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8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 In re  
12 UNI-PIXEL, INC.,  
UNI-PIXEL DISPLAYS, INC.,  
13  
14 Debtors.

Case No. 17-52100 MEH  
(Jointly Administered with  
Case No. 17-52101)

Chapter 11

**MOTION FOR ORDER APPROVING  
SALE OF ASSETS FREE AND CLEAR OF  
ALL LIENS, CLAIMS,  
ENCUMBRANCES, AND INTERESTS  
AND GRANTING RELATED RELIEF**

17 Judge: Hon. M. Elaine Hammond  
Date: November 2, 2017  
18 Time: 1:30 p.m.  
Judge: Hon. M. Elaine Hammond  
19 Place: Courtroom 3020  
United States Bankruptcy Court  
20 280 South First Street  
San Jose, CA 95113  
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1 **I. INTRODUCTION**

2 Uni-Pixel, Inc. (“Uni-Pixel, Inc.”) and Uni-Pixel Displays, Inc. (“Uni-Pixel Displays,” and  
3 together with Uni-Pixel, Inc. the “Debtors” or “Uni-Pixel”), the Debtors and debtors-in-possession  
4 in the above captioned Chapter 11 reorganization cases, hereby respectfully submit this MOTION  
5 FOR ORDER APPROVING SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,  
6 ENCUMBRANCES, AND INTERESTS AND GRANTING RELATED RELIEF (the “Sale Motion”), which  
7 seeks approval to sell substantially all of the Debtors’ assets, free and clear of all liens, claims,  
8 encumbrances, and interests, on the terms and subject to the conditions set forth in the APA with  
9 Future Tech (defined below). Concurrent with the filing of this Bid Procedures Motion, the  
10 Debtors are filing a MOTION FOR ORDER APPROVING BID PROCEDURES FOR THE SALE AND  
11 AUCTION OF DEBTORS’ ASSETS; APPROVING BID PROTECTIONS; SCHEDULING AN AUCTION AND  
12 HEARING TO CONSIDER THE SALE (the “Bid Procedures Motion”), which seeks approval of certain  
13 procedures to be employed in connection with the sale described in the Sale Motion.

14 This Sale Motion is based on the Memorandum of Points and Authorities set forth herein,  
15 the concurrently filed declaration of Jeff Hawthorne in support of the Sale Motion (the  
16 “Hawthorne Declaration”) and incorporated herein by this reference, the pleadings and papers on  
17 file herein, and upon such oral and documentary evidence as may be presented to the Court.

18 Since the commencement of these cases, the Debtors believed – and continue to believe –  
19 that a prompt sale of assets is in the best interests of all parties. In fact, it is the only viable  
20 alternative to conversion or a piecemeal liquidation. The transaction that is the subject of this Sale  
21 Motion (the “Proposed Sale”) are expected to provide sufficient cash proceeds to pay the Debtors’  
22 secured creditor, costs of sale and the priority administrative wage claims for employees who did  
23 not receive their final paychecks. The Debtors have no employees and no available cash. All  
24 employees were terminated after the decision by the Delaware Chancery Court to enter a partial  
25 judgment in favor of two former officers in the amount of approximately \$1.4 million. Thereafter,  
26 the Debtors’ secured lender swept the Debtors’ bank accounts. Thus, the Debtors had no cash and  
27 could not retain their employees when there was no reasonable expectation that the Debtors would

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1 be able to pay those employees. The Debtors filed voluntary petitions for relief under the  
2 Bankruptcy Code on August 30, 2017 (the “Petition Date”).

3 A limited number of the Debtors’ employees and management have continued to devote  
4 substantial time and effort to shutting down and securing the Debtors’ manufacturing facility in  
5 Colorado Springs, facilitating a potential sale of the assets, and working cooperatively with the  
6 landlord for the Colorado facility to ensure that hazardous materials and related equipment are  
7 properly maintained, a process that it had also undertaken prior to the Petition Date in anticipation  
8 of a potential sale transaction outside of bankruptcy. At the same time, management has been  
9 diligently pursuing all likely avenues to sell the assets. On the Petition Date, Debtors’  
10 management sent solicitation packages to all parties that might be interested in acquiring the  
11 Debtors’ assets. The pool of prospective purchasers is limited to a small number of identifiable  
12 companies, because only parties that are extremely familiar with the Debtors’ highly complex  
13 business and assets would be able to make an offer on the expedited basis necessary. The Debtors  
14 received a number of responses to the solicitation materials, and management has spent a  
15 significant amount of time responding to inquiries from interested parties and meeting with parties  
16 interested in conducting due diligence.

17 The Debtors reached agreement on the terms of an asset purchase agreement (“APA”) with  
18 Future Tech Capital, LLC, a California limited liability company (“Future Tech”), which agreed to  
19 those terms without requesting a period of time in which to conduct an independent due diligence  
20 inquiry. A copy of the APA is attached as Exhibit A to Hawthorne Declaration. The proposed  
21 sale will include all of the tangible personal property, intangible personal property, and materials  
22 and finished goods related to the Debtors’ business (the “Assets”). The Assets do not include any  
23 property leased by the Debtors or any interest in licenses of intellectual property not owned by the  
24 Debtors. The proposed sale price will be \$1,500,000. The Assets will be sold free and clear of all  
25 liens, claims, encumbrances, and interests. Western Alliance Bank through its Bridge Bank  
26 Division (“Bridge Bank”) is the Debtors’ only secured creditor, and Bridge Bank supports the  
27 Proposed Sale (and sale process) and consents to the sale of the Assets free and clear.

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1 The Debtors are proposing to hold an auction at the time of the hearing on this Sale  
2 Motion, if there are any other bidders. The Debtors are requesting that the hearing on the Bid  
3 Procedures Motion be set on shortened time.

4 The Debtors' process for marketing the assets and soliciting offers was remarkable under  
5 the circumstances. There were only a limited number of parties that would be interested in  
6 acquiring the Debtors' assets and even fewer that would be able to enter into an agreement under  
7 the extreme time pressures in these cases. The Debtors believe that the sale as proposed herein  
8 will maximize the value available for creditors in this case.

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## II. JURISDICTION

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The Court has jurisdiction over this case and this Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409(a).

The statutory bases for the relief requested herein are sections 105(a), 326, 330, and 363 of the Bankruptcy Code (11 U.S.C. §§ 101 *et seq.*)

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## III. FACTUAL BACKGROUND

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### A. The Uni-Pixel Business

Uni-Pixel is a public company that makes transparent conductive films and flexible electronic films, based on a proprietary manufacturing process, used in touch-based electronic products. The process offers precision micro-electronic circuit patterning and modification of surface characteristics over a large area on an ultra-thin, clear, flexible, plastic substrate. These flexible films may be incorporated into computer, tablet, printer, and smartphone touch sensors, as well as automotive applications. Uni-Pixel sells its screens/films under the brand name "XTouch" as sub-components of a fully assembled touch module.

In addition to the flexible electronic films described above, Uni-Pixel developed a hard coat resin that can be applied using film, spray, or inkjet coating methods for applications as protective cover films, a cover lens replacement, or a hard coat for plastics. The hard coat resin

1 provides glass-like performance and optical clarity in a thin, flexible, and shatterproof format. It  
2 provides exceptional scratch resistance and durability without compromising optical clarity. The  
3 hard coat resin and optical films are sold under the brand name “Diamond Guard.”

4 Uni-Pixel is headquartered in Santa Clara, California. Manufacturing is done at the Uni-  
5 Pixel facility in Colorado Springs, Colorado. Uni-Pixel has a facility in Texas, but those  
6 operations (primarily research and development) were being consolidated into the Colorado  
7 Springs facility during the summer of 2017.

8 **B. Corporate Structure**

9 Uni-Pixel, Inc. is the parent company of Uni-Pixel Displays, its wholly-owned operating  
10 subsidiary. Uni-Pixel, Inc. is a Delaware corporation. Until September 11, 2017, its common  
11 stock was quoted on the NASDAQ Capital Market under the ticker symbol “UNXL.” Beginning  
12 on September 12, 2017, the common stock is now being quoted on the OTC Markets Group’s  
13 OTC Pink under the symbol “UNXLQ”. Uni-Pixel Displays is a Texas corporation.

14 Uni-Pixel, Inc., as a publicly traded company, is required to make regular filings with the  
15 SEC regarding its finances (*e.g.*, 10-Q and 10-K’s), as well as other public disclosures required by  
16 various SEC rules and regulations. As of the Petition Date, Uni-Pixel, Inc. is current on all of its  
17 required SEC filings. Additional information may be obtained by reviewing the public filings,  
18 which are available on the SEC’s “EDGAR” website. The reports Uni-Pixel files with the SEC  
19 have been prepared on a consolidated basis to include information relating to both Uni-Pixel Inc.  
20 and Uni-Pixel Displays.

21 **C. Intellectual Property and Licenses**

22 Uni-Pixel has 16 issued patents and 58 patent applications covering key technology. Uni-  
23 Pixel also has licenses from Microchip Technology Incorporated (“Microchip”) and CIT  
24 Technology Ltd. (“CIT”) for additional technology under 44 issued patents and 93 patent  
25 applications belonging to CIT and Microchip.

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1 Uni-Pixel’s agreements with Microchip and CIT relate to Uni-Pixel’s XTouch brand  
2 products. Generally, the Debtors entered into two agreements each with CIT and Microchip’s  
3 predecessor, Atmel Corporation (“Atmel”):<sup>1</sup> the CIT Patent License Agreement; the CIT IP  
4 License Agreement; the Atmel Patent License Agreement; and the Atmel IP License Agreement.  
5 Both patent license agreements gave Uni-Pixel a non-sublicensable, worldwide, royalty-bearing  
6 license for the relevant patents. Both of the IP license agreements similarly licensed to Uni-Pixel  
7 a non-sublicensable, worldwide, royalty-free license for the relevant intellectual property related  
8 to the patents. The initial term for all of the agreements is five years, expiring in April 2020. Uni-  
9 Pixel has the unilateral right to renew the licenses for a term of 10 years. The minimum annual  
10 royalties under both patent license agreements have been pre-paid through February 2018.  
11 Microchip and CIT agreed that they would not enter into other license agreements for their  
12 respective patents and intellectual property prior to the second anniversary of the closing date of  
13 the agreements, which was April 16, 2015. The patent license agreements were amended, in  
14 December 2016 (CIT) and March 2017 (Microchip) to allow Uni-Pixel to sublicense in certain  
15 circumstances and to accordingly adjust the amount of royalties due.

16 The patent and IP licenses agreements with Microchip and CIT are *not* included as part of  
17 the proposed sale because they are non-exclusive license agreements that would not be assumable  
18 and assignable under the law of this circuit. Any purchaser is required to obtain any rights to  
19 necessary intellectual property that it deems essential.

20 **D. Equipment**

21 On April 16, 2015, at the same time that Uni-Pixel acquired intellectual property and  
22 patents from Atmel, it also acquired from Atmel various equipment and facilities necessary to  
23 manufacture the touch sensors. In addition to equipment owned by Uni-Pixel, the Debtors also  
24 lease certain equipment from Boston Financial & Equity Corporation and from International  
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27 <sup>1</sup> Atmel was acquired by Microchip.  
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1 Financial Services Corporation.<sup>2</sup> The majority of Uni-Pixel's equipment is located at its  
2 manufacturing facility in Colorado Springs, Colorado. The Santa Clara and Texas facilities have a  
3 small amount of miscellaneous laboratory equipment.

4 **E. Significant Creditors**

5 1. Bridge Bank

6 Uni-Pixel's primary secured debt is on a revolving line of credit (the "Credit Line") from  
7 Bridge Bank. On October 24, 2016, the Debtors entered into a Loan and Security Agreement (the  
8 "Loan Agreement") with Bridge Bank for the Credit Line. The Credit Line has a two-year term  
9 ending on October 18, 2018. Uni-Pixel is permitted to borrow up to \$2.5 million on a revolving  
10 basis based on a percentage of eligible export-related accounts. Total borrowing under the line  
11 may not exceed 90% of eligible export-related accounts. Borrowings under the line bear interest  
12 at the prime rate plus 1.25%. The Debtors' obligations under the Credit Line appear to be secured  
13 by all of the Debtors' assets, including intellectual property.<sup>3</sup> The Export Import Bank of the  
14 United States ("EXIM") provides credit support under the Loan Agreement, essentially  
15 guaranteeing the Debtors' obligations to Bridge Bank and permitting EXIM to assume all rights  
16 and remedies of the Bank under the Loan Agreement in the event that EXIM pays any guaranty  
17 claim to the Bank.

18 On August 22, 2017, Bridge Bank notified Uni-Pixel that it was in default under the Credit  
19 Line, and that the Bank was, among other things: (i) invoking the default rate (Prime plus 6.25%);  
20 (ii) declaring all obligations immediately due and payable; (iii) cutting off further advances under  
21 the Credit Line; (iv) setting off and applying to Debtors' obligations all balances and deposits held  
22 by the Bank; and (v) canceling all corporate credit cards.

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26 <sup>2</sup> Concurrent with the filing of this Bid Procedures and Sale Motion, or soon thereafter, the  
27 Debtors intend to file motions rejecting the equipment leases.

28 <sup>3</sup> The Debtors have not conducted a complete analysis of Bridge Bank's security interests, and  
therefore reserve all rights to dispute the validity or extent of liens securing the Credit Line.

1 The Debtors' outstanding obligations under the Credit Line as of September 12, 2017, are  
2 approximately \$638,425, based on a letter from Bridge Bank's counsel.<sup>4</sup>

3 2. Securities and Exchange Commission and Former Executives

4 In November 2013, Uni-Pixel cooperated with the SEC regarding a non-public fact-finding  
5 inquiry that resulted in the SEC filing a complaint in March 2016 against Uni-Pixel and two  
6 former executives, Reed Killion (CEO) and Jeffrey Tomz (CFO). Without admitting or denying  
7 the allegations in the complaint, Uni-Pixel, Inc. consented on the same day that the complaint was  
8 filed to entry of a final judgment that provided for, among other things, a civil penalty in the  
9 amount of \$750,000 (of which \$505,000 remains outstanding as of the Petition Date).

10 The SEC's action against the two former executives, however, has proceeded to be  
11 litigated and remains pending. Uni-Pixel, Inc.'s Amended and Restated Bylaws contain  
12 provisions regarding indemnification and advancement of expenses actually and reasonably  
13 incurred by these two former officers in connection with civil, criminal, administrative, or  
14 investigative matters, provided that such officers acted in good faith and in a manner such officers  
15 reasonably believed to be in or not opposed to the best interests of Uni-Pixel, Inc., and, with  
16 respect to any criminal action or proceeding, had no reason or cause to believe such conduct was  
17 unlawful. The advancement of expenses is expressly conditioned upon receipt of an undertaking  
18 by the officer to repay all such amounts so advanced in the event that it shall ultimately be  
19 determined that the officer is not entitled to be indemnified by Uni-Pixel, Inc.

20 Uni-Pixel, Inc., or its insurance company, has advanced as agreed all invoices for all years  
21 through the end of 2015 for the defense of the two former officers in the investigation that resulted  
22 in the SEC filing the complaint against them. A portion of advances for 2016 invoices have also  
23 been made, but Uni-Pixel, Inc. disputed other 2016 invoices as containing expenses that were not  
24 reasonably incurred by the two former officers. The total amount incurred in 2016 and initially

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26 <sup>4</sup> This is the amount that would be due after application of the funds in Uni-Pixel's bank account  
27 at Bridge Bank. At this point it is unclear whether these funds were actually swept and applied to  
28 the debt pre-petition.

1 disputed by Uni-Pixel, Inc. was \$147,750. Through the course of 2016, Uni-Pixel, Inc. was in  
2 discussions with counsel to the two former officers regarding resolving counsels' charges on these  
3 invoices. Notwithstanding those discussions, on August 22, 2016, the two former officers filed an  
4 action in the Delaware Chancery Court against Uni-Pixel, Inc. for advancement of expenses. Uni-  
5 Pixel, Inc. contested the claims made by the two former officers that it had not advanced expenses  
6 reasonably incurred by them in the underlying action brought by the SEC.

7 In October 2016, the Delaware Chancery Court appointed a former Vice Chancellor of the  
8 Chancery Court to act as a Special Master to determine whether expenses were reasonably  
9 incurred, to the extent that Uni-Pixel, Inc. and the two former officers were not capable of  
10 resolving the dispute without the assistance of the judicial process. In November 2016,  
11 unresolved and disputed invoices totaling approximately \$129,698 in fees incurred in 2016 prior  
12 to November 2016 were submitted to the Special Master for a determination whether such  
13 expenses were reasonably incurred. In May 2017, the Special Master determined that it was  
14 reasonable for Uni-Pixel, Inc. to advance \$95,749 of the disputed fees from 2016. Prior to the  
15 Petition Date, Uni-Pixel, Inc. had not advanced this amount determined by the Special Master to  
16 be reasonable, or certain other expenses incurred in 2017 that Uni-Pixel, Inc. had not disputed, as  
17 well as other amounts which Uni-Pixel, Inc. had disputed.

18 In addition, on August 28, 2017, the Delaware Chancery Court entered an order requiring  
19 Uni-Pixel to advance defense costs to the former executives for their ongoing litigation with the  
20 SEC, in the amount of \$1,404,598.70, which constitutes the amount for 2016 determined by the  
21 Special Master to be reasonable, plus all amounts incurred in 2017 prior to the Petition Date that  
22 Uni-Pixel, Inc. had not disputed as unreasonable.<sup>5</sup>

23 Uni-Pixel believes that its D&O insurance carrier, XL Specialty Insurance Company,  
24 improperly limited coverage for the SEC investigation and enforcement action against the former  
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26 \_\_\_\_\_  
27 <sup>5</sup> Uni-Pixel retains its right to seek recovery of advanced defense costs from Killion and Tomz if  
28 they are ultimately held liable in the SEC enforcement action.

1 officers. Uni-Pixel is pursuing these claims in litigation against the insurer, which is currently  
2 pending in Texas state court.

3 The former officers' aggressive actions to collect from Uni-Pixel, including the threat of a  
4 receiver liquidating the companies' assets to pay their legal fees in defending the SEC  
5 enforcement action, were a substantial factor in forcing Uni-Pixel to file for bankruptcy.

6 **F. Events Precipitating Bankruptcy**

7 In August 2017, Uni-Pixel was forced to consider a bankruptcy filing as a result of two  
8 related circumstances. The first was the former officers' aggressive actions to force liquidation of  
9 assets to pay the advancement of their defense costs in the SEC action, and in particular  
10 anticipation of an imminent award against Uni-Pixel, Inc. by the Delaware Chancery Court and its  
11 likely appointment of a limited receiver due to Uni-Pixel, Inc.'s failure to advance fees in  
12 accordance with the process that court established in October 2016. The second was Bridge Bank  
13 declaring a default and accelerating the Credit Line on August 22, 2017. Uni-Pixel believes that  
14 Bridge Bank's actions were largely precipitated by the threatened Chancery Court action to  
15 appoint a limited receiver. Regardless, they deprived Uni-Pixel of the funds necessary to pay even  
16 basic expenses and employees, and left no viable options to continue operating.

17 On August 24, 2017, the Uni-Pixel, Inc. and Uni-Pixel Displays' boards of directors  
18 authorized the Debtors to file for bankruptcy. The Debtors' boards also authorized the termination  
19 of all employees as of August 25, 2017, and all employees were terminated accordingly.

20 As anticipated, the Delaware Chancery Court entered a partial judgment against Uni-Pixel  
21 on August 28, 2017, but upon being advised of the authorization to file for bankruptcy, did not  
22 concurrently appoint a limited receiver. The Debtors filed their Chapter 11 petitions two days  
23 later, on August 30, 2017.

24 **G. Employees and Operations**

25 Jeff Hawthorne is Uni-Pixel's Sole Director and the Principal Executive Officer. Christine  
26 Russell is Uni-Pixel's Principal Financial Officer and Principal Accounting Officer. The Debtors  
27 have no employees at this time. A handful of former employees have continued, on an  
28 independent contractor basis, to assist the Debtors, on an independent contractor basis, with

1 shutting down operations, storing all materials requiring special handling, and beginning the  
2 process of reaching out to potential purchasers (described more fully below).

3         Prior to filing the bankruptcy cases, all employees were terminated, including all officers  
4 of the company, although the Debtors' Principal Executive Officer and their Principal Financial  
5 Officer/ Principal Accounting Officer agreed to serve in those roles on a consulting basis. Jalil  
6 Shaikh, the company's former Chief Operating Officer, has also agreed to assist in the sale process  
7 on a consulting basis. The Debtors have taken steps to shut down the manufacturing facility and  
8 secure all equipment and materials used in the manufacturing processes, including safe storage of  
9 any chemicals. The Debtors believe that they are in the process of accomplishing a safe and  
10 secure shut down. The Debtors are coordinating their efforts with the landlord in Colorado  
11 Springs in order to address any concerns and discuss next steps.

12 **H.     Cash Situation**

13         The Debtors had approximately \$139,000 in Bridge Bank and approximately \$50,000 in  
14 Silicon Valley Bank.<sup>6</sup> Bridge Bank asserts a cash collateral interest in all cash, and has filed a  
15 statement declining consent for use of cash collateral. The Debtors are in discussions with Bridge  
16 Bank regarding the use of cash collateral, but the Debtors acknowledge that any cash is likely cash  
17 collateral, which the Debtors may not use without Bridge Bank's consent or an order from this  
18 Court. Silicon Valley Bank has cut off access to the bank account in security for approximately  
19 \$44,000 for the prior month's company credit card bill.

20 **I.     Current Inventory**

21         Uni-Pixel has some completed inventory on hand. Although this inventory may have some  
22 value, Uni-Pixel has no money or employees to ship the inventory to purchasers. It is possible that  
23 finished inventory could be included as part of an asset sale.

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26 <sup>6</sup> Bridge Bank purports to have swept Uni-Pixel's account at Bridge Bank and applied the funds to  
27 Uni-Pixel's debt, but to date Uni-Pixel has not received any documentation that the funds were  
28 actually swept and applied pre-petition.

1 **J. Sale Efforts**

2 Uni-Pixel believes a prompt sale of the Assets is in the best interests of its creditors.  
3 Because Bridge Bank’s enforcement of its remedies left Uni-Pixel without any cash to operate,  
4 and forced an immediate lay-off of all employees, reorganization is simply not feasible. Without  
5 cash for even minimal operations, and given the ongoing accrual of administrative rent obligations  
6 for the manufacturing facility, the Debtors have been under extraordinary time pressure to reach  
7 agreement on terms for a sale, liquidate assets through an auction, or convert to Chapter 7.

8 Uni-Pixel has been aggressively pursuing a sale of all of the Debtors’ assets. The assets  
9 can be grouped into two categories: the patents, intellectual property and equipment related to the  
10 manufacture of Diamond Guard products (“Diamond Guard Assets”), and the manufacturing  
11 equipment and non-licensed IP for the XTouch sensors (the “XTouch Assets”). (Including the  
12 licensed intellectual property related to XTouch in a sale would likely require the buyer to  
13 negotiate the consent of the licensors, Microchip and CIT.)

14 There were several obstacles to be overcome in any sale of the Debtors’ assets: (i) no cash  
15 and no employees meant that any sale needed to be negotiated and signed within weeks and  
16 without a customary due diligence period; (ii) a high degree of technology transfer risk in light of  
17 the loss of employees and their know-how about the complex technologies used by the Debtors;  
18 and (iii) licenses critical to the product lines were not owned by the Debtors. Under the  
19 circumstances, the marketing efforts were remarkable.

20 The Debtors had neither the time nor the money to enlist the services of an investment  
21 banker or other financial professional to launch a full-scale sale effort that would allow months for  
22 marketing and due diligence. The Debtors had, prior to the bankruptcy petition, undertaken efforts  
23 to identify potential purchasers of the assets and had entered into a non-binding letter of intent  
24 with Future Tech prior to the filing. Based on the foregoing, it is highly speculative whether such  
25 additional time or a financial advisor would have significantly altered the process for soliciting  
26 bids. The unique nature of the Debtors’ product lines requires a significant degree of experience  
27 to manufacture saleable products. Expertise in semiconductor manufacturing, schmical processes,  
28 and materials sciences are required to conduct the Debtors’ business. Only parties that were

1 already very familiar with the Debtors' products and technologies would be able to bid for the  
2 Debtors' assets. In fact, the Debtors' management already knew all of the likely-interested parties,  
3 and those parties were contacted within days of the Petition Date.

4 On the Petition Date, Debtors' management sent solicitation packages to all of those  
5 parties which described the assets being sold and the explained the urgent time frame that  
6 necessarily applied because the Debtors did not have any available cash. Management approached  
7 companies across the globe, including China, Taiwan, South Korea, Germany and the United  
8 States. The Debtors received a number of responses to the solicitation materials. The Debtors'  
9 management (despite not having been paid for a couple of months but knowing that there could be  
10 no compensation for anyone unless there was a successful sale) responded to all inquiries from  
11 interested parties. Management spoke with and met with directors and officers from numerous  
12 companies including, Applied Materials, Nuovo Films, VIA Optronics, and Future Tech.  
13 Management provided information and assisted potential purchasers in conducting due diligence  
14 on an extremely compressed time schedule.<sup>7</sup>

15 Ultimately, Future Tech was the only potential purchaser that presented both an acceptable  
16 purchase price and willingness to purchase the Assets on an expedited basis without a requirement  
17 for due diligence. Because of management's prior engagement with Future Tech, its prior due  
18 diligence investigation of Debtors and the pre-filing execution of a non-binding letter of intent  
19 between the companies, management hoped that Future Tech would continue to pursue a potential  
20 transaction. The terms of the proposed APA reflect Future Tech's understanding of the Debtors'  
21 business and the risks related to technology transfer and intellectual property rights.

22 In light of significant constraints facing the Debtors, lack of available cash, and material  
23 licensing issues potentially affecting manufacturing operations, the universe of potential acquirers

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25 <sup>7</sup> The Debtors expect that Future Tech, or any other successful bidder, would approach the  
26 Debtors' management and other former employees in order to retain those people to assist with  
27 attempting to manufacture the products formerly made by the Debtors. The Debtors' management  
28 has not entered into any employment agreements, and would be willing to discuss such  
agreements with any successful purchaser.



1 was very limited. Debtors' effort to obtain value for the Assets, and its successful negotiation  
2 with Future Tech on the terms reflected in the APA, has been exceptional. More importantly,  
3 those efforts resulted in an offer to acquire all of the Assets and some continuing interest from  
4 parties that might be interested in participating in an auction.

5 **IV. RELIEF REQUESTED**

6 Pursuant to Bankruptcy Code sections 105 and 363(b), the Debtors request entry of order  
7 approving the sale of the Debtors' Assets, free and clear of liens, claims, encumbrances, or  
8 interests, to the highest bidder at the auction (if there is one) or to Future Tech if there are no  
9 overbidders on the terms and conditions in the APA and finding that Future Tech (or such other  
10 highest bidder) is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code.

11 **A. Material Terms of the Purchase Agreement**

12 The Debtors are proposing to sell substantially all of their Assets, including tangible and  
13 intangible personal property owned by the Debtors, and materials and finished goods related to the  
14 Debtors' business. The Debtors are not seeking to assume and assign to Future Tech any  
15 executory contracts, including equipment leases or licenses for patents or intellectual property  
16 licensed to the Debtors by Microchip or CIT. The Assets will be sold free and clear of all liens,  
17 claims, rights, interests, and encumbrances whatsoever in accordance with Sections 363 (b) and (f)  
18 of the Bankruptcy Code, with all then existing liens, claims, rights, interests, and encumbrances to  
19 attach to the proceeds of the Proposed Sale with the same validity, enforceability, and priority, if  
20 any, as existed with respect to the Assets as of the Petition Date. The Debtors believe that the only  
21 security interest in the Assets is held by Bridge Bank, which consents to the sale of the Assets on  
22 the terms proposed in the APA and this Sale Motion.

23 The following are the material terms of the proposed APA, including references to the  
24 APA where additional details may be found:

25 ///  
26 ///  
27 ///  
28 ///

- 1 1. Purchase Price:<sup>8</sup> \$1,500,000, with a \$200,000 deposit to be credited against the  
2 Purchase Price (*see* Section 2.1 of the APA).
- 3 2. Purchased Assets: All machinery, equipment, and tangible property used in  
4 connection with the Debtors' pre-petition business operations (*see* Section 1.1.2 of the APA); all  
5 intangible personal property owned by the Debtors, including patents and other intellectual  
6 property (*see* Section 1.1.1 of the APA); and inventory, supplies, and materials owned by the  
7 Debtors (*see* Section 1.1.3 of the APA).
- 8 3. Excluded Assets: Any leased equipment, any interests in licenses from Microchip  
9 or CIT, and accounts receivable (*see* Section 1.2 of the APA).
- 10 4. Assumed Liabilities: None, except that Buyer shall be responsible for  
11 Administrative expenses of the Colorado Landlord and Key Personnel (*see* Sections 8 and 9 of the  
12 APA).
- 13 5. Breakup Fee: \$75,000.
- 14 6. Representations and Warranties: As is customary for transactions of this kind,  
15 except as specifically set forth in the APA, the Buyer will accept the Assets at the Closing "AS-  
16 IS," "WHERE-IS," and "WITH ALL FAULTS" (*see* Sections 5,6, and 7 of the APA).
- 17 7. Termination Rights: As is customary for transactions of this kind (*see* Section 4.3  
18 of the APA).

19 **V. AUTHORITY FOR RELIEF**

20 **A. Approval of Sale**

21 A debtor after notice and a hearing, may use, sell, or lease property other than in the  
22 ordinary course of business. 11 U.S.C. § 363(b)(1). A debtor's application of its sound business  
23 judgment in the use, sale, or lease of property is subject to great judicial deference. *See, e.g., In re*  
24 *Moore*, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In re Canyon P'ship*, 55 B.R. 520 (Bankr. S.D. Cal.  
25 1985); *see also, Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 19-20 (B.A.P. 9th Cir. 1988).

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27 <sup>8</sup> Capitalized terms not defined herein have the meaning ascribed to them in the APA.  
28

1 In interpreting section 363(b)(1) of the Bankruptcy Code, courts have held that a  
2 transaction involving property of the estate generally should be approved where the debtor or  
3 trustee can demonstrate “some articulated business justification for using, selling, or leasing  
4 property outside of the ordinary course of business.” *In re Continental Airlines, Inc.*, 780 F.2d  
5 1223, 1226 (5th Cir. 1986); *accord In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983);  
6 *Walter*, 83 B.R. at 19-20; *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah  
7 1981); *Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996). In addition, courts have  
8 broad discretion regarding sales under section 363(b). *See Big Shanty Land Corp. v. Comer*  
9 *Props., Inc.*, 61 B.R. 272, 278 (Bankr. N.D. Ga. 1985).

10 In such sales, the purpose is to obtain the highest price for the property sold. *In re Wilde*  
11 *Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) (citing *In re Chung King, Inc.*, 753  
12 F.2d 547 (7th Cir. 1985); and *In re Alpha Indus., Inc.*, 84 B.R. 703, 705 (Bankr. Mont. 1988)).

13 Among other factors, courts should consider the consideration to be paid, the financial  
14 conditions and needs of the debtor, the qualifications of the buyer, and whether a risk exists that  
15 the assets proposed to be sold would decline in value if left in the debtor’s possession. *See Equity*  
16 *Funding Corp. of Am. v. Fin. Assocs. (In re Equity Funding Corp.)*, 492 F.2d 793, 794 (9th Cir.  
17 1974).

18 Although section 363(b) does not explicitly require good faith, courts have required that a  
19 sale be made in good faith. *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir. 1992).  
20 Whether a proposed sale is in good faith focuses principally on the element of special treatment of  
21 the debtor’s insiders in the sale transaction. *Id.*; *In re Industrial Valley Refrigeration and Air*  
22 *Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

23 The Proposed Sale reflects the end result of the most fulsome marketing process for the  
24 Assets available under the circumstances. It is the Debtors’ business judgment that the Proposed  
25 Sale is in the best interest of the Debtors, their estates, creditors, and stakeholders. The Debtors  
26 believe that the consideration to be paid represents a fair and reasonable offer in light of all the  
27 terms of the Proposed Sale, and the offer (or any higher and better offer obtained through the  
28 proposed Bid Procedures and Auction) will provide maximum value to the Debtors under the

1 circumstances. Overall, the Proposed Sale’s benefits greatly exceed those of any piecemeal  
2 liquidation.

3 **B. The Sale of the Assets Free and Clear of Liens, Claims, Encumbrances, and Interests**  
4 **Pursuant to Section 363(f) Should be Approved**

5 The Debtors request that the Court approve the sale of the Assets free and clear of all liens,  
6 claims, encumbrances, and interests (collectively, “Interests”), with any such Interests, if any, to  
7 attach to the sale proceeds with the same validity, enforceability and priority as existed with  
8 respect to the Assets as of the date of the commencement of these Chapter 11 cases.

9 Section 363(f) of the Bankruptcy Code expressly authorizes a debtor to sell property  
10 outside the ordinary course of business “free and clear of any interest in such property of an  
11 entity” if any of the following five conditions is met:

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

20 11 U.S.C. § 363(f). Because Section 363 (f) of the Bankruptcy Code is written in the  
21 disjunctive, any one of these five conditions affords authority to sell the Assets free and clear of  
22 Interests. *See Citicorp Homeowners Servs. V. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa.  
23 1988).

24 Under Section 363(f)(2) of the Bankruptcy Code, a debtor may sell estate property free and  
25 clear of Interests if the entity asserting the interest consents. In this case, Bridge Bank consents to  
26 the Proposed Sale. Further, to the extent that any other party asserting an Interest receives notice  
27 of the Sale Motion and does not file a written objection hereto, such party should be deemed to  
28

1 have consented to the sale of the Assets free and clear of its asserted Interest(s). *See In re Channel*  
2 *One Comms. Inc.*, 117 B.R. 493, 496 (Bankr. E.D. Mo. 1990).

3 In all events, the Debtors submit that every other Interest (if any) will satisfy one of the  
4 five conditions of Section 363(f), and that any such Interest will be adequately protected be either  
5 being paid in full at the time of closing, or by having it attach to the net proceeds of the Proposed  
6 Sale, subject to any claims and defenses the Debtors may possess with respect thereto. The  
7 Debtors have conducted a UCC search of purported holders of liens against any of the personal  
8 property included in the Assets and will serve such purported lienholders with notice of the Sale  
9 Motion, and will serve notice of any Sale Order.

10 The Court should approve the sale of the Assets to Future Tech or the Successful Bidder  
11 free and clear of Interests under Bankruptcy Code Section 363(f), and any potential claimants  
12 should be compelled to look exclusively to the proceeds of the Sale for satisfactions of their  
13 claims.

14 **C. Future Tech is an Arm’s Length Purchaser, Has Acted in Good Faith in Connection**  
15 **with the Proposed Sale, and Is Entitled to the Protections of Section 363(m)**

16 “The reversal or modification on appeal of an authorization under subsection (b) or (c) of  
17 this section [11 U.S.C. § 363] of a sale or lease of property does not affect the validity of a sale or  
18 lease under such authorization to an entity that purchased or leased such property in good faith,  
19 whether or not such entity know of the pendency of the appeal, unless such authorization and such  
20 sale or lease were stayed pending appeal.” 11 U.S.C. § 363(m). While the Bankruptcy Code does  
21 not define “good faith,” one court has held:

22 [t]he requirement that a Buyer act in good faith . . . speaks to the  
23 integrity of his conduct in the course of the sale proceedings.  
24 Typically, the misconduct that would destroy a Buyer’s good faith  
status at a judicial sale involves fraud, collusion between the Buyer  
and other bidders or the trustee, or an attempt to take grossly unfair  
advantage of other bidders.

25 *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (citations omitted).

26 The Proposed Sale to Future Tech was negotiated in good faith, at arm’s length, and  
27 without collusion or fraud of any kind. Future Tech is not an insider and the pre-petition  
28 relationship between the Debtors and Future Tech does not support denying a good faith

1 determination. Both the consideration to be paid and the terms and conditions of the Proposed  
2 Sale were the subject of extensive negotiations. This Court should find that Future Tech acted in  
3 good faith within the meaning of Section 363(m) of the Bankruptcy Code.<sup>9</sup> *See generally*  
4 *Paulman v. Gateway Venture Partners III, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570 (9th Cir.  
5 1998); *Ewell*, 958 F.2d at 280; *Marin v. Coated Sales, Inc. (In re Coated Sales, Inc.)*, 1990 WL  
6 \*212899 (S.D.N.Y. Dec. 13, 1990) (holding that to show lack of good faith, a party must  
7 demonstrate “fraud, collusion, or an attempt to take grossly unfair advantage of other bidders”);  
8 *see also In re Sassoon Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air*  
9 *Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)); *In re Pisces Leasing Corp.*, 66 B.R. 671, 673  
10 (E.D.N.Y. 1986) (examining the facts of each case, concentrating on the “integrity of [an actor’s]  
11 conduct during the sale proceedings” (quoting *In re Rock Indus. Machinery Corp.*, 572 F.2d 1195,  
12 1198 (7th Cir. 1978)). The Debtors shall present evidence, as necessary, prior to or at the Sale  
13 Hearing relating to Future Tech’s good faith. Additionally, the Debtors request that the Sale Order  
14 expressly provide that the Proposed Sale shall survive the entry of any order which may be entered  
15 converting the Debtors’ cases from Chapter 11 to Chapter 7, appointing a chapter 11 trustee, or  
16 dismissal of the cases, and it not subject to avoidance pursuant to section 363(n) of the Bankruptcy  
17 Code.

18 **D. Request for Waiver of Stay Under Bankruptcy Rule 6004(h)**

19 In order to allow the immediate realization of value from the Proposed Sale, the Debtors  
20 respectfully request that any orders on the Sale Motion be effective immediately, notwithstanding  
21 the 14-day stay imposed by Bankruptcy Rule 6004(h). Future Tech’s obligation to perform under  
22 the APA is conditioned upon the closing taking place as soon as practicable after entry of an order  
23 approving the Sale Motion. As discussed above, the Debtors believe that the consideration offered  
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26 <sup>9</sup> If any party other than Future Tech is a Successful Bidder, the Debtors intend to make an  
27 appropriate showing at the Sale Hearing that the purchase agreement with such other Successful  
28 Bidder is a negotiated, arm’s length transaction, in which the Successful Bidder at all times has  
acted in good faith under and otherwise in accordance with the standards set forth above.

1 by Future Tech is the most that the Debtors are likely to receive for the Assets. Accordingly, the  
2 Debtors request that Rule 6004(h) be waived so the Sale may close as promptly as possible.

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**VI. CONCLUSION**

For the reasons stated above, the Debtors respectfully request that after the auction, the Court enter an order approving the sale of the Debtors’ assets, free and clear of liens, claims, encumbrances, or interests, to the highest bidder at the auction (if there is one) or to Future Tech if there are no overbidders on the terms and conditions in the APA and finding that Future Tech (or such other highest bidder) is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code.

DATED: October 2, 2017

McNUTT LAW GROUP LLP

By:                   /s/ Michael C. Abel                    
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7

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 In re  
12 UNI-PIXEL, INC.,  
UNI-PIXEL DISPLAYS, INC.,  
13  
14 Debtors.

Case No. 17-52100 MEH  
(Jointly Administered with  
Case No. 17-52101)

Chapter 11

**DECLARATION OF JEFF HAWTHORNE  
IN SUPPORT OF MOTION FOR ORDER  
APPROVING SALE OF ASSETS FREE  
AND CLEAR OF ALL LIENS, CLAIMS,  
ENCUMBRANCES, AND INTERESTS  
AND GRANTING RELATED RELIEF**

Judge: Hon. M. Elaine Hammond  
Date: November 2, 2017  
Time: 1:30 p.m.  
Judge: Hon. M. Elaine Hammond  
Place: Courtroom 3020  
United States Bankruptcy Court  
280 South First Street  
San Jose, CA 95113

22  
23  
24 I, Jeff Hawthorne, declare as follows:

25 1. I am the Principal Executive Officer of Uni-Pixel, Inc. (“Uni-Pixel, Inc.”) and Uni-  
26 Pixel Displays, Inc. (“Uni-Pixel Displays”, and together with Uni-Pixel, Inc. the “Debtors” or  
27 “Uni-Pixel”). I make this Declaration of my personal knowledge and based on my review of Uni-  
28 Pixel’s books and records and inquiries of Uni-Pixel’s management and employees. I could and



1 would competently testify as follows.

2           2.       This declaration is submitted in support of the MOTION FOR ORDER SALE OF ASSETS  
3 FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS AND GRANTING  
4 RELATED RELIEF (the “Sale Motion”) filed concurrently herewith.

5 **A.     The Uni-Pixel Business**

6           3.       Uni-Pixel is a public company that makes transparent conductive films and flexible  
7 electronic films, based on a proprietary manufacturing process, used in touch-based electronic  
8 products. The process offers precision micro-electronic circuit patterning and modification of  
9 surface characteristics over a large area on an ultra-thin, clear, flexible, plastic substrate. These  
10 flexible films may be incorporated into computer, tablet, printer, and smartphone touch sensors, as  
11 well as automotive applications. Uni-Pixel sells its screens/films under the brand name “XTouch”  
12 as sub-components of a fully assembled touch module.

13           4.       In addition to the flexible electronic films described above, Uni-Pixel developed a  
14 hard coat resin that can be applied using film, spray, or inkjet coating methods for applications as  
15 protective cover films, a cover lens replacement, or a hard coat for plastics. The hard coat resin  
16 provides glass-like performance and optical clarity in a thin, flexible, and shatterproof format. It  
17 provides exceptional scratch resistance and durability without compromising optical clarity. The  
18 hard coat resin and optical films are sold under the brand name “Diamond Guard.”

19           5.       Uni-Pixel is headquartered in Santa Clara, California. Manufacturing is done at the  
20 Uni-Pixel facility in Colorado Springs, Colorado. Uni-Pixel has a facility in Texas, but those  
21 operations (primarily research and development) were being consolidated into the Colorado  
22 Springs facility during the summer of 2017.

23 **B.     Corporate Structure**

24           6.       Uni-Pixel, Inc. is the parent company of Uni-Pixel Displays, its wholly-owned  
25 operating subsidiary. Uni-Pixel, Inc. is a Delaware corporation. Until September 11, 2017, its  
26 common stock was quoted on the NASDAQ Capital Market under the ticker symbol “UNXL.”  
27 Beginning on September 12, 2017, the common stock is now being quoted on the OTC Markets  
28 Group’s OTC Pink under the symbol “UNXLQ”. Uni-Pixel Displays is a Texas corporation.

1           7.       Uni-Pixel, Inc., as a publicly traded company, is required to make regular filings  
2 with the SEC regarding its finances (*e.g.*, 10-Q and 10-K's), as well as make other public  
3 disclosures required by various SEC rules and regulations.

4           8.       As of the Petition Date, Uni-Pixel, Inc. is current on all of its required SEC filings.  
5 Additional information may be obtained by reviewing the public filings, which are available on  
6 the SEC's "EDGAR" website.

7           9.       The reports Uni-Pixel files with the SEC have been prepared on a consolidated  
8 basis to include information relating to both Uni-Pixel Inc. and Uni-Pixel Displays.

9 **C.       Intellectual Property and Licenses**

10           10.       Uni-Pixel has 16 issued patents and 58 patent applications covering key  
11 technology. Uni-Pixel also has licenses from Microchip Technology Incorporated ("Microchip")  
12 and CIT Technology Ltd. ("CIT") for additional technology under 44 issued patents and 93 patent  
13 applications belonging to CIT and Microchip.

14           11.       Uni-Pixel's agreements with Microchip and CIT relate to the Uni-Pixel's XTouch  
15 brand products. Generally, the Debtors entered into two agreements with each of CIT and  
16 Microchip's predecessor, Atmel Corporation ("Atmel"):<sup>1</sup> the Atmel Patent License Agreement;  
17 the Atmel IP License Agreement; the CIT Patent License Agreement; and the CIT IP License  
18 Agreement. Both Patent License Agreements gave Uni-Pixel a non-sublicensable, worldwide,  
19 royalty-bearing license for the relevant patents. Both of the IP License Agreements similarly  
20 licensed to Uni-Pixel a non-sublicensable, worldwide, royalty-free license for the relevant  
21 intellectual property related to the patents. The initial term for all of the agreements is five years,  
22 expiring in April 2020. Uni-Pixel has the unilateral right to renew the licenses for a term of 10  
23 years. The minimum annual royalties under both Patent License Agreements have been pre-paid  
24 through February 2018. Atmel/Microchip and CIT agreed that they would not enter into other  
25 license agreements for their respective patents and intellectual property prior to the second

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27 <sup>1</sup> Atmel was acquired by Microchip.  
28

1 anniversary of the closing date of the agreements, which was on April 16, 2015. The Patent  
2 License Agreements were amended, in December 2016 (CIT) and March 2017 (Microchip) to  
3 allow Uni-Pixel to sublicense in certain circumstances and to accordingly adjust the amount of  
4 royalties due.

5 **D. Equipment**

6 12. At the same time that Uni-Pixel acquired intellectual property and patents from  
7 Amtel, on April 16, 2015, it also acquired from Amtel various equipment and facilities necessary  
8 to manufacture the touch sensors. In addition to equipment owned by Uni-Pixel, the Debtors also  
9 lease certain equipment from Boston Financial & Equity Corporation and from International  
10 Financial Services Corporation. The majority of Uni-Pixel's equipment is located at its  
11 manufacturing facility, which is located in Colorado Springs, Colorado. The Santal Clara and  
12 Texas facilities have a small amount of miscellaneous laboratory equipment.

13 **E. Significant Creditors**

14 *Bridge Bank*

15 13. Uni-Pixel's primary secured debt is on a revolving line of credit (the "Credit Line")  
16 from Western Alliance Bank through its Bridge Bank division (the "Bank" or "Bridge Bank"). On  
17 October 24, 2016, the Debtors entered into a Loan and Security Agreement (the "Loan  
18 Agreement") with Bridge Bank for Credit Line. The Credit Line is for a two-year term ending on  
19 October 18, 2018. Uni-Pixel is permitted to borrow up to \$2.5 million on a revolving basis based  
20 on a percentage of eligible export-related accounts. Total borrowing under the line may not  
21 exceed 90% of eligible export related accounts. Borrowings under the line bear interest at the  
22 prime rate plus 1.25%. The Debtors' obligations under the Credit Line appear to be secured by all  
23 of the assets of the Debtors, including intellectual property.<sup>2</sup> The Export Import Bank of the  
24 United States ("EXIM") provides credit support under the Loan Agreement, essentially  
25 guaranteeing the Debtors' obligations to Bridge Bank and permitting EXIM to assume all rights

26 \_\_\_\_\_  
27 <sup>2</sup> The Debtors have not conducted a complete analysis of Bridge Bank's security interests, and  
28 therefore reserve all rights to dispute the validity or extent of liens securing the Credit Line.

1 and remedies of the Bank under the Loan Agreement in the event that EXIM pays any guaranty  
2 claim to the Bank.

3 14. On August 22, 2017, Bridge Bank notified Uni-Pixel that it was in default under  
4 the Credit Line, and the Bank was, among other things: (i) invoking the default rate (Prime plus  
5 6.25%); (ii) declaring all obligations immediately due and payable; (iii) cutting off further  
6 advances under the Credit Line; (iv) setting off and applying to Debtors' obligations all balances  
7 and deposits held by the bank; and (v) canceling all corporate credit cards.

8 15. The Debtors' outstanding obligations under the Credit Line as of September 12,  
9 2017, are approximately \$638,425, based on a letter from Bridge Bank's counsel.<sup>3</sup>

10 Securities and Exchange Commission and Former Executives

11 16. In November 2013, Uni-Pixel cooperated with the SEC regarding a non-public  
12 fact-finding inquiry that resulted in the SEC filing a complaint in March 2016 against Uni-Pixel  
13 and two former executives, Reed Killion (CEO) and Jeffrey Tomz (CFO). Without admitting or  
14 denying the allegations in the complaint, Uni-Pixel, Inc. consented on the same day that the  
15 complaint was filed to entry of a final judgment that provided for, among other things, a civil  
16 penalty in the amount of \$750,000 (of which \$505,000 remains outstanding as of the Petition  
17 Date).

18 17. The SEC's action against the two former executives, however, has proceeded to be  
19 litigated and remains pending. Uni-Pixel, Inc.'s Amended and Restated Bylaws contain  
20 provisions regarding indemnification and advancement of expenses actually and reasonably  
21 incurred by these two former officers in connection with civil, criminal, administrative, or  
22 investigative matters, provided that such officers acted in good faith and in a manner such officers  
23 reasonably believed to be in or not opposed to the best interests of Uni-Pixel, Inc., and, with  
24 respect to any criminal action or proceeding, had no reason or cause to believe such conduct was

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26 <sup>3</sup> This is the amount that would be due after application of the funds in Uni-Pixel's bank account  
27 at Bridge Bank. At this point it is unclear whether these funds were actually swept and applied to  
28 the debt pre-petition.

1 unlawful. The advancement of expenses is expressly conditioned upon receipt of an undertaking  
2 by the officer to repay all such amounts so advanced in the event that it shall ultimately be  
3 determined that the officer is not entitled to be indemnified by Uni-Pixel, Inc.

4 18. Uni-Pixel, Inc., or its insurance company, has advanced as agreed all invoices for  
5 all years through the end of 2015 for the defense of the two former officers in the SEC's  
6 investigation that resulted in the SEC filing the complaint against them. A portion of  
7 advancements for 2016 invoices have also been made, but Uni-Pixel, Inc. disputed other 2016  
8 invoices as containing expenses that were not reasonably incurred by the two former officers in  
9 defense of the SEC's complaint. The total amount incurred in 2016 and initially disputed by Uni-  
10 Pixel, Inc. was \$147,750. Through the course of 2016, Uni-Pixel, Inc. was in discussions with  
11 counsel to the two former officers regarding resolving counsels' charges on these invoices.  
12 Notwithstanding those discussions, on August 22, 2016, the two former officers filed an action in  
13 the Delaware Chancery Court against Uni-Pixel, Inc. for advancement of expenses. Uni-Pixel,  
14 Inc. contested the claims made by the two former officers that it had not advanced expenses  
15 reasonably incurred by them in the underlying action brought by the SEC.

16 19. In October 2016, the Delaware Chancery Court appointed a former Vice Chancellor  
17 of the Chancery Court to act as a Special Master to determine whether expenses were reasonably  
18 incurred, to the extent that Uni-Pixel, Inc. and the two former officers were not capable of  
19 resolving the dispute without the assistance of the judicial process. In November 2016,  
20 unresolved and disputed invoices totaling approximately \$129,698 in fees incurred in 2016 prior  
21 to November 2016 were submitted to the Special Master for a determination whether such  
22 expenses were reasonably incurred. In May 2017, the Special Master determined that it was  
23 reasonable for Uni-Pixel, Inc. to advance \$95,749 of the disputed fees from 2016. Prior to the  
24 Petition Date, Uni-Pixel, Inc. had not advanced this amount determined by the Special Master to  
25 be reasonable, or certain other expenses incurred in 2017 that Uni-Pixel, Inc. had not disputed, as  
26 well as other amounts which Uni-Pixel, Inc. had disputed.

27 20. In addition, on August 28, 2017, the Delaware Chancery Court entered an order  
28 requiring Uni-Pixel to advance defense costs to the former executives for their ongoing litigation

1 with the SEC, in the amount of \$1,404,598.70, which constitutes the amount for 2016 determined  
2 by the Special Master to be reasonable, plus all amounts incurred in 2017 prior to the Petition Date  
3 that Uni-Pixel, Inc. had not disputed as unreasonable.<sup>4</sup>

4 21. Uni-Pixel believes that its D&O insurance carrier, XL Specialty Insurance  
5 Company, improperly limited coverage for the SEC investigation and enforcement action against  
6 the former officers. Uni-Pixel is pursuing these claims in litigation against the insurer, which is  
7 currently pending in Texas state court.

8 22. The former officers' aggressive actions to collect from Uni-Pixel, including the  
9 threat of a receiver liquidating the company's assets to pay their legal fees in defending the SEC  
10 enforcement action, were a substantial factor in forcing Uni-Pixel to file for bankruptcy.

11 **F. Events Precipitating Bankruptcy**

12 23. In August 2017, Uni-Pixel was forced to consider a bankruptcy filing as a result of  
13 two related circumstances. The first was the aggressive actions by the former officers to force  
14 liquidation of assets to pay the advancement of their defense costs in the SEC action, and in  
15 particular anticipation of an imminent award against Uni-Pixel, Inc. by the Delaware Chancery  
16 Court and the likely appointment by that court of a limited receiver due to Uni-Pixel, Inc.'s failure  
17 to advance fees in accordance with the process established by that court in October 2016 when it  
18 appointed the Special Master. The second was Bridge Bank declaring a default and accelerating  
19 the Credit Line on August 22, 2017. Uni-Pixel believes that Bridge Bank's actions were largely  
20 precipitated by the threatened Chancery Court action to appoint a limited receiver. Regardless,  
21 they deprived Uni-Pixel of the funds necessary to pay even basic expenses and employees, and left  
22 no viable options to continue operating.

23 24. On August 24, 2017, the Uni-Pixel, Inc. and Uni-Pixel Displays' boards of  
24 directors authorized the Debtors to file for bankruptcy. The Debtors' boards also authorized the  
25

26 \_\_\_\_\_  
27 <sup>4</sup> Uni-Pixel retains its right to seek recovery of advanced defense costs from Killion and Tomz if  
28 they are ultimately held liable in the SEC enforcement action.

1 termination of all employees as of August 25, 2017, and all employees were terminated  
2 accordingly.

3 25. As anticipated, the Delaware Chancery Court entered a partial judgment against  
4 Uni-Pixel on August 28, 2017, but upon being advised of the authorization to file for bankruptcy,  
5 did not concurrently appoint a limited receiver. The Debtors filed their Chapter 11 petitions two  
6 days later, on August 30, 2017.

7 **G. Employees and Operations**

8 26. I am Uni-Pixel's Sole Director and the Principal Executive Officer, and continue to  
9 function in that capacity. Christine Russell remains as the Principal Financial Officer and  
10 Principal Accounting Officer of the Debtors. The Debtors have no employees at this time. A  
11 handful of former employees have continued, on an independent contractor basis, to assist the  
12 Debtors with shutting down operations, storing all materials requiring special handling, and  
13 beginning the process of reaching out to potential purchasers (described more fully below).

14 27. Prior to the filing of the bankruptcy cases, all employees were terminated,  
15 including all officers of the company, although the Debtors' Principal Executive Officer and their  
16 Principal Financial Officer and Principal Accounting Officer agreed to serve in those roles on a  
17 consulting basis. Jalil Shaikh, the company's former Chief Operating Officer, has also agreed to  
18 assist in the sale process on a consulting basis. The Debtors have taken steps to shut down the  
19 manufacturing facility and secure all equipment and materials used in the manufacturing  
20 processes, including safe storage of any chemicals. The Debtors believe that they are in the  
21 process of accomplishing a safe and secure shut down. The Debtors are in communication with  
22 the landlord in Colorado Springs in order to address any concerns and discuss next steps.

23 **H. Cash Situation**

24 28. The Debtors had approximately \$139,000 in Bridge Bank and approximately  
25 \$50,000 in Silicon Valley Bank.<sup>5</sup> Bridge Bank asserts a cash collateral interest in all cash, and has  
26 \_\_\_\_\_

27 <sup>5</sup> Bridge Bank purports to have swept Uni-Pixel's account at Bridge Bank and applied the funds to  
28 Uni-Pixel's debt, but to date Uni-Pixel has not received any documentation that the funds were  
(footnote continued)

1 filed a statement declining consent for use of cash collateral. The Debtors are in discussions with  
2 Bridge Bank regarding the use of cash collateral, but the Debtors acknowledge that any cash is  
3 likely cash collateral, which the Debtors may not use without Bridge Bank’s consent or an order  
4 from this Court. Silicon Valley Bank has cut off access to the bank account in security for  
5 approximately \$44,000 for the prior month’s company credit card that is owed to the bank.

6 **I. Current Inventory**

7 29. Uni-Pixel has some completed inventory on hand. Although this inventory may  
8 have some value, Uni-Pixel has no money or employees to ship the inventory to purchasers. It is  
9 possible that finished inventory could be included as part of an asset sale.

10 **J. Sale Efforts**

11 30. Uni-Pixel believes a prompt sale of its assets is in the best interests of its creditors.  
12 Because Bridge Bank’s enforcement of its remedies left Uni-Pixel without any cash to operate,  
13 and forced an immediate lay-off of all employees, a reorganization is simply not feasible. Without  
14 cash for even minimal operations, and given the ongoing accrual of administrative rent obligations  
15 for the manufacturing facility, the Debtors are under substantial time pressure to reach agreement  
16 on terms for a sale, liquidate assets through an auction, or convert to Chapter 7.

17 31. Uni-Pixel has been aggressively pursuing a sale of all of the Debtors’ assets. The  
18 assets can be grouped into the manufacturing equipment and non-licensed IP for the XTouch  
19 sensors (the “XTouch Assets”) and the patents, intellectual property and equipment related to the  
20 manufacture of Diamond Guard products (“Diamond Guard Assets”). Practically speaking,  
21 including the licensed intellectual property related to XTouch in a sale would likely require the  
22 buyer to negotiate the consent of the licensors (Microchip and CIT).

23 32. Since the commencement of these cases, the Debtors believed – and continue to  
24 believe – that a prompt sale of assets is in the best interests of all parties. In fact, it is the only  
25 viable alternative to conversion or a piecemeal liquidation. The Debtors have no employees and  
26

27 \_\_\_\_\_  
28 actually swept and applied pre-petition.



1 no available cash. All employees were terminated after the decision by the Delaware Chancery  
2 Court to enter a partial judgment in favor of two former officers in the amount of approximately  
3 \$1.4 million. Thereafter, the Debtors' secured lender swept the Debtors' bank accounts. Thus, the  
4 Debtors had no cash and could not retain its employees when there was no reasonable expectation  
5 for being able to pay those employees. The Debtors filed voluntary petitions for relief under the  
6 Bankruptcy Code on August 30, 2017 (the "Petition Date").

7 33. A limited number of the Debtors' employees and management have continued to  
8 devote substantial time and effort to shutting down and securing the Debtors' manufacturing  
9 facility in Colorado Springs, facilitating a potential sale of the Debtors' assets, and working  
10 cooperatively with the landlord for the Colorado facility.

11 34. There were several obstacles to be overcome in any sale of the Debtors' assets: (i)  
12 no cash and no employees meant that any sale needed to be negotiated and signed within weeks  
13 and without a customary due diligence period; (ii) a high degree of technology transfer risk in light  
14 of the loss of employees and their know-how about the complex technologies used by the Debtors;  
15 and (iii) licenses critical to the product lines were not owned by the Debtors. Under the  
16 circumstances, the marketing efforts were remarkable. .

17 35. On the Petition Date, Debtors' management sent solicitation packages to all parties  
18 that might be interested in acquiring the Debtors' assets. The pool of prospective purchasers is  
19 limited to a small number of identifiable companies, because only parties that are extremely  
20 familiar with the Debtors' business and technologies would be able to make an offer on the  
21 expedited basis necessary. The Debtors received a number of responses to the solicitation  
22 materials and management has held numerous discussions with potential purchasers. Management  
23 spoke with and met with directors and officers from numerous companies including, Applied  
24 Materials, Nuovo Films, VIA Optronics, and Future Tech. Management provided information and  
25 assisted potential purchasers in conducting due diligence on an extremely compressed time  
26 schedule

27 36. The Debtors had neither the time nor the money to enlist the services of an  
28 investment banker or other financial professional to launch a full-scale sale effort that would allow

1 months for marketing and due diligence. The Debtors had, prior to the bankruptcy petition,  
2 undertaken efforts to identify potential purchasers of the assets and had entered into a non-binding  
3 letter of intent with Future Tech prior to the filing. Based on the foregoing, it is highly speculative  
4 whether such additional time or a financial advisor would have significantly altered the process for  
5 soliciting bids.

6 37. The unique nature of the Debtors' product lines requires a significant degree of  
7 experience to manufacture saleable products. Expertise in semiconductor manufacturing,  
8 chemical processes, and materials sciences are required to conduct the Debtors' business. Only  
9 parties that were already very familiar with the Debtors' products and technologies would be able  
10 to bid for the Debtors' assets. In fact, the Debtors' management already knew all of the likely-  
11 interested parties, and those parties were contacted within days of the Petition Date.

12 38. I believe that the Debtors' management already knew all of the likely-interested  
13 parties, and those parties were contacted with days of the Petition Date.

14 39. I worked with Christine Russell and other former members of the Debtors'  
15 management, including Jalil Shaikh, to approach companies across the globe, including China,  
16 Taiwan, South Korea, Germany and the United States. We received a number of responses to the  
17 solicitation materials. We responded to all inquiries from interested parties. Management spoke  
18 with and met with directors and officers from numerous companies including, Applied Materials,  
19 Nuovo Films, VIA Optronics, and Future Tech. Management provided information and assisted  
20 potential purchasers in conducting due diligence on an extremely compressed time schedule.

21 40. Ultimately, Future Tech was the only potential purchaser that presented both an  
22 acceptable purchase price and willingness to purchase the Assets on an expedited basis without a  
23 requirement for due diligence. Because of management's prior engagement with Future Tech, its  
24 prior due diligence investigation of Debtors and the pre-filing execution of a non-binding letter of  
25 intent between the companies, management hoped that Future Tech would continue to pursue a  
26 potential transaction. The terms of the proposed APA reflect Future Tech's understanding of the  
27 Debtors' business and the risks related to technology transfer and intellectual property rights.

28

1           41.     While the Debtors’ assets are a critical and essential component to manufacture the  
2 Debtors’ products, the Microchip and CIT license agreements were also essential to the Debtors’  
3 business, and the Debtors were unable to include those licenses in any potential sale.

4           42.     The Debtors reached agreement on the terms of an asset purchase agreement  
5 (“APA”) with Future Tech Capital, LLC, a California limited liability company (“Future Tech”),  
6 which agreed to those terms without requesting a period of time in which to conduct an  
7 independent due diligence inquiry. A true and correct copy of the signed APA is attached hereto  
8 as **Exhibit A**.

9           43.     The proposed sale will include all of the tangible personal property, intangible  
10 personal property, and materials and finished goods related to the Debtors’ business (the  
11 “Assets”). The Assets do not include any property leased by the Debtors or any interest in  
12 licenses of intellectual property not owned by the Debtors. The proposed sale price will be  
13 \$1,500,000. The Assets will be sold free and clear of all liens, claims, encumbrances, and  
14 interests.

15           44.     Bridge Bank is the Debtors’ only secured creditor, and supports the Proposed Sale  
16 (and sale process) and consents to the sale of the Assets free and clear.

17           45.     Microchip also supports the Proposed Sale and sale process.

18  
19           I declare under penalty of perjury under the laws of the United States of America that the  
20 foregoing is true and correct. Executed October 2, 2017, at Santa Clara, California.

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        /s/ Jeff Hawthorne          
Jeff Hawthorne

# Exhibit A

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of this 29th day of September, 2017, by and between Future Tech Capital, LLC, a California limited liability company (the “**Buyer**”) on the one hand, and Uni-Pixel, Inc. (“**Uni-Pixel**”), a Delaware Corporation and debtor and debtor-in-possession under Case No. 17-52100 in the United States Bankruptcy Court for the Northern District of California – San Jose Division (the “**Bankruptcy Court**”) and Uni-Pixel Displays, Inc., a Texas Corporation and debtor and debtor-in-possession under Case No. 17-52101 in the Bankruptcy Court (“**Displays,**” and together with Uni-Pixel as debtors-in-possession, collectively, the “**Seller**”) on the other hand.

Capitalized terms used in this Agreement that are not otherwise defined herein shall have the meanings ascribed to such terms in Section 12 below.

### RECITALS

A. Uni-Pixel and Displays filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code (11 U.S.C. 101 *et seq.*, the “**Bankruptcy Code**”) on August 30, 2017, and continue to operate as debtors and debtors-in-possession under Sections 1107(a) and 1108 of the Bankruptcy Code.

B. Seller manufactures and sells transparent conductive films and flexible electronic films used in touch-based electronic products, which are sold under the “Xtouch” brand name. Additionally, Seller developed and sells a hard coat resin and optical films to be used as protective cover films, a cover lens replacement, or a hard coat for plastics, which are sold under the “Diamond Guard” brand name and has also conducted research and development related, among other things, to a product referred to internally as “Diamond Touch.” These activities and other activities incidental or related thereto or which were otherwise conducted by Seller in the course of its business prior to the Petition Date are referred to collectively herein as the Seller’s “**Business**”.

C. Seller is headquartered in Santa Clara, California. Manufacturing is done at the facility in Colorado Springs, Colorado.

D. Seller wishes to sell to Buyer, pursuant to Section 363 of Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) substantially all of the assets of Seller used in connection with or arising out of the operation of the Business, all at the price and on the terms and conditions specified in detail below, and Buyer wishes to purchase and acquire such assets from Seller.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties agree as follows:

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1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the terms and subject to the conditions of this Agreement, on the Closing Date (as defined below), Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of Seller's right, title and interest in and to all of the machinery, equipment, tangible and intangible personal property, inventory, supplies, materials, and intellectual property (collectively, the "**Property**"), owned by Seller and located at Seller's Colorado Springs or Santa Clara facility, used or held for use in connection with, or related to, the Business, free and clear of Liens to the extent permitted pursuant to Section 363 of the Bankruptcy Code. Except as specifically excluded pursuant to Section 1.2 below, the Property includes, without limitation, the following:

1.1.1 Intangible Property. All items of intangible personal property, including all property listed on Exhibit 1.1.1, and all patents, patent applications and other registrations and applications for registration of intellectual property owned by Seller and relating to the Business together with intellectual property, patents, trademarks, trade names, service marks, URL's, processes, formulae, copyrights, copyright registrations and copyright rights, trade dress, business and product names, logos, slogans, industrial models, methodologies, inventions, ideas, trade secrets, know-how, patents, patent registrations and patent rights, specifications, user guides, plans, computer software, trademark registrations and trademark rights; all pending applications for patents, trademarks, service marks and copyrights, and all related documentation, technical information, manufacturing, engineering and technical drawings, specifications and plans, equipment manuals; all income, royalties or payments due and payable, including, without limitation, all claims for damages by reason of past, present and future infringement, and all legal privileges associated therewith, and all warranties related to any machinery and equipment being transferred to Buyer hereunder (collectively, the "**Intangible Property**"). As used in this Agreement, Intangible Property shall in all events exclude, (i) any materials containing privileged communications and any other materials which are subject to attorney-client or other privilege; and (ii) any books, records and other materials that relate to the administration of the Case, provided that Buyer shall be permitted to review and copy purchase orders, customer lists, accounts receivable, correspondence with suppliers and equipment manufacturers, supply agreements, sales agreements, and other contracts and records such as warranty claims that may constitute "records" but relate to the Business as ordinarily conducted prior to the Petition Date.

1.1.2 Tangible Personal Property. All items of machinery, equipment, and tangible personal property owned by Seller, including items listed on Exhibit 1.1.2 to this Agreement and all other tangible personal property now or prior to the Closing Date owned by Seller and used in connection with the Business, including, without limitation, all fixtures, machinery, equipment, tools, inventory, works-in-progress spare parts, packing materials, motor vehicles used in the operation of the Business, racking, molds, forms, dies and tooling, furniture, office equipment (including, without limitation, all computers, computer hardware, photocopiers, facsimile machines and other business equipment), furnishings and miscellaneous items (collectively, the "**Personal Property**"). The Personal Property shall expressly exclude any equipment or other tangible property held by the Seller pursuant to a lease, rental agreement, contract, or license that is not in the form of a "shrink-wrap" license, embedded software, or a fully paid-up contract or similar arrangement.

1.1.3 Inventory, Supplies and other Materials. All supplies, goods, materials, raw and finished goods, work in process, inventory and stock in trade used or held for sale in connection with the Business (collectively, the “**Acquired Inventory**”), including all inventory and related items listed on Exhibit 1.1.3.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, the Property shall not include any of the Excluded Assets. “**Excluded Assets**” means any of the following: (a) any Liquid Assets and Financial Instruments; (b) all Rights of Action (other than any right of action in respect of a warranty or similar claim against the manufacturer or seller of any machinery, equipment, or other Property that is transferred to Buyer); (c) all preference or avoidance claims and actions of Seller arising under chapter 5 of the Bankruptcy Code, including, without limitation, any such claims and actions arising under Sections 544, 545, 547, 548, 549, 550 and/or 551 of the Bankruptcy Code; (d) Seller’s rights under this Agreement and all cash and non-cash consideration payable to Seller pursuant to the terms and provisions hereof; (e) executory contracts, leases or agreements (other than warranty and similar agreements with the manufacturer or seller of any machinery, equipment, or other Property that is transferred to Buyer); (f) all rights and claims in or to any refunds or credits of or with respect to any taxes paid by Seller in respect of a pre-Closing period; (g) tax records, minute books, stock transfer books and corporate seals of Seller; (h) all claims under any directors and officers liability insurance policies; (i) all assets not otherwise included in the definition of Property; (j) any obligations owing to Seller by any affiliate of Seller; (k) any real property, interest therein, or improvement thereon, whether owned or leased by Seller, (l) any leased equipment or other leased tangible personal property in possession of Seller; (m) any intellectual property that is not owned by Seller, including specifically any interests in licenses with Microchip or CIT Technology Ltd (“**CIT**”) (other than the intellectual property referred to in the last sentence of Section 1.1.2 that is intended to be transferred to Buyer); and (n) accounts receivable.

1.3 Instruments of Transfer. The sale, assignment, transfer, and conveyance of the Property to Buyer shall be made by assignments, bills of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, and assign the Property to Buyer, but in all events only to the extent that the same do not impose any monetary obligations upon Seller or in any other material respect increase the burdens imposed by the other provisions of this Agreement upon Seller.

## 2. Consideration and Liquidated Damages.

### 2.1 Purchase Price.

2.1.1 Subject to the terms of this Agreement the cash consideration to be paid by Buyer to Seller for the Property (the “**Purchase Price**”) shall be One Million Five Hundred Thousand Dollars (\$1,500,000).

2.1.2 The Purchase Price shall be payable as follows:

2.1.2.1 Concurrent with the execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the “**Execution Date**”), Buyer shall (i) deliver a check made payable to McNutt Law Group LLP or (ii) provide evidence that it has initiated a wire transfer of funds to an account specified by Seller, in the amount of Two Hundred Thousand Dollars (\$200,000) (the “**Deposit**”). The Deposit will be held in the client trust fund account of McNutt Law Group LLP, counsel to the Seller (“**MLG**”), provided that, subject to Bankruptcy Court approval, the Deposit may be used up to the Closing Date for the necessary expenses of the Seller. The Deposit shall become nonrefundable upon the termination of the transaction contemplated by this Agreement only by reason of Buyer’s material default hereunder (a “**Buyer Default Termination**”), it being agreed that Seller shall not have the right to so terminate this Agreement unless Buyer has failed to cure the applicable default within five (5) days follows its receipt of written notice thereof from Seller. Buyer shall be entitled to credit against the Deposit any amounts paid to Key Personnel prior to the Execution Date or the Purchase Price if paid after the Execution Date but prior to the Closing. At the Closing, the Deposit shall be credited and applied toward payment of the Purchase Price, and to the extent that the Deposit had not been adjusted by applying the credits permitted by the previous sentence, then, in such event, the Purchase Price shall be reduced to reflect the amounts of the foregoing credits. If the Buyer is not the winning bidder at the auction described in Section 10.4.1.3, and no uncured Buyer Default Termination has occurred, then the Deposit shall promptly be returned to Buyer and other reimbursable amounts contemplated by this Agreement shall be paid to Buyer. If the Closing does not occur by reason of a failure of a condition, Buyer agrees that is only entitled to return of the Deposit less any necessary expenses that have been paid by Seller from the Deposit, provided that payment of those expenses was approved by the Bankruptcy Court, and Buyer agrees that it waives or releases any claim that Buyer might have been able to assert in the Bankruptcy Case relating to the unreturned portion of its Deposit or other expenses Buyer may have advanced. Further, Buyer agrees that, without restriction or limitation, any Claim that Buyer may have or may assert against Seller arising out of or related to the transactions contemplated by this Agreement, shall be subordinate in right and priority of payment to the payment in full of all obligations owed by Seller to Western Alliance Bank (though its Bridge Bank Division) or the Export Import Bank of the United States, arising from or related to that certain Loan and Security Agreement, dated October 18, 2016 (and any amendments thereto).

2.1.2.2 On the Closing Date, Buyer shall deliver a cashier’s check made payable to McNutt Law Group LLP or wire into MLG’s client trust account an amount equal to the Purchase Price minus Buyer’s Deposit.

2.1.2.3 LIQUIDATED DAMAGES. BUYER AND SELLER HEREBY ACKNOWLEDGE THAT, IN THE EVENT OF BUYER’S DEFAULT, IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SELLER MAY SUFFER OR INCUR IN THE EVENT THAT THE TRANSACTION CONTEMPLATED HEREIN FAILS TO CLOSE BY REASON OF SUCH DEFAULT. ACCORDINGLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN BUYER AND SELLER AGREE THAT CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AT THE EXECUTION OF THIS AGREEMENT, A REASONABLE ESTIMATE



OF THE TOTAL DETRIMENT THAT SELLER WOULD SUFFER IN THE EVENT THAT THE TRANSACTION CONTEMPLATED HEREIN FAILS TO CLOSE BY REASON OF BUYER'S DEFAULT IS AND SHALL BE AN AMOUNT EQUAL TO THE AMOUNT OF THE DEPOSIT. EXCEPT AS OTHERWISE PROVIDED IN CLAUSES (ii) AND (iii) BELOW, SAID AMOUNT SHALL REPRESENT THE FULL, AGREED, AND LIQUIDATED DAMAGES TO WHICH SELLER IS ENTITLED BY REASON OF BUYER'S BREACH AND SELLER HEREBY EXPRESSLY WAIVES ANY AND ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES (WHETHER AT LAW OR IN EQUITY). THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANINGS OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT RATHER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, *ET SEQ.* UPON BUYER'S DEFAULT AND SELLER'S ELECTION TO TERMINATE THIS AGREEMENT BY REASON THEREOF, THIS AGREEMENT SHALL TERMINATE AND EXCEPT FOR (i) SELLER'S RIGHT TO COLLECT THE AMOUNT OF SUCH LIQUIDATED DAMAGES, (ii) ANY PROVISIONS AND OBLIGATIONS (INCLUDING WITHOUT LIMITATION, BUYER'S INDEMNITY OBLIGATIONS) OF THIS AGREEMENT WHICH BY THEIR TERMS SURVIVE ANY TERMINATION OF THIS AGREEMENT, AND (iii) THE PARTIES' RESPECTIVE OBLIGATIONS UNDER SECTION 13.1 OF THIS AGREEMENT, THE PARTIES HERETO SHALL BE RELIEVED OF ANY FURTHER LIABILITY OR OBLIGATION UNDER THIS AGREEMENT. BY PLACING THEIR INITIALS IN THE SPACES PROVIDED BELOW, EACH PARTY SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE ACCURACY OF THE STATEMENTS SET FORTH ABOVE AND THAT THEY WERE REPRESENTED BY COUNSEL OF THEIR CHOICE WHO FULLY EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISIONS AT THE TIME OF EXECUTION OF THIS AGREEMENT.

Seller's Initials \_\_\_\_\_

Buyer's Initials \_\_\_\_\_

2.2 No Assumed Liabilities. Except as expressly set forth in this Agreement in Sections 8 and 9 for payment of Administrative Rent and payments to Key Personnel, Buyer will not be assuming or be responsible for any Liabilities of Seller, or its employees, directors, officers, subsidiaries, affiliates, or owners, or as lessee of any premises, whether such Liabilities arose prior to, on, or after the Closing, pursuant to this Agreement.

2.3 Purchase Price Allocation. Buyer and Seller agree to cooperate and agree to an allocation of the Purchase Price among the various assets comprising the Property. Buyer and Seller shall, as may be required, report and file any and all required tax returns consistent with such agreed upon allocation.

### 3. Closing Transactions.

3.1 Closing. The Closing of the transaction provided for herein (the "Closing") shall take place at the place or places as the parties may mutually agree upon.

3.2 Closing Date. The Closing shall be held no later than the third (3rd) business day following the satisfaction or waiver of all conditions precedent to the parties' obligations

hereunder (the “**Closing Date**”). Until this Agreement is either terminated or the parties have agreed upon an extended Closing Date, the parties shall diligently continue to work to satisfy all conditions to Closing and the transaction contemplated herein shall close as soon as such conditions are satisfied or waived.

3.3 Seller’s Deliveries to Buyer at Closing. On the Closing Date, Seller shall make the following deliveries to Buyer:

3.3.1 A bill of sale, duly executed by Seller, in the form and on the terms of the bill of sale attached hereto as Exhibit 3.3.1 pursuant to which Seller transfers the Property, to Buyer or a wholly owned subsidiary of Buyer if requested by Buyer (the “**Bill of Sale**”).

3.3.2 A counterpart assignment of intangible property, duly executed by Seller, in the form and content of the assignment of intangible property attached as Exhibit 3.3.2 hereto, pursuant to which Seller assigns to Buyer its interest, if any, in and to the Intangible Property (the “**Assignment of Intangible Property**”). Although not specifically as a condition to Closing, Seller shall execute such other additional specific assignments of its intellectual property to be filed with the United States Patent and Trademark Office, or foreign offices with similar responsibilities, as Buyer may reasonably request as part of Seller’s obligations under Section 13.8.

3.3.3 Certified copies of the Sale Orders, and if separately entered, a certified copy of the order approving the Procedures, as defined in Section 10.4.1.3.

3.3.4 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Seller to Buyer at the Closing.

3.4 Buyer’s Deliveries to Seller at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Seller:

3.4.1 The Purchase Price.

3.4.2 A counterpart of the Assignment of Intangible Property, duly executed by Buyer.

3.4.3 Any such other documents, funds or other things reasonably contemplated by this Agreement to be delivered by Buyer to Seller at the Closing.

3.5 Transfer Taxes. All Transfer Taxes payable by reason of the purchase and sale of the Property under this Agreement or the transactions contemplated herein shall be borne and timely paid by Buyer. In addition, except as provided in Section 13.11 hereof, Seller shall pay all costs, fees or expenses required with respect to the recording or consummation of transfers of the Property pursuant to this Agreement, including, without limitation, any Transfer Taxes or other costs associated with such transfers. Seller shall file all necessary documentation and returns with respect to such taxes and other amounts.

3.6 Transfer of Possession and Removal of Property. Right to possession of the Property shall transfer to Buyer on the Closing Date. After that date, Buyer will be responsible for Disassembly and Removal of the Property as described in Section 11 below. Buyer shall be responsible for the Administrative Rent payments referred to, and governed by, the Administrative Rent Agreement, but no other costs, expenses or Liabilities of any nature or kind associated with, or related to, the Colorado Facility or Seller's occupation thereof.

4. Conditions Precedent to Closing.

4.1 Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing and otherwise to close the transaction contemplated hereby, shall be subject to the satisfaction or waiver by Seller of each of the following conditions on or prior to the Closing Date:

4.1.1 Buyer shall have performed and complied with, in all material respects, each and every covenant or other obligation required to be performed by it prior to the Closing.

4.1.2 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

4.1.3 Buyer shall have delivered the Purchase Price payable in cash to Seller at the Closing and all other cash and other documents required of Buyer to be paid, delivered or funded by Buyer at the Closing.

4.1.4 Buyer shall have delivered to Seller appropriate evidence of all necessary corporate action by Buyer in connection with the transactions contemplated hereby.

4.1.5 Seller shall have received or obtained, in addition to the Sale Order, all consents and approvals that may be legally required in connection with the consummation of the transactions contemplated herein.

4.1.6 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.1.7 The Bankruptcy Court shall have entered the Sale Order in accordance with Section 10.4.1.1 below, and the Sale Order shall not have been stayed as of the Closing Date and shall be in form and substance reasonably satisfactory to Seller.

4.1.8 There shall be no injunction or court order restraining consummation of any of the transactions contemplated by this Agreement and there shall not have been adopted any law or regulation making all or any portion of such transactions illegal.

4.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing, and otherwise to close the transaction contemplated hereby, shall be subject to the satisfaction or waiver by Buyer of each of the following conditions on or prior to the Closing Date:

4.2.1 Seller shall have performed and complied with, in all material respects, each and every covenant or other obligation required to be performed by it prior to the Closing.

4.2.2 All representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.3 The Sale Order shall be in form and substance reasonably satisfactory to the Buyer with respect to the subject matter hereof.

4.2.4 Seller shall have delivered, or shall be prepared to deliver at the Closing, all other documents, if any, required of Seller to be delivered at the Closing.

4.2.5 No action, suit or other proceedings shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.6 There shall be no injunction or court order restraining consummation of any of the transactions contemplated by this Agreement and there shall not have been adopted any law or regulation making all or any portion of such transactions illegal.

4.2.7 The Bankruptcy Court shall have entered the Sale Order in accordance with Section 10.4.1.1 below, and the Sale Order shall not have been stayed as of the Closing Date or be the subject of an appeal or motion for rehearing or new trial, provided however, that Buyer, in its sole and absolute discretion, may elect to proceed with the Closing even if an appeal from or motion for rehearing or new trial on the Sale Order is pending.

4.2.8 The Administrative Rent Agreement, as defined in Section 12 below, with Microchip Technology Incorporated ("**Microchip**") shall have been approved by the Bankruptcy Court in a form reasonably acceptable to Buyer.

4.2.9 Buyer expressly acknowledges that Closing is **NOT** conditioned on obtaining an agreement regarding the intellectual property and patents licensed to Seller by each Microchip and CIT, and that Buyer is responsible for negotiating such agreements independent of this Agreement.

### 4.3 Termination.

4.3.1 Termination by Reason of Failure of Conditions. If any of the above conditions is neither satisfied nor waived on or before the date by which the condition is required to be satisfied, a party who is not then in default hereunder may terminate this Agreement by delivering to the other written notice of termination in the manner required by this Agreement. Any waiver of a condition shall be effective only if such waiver is stated in writing and signed by the waiving party; provided, however, that the consent of a party to the Closing shall constitute a waiver by such party of any conditions to Closing not satisfied as of the Closing Date.

4.3.2 Termination for Other Reasons. This Agreement may also be terminated prior to Closing in accordance with the following provisions:

4.3.2.1 by mutual written consent of Buyer and Seller;

4.3.2.2 by the party not in breach in the event of a material breach of this Agreement by the other party that is not cured within ten (10) days after the receipt by breaching party of written notice of such material breach;

4.3.2.3 by Buyer (or Seller, as to clause (i) of this Section 4.3.2.3):

(i) if (A) the Sale Hearing shall not have been held and the Sale Order, in form and substance reasonably satisfactory to Buyer or Seller, as the case may be, shall not have been signed on or prior to October 31, 2017, which date may be extended if the Bankruptcy Court does not have available dates for a hearing on the Sale Motion, provided that the date shall not be extended more than necessary to accommodate the Bankruptcy Court's available hearing dates, or (B) after such entry, the Sale Order shall not have, within fourteen (14) days after its entry, become final, non-appealable and no longer subject to appeal, reconsideration or stay;

(ii) except as otherwise contemplated by the provisions of this Agreement, if any material portion (as determined by Buyer in the exercise of its reasonable discretion) of any of the Property is not transferable by Seller at the Closing, as contemplated by this Agreement;

(iii) if the Case is converted to a case under chapter 7 of the Bankruptcy Code, a trustee is appointed in the Case or the Case is dismissed.

4.3.3 Effect of Termination. Any termination of this Agreement pursuant to Section 4.3 shall be effected by written notice from the terminating party to the other party, which notice shall specify the basis for the termination. In the event of termination of this Agreement as provided in Section 4.3, this Agreement shall forthwith become null and void and of no further force and effect, except that, such termination shall not terminate the Liability of any party for any breach or default that exists at the time of such termination.

5. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which shall lapse and be of no further force or effect whatsoever upon the Closing.

5.1 Validity of Agreement. This Agreement has been duly executed and delivered by Seller, and, upon entry of the Sale Order, will constitute the valid and binding obligation of Seller enforceable against it in accordance with the terms set forth herein, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory, or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principals (regardless of whether considered in a proceeding at law or in equity).

5.2 Organization, Standing and Power. Uni-Pixel is a corporation duly organized and validly existing under the laws of the State of Delaware. Displays is a corporation duly organized and validly existing under the laws of the State of Texas. Subject to the applicable provisions of bankruptcy law, Uni-Pixel and Displays have all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

5.3 Authorization of Seller, Related Matters. Upon obtaining the Sale Order, the execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller do not and will not: (i) conflict with or result in a breach of the articles of incorporation or the by-laws of Seller; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority binding Seller; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Seller is a party or by which Seller or its assets or properties may be bound, or which is reasonably likely to prevent consummation of the transactions contemplated in this Agreement. There is no action, suit, proceeding, judgment, or decree that would impair or have a materially adverse effect on Buyer's right or ability to own, use, commercialize, or otherwise exploit the Property following the Closing. To the Seller's Knowledge, except for approval of the Bankruptcy Court, Seller does not require any other consent or approval to consummate the transaction contemplated by this Agreement. To Seller's Knowledge, there are no environmental violations or unresolved environmental matters at the Colorado Facility.

5.4 Title. Subject to Section 7 below, at the Closing, Buyer will receive good and marketable title to the Property, free and clear of all Liens (including the Liens of Bridge Bank) to the extent permitted under Section 363 of the Bankruptcy Code and subject to the entry of the Sale Order. The machinery and other manufacturing equipment being transferred to Buyer hereunder were functional and in good working order and condition, ordinary wear and tear expected, on the Petition Date. No Property has been excluded by Seller from this Agreement that, to Seller's Knowledge, is reasonably necessary to conduct the Business after the Closing in a manner generally consistent with the conduct of the Business by Seller prior to the Petition Date, except, and as specifically acknowledged Buyer, for the intellectual property rights, including patents, licensed to Seller by each of CIT and Microchip and any leased equipment.

6. Buyer's Warranties and Representations. In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Seller:

6.1 Validity of Agreement. All action on the part of Buyer necessary for the authorization, execution, delivery and performance of this Agreement by Buyer, including, but not limited to, the performance of Buyer's obligations hereunder, has been taken. This Agreement, when executed and delivered by Buyer, shall constitute the valid and binding obligation of Buyer enforceable in accordance with its terms.

6.2 Organization, Standing and Power. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of California. Buyer has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

6.3 Authorization of Buyer. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the by-laws or certificate of incorporation of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

7. "AS IS" Transaction. Buyer hereby acknowledges and agrees that, except only as provided in Section 5 above, Seller makes no representations or warranties whatsoever, whether express or implied, with respect to any matter relating to the Property. Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Property and all such other matters relating to or affecting the Property as Buyer deemed necessary or appropriate and that in proceeding with its acquisition of the Property, Buyer is doing so based solely upon such independent inspections and investigations. Accordingly, Buyer will accept the Property at the Closing **"AS IS," "WHERE IS,"** and **"WITH ALL FAULTS,"** provided that the Sale Order will expressly indicate that the sale of the Property is free and clear of all Liens.

8. Responsibility for Administrative Rent. Buyer shall be responsible for payment of Administrative Rent, as defined in Section 12 below, relating to the Colorado Facility from the September 1, 2017 through the removal of the Property and surrender of the Colorado Facility to the Landlord. Buyer shall pay Administrative Rent to Seller for delivery to the Landlord, as contemplated and governed by the Administrative Rent Agreement. In the event that there is an Auction pursuant to Section 10.4.1 and Buyer is not the winning bidder, such winning bidder will agree, concurrent with the termination of this Agreement, to reimburse Buyer for the amounts actually paid to Landlord as Administrative Rent, and such amount is

separate from and in addition to the Purchase Price. Buyer shall not be responsible for or liable for any expenses or rent to any other landlord of Seller.

9. Responsibility for Key Personnel Assisting the Seller. Buyer shall be responsible for engaging former Uni-Pixel personnel to assist with the Disassembly and Removal of the Property (the “**Key Personnel**”). To the extent that Buyer has actually paid expenses for the personnel prior to the Execution Date, such amounts will be credited toward the Deposit, or if Buyer pays those expenses after the Execution Date but prior to the Closing Date, those expenses shall be credited against the Purchase Price. In the event that there is an Auction and Buyer is not the winning bidder, Buyer shall be entitled to reimbursement by Seller or the winning bidder, concurrent with the termination of this Agreement, for the amounts actually paid by Buyer to any Key Personnel. Buyer agrees that the total amount to be paid to Key Personnel will not exceed the amount of the Deposit. Any party wishing to participate in the auction will be required to deliver the full amount of the Deposit in order to qualify as a Qualified Bidder (as defined in Section 10.4.1.3).

10. Conduct and Transaction Prior to Closing.

10.1 Access. Prior to the Closing and during the Removal Period, Seller shall permit (or otherwise obtain permission from any applicable third party landlord or lessor, which permission shall be set forth in the Administrative Rent Agreement) Buyer and its respective affiliates, officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives to have reasonable access, to the extent related to the Property, books, employees, and records of Seller, and Seller will furnish such additional information relating to the Property as Buyer may reasonably request. Buyer acknowledges that its access to the Colorado Facility is not exclusive, and nothing herein shall be interpreted to prohibit or otherwise limit Seller from providing access to other parties interested in participating in the Auction described in Section 10.4.1 below.

10.2 Cooperation Toward Closing. From the Execution Date until the Closing Date, subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective the transactions contemplated by this Agreement, including using commercially reasonable efforts to ensure timely satisfaction of the conditions precedent to such party’s obligations hereunder. Except as required by applicable law, Seller covenants and agrees on behalf of itself and its representatives, that it will not, directly or indirectly, solicit, induce, recruit, encourage or in any manner attempt to influence any third parties to participate in the Auction; provided, however, that nothing herein shall limit the ability of the Seller to respond to, or provide information in connection with, any inquiry relating to the Property or to fulfill any fiduciary duty or other obligations applicable to Seller under the Bankruptcy Code or other applicable law.

10.3 Consents. On or prior to the Closing Date, Seller shall use commercially reasonable efforts, and Buyer shall reasonably cooperate with Seller, to obtain at the earliest practical date all material consents, waivers and approvals required to consummate the transactions contemplated by this Agreement.



## 10.4 Bankruptcy Court Approvals.

### 10.4.1 Bankruptcy Court Approval of Sale Procedures.

10.4.1.1 Within three (3) business days of the Execution Date, Seller will file its motion (the **“Sale Motion”**) for an order (the **“Sale Order”**) from the Bankruptcy Court, which Sale Order shall be in form and substance reasonably satisfactory to Buyer and Seller and shall (i) approve the sale of the Property to Buyer on the terms and conditions set forth in this Agreement (including the provisions contemplated by the Administrative Rent Agreement) and authorizes the Seller to proceed with this transaction, (ii) include a specific finding that Buyer is a good faith purchaser of the Property under Section 363(m) of the Bankruptcy Code, and (iii) state that the sale of the Property to Buyer shall be free and clear of all Liens, to the extent permitted by Section 363 of the Bankruptcy Code.

10.4.1.2 Following the filing of the Sale Motion, the Seller shall use all commercially reasonable efforts to obtain the Sale Order and to have the Sale Order entered by the Bankruptcy Court no later than October 31, 2017, provided that this date may be extended to the extent required to accommodate the Bankruptcy Court’s available hearing dates. Both Buyer’s and Seller’s obligations to consummate the transactions contemplated in this Agreement shall be conditioned upon the Bankruptcy Court’s entry of the Sale Order.

10.4.1.3 The Sale Motion will describe the procedures for qualifying to participate in the Auction, the procedures for conducting the Auction, including entitlement to a break-up fee (collectively, the **“Procedures”**). The Procedures will include at minimum the following terms: (i) only **“Qualified Bidders”** will be permitted to participate in an auction; (ii) to be qualified as a **“Qualified Bidder”** the bidder must deliver a \$200,000 deposit, provide proof of ability to close a transaction; sign an agreement in the same form and on the same terms and conditions, including the same assets and exclusions thereto, as this Agreement, with an additional provision requiring such other bidder to agree to promptly reimburse Buyer any amounts actually paid to the Landlord; (iii) the minimum initial overbid will be \$1,775,000 (plus bidder’s agreement to make the additional payments referred to in clauses (ii) and (v) of this Section 10.4.1.3); and (iv) minimum bid increments of \$25,000 thereafter; and (v) if Buyer is not the winning bidder at the Auction, Buyer shall be entitled to a break-up fee in the amount of \$75,000 (the **“Break-Up Fee”**) and a return of the Deposit.

10.4.1.4 The Auction shall take place in the Bankruptcy Court and will be conducted on the day and at the time of the hearing regarding the Sale Motion.

10.4.1.5 Seller shall provide notice of the Sale Motion to all taxing authorities in accordance with Section 1146(c) of the Bankruptcy Code, to all other parties having Liens in the Property, and on such other Persons as the Buyer may reasonably request.

## 11. Disassembly and Removal of the Property.

11.1 Buyer and Seller contemplate that Buyer shall commence the disassembly, packing, crating and removal (including any necessary decontamination or other prep work) of the Assets from the Premises (**“Disassembly and Removal”**) no later than the Closing Date and shall complete the same as expeditiously as practicable, but in no event later than January 31,

2018. The period beginning on the Closing Date and ending on the date the Disassembly and Removal is completed is defined as the **“Removal Period.”** Buyer shall be responsible for the Administrative Rent payments referred to, and governed by, the Administrative Rent Agreement, but no other costs, expenses, or Liabilities of any nature or kind associated with, or related to, the Colorado Facility or Seller’s occupation thereof.

11.2 From the Closing Date until the end of the Removal Period, Seller and Buyer agree to use commercially reasonable efforts to take, or cause to be taken, all actions reasonably necessary, proper and advisable to facilitate the Disassembly and Removal in a prompt and efficient manner. Seller shall afford (or shall obtain any necessary landlord permission to ensure the same, which permission shall be set forth in the Administrative Rent Agreement) Buyer, Buyer’s vendors or contractors and any other third parties retained by Buyer in connection with the Disassembly and Removal and their respective employees, subject to applicable, reasonable access to, use of and the right to enter the Premises to complete the Disassembly and Removal, and to bring on the Colorado Facility and operate such equipment, tools, vehicles and other devices as may be reasonably necessary to efficiently engage in and complete the Disassembly and Removal. At Buyer’s request, Seller shall also provide input to Buyer on individuals or companies, including Seller’s former employees and contractors, who may be helpful in connection with the Disassembly and Removal.

11.3 Buyer will promptly after the Closing Date enter into an agreement to effectuate the Disassembly and Removal with removal vendors it will designate (collectively, the **“Removal Vendor”**), at Buyer’s sole discretion.

11.4 Buyer shall effectuate the Disassembly and Removal in compliance with all applicable Laws.

11.5 Buyer shall effectuate the Disassembly and Removal using qualified workers and contractors, and all work performed on or about the Premises in connection with the Disassembly and Removal shall be performed in a workmanlike manner, consistent with good industrial practice.

11.6 Buyer shall be solely responsible for the costs of Disassembly and Removal, including for any claims by Landlord for damage to the Colorado Facility caused by the Disassembly and Removal to the extent not covered by insurance of the Removal Vendor.

11.7 Seller shall cooperate, assist and coordinate with Buyer with the Removal and Disassembly and will ensure that no Property is removed from the Colorado Facility without the express written consent of Buyer and that the Colorado Facility will be preserved and maintained in the same condition as on the Execution Date.

11.8 Seller has in place (i) risk property insurance on a replacement value basis for direct physical loss of or damage to the Colorado Facility and (ii) comprehensive general liability insurance and Seller shall maintain such policies.

12. Definitions. For purposes of this Agreement, the following terms have the meanings set forth below:

“Acquired Inventory” has the meaning given to such term in Section 1.1.3 of this Agreement.

“Administrative Rent” means an amount equal to (x) \$80,000 per month, beginning on September 1, 2017, payable to Seller, within ten days after the commencement of each month (except that the initial payment for the month of September 2017 shall be made to Seller within ten days after the Sale Motion has been filed with the Bankruptcy Court) for delivery to Microchip, as the landlord of the Colorado Facility, relating to Seller’s possession and occupancy of the Colorado Facility, covering rent and all operating and other expenses in respect thereof; provided that the amount due under this clause (x) will be paid for not less than three (3) months and will be paid through the time that the Colorado Facility is turned over to the landlord, which shall occur no later than January 31, 2018, and (y) \$50,000 as a one-time payment in connection with the removal and disposal by Seller or Microchip, unless otherwise agreed, of all environmental and hazardous waste materials located at the Colorado Facility, which payment shall be due within five business days after Closing and shall be the sole and exclusive payment by Buyer made in respect of the subject matter covered by this clause (y).

“Administrative Rent Agreement” means an agreement covering the period from September 1, 2017 and ending on January 31, 2018, approved by the Bankruptcy Court, pursuant to which: (A) Microchip agrees, as landlord of the Colorado Facility, (i) to accept the agreed upon Administrative Rent, for the time period until possession of the Colorado Facility is returned to Microchip (subject to the minimum rent payment referred to in clause (x) of the definition of Administrative Rent), in full and complete satisfaction of any and all obligations of Seller relating to possession or occupancy of the Colorado Facility, (ii) to accept payment of \$50,000 in full and complete satisfaction of the Seller in connection with the removal and disposal of all hazardous waste materials stored in, or otherwise associated with the Colorado Facility, (iii) to provide access to the Colorado Facility during the Removal Period to Seller and Buyer (and their respective vendors and contractors) in a manner consistent with the access available to Seller immediately prior to the Petition Date, (iv) to cooperate with Seller in the removal of all machinery and equipment from the Colorado Facility, and (v) to acknowledge and confirm that Buyer is not assuming, or in any way becoming responsible for, Seller’s lease with Microchip and that Buyer is not a tenant, lessee, or occupier of the Colorado Facility for any purposes and that, except for the agreed upon Administrative Rent, Buyer has no Liability to Microchip in respect to the Colorado Facility for any reason, whether for Seller’s unpaid rent, utilities, environmental matters or anything else; (B) Buyer agrees to pay the Administrative Rent to Seller; and (C) Seller Agrees to forward such amounts to Microchip in a timely manner.

“Auction” means the auction to be conducted at the hearing on the Sale Motion if there are any Qualified Bidders as described in Section 10.4.1.3 above.

“Bankruptcy Code” means title 11 of the U.S. Code.

“Business” has the meaning given to such term in Recital A of this Agreement.

“Buyer” has the meaning given to such term in the preamble to this Agreement.

“Case” shall mean, collectively, the bankruptcy cases for Uni-Pixel (Case No. 17-25100) and Displays (Case No. 17-25101) pending in the Bankruptcy Court.

“Claim” means any claim against the Debtors or any of them within the meaning of Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning given to such term in Section 3.1 of this Agreement.

“Closing Date” has the meaning given to such term in Section 3.2 of this Agreement.

“Colorado Facility” means Sellers’ facility located at Buildings 2 and 4, 1150 E. Cheyenne Mountain Blvd., Colorado Springs, Colorado 80906.

“Debtor” means the Seller in the capacity as debtors and debtors-in-possession under the Bankruptcy Code.

“Estate” means each estate created pursuant to Section 541(a) of the Bankruptcy Code upon the commencement of each of the Debtors’ bankruptcy cases.

“Holder” means the beneficial owners of any Claim or Interest, which, in the case of an investment company, shall be the investment company and not its shareholders, and which in the case of an insurance company, shall be the insurance company and not its insureds.

“Intangible Property” shall have the meaning given to such term in Section 1.1.1 of this Agreement.

“Interest” means an equity security of any Debtor within the meaning of Section 101(16) of the Bankruptcy Code, including without limitation the rights evidenced by the Existing Securities, and also includes within its meaning Claims allowed by the Bankruptcy Court arising from the rescission of a purchase or sale of such equity security, for damages arising from the purchase or sale of such security, or for reimbursement or contribution on account of such claim.

“Knowledge” means, with respect to Seller, the actual knowledge of Jeff Hawthorne or Christine Russell, without having performed any investigation.

“Liability” means any Claim, debt, liability or obligation of any kind whatsoever, whether arising under contract or applicable law or in connection with a business, and whether conditioned or absolute, liquidated or unliquidated, contingent or non-contingent, or known or unknown.

“Liens” means any liens, Claims, charges, adverse interests, security interests, rights of first refusal, charge, pledges, hypothecations, covenants, restrictions of any kind or character, or encumbrances, whether, known or unknown.

“Liquid Assets and Financial Instruments” means the following assets of Seller (a) cash, (b) cash equivalents, (c) securities (whether capital stock or debt) of or held by Seller; and (d)

retainers paid by Seller for legal, accounting or other professional services.; and (e) any letters of credit or similar financial accommodations issued to any third party(ies) for the account of Seller.

“Person” means an individual, partnership, corporation, limited liability company, limited liability partnership, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, governmental unit or other entity of whatever nature.

“Personal Property” shall have the meaning given to such term in Section 1.1.2 of this Agreement.

“Petition Date” means August 30, 2017, the date on which each Debtor filed its petition for relief under chapter 11 of the Bankruptcy Code.

“Property” shall have the meaning given to such term in Section 1.1 of this Agreement.

“Purchase Price” has the meaning given to such term in Section 2.1 of this Agreement.

“Rights of Action” means any and all claims, demands, rights, defenses, actions, causes of action, suits, contracts, agreements, obligations, accounts, defenses, offsets, powers and privileges of any kind or character whatsoever, known or unknown, suspected or unsuspected, whether arising prior to, on or after the Petition Date, in contract or in tort, at law or in equity, or under any other theory of law, held by any of the Debtors against any Person, including but not limited to: (i) rights of setoff, counterclaim, or recoupment, and claims on contracts or for breaches of duties imposed by law; (ii) the right to object to Claims, pursuant to Bankruptcy Code § 362; (iii) such claims and defenses as fraud, mistake, duress and usury and (iv) all avoidance powers, actions, rights, remedies or affirmative defenses under Bankruptcy Code §§ 544-553 and 724, under any similar or related law, or under fraudulent transfer or preference laws.

“Sale Hearing” means the hearing(s) conducted by the Bankruptcy Court in response to the Sale Motion.

“Sale Motion” has the meaning given to such term in Section 10.4.1.

“Sale Order” has the meaning given to such term in Section 10.4.1.

“Seller” shall have the meaning set forth in the preamble to this Agreement.

“Tax” and “Taxes” means all taxes, charges, fees, levies or other assessments imposed by any federal, state, local or foreign taxing authority, whether disputed or not, including, without limitation, income, capital, estimated, excise, property, sales, transfer, withholding, employment, payroll, and franchise taxes and such terms shall include any interest, penalties or additions attributable to or imposed on or with respect to such assessments.

“Tax Return” means any return, report, information return, or other document (including any related or supporting information) filed or required to be filed with any federal, state, local, or foreign governmental entity or other authority in connection with the determination,

assessment or collection of any Tax (whether or not such Tax is imposed on Seller) or the administration of any laws, regulations or administrative requirements relating to any Tax.

“Transfer Tax” means any sales, purchase, transfer, stamp, stamp duty, documentary stamp, use, value added, or similar Tax under applicable state laws which may be payable by reason of the purchase and sale of assets.

13. Miscellaneous.

13.1 Attorneys’ Fees. In the event that either party hereto brings an action or other proceeding to enforce or interpret the terms and provisions of this Agreement, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys’ fees through all levels of appeal) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

13.2 Notices. Unless otherwise provided herein, any notice, tender, or delivery to be given hereunder by either party to the other may be effected by personal delivery in writing, or by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed communicated as of the date of receipt. Mailed notices shall be addressed as set forth below, but each party may change his address by written notice in accordance with this paragraph.

To Seller:

Uni-Pixel, Inc.  
Attn: Jeff Hawthorne  
4699 Old Ironside Drive, Suite 300  
Santa Clara, CA 95054

-and-

Uni-Pixel Displays, Inc.  
Attn: Jeff Hawthorne  
4699 Old Ironside Drive, Suite 300  
Santa Clara, CA 95054

*With a copy (which shall not constitute notice) to:*  
McNutt Law Group LLP  
Attn: Michael C. Abel, Esq.  
219 9th Street  
San Francisco, CA 94103

To Buyer: Future Tech Capital, LLC  
Attn: Caixing Xie  
940 Industrial Avenue  
Palo Alto, California 94303

*With a copy (which shall not constitute notice) to person(s) designated, in writing, by Buyer to Seller prior to Closing.*

13.3 Entire Agreement. This instrument and the documents to be executed pursuant hereto contain the entire agreement between the parties relating to the sale of the Property. Any oral representations or modifications concerning this Agreement or any such other document shall be of no force and effect excepting a subsequent modification in writing, signed by the party to be charged.

13.4 Modification. This Agreement may be modified, amended or supplemented only by a written instrument duly executed by all the parties hereto and, where required, the Bankruptcy Court.

13.5 Closing Date. All actions to be taken on the Closing pursuant to this Agreement shall be deemed to have occurred simultaneously, and no act, document or transaction shall be deemed to have been taken, delivered or effected until all such actions, documents and transactions have been taken, delivered or effected.

13.6 Severability. Should any term, provision or paragraph of this Agreement be determined to be illegal or void or of no force and effect, the balance of the Agreement shall survive except that, if Buyer cannot acquire and Seller cannot sell substantially all of the Property, either party may terminate this Agreement, and it shall be of no further force and effect, unless both parties agree in writing to the contrary.

13.7 Captions. All captions and headings contained in this Agreement are for convenience of reference only and shall not be construed to limit or extend the terms or conditions of this Agreement.

13.8 Further Assurances. Each party hereto will execute, acknowledge and deliver any further assurance, documents and instruments reasonably requested by any other party hereto for the purpose of giving effect to the transactions contemplated herein or the intentions of the parties with respect thereto, including additional specific assignments of its intellectual property to be filed with the United States Patent and Trademark Office, or foreign offices with similar responsibilities, as Buyer may reasonably request.

13.9 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

13.10 Brokerage Obligations. Seller and the Buyer each represent and warrant to the other that, such party has incurred no Liability to any real estate broker or agent with respect to the payment of any commission regarding the consummation of the transaction contemplated hereby.

13.11 Payment of Fees and Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement shall be responsible for, and shall pay, all of its own fees and expenses, including those of its counsel, incurred in the negotiation, preparation and consummation of the Agreement and the transaction described herein.

13.12 Survival. Except for any covenants which, by their terms, survive the Closing, the respective representations, warranties, covenants and agreements of Seller and Buyer herein shall be deemed waived and shall lapse and be of no further force or effect after the Closing.

13.13 Assignments. This Agreement shall not be assigned by either party hereto without the prior written consent of the other party hereto; provided, that Buyer shall be permitted to assign its right to purchase all or any portion of the Property to any one or more affiliates of Buyer and provided further that any such assignment(s) shall in no way release or relieve Buyer from any Liability under this Agreement.

13.14 Third Party Beneficiaries; No Successor Liability. Buyer and Seller intend that this Agreement and those transactional documents contemplated by this Agreement shall not benefit or create any right or cause of action in any Person other than the parties hereto. The parties intend that Buyer shall not be deemed to: (i) be the successor of Seller, (ii) have, de facto, or otherwise, merged with or into Seller, (iii) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller, or (iv) be liable for any acts or omissions of Seller in the conduct of the Business or arising under or related to the Property or as a lessee of any premises that Seller may have used or occupied during the conduct of its Business.

13.15 Binding Effect. Subject to the provisions of Section 13.13 above, this Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties hereto.

13.16 Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of State of California, without giving effect to the conflict of laws provisions thereof.

13.17 Good Faith. All parties hereto agree to do all acts and execute all documents required to carry out the terms of this Agreement and to act in good faith with respect to the terms and conditions contained herein before and after Closing.

13.18 Construction. In the interpretation and construction of this Agreement, the parties acknowledge that the terms hereof reflect extensive negotiations between the parties and that this Agreement shall not be deemed, for the purpose of construction and interpretation, drafted by either party hereto.



13.19 Counterparts. This Agreement may be signed in counterparts. The parties further agree that this Agreement may be executed by the exchange of facsimile, or other electronic format, including Adobe .pdf format, signature pages provided that by doing so the parties agree to undertake to provide original signatures as soon thereafter as reasonable in the circumstances.

13.20 Time is of the Essence. Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

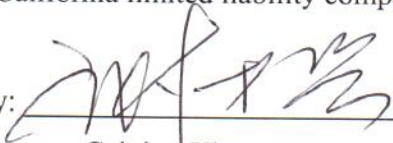
13.21 Bankruptcy Court Jurisdiction. **BUYER AND SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT HERETO; AND/OR (ii) THE PROPERTY AND/OR ASSUMED LIABILITIES, AND BUYER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION.**

13.22 Liability of Certain Officer(s) of the Seller. Buyer hereby acknowledges that the officer(s) signing this Agreement on behalf of the Seller will not have any Liability by reason of the breach of any term, provision or representation set forth in this Agreement, with the Buyer's recourse, if any, under such circumstances being limited to the assets of Seller's bankruptcy estate.

*[SIGNATURE PAGE FOLLOWS]*

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Asset Purchase Agreement as of the day and year first above written.

**BUYER:** Future Tech Capital, LLC  
a California limited liability company

By:   
Name: Caixing Xie  
Its: President

**SELLER:** Uni-Pixel, Inc.  
a Delaware corporation

By: \_\_\_\_\_  
Name: Jeff Hawthorne  
Its: Principal Executive Officer

Uni-Pixel Displays, Inc.  
a Texas corporation

By: \_\_\_\_\_  
Name: Jeff Hawthorne  
Its: Principal Executive Officer

**IN WITNESS WHEREOF**, Buyer and Seller have executed this Asset Purchase Agreement as of the day and year first above written.

BUYER: Future Tech Capital, LLC  
a California limited liability company

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

Name: Caixing Xie

Its: President

SELLER: Uni-Pixel, Inc.  
a Delaware corporation

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

Name: Jeff Hawthorne

Its: Principal Executive Officer

Uni-Pixel Displays, Inc.  
a Texas corporation

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

Name: Jeff Hawthorne

Its: Principal Executive Officer

## Schedules and Exhibits

Intangible Property, incl. Intellectual Property	Exhibit 1.1.1	TO BE ATTACHED
Tangible Personal Property	Exhibit 1.1.2	TO BE ATTACHED
Inventory, Supplies, and Other Materials	Exhibit 1.1.3	TO BE ATTACHED
Bill of Sale	Exhibit 3.3.1	ATTACHED
Assignment of Intangible Property	Exhibit 3.3.2	ATTACHED

{00066186-1 }

## Exhibit "3.3.1"

### BILL OF SALE

Pursuant to Section 3.3.2 of that certain Asset Purchase Agreement dated as of September 26, 2017 (the "Agreement"), by and between Future Tech Capital, LLC, a California limited liability company, on the one hand, and Uni-Pixel, Inc. ("Uni-Pixel"), a Delaware Corporation and debtor and debtor-in-possession under Case No. 17-52100 in the United States Bankruptcy Court for the Northern District of California – San Jose Division (the "Bankruptcy Court") and Uni-Pixel Displays, Inc., a Texas Corporation and debtor and debtor-in-possession under Case No. 17-52101 in the Bankruptcy Court ("Displays," and together with Uni-Pixel as debtors-in-possession, collectively, the "Seller") on the other hand, and for good and valuable consideration, the receipt and sufficiency of which Seller hereby expressly acknowledges, Seller hereby sells, transfers, assigns and delivers all of its right, title and interest in and to the Property, including without limitation, the (i) Intangible Property, (ii) Tangible Personal Property, and (iii) Acquired Inventory, free and clear of all Liens to the extent permitted by the Bankruptcy Code.

Except for terms specifically defined in this Bill of Sale, all capitalized terms used in herein shall have the same meanings as such terms have in the Agreement.

Notwithstanding anything to the contrary herein, Seller is executing and delivering this Bill of Sale in accordance with and subject to all of the terms and provisions of the Agreement (including, without limitation, the exclusions set forth in Section 1.2 of the Agreement, and the acknowledgement and disclaimer set forth in Section 7 of the Agreement). Seller covenants that, from time to time after delivery of this Bill of Sale, at Buyer's request and expense, and without further consideration, Seller will execute and deliver such instruments of conveyance and transfer and take such other actions as Buyer may reasonably request in order to more effectively sell, transfer, assign, deliver and vest in Buyer title to and possession of the Property, and any and all other rights and interests pertaining thereto.

This Bill of Sale will inure to the benefit of Buyer, its successors, assigns, grantees, administrators, receivers and trustees, and will be binding upon Seller, its estate, creditors, direct and indirect equity holders, all parties-in-interest, affiliates, successors, assigns, grantees, any affected third parties, administrators, receivers and trustees, including, without limitation, any trustee or successor trustee appointed or elected in the Bankruptcy Case.

This Bill of Sale shall be governed by and construed and enforced in accordance with the laws of California.

*[SIGNATURES FOLLOW]*

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IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed as of the  
[ ] day of [ ], 2017.

Uni-Pixel, Inc.  
a Delaware corporation

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

Name: Jeff Hawthorne

Its: Principal Executive Officer

Uni-Pixel Displays, Inc.  
a Texas corporation

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

Name: Jeff Hawthorne

Its: Principal Executive Officer

{00066186-1 }

## Exhibit "3.3.2"

### ASSIGNMENT OF INTANGIBLE PROPERTY

Uni-Pixel, Inc. ("Uni-Pixel"), a Delaware Corporation and debtor and debtor-in-possession under Case No. 17-52100 in the United States Bankruptcy Court for the Northern District of California – San Jose Division (the "Bankruptcy Court") and Uni-Pixel Displays, Inc., a Texas Corporation and debtor and debtor-in-possession under Case No. 17-52101 in the Bankruptcy Court ("Displays," and together with Uni-Pixel as debtors-in-possession, collectively, the "Assignor") is executing this Assignment of Intangible Property (the "Assignment") in favor of Future Tech Capital, LLC, a California limited liability company (or any wholly owned subsidiary of Buyer, the "Assignee"), with respect to the following facts and circumstances:

(A) Assignor and Assignee have heretofore entered into that certain Asset Purchase Agreement dated September 26, 2017 (the "Agreement"), by and between Assignor and Assignee. Except for terms specifically defined in this Assignment, the capitalized terms used in this Assignment shall have the same meanings as such terms when used in the Agreement.

(B) Concurrently with the execution and delivery of this Assignment, Assignor and Assignee are consummating the transactions contemplated by the Agreement. Pursuant to Sections 3.3.2 and 3.4.2 of the Agreement, Assignor and Assignee are required to mutually execute and deliver this Assignment at the Closing.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which Assignor hereby expressly acknowledges, to the extent of its respective interests therein, each entity comprising Assignor hereby assigns, conveys, transfers and sets over unto Assignee, all of Assignor's right, title and interest, if any, in and to all Intangible Property, including, but not limited to, its right, title and interest, if any, in and to the Intangible Property identified on Schedule 1 attached hereto and incorporated herein by this reference. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of Assignor and Assignee.

Notwithstanding anything to the contrary herein, Assignor is executing and delivering this Assignment in accordance with and subject to all of the terms and provisions of the Agreement (including, without limitation, the exclusions set forth in Section 1.2 of the Agreement, and the acknowledgement and disclaimer set forth in Section 7 of the Agreement). Seller covenants that, from time to time after delivery of this Assignment, at Buyer's request and expense, and without further consideration, Seller will execute and deliver such instruments of conveyance and transfer and take such other actions as Buyer may reasonably request in order to more effectively sell, transfer, assign, deliver and vest in Buyer title to and possession of the Property, and any and all other rights and interests pertaining thereto.

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This Assignment will inure to the benefit of Buyer, its successors, assigns, grantees, administrators, receivers and trustees, and will be binding upon Seller, its estate, creditors, direct and indirect equity holders, all parties-in-interest, affiliates, successors, assigns, grantees, any affected third parties, administrators, receivers and trustees, including, without limitation, any trustee or successor trustee appointed or elected in the Bankruptcy Case.

In the event that Assignor or Assignee brings an action or other proceeding to enforce or interpret the terms and provisions of this Assignment, the prevailing party in that action or proceeding shall be entitled to have and recover from the non-prevailing party all such fees, costs and expenses (including, without limitation, all court costs and reasonable attorneys' fees) as the prevailing party may suffer or incur in the pursuit or defense of such action or proceeding.

This Assignment shall be governed by and construed and enforced in accordance with the laws of California.

**IN WITNESS WHEREOF**, Assignor has executed this Assignment as of [\_\_\_\_], 2017.

**ASSIGNOR:**

Uni-Pixel, Inc.  
a Delaware corporation

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

Name: Jeff Hawthorne

Its: Principal Executive Officer

Uni-Pixel Displays, Inc.  
a Texas corporation

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

Name: Jeff Hawthorne

Its: Principal Executive Officer