall have been entered on the docket by the Clerk of the Bankruptcy Court on or before December 21, 2017.

(b) The Sale Order shall approve and authorize the assumption and assignment of the Assigned Contracts and the Assigned Contracts shall have been actually assumed and assigned to Buyer such that the Assigned Contracts will be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Buyer, among other things, defaults, breaches or claims (including, without limitation, cure claims under section 365 of the Bankruptcy Code, except as otherwise specifically provided in the Sale Order) existing as of the Closing or by reason of the Closing.

(c) The Sale Motions shall request, among other things, that:

(i) upon the first to occur of (A) the date the applicable Seller consummates an Alternative Transaction, (B) the date the applicable Seller files a Chapter 11 plan contemplating the sale or retention of any of the Acquired Assets or the Acquired Real Estate, as applicable, by such Seller and/or the disposition of any of the Assigned Contracts in a manner substantially inconsistent with the terms of this Agreement, or (C) the confirmation of a plan of reorganization of the applicable Seller by the Bankruptcy Court that does not contemplate all of the transactions contemplated by this Agreement, such Seller shall be obligated to pay Buyer the amount of \$50,000.00 (in cash) as reimbursement for all out-of-pocket costs and expenses (including attorneys' fees and expenses) incurred by Buyer in connection with the Chapter 11 Cases and the negotiation, execution and delivery of this Agreement and the Transaction Documents and other legal work concerning acquisitions contemplated by this Agreement ("Expense Reimbursement"), which payment shall be made in accordance with Section 11.2;

(ii) no party submitting any other offer to purchase the Acquired Assets or the Acquired Real Estate, as applicable, or a Qualifying Bid shall be entitled to any expense reimbursement, or termination or similar fee or payment;

(iii) prior to receipt by a prospective Bidder of any non-public information (including, without limitation, business and financial non-public information and access to representatives of Sellers) from Sellers, each Bidder will be required to execute an appropriate confidentiality agreement;

(iv) as part of any Bid, each Bidder shall submit a copy of this Agreement marked to show changes, along with any other bid package requirements to Sellers and Buyer, and place into escrow, with counsel for the debtor, a cash deposit of no less than \$100,000.00;

(v) (A) a competing Bid will not be considered by the applicable Seller or the Bankruptcy Court as qualified for the Auction unless such competing Bid is for an amount equal to, or greater than \$100,000.00 in excess of the Purchase Price; (B) any subsequent competing Bids submitted at the Auction must be higher than the immediately preceding Bid in increments of not less than \$50,000.00 in cash; provided, however, any competing Bid submitted at the

**EXHIBIT A TO SALE MOTION**

Auction by Buyer shall be increased by the dollar value of the Expense Reimbursement for purposes of determining whether it constitutes the Highest or Best Bid; and (C) a Bid will not be considered by the applicable Seller as qualified for the Auction if: (I) such Bid contains financing or due diligence contingencies of any kind; (II) such Bid consists of non-cash consideration in excess of the non-cash portion of the Purchase Price under this Agreement; (III) such Bid is not received by Sellers and Buyer in writing at least four (4) Business Days prior to the Sale Hearing; (IV) such Bid does not contain evidence that the Person submitting it has received debt and/or equity funding commitments or available cash sufficient in the aggregate to finance the purchase contemplated thereby, including proof of deposit into escrow of no less than \$100,000.00 in cash; or (V) such bid is otherwise determined by the Sellers to be made in bad faith and such determination is not reversed by a Final Order of the Bankruptcy Court (each Bid that satisfies the criteria set forth in sub-paragraphs A and B and also is not excluded pursuant to sub-paragraph C constitutes a "Qualifying Bid");

(vi) if one or more Qualifying Bids are submitted in accordance with the Sale Motions, Sellers will conduct the Auction as set forth in this Agreement. At the Auction, Buyer and all Persons who submitted a Qualifying Bid pursuant to Section 8.3(c)(v) shall have the right to submit further Bids along with a copy of this Agreement marked to show changes. Sellers shall have the right to select the highest or best Bid from Buyer and any Person who submitted a Qualifying Bid pursuant to Section 8.3(c)(v) (the "Highest or Best Bid"), which will be determined by considering, among other things: (A) the number, type, and nature of any changes to this Agreement requested by each Bidder; (B) the extent to which such modifications are likely to delay closing of the sale of the Acquired Assets and the cost to the applicable Seller of such modifications or delay, including potential decrease in purchase sale price of the Acquired Assets or the Acquired Real Estate, as applicable, if not sold by the Closing Date; (C) the total consideration to be received by the applicable Seller; (D) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (E) the net benefit to the estate, taking into account Buyer's rights to the Expense Reimbursement;

(vii) Not later than seven (7) Business Days prior to the Sale Hearing (such date, the "Cure Notice Deadline"), Buyer shall provide a notice (the "Cure Notice") to each non-debtor party to an Assigned Contract set forth in Schedule 2.1(a)(v), which Cure Notice shall, among other things, (A) provide notice of the proposed assumption and assignment of the Assigned Contract to Buyer, (B) contain a calculation of the Cure Amount, and (C) provide notice of the deadline to object to the Cure Notice, which deadline shall be four (4) Business Days prior to the Sale Hearing.

(viii) unless otherwise agreed to by Buyer, only the Persons who submitted Qualified Bids, the Buyer, any Committee, and the United States Trustee may participate in the Auction; and

(ix) Sellers shall not contest any argument by Buyer that it has standing to contest the Highest or Best Bid selected by Sellers.

(d) Notwithstanding Sections 8.3(a) and 10.1, nothing in this Agreement shall preclude Buyer or Sellers from consummating the transactions contemplated herein if Buyer, in its sole discretion, waives the requirement that the Sale Orders or any other Order shall have become Final Orders. No notice of such waiver of this or any other condition to Closing need be given except any Committee and the United States Trustee, it being the intention of the parties hereto that Buyer shall be entitled to, and is not waiving, the protection of section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of Law if the Closing occurs in the absence of Final Orders.

## EXHIBIT A TO SALE MOTION

8.4 Material Adverse Change. There shall not have occurred a Material Adverse Change since the date of this Agreement.

8.5 Litigation. No Order shall have been entered that restrains or prohibits the consummation of the transactions contemplated by this Agreement.

8.6 Approvals. All authorizations, consents, filings and approvals necessary to permit Sellers to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Buyer, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods (and any extension thereof) imposed by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

8.7 Due Diligence. Buyer shall be satisfied in all material respects with Buyer's due diligence investigation of the Acquired Assets, the Acquired Real Estate, and the Business of Sellers, including, without limitation, those investigations and reports contemplated by Sections 6.2, 6.3 and 6.4 hereof.

8.8 Employees. Buyer shall agree upon terms satisfactory to Buyer for the employment immediately after the Closing (but contingent on the occurrence of the Closing) of Sellers' Representative and such other Persons that Buyer determines to be key to the Business, as determined by Buyer in its sole discretion.

## ARTICLE IX

### CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers under this Agreement are, at the option of Sellers, subject to the satisfaction of the following conditions precedent on or before the Closing Date.

9.1 Warranties True as of Both Present Date and Closing Date. The representations and warranties of Buyer contained herein shall be true and correct in all material respects on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date in all material respects) with the same force and effect as though made by Buyer on and as of the Closing Date, except those qualified by materiality shall be true and correct in all respects. Buyer shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Buyer on or prior to the Closing Date.

9.2 Bankruptcy Court Approval. The Bankruptcy Court shall have entered the Sale Orders.

9.3 Litigation. No action, suit or other proceedings shall be pending before any Governmental Authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or involving a claim that consummation thereof would result in the violation of any Law.

9.4 Approvals. All authorizations, consents, filings and approvals necessary to permit Buyer to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to Sellers, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods (and any extension thereof) imposed by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

EXHIBIT A TO SALE MOTION



## ARTICLE X

### CLOSING

10.1 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transaction contemplated by this Agreement (the "Closing") will take place at the offices of Affinity Law Group, LLC, 1610 Des Peres Road, Suite 100, St. Louis, Missouri 63131 at 11:00 A.M. Central time no later than the first business day after the date on which the conditions set forth in Article VIII and Article IX have been satisfied or waived, or on such other date or place as Buyer and Sellers may determine (the "Closing Date").

10.2 Deliveries by Sellers. At the Closing, the applicable Seller shall deliver or procure delivery to Buyer of:

(a) one or more bills of sale, in form and substance reasonably satisfactory to Buyer, conveying in the Acquired Assets, duly executed by Asset Seller;

(b) one or more assignments of the Assigned Contracts and assumptions of the Assumed Obligations, in form and substance reasonably satisfactory to Buyer (collectively, the "Assignment and Assumption"), duly executed by Asset Seller;

(c) a general warranty deed in form and substance reasonably satisfactory to Buyer (the "Warranty Deed"), duly executed by Real Estate Seller, conveying to Buyer or its assignee fee simple title to the Acquired Real Estate free and clear of all Liens, Claims, and other interests and encumbrances (whether arising prior to or subsequent to the petition for a Chapter 11 Case) (except for the Assumed Obligations and Permitted Liens) to the fullest extent allowed by Law;

(d) terminations of all leases, leasehold interests, occupancy rights and other tenancies with respect to the Acquired Real Estate, duly executed by all necessary parties;

(e) duly executed Intellectual Property Assignments, in form and substance reasonably satisfactory to Buyer, each in recordable form to the extent necessary to duly assign such rights to Buyer;

(f) certificates of title and title transfer documents to all titled motor vehicles;

(g) an assignment and assumption agreement with respect to Sellers' Permits and warranties in form and substance reasonably acceptable to Buyer, whereby Sellers shall assign to Buyer all of their respective rights in and to any Permits and warranties relating (directly or indirectly) to the Acquired Assets, the Acquired Real Estate or the Business, to the extent such Permits and warranties are assignable;

(h) all the Books and Records, and any data related to the Acquired Assets, the Acquired Real Estate or the Business;

(i) such other instruments, in form and substance, reasonably satisfactory to Buyer, as are necessary to vest in Buyer good and marketable title in and to the Acquired Assets and the Acquired Real Estate in accordance with the provisions hereof;

(j) such documentation as may be necessary to change the authorized signatories on any bank accounts to be transferred hereby or powers of attorney relating (directly or indirectly) to the Acquired Assets, the Acquired Real Estate or the Business;

(k) certified copies of the Sale Orders; and

EXHIBIT A TO SALE MOTION

(I) an affidavit, as provided in Section 1445(b)(2) of the Code, stating under penalties of perjury that each Seller is not a foreign person within the meaning of Section 1445(f)(3) of the Code.

10.3 Deliveries by Buyer. At the Closing, Buyer will (a) deliver to Seller the Assignment and Assumption duly executed by Buyer and (b) deliver the Purchase Price pursuant to Section 3.1(a) hereof.

10.4 Form of Instruments. To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Buyer.

## ARTICLE XI

### TERMINATION; TERMINATION PAYMENT

11.1 Termination. This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written agreement of Buyer and Sellers;

(b) by either Buyer or either of the Sellers if there shall be in effect a Final Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(c) by either Buyer or either of the Sellers (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants or obligations set forth in this Agreement on the part of either Seller, on the one hand, or the Buyer on the other hand, which breach would give rise to the failure of the conditions set forth in Section 8.1 or 9.1, as applicable, and such breach is not cured within ten days following written notice to the party committing such breach or which breach, by its nature, cannot be cured prior to the Closing;

(d) by Buyer or either Seller (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if it shall have reasonably determined that a material condition set forth in Article IV, Article VIII and Article IX for the benefit of the terminating party has not been or cannot be fulfilled or satisfied prior to the Termination Date and has not been waived by the terminating party, provided that the terminating party shall not be responsible for the failure of such condition to be satisfied;

(e) by Buyer if either Seller (i) seeks or supports Bankruptcy Court approval of an Alternative Transaction (other than to or by Buyer) or a Chapter 11 plan contemplating the sale or retention of the Acquired Assets or the Acquired Real Estate in a manner substantially inconsistent with the terms of this Agreement or (ii) executes and delivers an agreement or understanding of any kind with respect to an any of the items described in the foregoing clause (i);

(f) by Buyer or either Seller if the Bankruptcy Court enters an order approving any Alternative Transaction (other than the sale of the Business and the Acquired Assets or the Acquired Real Estate, as applicable, to Buyer);

(g) by Buyer on any day on or after December 31, 2017 (the "Termination Date") if the Closing shall not have been consummated by such date (or by such later date as shall be mutually agreed to by Buyer and Sellers in writing), unless the Closing has not occurred due to a material failure of the Buyer to perform or observe its covenants or obligations as set forth in this Agreement required to be performed or observed by it on or before the Closing Date;

## EXHIBIT A TO SALE MOTION

(h) by Buyer if there is any "Event of Default" as defined under any material Assigned Contract that cannot be cured within a reasonable time prior to the Termination Date;

(i) by Buyer if the Bankruptcy Court fails to enter the Sale Order (in form and substance acceptable to Buyer) on or before December 14, 2017.

#### 11.2 Expense Reimbursement.

(a) On the date either Seller consummates an Alternative Transaction or files a Chapter 11 plan contemplating the sale or retention of any of the Acquired Assets, the Acquired Real Estate and/or disposition of any of the Assigned Contracts by the applicable Seller in a manner substantially inconsistent with the terms of this Agreement, Buyer shall be entitled to a claim, secured by a lien on all assets of both Sellers with priority over all other liens, claims and encumbrances, pursuant to section 364(d)(1) of the Bankruptcy Code in the amount of the Expense Reimbursement.

(b) Each of the parties' obligations to make payments pursuant to this Section 11.2 shall survive termination of this Agreement, other than in an instance in which this Agreement is terminated as a result of the Bankruptcy Court's failure to approve the Bidding Procedures Order (for reasons other than a breach of an obligation under this Agreement by either Seller).

11.3 Effect of Termination or Breach. If the transactions contemplated hereby are not consummated (a) this Agreement shall become null and void and of no further force and effect, except (i) for this Section 11.3 and (ii) for the provisions of Sections 6.11, 11.2, 13.1, 13.2, 13.4, 13.7, 13.8, 13.9, 13.10, 13.11, and 13.12 hereof, each of provisions set forth in (i) and (ii) above to survive the termination of this Agreement; (b) the receipt by the Buyer of the Expense Reimbursement which shall be payable in accordance with Section 11.2, shall be the Buyer's sole and exclusive remedy (as liquidated damages) other than for claims based on actual fraud, and the Buyer shall not be entitled to any other damages, losses, or payment from Sellers, and Sellers shall have no further obligation of Liability of any kind to the Buyer or its Affiliates on account of this Agreement; and (c) if this Agreement is terminated for any reason other than the termination of this Agreement by either Seller pursuant to Section 11.1(c), Sellers shall not be entitled to any damages, losses, or payment from Buyer, and Buyer shall have no further obligation or Liability of any kind to either Seller or any of their respective Affiliates on account of this Agreement.

## ARTICLE XII

### ADDITIONAL POST-CLOSING COVENANTS

#### 12.1 Employees.

(a) Buyer shall offer employment immediately prior to the Closing (but contingent on the occurrence of the Closing) to such employees of Asset Seller actively employed or engaged principally in the Business as of the Closing Date that Buyer determines to be key to the Business, as determined by Buyer in its sole discretion (such employees who accept such offer of employment, the "Rehired Employees"), on terms and conditions as determined by Buyer in its sole discretion.

(b) Nothing contained in this Agreement shall confer upon any employee of either Seller prior to the Closing or Rehired Employee any right with respect to continuance of employment by Buyer or any of its Affiliates, nor shall anything herein interfere with the right of Buyer or any of its Affiliates to terminate the employment of any employee, including any Rehired Employee, at any time, with or without notice and for any or no reason, or restrict Buyer or any of its Affiliates in modifying any of the terms or conditions of employment of any employee, including any Rehired Employee, after the Closing.

## EXHIBIT A TO SALE MOTION

12.2 Certain Consents. If a consent of a Third Party which is required in order to assign any Acquired Asset or the Acquired Real Estate (or Claim, right or benefit arising thereunder or resulting therefrom) is not obtained prior to the Closing Date, or if an attempted assignment would be ineffective or would adversely affect the ability of Sellers to convey its interest in question to Buyer, Sellers will cooperate with Buyer and use commercially reasonable efforts in any lawful arrangement to provide that Buyer shall receive the interests of the applicable Seller in the benefits of such Acquired Asset or the Acquired Real Estate. If any consent or waiver is not obtained before the Closing Date and the Closing is nevertheless consummated, Sellers agree to continue to use commercially reasonable efforts to obtain all such consents as have not been obtained prior to such date.

12.3 Post-Closing Operation of Sellers; Name Changes. Provided Buyer is approved as the successful bidder at the Sale Hearing, from and after the Closing, Sellers, except as provided herein, will cease using the Acquired Assets and the Acquired Real Estate. If requested by Buyer after the Closing, Sellers shall take all necessary action to change their respective names to names bearing no resemblance to the names set forth on the signature pages to this Agreement and will file such documents as are necessary to reflect such name change in the States in which the applicable Seller is incorporated and the other jurisdictions where the applicable Seller is qualified to do business as a foreign entity, in which case such Seller shall promptly notify Buyer of such name change and the name chosen by such Seller. Notwithstanding the foregoing, Asset Seller may refer to "Schantz Mfg Inc." and Real Estate Seller may refer to "Schantz Holdings LLC" as a former name for legal and noticing purposes in the Chapter 11 Case and other legal documents.

12.4 Accounts Receivable Deposits; Collections. After the Closing, Sellers shall permit, and hereby authorizes, Buyer to collect, including pursuit of collection, in the name of Asset Seller, all accounts, notes, credit card receivables and deposits constituting part of the Acquired Assets and to endorse with the name of Asset Seller for deposit in Buyer's account any checks or drafts received in payment thereof. Sellers shall promptly deliver to Buyer any cash, checks or other property that Sellers may receive after the Closing in respect of any accounts, notes and credit card receivables or other asset constituting part of the Acquired Assets.

12.5 Tax Matters. The allocation of the Purchase Price between (a) the Asset Seller for the Acquired Assets, and (b) the Real Estate Seller for the Acquired Real Estate shall be mutually agreed upon by Sellers and Buyer. Buyer shall, within 120 days after the Closing Date, prepare and deliver to Sellers a schedule allocating the Purchase Price that is allocated to Acquired Assets (and any other items that are required for federal income tax purposes to be treated as part of the purchase price) among the Acquired Assets in accordance with the requirements of section 1060 of the Code (such schedule and the allocation pursuant to the preceding sentence, the "Allocation"). Buyer and each Seller shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any Governmental Authority or any other proceeding). Buyer and each Seller shall cooperate in the filing of any forms (including Form 8594 under section 1060 of the Code) with respect to such Allocation. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 12.5 shall survive the Closing without limitation.

## ARTICLE XIII

### MISCELLANEOUS

13.1 Survival. The representations and warranties contained in this Agreement shall survive the Closing. Each of the covenants and obligations of Buyer and each Seller in this Agreement and in the other Transaction Documents shall survive in accordance with their respective terms.

EXHIBIT A TO SALE MOTION

13.2 Expenses. Except as provided in Section 8.3(c) or 11.2 hereof, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby. Notwithstanding the foregoing, in the event of any action or proceeding to interpret or enforce this Agreement, the prevailing party in such action or proceeding (i.e., the party who, in light of the issues contested or determined in the action or proceeding, was more successful) shall be entitled to have and recover from the non-prevailing party such costs and expenses (including all court costs and reasonable attorneys' fees) as the prevailing party may incur in the pursuit or defense thereof.

13.3 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by each Seller and Buyer.

13.4 Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by telex, telecopy, email or other wire transmission (with answer back confirmation of such transmission, and, if sent by email, provided that a copy of such notice, request or instruction or other document be sent by overnight delivery), (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service (such as Federal Express), or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid:

To Asset Seller: Schantz Mfg Inc.  
13480 US Hwy 40  
Highland, IL 62249  
[mschantz@schantzmfg.org](mailto:mschantz@schantzmfg.org)

With a copy to: Spencer P. Desai  
Carmody MacDonald, PC  
120 South Central, Suite 1800  
Clayton, MO 63105  
Phone: 314-854-8600  
Email: spd@Carmodymacdonald.com

To Real Estate Seller: Schantz Holdings LLC  
13480 US Hwy 40  
Highland, IL 62249  
[mschantz@schantzmfg.org](mailto:mschantz@schantzmfg.org)

With a copy to: Spencer P. Desai  
Carmody MacDonald, PC  
120 South Central, Suite 1800  
Clayton, MO 63105  
Phone: 314-854-8600  
Email: spd@Carmodymacdonald.com

To Sellers' Representative: Mr. Michael A. Schantz  
13480 US Hwy 40  
Highland, IL 62249  
[mschantz@schantzmfg.org](mailto:mschantz@schantzmfg.org)

With a copy to: Spencer P. Desai  
Carmody MacDonald, PC

EXHIBIT A TO SALE MOTION

120 South Central, Suite 1800  
Clayton, MO 63105  
Phone: 314-854-8600  
Email: spd@Carmodymacdonald.com

To Buyer:                      Craftsmen Industries, Inc.  
                                     Attn: Mark Steele  
                                     3101 Elm Point Industrial Drive  
                                     St. Charles, MO 63301

With a copy to:              Affinity Law Group, LLC  
                                     Attn: Robert E. Guest, Jr.  
                                     1610 Des Peres Road, Suite 100  
                                     St. Louis, Missouri 63131  
                                     Phone: 314.872.3333  
                                     Fax: 314.872.3365

or to such other individual or address as a party hereto may designate for itself by notice given as herein provided.

13.5 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by Sellers in the case of a waiver by Sellers, or Buyer, in the case of any waiver by Buyer, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

13.6 Counterparts and Execution. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature and such facsimile signature shall be deemed an original.

13.7 SUBMISSION TO JURISDICTION. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT.

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of Illinois without regards to any conflict of Law principles as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies.

13.9 Binding Nature; Assignment. Subject to approval of the Bankruptcy Court, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other party (which shall not be unreasonably withheld or delayed); except that (a) Buyer may assign in whole or in part any of its rights and obligations hereunder to any Affiliate or Subsidiary of Buyer (whether wholly owned or otherwise) or to its lenders and, following the Closing, in whole or in part to any successor-in-interest to

**EXHIBIT A TO SALE MOTION**

any Person acquiring all or any portion of the Business, the Acquired Assets or the Acquired Real Estate; (b) the rights and interests of Sellers hereunder may be assigned to a trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code; (c) this Agreement may be assigned to any entity appointed as a successor to Sellers pursuant to a confirmed Chapter 11 plan; and (d) as otherwise provided in this Agreement. Sellers hereby agree that Buyer may grant a security interest in its rights and interests hereunder to its lenders, and Sellers will sign a consent with respect thereto if so requested by Buyer or its lenders (upon approval by the Bankruptcy Court as necessary), and that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code.

13.10 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and permitted assigns and any Persons named as an indemnitee herein, any rights, remedies, obligations, Claims, or causes of action under or by reason of this Agreement.

13.11 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.

13.12 Public Announcements. Except as required by this Agreement, Law or in connection with a Chapter 11 Case, neither Buyer nor either Seller shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto relating to the contents and manner of presentation and publication thereof, which approval will not be unreasonably withheld, delayed or conditioned. Prior to making any public disclosure required by applicable Law, Sellers shall give Buyer a copy of the proposed disclosure and reasonable opportunity to comment on the same and shall use its best efforts to include Buyer's comments in such public disclosure. For purposes of clarity, the reference to "applicable Law" in the preceding sentence does not include filings in a Chapter 11 Cases.

13.13 Entire Understanding. This Agreement, the other Transaction Documents and the Schedules set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement and the Schedules supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other Person any rights or remedies hereunder. The Parties acknowledge and agree that this Agreement is being executed without the Schedules referenced herein, and further agree that the Schedules will be prepared as soon as practicable following execution and included as finally agreed upon as part of this Agreement immediately prior to the Closing.

13.14 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

13.15 Conflict between Transaction Documents. The parties hereto agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of any other agreement or document referred to herein, this Agreement shall govern and control.


[Signature Page Follows]

EXHIBIT A TO SALE MOTION

IN WITNESS WHEREOF, the parties hereto have caused this Asset and Real Estate Purchase Agreement to be executed and delivered on the date first above written.


**BUYER:**

CRAFTSMEN INDUSTRIES, INC.

By:   
Name: Mark D. Steele  
Title: President & CEO

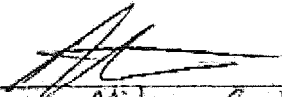
**ASSET SELLER:**

SCHANTZ MFG INC.

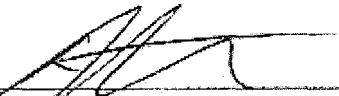
By:   
Name: Mike Schantz  
Title: PRES & CEO

**REAL ESTATE SELLER:**

SCHANTZ HOLDINGS LLC

By:   
Name: Mike Schantz  
Title: President

**SELLERS' REPRESENTATIVE:**

  
Michael A. Schantz, individually



## **EXHIBIT A**

### **Definitions**

“Acquired Assets” shall have the meaning set forth in Section 2.1(a) hereof.

“Acquired Real Estate” shall have the meaning set forth in Section 2.2 hereof.

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise.

“Affiliated Group” means an affiliated group as defined in section 1504 of the Code (or any analogous combined, consolidated or unitary group defined under state, local or foreign income Tax Law) of which Seller is or has been a member.

“Agreement” means this Asset Purchase Agreement, including all the Schedules hereto, as the same may be amended, modified or waived from time to time in accordance with its terms.

“Allocation” shall have the meaning set forth in Section 12.5 hereof.

“Alternative Transaction” means any transaction occurring after the Bidding Procedures Order is entered involving the consummation of the sale pursuant to section 363(b) of the Bankruptcy Code of all or a material portion of the Acquired Assets by the Seller to a buyer or buyers other than the Buyer at any time during the pendency of a Chapter 11 Case.

“Assignment and Assumption” shall have the meaning set forth in Section 10.2(b) hereof.

“Assigned Contracts” means all Contracts and Leases identified in Schedule 2.1(a)(v).

“Assumed Obligations” shall have the meaning set forth in Section 2.3(a) hereof.

“Auction” shall mean the auction conducted by Sellers as set forth in the Sale Motions and Section 8.3(c) hereof for substantially all of the Acquired Assets and the Acquired Real Estate, as applicable, which shall occur, if at all, on the first Business Day immediately preceding the Sale Hearing.

“Avoidance Actions” means a right to recover, or to obtain other relief arising under or referenced in: § 550 of the Bankruptcy Code; the Uniform Fraudulent Transfer Act, Uniform Fraudulent Transfer Act as enacted in any state, or any other law providing for recovery of consideration given, or reversal of any transfer by or for the benefit of either Seller.

“Bankruptcy Code” means Title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of Illinois.

“Bid” or “Bids” shall have the meaning set forth in Section 6.10 hereof.

“Bidders” shall have the meaning set forth in Section 6.10 hereof.

“Books and Records” means all records and lists of Sellers including: (i) all merchandise, analysis reports, marketing reports and creative material pertaining to the Acquired Assets, the Acquired Real Estate or the Business, (ii) all records relating to past or present customers, suppliers or personnel of Asset Seller (including customer lists, mailing address lists, e-mail address lists, recipient lists, sales records, correspondence with customers, customer files and account histories, supply lists and records of purchases from and correspondence with suppliers and any other written or electronic identifiable data relating to past or present customers or suppliers of the Business or personnel of Asset Seller which has

**EXHIBIT A TO SALE MOTION**

been created by either Seller or its representatives, agents or employees), all records relating to all product, business and marketing plans of Asset Seller, and (iii) all books, ledgers, files, reports, plans, drawings and operating records of every kind of either Seller; provided, however, "Books and Records" shall not include any records exclusively related to the Excluded Assets or Sellers' minute books, stock books and Tax Returns.

"Business" means the business activities carried on by or on behalf of Sellers.

"Buyer" shall have the meaning set forth in the preamble hereof.

"Chapter 11 Cases" means the cases commenced by each Seller under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court.

"Claim" shall have the meaning set forth in section 101(5) of the Bankruptcy Code.

"Closing" shall have the meaning set forth in Section 10.1 hereof.

"Closing Date" shall have the meaning set forth in Section 10.1 hereof.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Committee" means a statutory committee appointed by the Bankruptcy Court in a Chapter 11 Case pursuant to Section 1102 of the Bankruptcy Code.

"Contract" means any agreement, contract, commitment or other binding arrangement or understanding, whether written or oral, to which Asset Seller is a party and which Asset Seller is permitted under the Bankruptcy Code and applicable law to assume and assign other than an Employee Benefit Plan.

"Copyright Assignment" means a copyright assignment in form and substance reasonably satisfactory to Buyer.

"Disclosure Schedules" shall have the meaning set forth in Section 4.1 hereof.

"Dollars" or "\$" means dollars of the United States of America.

"Excluded Assets" shall have the meaning set forth in Section 2.4 hereof.

"Excluded Contracts" shall have the meaning set forth in Section 2.4(b) hereof.

"Environmental Laws" means all local, state and federal Laws relating to protection of surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or ambient air, pollution control, product registration and Hazardous Materials.

"Environmental Liabilities" means any Liability or investigatory, corrective or remedial obligation, arising under environmental Laws with respect to either Seller or any predecessor or Affiliate of either Seller, arising out of or relating to the operation, use or environmental condition of the Business, the Acquired Assets or the Acquired Real Estate prior to the Closing (including any arising from the on-site or off-site release, threatened release, treatment, storage, disposal, or arrangement for disposal of, or exposure to hazardous substances) whether or not constituting a breach of any representation or warranty herein and whether or not set forth on any Disclosure Schedule.

"Excluded Liabilities" shall have the meaning set forth in Section 2.5 hereof.

"Expense Reimbursement" shall have the meaning set forth in Section 8.3(c)(i) hereof.

"Final Order" means an Order as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

## EXHIBIT A TO SALE MOTION

"GAAP" means, at a given time, United States generally accepted accounting principles, consistently applied.

"Governmental Authority" means any United States federal, state or local or any foreign government, governmental regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

"Hazardous Materials" means any waste, pollutant, contaminant, hazardous substance, toxic, ignitable, reactive or corrosive substance, hazardous waste, special waste, industrial substance, by-product, process-intermediate product or waste, petroleum or petroleum-derived substance or waste, chemical liquids or solids, liquid or gaseous products, or any constituent of any such substance or waste, the use, handling or disposal of which by any Seller is in any way governed by or subject to any applicable Law.

"Highest or Best Bid" shall have the meaning set forth in Section 8.3(c)(vi) hereof.

"Indebtedness" with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (i) any obligation incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the Ordinary Course of Business, (ii) the face amount of all letters of credit issued for the account of such Person, (iii) obligations (whether or not such Person has assumed or become liable for the payment of such obligation) secured by Liens, (iv) capitalized lease obligations, (v) all guarantees and similar obligations of such Person, (vi) all accrued interest, fees and charges in respect of any indebtedness and (vii) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment or discharge of any indebtedness.

"Intellectual Property" means all of the following in any jurisdiction throughout the world: (i) inventions (whether or not patentable or reduced to practice), all improvements thereto, and patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, reexaminations and counterparts thereof; (ii) trademarks, service marks, trade dress, logos, slogans, trade names, internet domain names, corporate names and all other indicia of origin, together with all translations, derivations and combinations thereof, and together with all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, including, without limitation, the name "Schantz Mfg Inc." and all derivatives thereof used in the conduct of Sellers' Business; (iii) works of authorship (whether or not copyrightable), and copyrights, mask works and copyrightable works, and applications, registrations and renewals in connection therewith; (iv) trade secrets, know-how and other confidential, proprietary or business information (including ideas, research and development, formulas, compositions, manufacturing, production and other processes and techniques, methods, designs, technical and other data, charts, plans, diagrams, drawings and specifications, customer and supplier lists and business, marketing and other plans, studies and proposals); (v) computer software (including source code, executable code data, databases and documentation) and systems; (vi) copies and tangible embodiments of any of the foregoing in whatever form or medium; (vii) all other intellectual property and proprietary rights; and (viii) the right to sue and recover for any past, present or future infringement, misappropriation, dilution or any other causes of action, and to recover or collect any damages, proceeds, income, royalties or other payments in connection with or relating to any of the foregoing.

"Intellectual Property Assignments" means the Trademark Assignment and the Copyright Assignment.

"Inventory" means all inventory of any kind or nature owned by Asset Seller, including all raw materials, work in process, semi-finished and finished products, replacement and spare parts, packaging materials, operating supplies, and fuels and other and similar items.

## EXHIBIT A TO SALE MOTION

"Knowledge of Sellers" shall mean the actual knowledge of any of either Seller's Chief Executive Officer and Chief Financial Officer or Sellers' Representative.

"Law" means any law, statute, regulation, ruling, or Order of, administered or enforced by or on behalf of, any Governmental Authority, or common law.

"Lease" means any agreement pursuant to which Asset Seller is a lessee of personal property or a lessee or tenant with respect to real property and/or improvements therein, in each instance as to which the leasehold period has not expired.

"Liability" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including any liability for Taxes.

"Lien" or "Liens" means any lien (statutory or otherwise), hypothecation, encumbrance, Claim, Liability, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, Tax (including foreign, federal, state and local Tax), Order of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that Buyer is a successor, transferee or continuation of Seller or the Business, and (iv) any leasehold interest, license or other right, in favor of a Third Party or a Seller, to use any portion of the Acquired Assets or the Acquired Real Estate), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown.

"Material Adverse Change" or "Material Adverse Effect" means any event, condition, development or effect that individually or in the aggregate with all other events, changes, conditions, developments and effects, is or is reasonably likely to be materially adverse to (i) the Acquired Assets, the Assumed Obligations or the Acquired Real Estate or (ii) the ability of either Seller to perform its obligations under this Agreement, provided, however, that none of the following shall be deemed in and of itself, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Change or a Material Adverse Effect: (a) the filing of a Chapter 11 Cases, (b) changes in economic conditions generally or in the industries in which Asset Seller operates, except to the extent such changes have a disproportionate effect on Asset Seller, (c) any change of Law, accounting standards or regulatory policy, (d) changes or adverse conditions in the securities markets, including those relating to debt financing, except to the extent such changes have a disproportionate effect on Asset Seller, and (e) any actions specifically required to be taken pursuant to this Agreement.

"Order" means any decree, order, injunction, rule, judgment, consent of or by any Governmental Authority.

"Ordinary Course of Business" means the operation of the Business by Sellers in the usual and ordinary course in a manner substantially similar to the manner in which Sellers operated, consistent with past practice prior to the date hereof, subject to any obligations as a debtor under the Bankruptcy Code or any order of the Bankruptcy Court.

"Permits" means licenses, permits, approvals, certificates of occupancy, authorizations, operating permits, registrations, plans and the like.

"Permitted Liens" means easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personalty that do not in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto.

## EXHIBIT A TO SALE MOTION

“Person” means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

“Petition Date” means the date a Chapter 11 Cases were filed.

“Proceeding” means any claim, charge, complaint, dispute, demand, action, investigation, inquiry, audit, suit in equity or at Law, administrative, regulatory or quasi-judicial proceeding, arbitration, account, contribution, and/or other causes of action of whatever kind or character.

“Purchase Price” shall have the meaning set forth in Section 3.1(a) hereof.

“Qualifying Bid” shall have the meaning set forth in Section 8.3(c)(v) hereof.

“Rehired Employees” shall have the meaning set forth in Section 12.1 hereof.

“Release” means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of a Hazardous Material into the environment (including, without limitation, the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Materials) and any condition that results in the exposure of a Person to a Hazardous Material.

“Rule” or “Rules” means the Federal Rules of Bankruptcy Procedure.

“Sale Hearing” means the hearing of the Bankruptcy Court to approve this Agreement and the transactions contemplated herein.

“Sale Motions” shall have the meaning set forth in Section 6.8(b) hereof.

“Sale Orders” means the Final Orders of the Bankruptcy Court, in form and substance acceptable to the Buyer and to be filed with the Bankruptcy Court on or before two (2) business days before the Sale Hearing, to be entered by the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code that is not subject to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

“Schedules” means the schedules attached hereto (including the Disclosure Schedules).

“Seller” and “Sellers” shall have the meaning set forth in the preamble hereof.

“Subsidiary” means, with respect to any Person, any corporation a majority of the total voting power of shares of stock of which is entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or any partnership, limited liability company, association or other business entity a majority of the partnership or other similar ownership interest of which is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof. For purposes of this definition, a Person is deemed to have a majority ownership interest in a partnership, limited liability company, association or other business entity if such Person is allocated a majority of the gains or losses of such partnership, limited liability company, association or other business entity or is or controls the managing director or general partner of such partnership, limited liability company, association or other business entity.

“Tax” and, with correlative meaning, “Taxes” mean with respect to any Person (i) all federal, state, local, county, foreign and other taxes, assessments or other government charges, including any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, *ad valorem*, value added, transfer, capital stock franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, real property, personal property, unclaimed property, environmental or windfall profit tax, custom duty or other tax, governmental fee or other like assessment, charge, or tax of any kind whatsoever, together with any

**EXHIBIT A TO SALE MOTION**

interest, penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign) whether such Tax is disputed or not, (ii) Liability for the payment of any amounts of the type described in clause (i) above relating to any other Person as a result of being party to any agreement to indemnify such other Person, being a successor or transferee of such other Person, or being a member of the same affiliated, consolidated, combined, unitary or other group with such other Person, or (iii) Liability for the payment of any amounts of the type described in clause (i) arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

“Tax Return” means any report, return, declaration, claim for refund or other information or statement relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

“Third Party” means any Person other than Sellers, Buyer or any of their respective Affiliates.

“Threat of Release” means a substantial likelihood of a Release that requires action to prevent or mitigate damage to the Environment that might result from such Release.

“Trademark Assignment” means the trademark assignment in form and substance reasonably satisfactory to Buyer.

“Transaction Documents” means this Agreement, and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

“WARN Act” means the Worker Adjustment and Retraining Notification Act, as amended.

“Warranty Deed” shall have the meaning set forth in Section 10.2(c) hereof.

EXHIBIT A TO SALE MOTION

**Schedule 2.1(a)(v)**

**Assigned Contracts**

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION

**Schedule 2.2**

**Legal Description of Acquired Real Estate**

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION



**Schedule 2.4(b)**

**Excluded Contracts**

All Contracts and Leases other than the Assigned Contracts listed on Schedule 2.1(a)(v), including, but not limited to those excluded Contracts and Leases listed below, if any.

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION

**Schedule 2.4(d)**

**Excluded Assets**

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION

**Schedule 4.6**

**Legal Proceedings**

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION

**Schedule 4.8**

**Brokers**

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION

**Schedule 4.9**

**Intellectual Property**

*[To be updated pursuant to Section 2.1(b) of the Asset and Real Estate Purchase Agreement.]*

EXHIBIT A TO SALE MOTION