

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
AcuSport Corporation,	)	Case No. 18-52736
	)	
Debtor.	)	Honorable John E. Hoffman, Jr.

**DEBTOR’S MOTION FOR AN ORDER (I) APPROVING AND AUTHORIZING SALE OF CERTAIN OF DEBTOR’S ASSETS PURSUANT TO SUCCESSFUL BIDDER’S ASSET PURCHASE AGREEMENT, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (III) GRANTING RELATED RELIEF**

AcuSport Corporation, the debtor and debtor in possession (the “*Debtor*” or “*AcuSport*”), hereby moves the Court for the entry of an order, pursuant to 11 U.S.C. §§ 105, 363(b), (f) and (m), Fed. R. Bankr. P. 2002 and 6004, and Local Rule 6004-1: (i) authorizing the sale of substantially all of the assets of the Debtor (with some specific exclusions as further described herein), free and clear of liens, claims, encumbrances, and other interests, to Ellett Brothers, LLC (the “*Proposed Buyer*”) pursuant to the terms of that certain Asset Purchase Agreement dated April 30, 2018 attached hereto as Exhibit A (the “*APA*”), or, in the event any competitive bids are received in accordance with the bidding procedures (the “*Bidding Procedures*”) approved by this Court pursuant to its order entered May 16, 2018 (Doc. No. 109, “*Bidding Procedures Order*”),<sup>1</sup> to the bidder determined to have made the best and highest bid for such assets, in accordance with the terms of such bid; (ii) approving the assumption and assignment of certain executory contracts and unexpired leases related to such sale pursuant to the Bidding Procedures

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

Order; and (iii) granting such other and further relief as may be just and proper in connection with this Motion.

A proposed order (the “*Proposed Sale Order*”) approving the sale to Proposed Buyer is attached hereto as Exhibit B and will be submitted in the event there are no competitive bids pursuant to the Bidding Procedures. In the event Debtor receives any Qualified Bids pursuant to the Bidding Procedures, Debtor intends to submit a proposed order substantially consistent with the Proposed Sale Order approving the sale to the highest and best bidder, as approved by the Court.

**NOTICE OF HEARING AND DEADLINE FOR OBJECTIONS**

As set forth in the Bidding Procedures Order, if no bidders other than the Proposed Buyer qualify as Qualified Bidders on or before June 12, 2018, this Court has scheduled a hearing on this Motion at 11:00 a.m. (Eastern Time) on June 14, 2018 in **Courtroom A, 170 N. High Street, Columbus, Ohio 43215**. If at least one bidder other than the Proposed Buyer has qualified as a Qualified Bidder on or before June 12, 2018, an auction with respect to the sale of Debtor’s assets will be held on June 14, 2018, and this Court will conduct a hearing on this Motion at 11:00 a.m. (Eastern Time) on June 15, 2018 in **Courtroom A, 170 N. High Street, Columbus, Ohio 43215**, to approve the sale to the Successful Bidder in connection with the Bidding Procedures.

As set forth in the Bidding Procedures Order, the deadline for objections to the relief requested in this Motion is 4:00 p.m. (Eastern Time) on June 12, 2018.

In support of this Motion, the Debtor respectfully represents as follows:

## JURISDICTION

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the General Order of Reference entered in this district. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The matters raised herein constitute core proceedings pursuant to 28 U.S.C. §§ 157(b)(2)(A), (N) & (O).

## BACKGROUND

2. On May 1, 2018 (the “*Petition Date*”), Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with this Court. Debtor continues to manage and operate its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner in this case. An official committee of unsecured creditors was formed on May 10, 2018.

4. A detailed description of Debtor’s business, capital structure, and events leading to this Case is more fully set forth in the Declaration of John K. Flanagan (the “*Flanagan Declaration*”) filed on the Petition Date, which is incorporated herein by reference.

5. Additional information regarding the sale process for Debtor’s assets that resulted in the APA with the Proposed Buyer is set forth in the *Motion for an Order (I) Establishing Bidding Procedures for the Sale of Certain of Debtor’s Assets; (II) Approving Break-Up Fee; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure, and Other Notices;* and (V) *Establishing Auction and Hearing Dates* [Docket No. 19] and the related Declaration of Geoffrey Frankel in support of such motion [Docket No. 20], both of which were filed with the court on the Petition Date.

**SUMMARY OF PRIMARY PROPOSED SALE TERMS**

6. **Purchase Price:** Under section 2.7 of the APA, the aggregate consideration for the purchase of the proposed sale assets consists of cash in an amount equal to the sum of \$7,750,000 plus an amount equal to the value of Debtor's inventory as calculated in accordance with the terms of the APA.

7. **Purchased Assets:** As set forth in the APA, including section 2.1 thereof, Proposed Buyer will acquire, among other things, Debtor's inventory, real estate, equipment, technology, and certain other intangible assets of Debtor ("***Purchased Assets***").

8. **Assumed Liabilities:** Section 2.3 of the APA provides that Proposed Buyer will assume and agree to perform only certain liabilities ("***Assumed Liabilities***") as follows: (i) all liabilities and obligations arising under or related to assigned executory contracts and unexpired leases, solely to the extent arising after closing of the sale; (ii) all liabilities and obligations for taxes relating to the Purchased Assets or Assumed Liabilities, solely to the extent arising after the closing of the sale and as provided by the APA; and (iii) all other liabilities and obligations arising out of or relating to Proposed Buyer's ownership or operation of the business and the Purchased Assets on or after the Closing.

9. **Termination:** Article 10 of the APA provides for the termination of the APA if the closing conditions are not satisfied on or before July 6, 2018.

10. **Bid Protections:** In the event that the Purchased Assets subject to Proposed Buyer's bid are sold to a bidder other than Proposed Buyer, Proposed Buyer will be entitled to receive from the proceeds of such sale, in cash, the amount of \$300,000 as a break-up fee (the "***Break-up Fee***"), plus the reimbursement of up to \$300,000 in reasonable expenses of the Proposed Buyer (the "***Expense Reimbursement***").

**RELIEF REQUESTED AND REASONS THEREFOR**

11. Debtor respectfully requests, pursuant to 11 U.S.C. §§ 105, 363(b), (f) and (m), Fed. R. Bankr. P. 2002 and 6004, and Local Rule 6004-1, approval of the sale of the Purchased Assets to the Proposed Buyer pursuant to the terms of the APA, free and clear of liens, claims, encumbrances, and other interests, or to such other Successful Bidder as may be determined pursuant to the Bidding Procedures Order, and approval of the form of the Proposed Sale Order authorizing such sale.

12. Debtor's senior secured lenders support the proposed sale of Debtor's assets pursuant to the Bidding Procedures and the terms of the Proposed Sale Order.<sup>2</sup>

13. In the event that any Qualified Bids are received prior to the expiration of the time for any party to object to the proposed sale, an Auction will be conducted in accordance with the Bidding Procedures Order.

**The Sale of the Debtor's Assets**

14. The sale of Purchased Assets as described herein should be approved as a reasonable and appropriate exercise of the Debtor's business judgment. Section 363 of the Bankruptcy Code provides in pertinent part that "[t]he trustee, after notice and hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." 11 U.S.C. § 363(b)(1).

15. Section 363(b) grants the Court wide latitude to approve a sale of a debtor's assets in the exercise of its discretion where a sound business purpose dictates such action. *See Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986). *See also In re Baldwin*

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<sup>2</sup> The APA with the Proposed Buyer included a provision to allow for the Proposed Buyer to manage collection of the Debtor's accounts receivable after the proposed sale. Such an arrangement with respect to the Debtor's accounts receivable (which are not Purchased Assets) remains subject to further negotiation, documentation, and consent of the parties as of the filing of this Motion.

*United Corp.*, 43 B.R. 905 (Bankr. S.D. Ohio 1984) (Bankruptcy Court’s power to authorize a sale under Section 363(b) of the Code is to be exercised at its discretion utilizing a flexible case-by-case approach).

16. Debtor submits that the terms and conditions of the APA are fair and reasonable and that, under the circumstances, Debtor obtained a fair price for the Purchased Assets. Furthermore, Debtor’s assets have been exposed to the market for a significant period of time and are still being marketed in connection with the Bidding Procedures. Debtor believes that, pursuant to the Bidding Procedures, it will obtain the highest and best offer for the assets to be sold.

17. Section 363(f) of the Bankruptcy Code further permits a debtor in possession to sell property under subsection (b) “free and clear of any interest in such property of an entity other than the estate . . . .” *See* 11 U.S.C. § 363(f). However, under subsection (f), the debtor can only do under the following circumstances:

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

11 U.S.C. § 363(f).

18. In the instant case, subsection 363(f)(2) will be satisfied with respect to Debtors senior secured lenders, the only creditors with a lien on or security interest in the property sought to be sold, as they currently consent to the terms and conditions of the Proposed Sale under the

APA, the Bidding Procedures, and the Proposed Sale Order. Accordingly, the Court should authorize the Debtor to sell the Purchased Assets under the APA and Proposed Sale Order free and clear of any and all liens, claims, encumbrances, and other interests, either to the Proposed Buyer or to such other Successful Bidder as may be determined pursuant to the procedures set forth in the Bidding Procedures Order.

**WAIVER OF FED. R. BANK. P. 6004(h)**

19. Time is of the essence in completing this transaction. The notices contemplated in this Motion are calculated to give reasonable notice to all affected parties. Accordingly, Debtor asserts that cause exists to waive the requirements of Rule 6004(h) of the Bankruptcy Rules, and requests that the Proposed Sale Order be effective immediately upon entry and that the fourteen (14) day stay under such rule not apply.

**NOTICE**

20. Notice and a copy of this Motion has been provided to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee; (b) counsel for the Official Committee of Unsecured Creditors; (c) the agent for Debtor's primary secured lender group, Wells Fargo Bank, National Association; (d) all parties who have asked to be provided notice of all pleadings in this case; and (e) all parties that have expressed interest in a purchase or acquisition of the assets subject to this Motion. Notice of the hearing on this Motion is also being provided separately to all of Debtor's creditors. Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

**NO PRIOR REQUEST**

21. No prior request for the relief sought in this Motion has been made to this Court or any other court.

**WHEREFORE**, Debtor respectfully requests that the Court grant the relief requested in this Motion, in substantially the form set forth in the Proposed Sale Order (subject to revision in the event the identity of the purchaser or the terms of the sale are changed due to competitive bidding), including: (i) authorizing the sale of substantially all of the assets of the Debtor to Proposed Buyer pursuant to the terms of the APA or to such other Successful Bidder as may be determined pursuant to the terms of the Bidding Procedures Order, free and clear of all liens, claims, encumbrances, and other interests; (ii) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto in accordance with the Bidding Procedures Order; and (iii) granting such other and further relief as this Court deems just and proper.

Date: May 24, 2018

Respectfully submitted,

/s/ Thomas R. Allen

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**EXHIBIT A**

**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**ACUSPORT CORPORATION**

**AND**

**ELLETT BROTHERS, LLC**

**April 30, 2018**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of April 30, 2018 (the “**Agreement Date**”), is entered into by and between ACUSPORT CORPORATION, an Ohio corporation (“**Seller**”), and ELLETT BROTHERS, LLC, a South Carolina limited liability company (“**Buyer**”). Buyer and Seller are referred to herein collectively as the “Parties,” and individually, a “Party.”

### RECITALS

A. Seller is engaged in the business of the distribution and sales of outdoor and shooting sports products, as well as providing point of sale Software (as defined below) and services (including maintenance and support) for certain of Seller’s retail customers (the “**Business**”).

B. Seller desires to sell certain of its assets used in the Business to Buyer, and Buyer desires to purchase such assets from Seller, in a sale to be conducted following Seller’s filing of a voluntary bankruptcy petition for relief in the United States Bankruptcy Court for the Southern District of Ohio, Eastern Division (the “**Bankruptcy Court**”), under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”), in accordance with Bankruptcy Code sections 363 and 365.

### AGREEMENT

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

### ARTICLE I DEFINITIONS

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

“**Administrative Claim**” means any Claim constituting a cost or expense of administration of the Bankruptcy Case under Bankruptcy Code section 503(b) and that is entitled to priority under Bankruptcy Code section 507(a), including, *inter alia*, any actual and necessary expenses of preserving the estate, and all fees and charges assessed against the bankruptcy estate under Chapter 123 of Title 28, United States Code.

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

“**Affiliate Purchased Assets**” has the meaning set forth in Section 2.6(b).

“**Agreement**” means this Asset Purchase Agreement, effective as of the Agreement Date and as amended, modified, or supplemented in accordance with the terms hereof, including all schedules and exhibits hereto.

“**Agreement Date**” has the meaning set forth in the preamble.

“**Alternative Transaction**” has the meaning set forth in Section 10.1(d)(iii).

“**Assigned Contracts**” means the Contracts listed in Section 2.5 of the Disclosure Schedules to be assumed by Seller and assigned to Buyer under Section 365 of the Bankruptcy Code, as such schedule may be amended from time to time prior to the Closing pursuant to Section 2.5; *provided, however*, that notwithstanding anything else herein, Contracts related exclusively to RTG Assets shall not be Assigned Contracts.

“**Assignment and Assumption Agreement**” has the meaning set forth in Section 3.2(a)(ii).

“**Assignment and Assumption of Lease**” has the meaning set forth in Section 3.2(a)(iv).

“**Auction**” means the auction contemplated by the Sale Procedures Order.

“**Avoidance Claims**” means any and all Claims or Proceedings under Chapter 5 of the Bankruptcy Code.

“**Bankruptcy Case**” means a case to be commenced by Seller in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

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

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

“**Benefit Plan**” means any (i) deferred compensation plan, (ii) incentive compensation plan, (iii) equity compensation plan, (iv) “welfare” plan, fund, or program (within the meaning of Section 3(1) of ERISA), (v) “pension” plan, fund, or program (within the meaning of Section 3(2) of ERISA) (vi) “employee benefit plan” (within the meaning of Section 3(3) of ERISA), (vii) employment (other than offer letters entered into in the ordinary course of the Business), termination, severance, or “change in control” agreement, and (viii) other employee benefit plan, fund, program, agreement, or arrangement, in each case, that is sponsored, maintained, or contributed to or required to be contributed to by Seller or any ERISA Affiliate, or to which Seller or any ERISA Affiliate is party, for the benefit of any of Sellers’ Employees.

“**Bill of Sale**” has the meaning set forth in Section 3.2(a)(i).

“**Books and Records**” means books of account, general, financial, warranty and shipping records, invoices, correspondence, engineering, maintenance, operating and production records, in each case related to the Purchased Assets.

“**Break-Up Fee**” means an amount equal to Four Hundred Thousand Dollars

(\$400,000.00), which shall, subject to Bankruptcy Court approval, constitute a super priority Administrative Claim of Buyer under Bankruptcy Code sections 364(c)(1) and 507(a)(2) with priority over any other super priority Administrative Claims and all Administrative Claims in the Bankruptcy Case.

“**Business**” has the meaning set forth in the recitals.

“**Business Confidential Information**” has the meaning set forth in Section 7.2(a).

“**Business Day**” means any day except Saturday, Sunday, or any other day on which banks are required or authorized by Law to be closed in the States of Ohio, New York, or South Carolina.

“**Buyer**” has the meaning set forth in the preamble.

“**Buyer Closing Certificate**” has the meaning set forth in Section 8.3(d).

“**Claim**” shall have the meaning set forth in Bankruptcy Code section 101(5).

“**Closing**” has the meaning set forth in Section 3.1.

“**Closing Date**” has the meaning set forth in Section 3.1.

“**Closing Notice**” has the meaning set forth in Section 2.5(d).

“**Computer Equipment**” means all equipment and devices (including data processing hardware and related telecommunications equipment, media, materials, program documentation and tools) owned or leased by Seller, including the warehouse management system, the IBM AS 400 system, the “Power 8” software, and the CLX fulfillment system, together with Seller’s rights under all related warranties.

“**Contracts**” means all legally binding contracts, leases, mortgages, licenses, instruments, notes, commitments, undertakings, purchase orders, indentures and other agreements or arrangements of any nature.

“**Cure Amount Cap**” has the meaning set forth in Section 2.5(b).

“**Cure Amounts**” means, as to each Assigned Contract, the amount required to be paid pursuant to Section 365(b) of the Bankruptcy Code in connection with the assumption by Seller of such Assigned Contract as (a) reported on a schedule to be filed with the Bankruptcy Court at least three (3) days prior to the hearing for the approval of the Sale Order, as such schedule may be amended; (b) determined by agreement of Parties; or (c) determined by Final Order of the Bankruptcy Court.

“**Deed**” has the meaning set forth in Section 3.2(a)(iii).

“**Deposit**” has the meaning set forth in Section 6.7(a).

“**Disclosure Schedules**” means the Disclosure Schedules delivered by Seller and Buyer

concurrently with the execution and delivery of this Agreement.

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

“**Drop Dead Date**” has the meaning set forth in Section 10.1.

“**Effective Time**” has the meaning set forth in Section 3.1.

“**Employees**” means those Persons employed by Seller who worked for the Business immediately prior to the Closing.

“**Encumbrance**” means any lien, pledge, mortgage, security interest, easement, encroachment, encumbrance, third-party interest, right of first refusal, right of first offer, conditional sale agreement, option, or other restriction or limitation of any kind, whether legal, contractual, or otherwise, including or any other restriction or covenant with respect to, or condition governing, the use, transfer, alienation, or exercise of any attributes to ownership.

“**Environmental Laws**” has the meaning set forth in Section 4.9(a).

“**ERISA**” means the United States Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“**ERISA Affiliate**” means any trade or business, whether or not incorporated, that together with Seller would be deemed a “single employer” within the meaning of Section 4001(b) of ERISA.

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

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

“**Expense Reimbursement**” has the meaning set forth in Section 6.6.

“**Facility**” means the warehouse facility located on the Real Property.

“**Fee Criteria**” means, with respect to the termination of this Agreement pursuant to Section 10.1(b)(iv): (a) Buyer is ready, willing, and able to close when it delivers written notice of its intention to terminate this Agreement pursuant to Section 10.1(b)(iv), or a breach by Seller of this Agreement has rendered Buyer unable to close, (b) the Sale Order shall have become a Final Order prior to or on the date Buyer delivers written notice of its intention to terminate this Agreement pursuant to Section 10.1(b)(iv), and (c) Seller is not ready, willing, and able to close within one (1) Business Day after Buyer delivers written notice of its intention to terminate this Agreement pursuant to Section 10.1(b)(iv).

“**Final Order**” means an action taken or Order issued by a Governmental Authority as to which: (i) no request for stay of the action or Order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or regulation, said deadline has passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or Order, or protest of any kind, is pending before the Governmental Authority and the

time for filing any such petition or protest has passed; (iii) the Governmental Authority does not have the action or Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof; provided, however, that the availability of relief under Federal Rule of Civil Procedure 60(b) or Federal Rule of Bankruptcy Procedure 9024 shall not, by itself, render an action or Order not a Final Order.

**“Firearms Acquisition and Disposition Records”** means Seller’s records required to be maintained pursuant to Subpart H of 27 CFR Part 478.

**“FIRPTA Certificate”** has the meaning set forth in Section 8.2(h).

**“GAAP”** means the United States generally accepted accounting principles and practices in effect from time to time.

**“Governmental Authority”** means any federal, state, or local government, governmental authority, or regulatory or administrative authority or any court, tribunal, or judicial body having jurisdiction, including, *inter alia*, the Bankruptcy Court.

**“Governmental Authorization”** means any Permit, certificate, permission, variance, clearance, registration, qualification, or approval issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law, including the Bankruptcy Code.

**“Hazardous Substance”** means any pollutant, contaminant, hazardous waste, hazardous material, or hazardous substance as defined by or regulated under any Environmental Laws.

**“Intellectual Property”** means all of the following, anywhere in the world, along with all income, royalties, damages and payments due or payable on the Closing Date or thereafter, including damages and payments for past or future infringements or misappropriations thereof, the right to sue and recover for past infringements or misappropriations thereof and any and all corresponding rights: all patents and patent applications; trademarks, service marks, and trade dress, and registrations and applications for registration therefor; trade secrets; copyrights and registrations, and applications for registration therefor; know-how; Software; and all similar proprietary rights in trade names, domain names, websites, fictitious names or other names used in connection with the Business, logos, formulae, processes, and inventions, and discoveries, whether or not patentable or otherwise subject to registration.

**“Intellectual Property Assets”** means all Intellectual Property that is owned by Seller and used in connection with the Business, including the Intellectual Property Registrations set forth on Section 4.10(a) of the Disclosure Schedules; *provided, however*, that notwithstanding anything else set forth herein, Intellectual Property Assets shall not include any Intellectual Property that is owned by Seller and related exclusively to RTG Assets.

**“Intellectual Property Registrations”** means all Intellectual Property Assets that are subject to any issuance, registration, application or other filing by, to or with any Governmental

Authority or authorized private registrar in any jurisdiction, including registered trademarks, domain names, and copyrights, issued and reissued patents and pending applications for any of the foregoing.

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

“**Inventory**” has the meaning set forth in Section 2.1(a).

“**Inventory Value**” means the value of Seller’s Inventory using the advance rate methodology as set forth on Seller’s borrowing base certificate pursuant to its senior secured lending facility provided as of Closing, consistent with the calculation of the value of Inventory as set forth on the borrowing base certificate attached to this Agreement as Exhibit A.

“**IT Assets**” means all of Seller’s IT Inventories, Technical Documentation, Computer Equipment, and Software Contracts.

“**IT Inventories**” means (i) Software code (in all media) and materials, including all Software; (ii) Software documentation, including user materials; and (iii) all other unused or reusable materials, stores, and supplies related to Software.

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

“**Leased Real Property**” has the meaning set forth in Section 4.8(b).

“**Leases**” has the meaning set forth in Section 4.8(b).

“**Material Adverse Effect**” means any event, occurrence, fact, condition or change that is materially adverse to (a) the business, results of operations, financial condition or assets of the Business, taken as a whole, or (b) the ability of Seller to consummate the transactions contemplated hereby; *provided, however*, that “Material Adverse Effect” shall not, solely with respect to clause (a) of this definition, include any event, occurrence, fact, condition or change arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial, banking or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action specifically required by this Agreement or any action taken (or omitted to be taken) with the written consent of or at the written request of Buyer; (vi) any changes in applicable Laws or accounting rules (including GAAP) or the enforcement, implementation, or interpretation thereof; or (vii) any natural or man-made disaster or acts of God; in each case, except in the case of each of clauses (i), (ii), (iii), (iv), (v), or (vii) to the extent such change, effect, event, occurrence, state of facts or development has a disproportionate effect on the Seller or the Business relative to other similarly situated participants in the industry in which the Seller operates.

“**Names**” has the meaning set forth in Section 7.9.

“**Necessary Consent**” has the meaning set forth in Section 2.6(a).

“**Non-Solicitation Period**” has the meaning set forth in Section 6.2(b).

“**Order**” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered, issued, made, or rendered by or with any Governmental Authority.

“**Organizational Documents**” means the legal document(s) by which any Person (other than an individual) establishes its legal existence or which govern its structure and internal affairs.

“**Owned Real Property**” has the meaning set forth in Section 4.8(a).

“**Party**” or “**Parties**” has the meaning set forth in the preamble.

“**Permits**” means all permits, licenses, franchises, approvals, authorizations, and consents required to be obtained from Governmental Authorities or are otherwise necessary for the conduct of the Business.

“**Permitted Encumbrances**” means (a) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures; (b) mechanics’, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business; (c) easements, rights of way, zoning ordinances and other similar encumbrances affecting Real Property that do not materially detract from the use or value of such Real Property; and (d) other than with respect to Owned Real Property, liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business.

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

“**Proceeding**” means any action, claim, demand, suit, proceeding, litigation, arbitration, grievance, citation, summons, subpoena, inquiry or investigation of any nature, civil, criminal, regulatory or otherwise, in law or in equity (including actions or proceedings seeking injunctive relief).

“**Purchase Price**” has the meaning set forth in Section 2.5.

“**Purchased Assets**” has the meaning set forth in Section 2.1.

“**Real Property**” means, collectively, the Owned Real Property and the Leased Real Property.

“**Release**” means any past or present spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a Hazardous Substance into the environment.

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

“**RTG Assets**” means those assets to be sold by Seller to J.W. Shultz, LLC pursuant to that certain Asset Purchase Agreement dated April 27, 2018.

“**Sale Order**” has the meaning set forth in Section 6.4.

“**Sale Procedures Order**” means the Order entered by the Bankruptcy Court in the Bankruptcy Case, setting forth the bidding procedures for the Auction.

“**Seller**” has the meaning set forth in the preamble.

“**Seller Closing Certificate**” has the meaning set forth in Section 8.2(e).

“**Seller’s Knowledge**” means the actual knowledge, after reasonable inquiry, of Seller’s Chief Financial Officer, Chief Information Officer, Chief Executive Officer/President, and Vice President of Operations.

“**Side Letter**” has the meaning set forth in Section 7.1.

“**Software**” means computer programs, whether in object code, source code or other form, firmware, databases and data.

“**Software Contracts**” means Contracts to which Seller is a party respecting the ownership, license, acquisition, design, development, distribution, marketing, development, use, outsourcing, or maintenance of Software.

“**Tangible Personal Property**” has the meaning set forth in Section 2.1(d).

“**Tax**” or “**Taxes**” means all federal, state, local, foreign, and other income, gross receipts, sales, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

“**Tax Return**” means any return, declaration, report, claim for refund, information return or statement or other document required to be filed with respect to Taxes, including any schedule or attachment thereto, and including any amendment or supplement thereof.

“**Technical Documentation**” means all technical and descriptive materials (other than Inventory) relating to the acquisition, design, development, use, or maintenance of computer code and Computer Equipment, including all images and dimensional information necessary or desirable for the operation of Seller’s systems relating to Inventory.

“**Transaction Documents**” means this Agreement, the Bill of Sale, the Assignment and

Assumption Agreement, Deeds, Assignment and Assumption of Leases, Sale Order, and the other agreements, instruments, and documents required to be delivered at the Closing.

“**Transferred Employee**” has the meaning set forth in Section 7.1.

## **ARTICLE II** **PURCHASE AND SALE**

**Section 2.1 Purchase and Sale of Assets.** Subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase and assume from Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller’s right, title, and interest in, to, and under the following assets, properties, and rights of Seller, to the extent that such assets, properties, and rights exist as of the Closing Date (collectively, the “**Purchased Assets**”):

(a) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts, and other inventories of the Business, regardless of value (and including, for the avoidance of doubt, inventory with zero value as set forth in Seller’s borrowing base certificate) (“**Inventory**”);

(b) all Assigned Contracts set forth on Section 2.5 of the Disclosure Schedules;

(c) all Intellectual Property Assets described on Section 2.1(c) of the Disclosure Schedules;

(d) all furniture, fixtures, equipment, supplies, and other tangible personal property of the Business listed on Section 2.1(d) of the Disclosure Schedules (the “**Tangible Personal Property**”); *provided, however*, that Tangible Personal Property shall not include any furniture, fixtures, equipment, supplies, or other tangible personal property included within the RTG Assets;

(e) all Owned Real Property and Leased Real Property described on Section 2.1(e) of the Disclosure Schedules;

(f) all Permits, listed on Section 2.1(f) of the Disclosure Schedules, but only to the extent such Permits may be transferred under applicable Law;

(g) all IT Assets, other than those IT Assets set forth in Section 2.1(g) of the Disclosure Schedules;

(h) all credits, prepaid expenses, deferred charges, security deposits, prepaid items and duties to the extent related to a Purchased Asset or an Assumed Liability;

(i) all signage and marketing materials relating to the Business;

(j) all insurance benefits, including claims, rights and proceeds, arising from or related to the Business, the Purchased Assets, or the Assumed Liabilities, except

for those insurance benefits arising from credit insurance and claims arising thereunder for accounts or notes receivable of the Business;

- (k) all Books and Records, to the extent not excluded by Section 2.2(e);
- (l) all client lists, customer lists, supplier lists, vendor lists, mailing lists, and other data related to the Business, including service and warranty records, customer data and transaction history, operating guides and manuals, studies, and correspondence (electronic or otherwise); and
- (m) all goodwill generated by or associated with the Business.

**Section 2.2 Excluded Assets.** Other than the Purchased Assets subject to Section 2.1, Buyer understands and agrees that it is not purchasing or acquiring, and Seller is not selling or assigning, any other assets or properties of Seller, and all such other assets and properties shall be excluded from the Purchased Assets (the “**Excluded Assets**”). Excluded Assets include the following assets and properties of Seller:

- (a) all accounts or notes receivable of the Business (subject to Section 7.3 hereof);
- (b) all cash and cash equivalents, bank accounts, and securities of Seller;
- (c) all Contracts that are not Assigned Contracts;
- (d) all Intellectual Property other than the Intellectual Property Assets;
- (e) the corporate seals, Organizational Documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller, all employee-related or employee benefit-related files or records, other than personnel files of Transferred Employees, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable Law and is required by applicable Law to retain;
- (f) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder (except as set forth in Section 2.1(j));
- (g) all Benefit Plans and trusts or other assets attributable thereto;
- (h) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates;
- (i) all rights, claims, and causes of action of Seller against third parties and the proceeds thereof, including, without limitation, any Avoidance Claims, tort claims, and causes of action against officers and directors, and including all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;

(j) all assets, properties and rights that Seller uses exclusively in its businesses other than the Business, including all RTG Assets; and

(k) the rights which accrue or will accrue to Seller under the Transaction Documents.

**Section 2.3 Assumed Liabilities.** Subject to the terms and conditions of this Agreement, Buyer shall assume and agree to pay, perform, and discharge when due only the following liabilities and obligations of Seller arising out of or relating to the Business or the Purchased Assets (collectively, the “**Assumed Liabilities**”):

(a) all liabilities and obligations arising under or relating to the Assigned Contracts, solely to the extent arising after the Closing Date and not relating to breaches or defaults occurring on or prior to the Closing Date;

(b) all liabilities and obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities arising after the Closing Date and (ii) Taxes for which Buyer is liable pursuant to Section 7.6; and

(c) all other liabilities and obligations arising out of or relating to Buyer’s ownership or operation of the Business and the Purchased Assets solely to the extent arising after the Closing.

**Section 2.4 Excluded Liabilities.** Notwithstanding any other provision of this Agreement or any other Transaction Document to the contrary, and regardless of any disclosure to Buyer, the Parties agree that, other than the Assumed Liabilities, Buyer shall not assume and shall not be responsible to pay, perform or discharge (and Seller shall retain, pay, perform or otherwise discharge without recourse to Buyer) any liabilities or obligations of Seller (collectively, the “**Excluded Liabilities**”), including the following:

(a) other than the Assumed Liabilities, any liabilities or obligations arising out of or relating to Seller’s ownership or operation of the Business and the Purchased Assets prior to the Closing Date;

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

(c) any liabilities or obligations of any nature under any Contract that is not an Assigned Contract;

(d) any liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities arising on or before the Closing Date and (ii) any other Taxes of Seller (other than Taxes allocated to Buyer under Section 7.7) for any taxable period;

(e) any liabilities or obligations of Seller relating to or arising out of (i) the employment, or termination of employment, of any Employee (including accrued payroll, deferred compensation, accrued benefits, bonuses, paid time off, accrued vacation

or other ordinary course expenses of any Employees), or (ii) workers' compensation claims of any Employee;

(f) any liabilities or obligations relating to, resulting from, or arising out of any Environmental Laws to the extent relating to, resulting from, or arising out of the operation of the Business or the ownership of the Purchased Assets on or prior to the Closing Date;

(g) any liabilities or obligations relating to or arising out of any Benefit Plan; and

(h) any liabilities or obligations of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others.

### **Section 2.5 Contract and Lease Matters.**

(a) Prior to the Agreement Date, Buyer shall designate each of the Assigned Contracts, if any, that Buyer elects to have assumed and assigned to it as an Assigned Contract effective as of the Closing Date, with all such Assigned Contracts to be set forth on Section 2.5 of the Disclosure Schedules. Buyer shall have the right, until the second business day prior to the Closing Date, to either (i) designate any Contract not already so designated to be an Assigned Contract or (ii) remove any Contract from Section 2.5 of the Disclosure Schedules. Section 2.5 of the Disclosure Schedules shall be amended to include or remove any such Contract as an Assigned Contract. Any Contract removed from Section 2.5 of the Disclosure Schedules shall become an Excluded Asset and shall not be an Assigned Contract for all purposes of this Agreement and all liabilities and obligations under such Contract shall be Excluded Liabilities for all purposes of this Agreement.

(b) Seller shall be responsible for the payment of Cure Amounts solely with respect to the Assigned Contracts specifically set forth on Section 2.5 of the Disclosure Schedules in an aggregate amount not to exceed the aggregate of the Cure Amounts set forth on Section 2.5 of the Disclosure Schedules (the "**Cure Amount Cap**"). Such Cure Amounts may be paid from Seller's own funds, or may be paid at Closing from the proceeds of the Purchase Price. Seller represents that all material Assigned Contracts are listed on Section 2.5 of the Disclosure Schedules as of the Agreement Date.

(c) For the avoidance of doubt, Seller shall not be responsible for the payment of Cure Amounts with respect to (i) any Contract that is not an Assigned Contract (solely as a result of this Agreement) or (ii) any Assigned Contract that is added to Section 2.5 of the Disclosure Schedules after the Agreement Date, but only to the extent the aggregate Cure Amount(s) exceeds the Cure Amount Cap as a result of any additional Assigned Contract(s) added to Section 2.5 of the Disclosure Schedules after the Agreement

Date; *provided, however*, that (x) to the extent there are any material Assigned Contracts necessary for the operation of the Business and the Facility not listed on Section 2.5 of the Disclosure Schedules as of the Agreement Date that have corresponding Cure Amounts, the Cure Amount Cap shall be automatically increased by the full amount of any such Cure Amounts to reflect the addition of such Contracts to Section 2.5 of the Disclosure Schedules; and (y) Seller shall not be required to proceed with Closing if the Cure Amount Cap has materially increased from the Cure Amount Cap listed on Section 2.5 of the Disclosure Schedules as of the Agreement Date.

(d) Seller shall include in its Bankruptcy Court pleadings relief to assume and assign to Buyer all executory Contracts and unexpired Leases related to the Business and the Purchased Assets. No assumption and assignment shall be effective until the filing of a Notice of Closing and Contract Treatment (the “**Closing Notice**”), which shall be filed within two (2) days prior to the Closing. At Buyer’s request, Seller shall also file and serve any updates to the Contract schedules which may be made prior to the filing of the Closing Notice. From the Agreement Date through the Closing Date, Seller shall pay all amounts that accrue or come due post-petition under the Assigned Contracts.

#### **Section 2.6 Assignment of Purchased Assets.**

(a) To the maximum extent permitted by the Bankruptcy Code, the Purchased Assets that constitute Assigned Contracts shall be assumed by Seller and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code as of the Closing Date or such other date as specified in the Sale Order or this Agreement, as applicable. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any asset or any right thereunder if an attempted assignment without the consent of a third party (a “**Necessary Consent**”), which Necessary Consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), would be legally invalid, unless the Bankruptcy Court has entered a Final Order (which may include the Sale Order) providing that (i) such Necessary Consent is not required or (ii) the Purchased Assets shall be assigned or transferred regardless of any such Necessary Consent and there shall be no breach or adverse effect on the rights of Buyer thereunder for the failure to obtain any such Necessary Consent. If, with respect to any Purchased Asset, such Necessary Consent is not obtained, the Bankruptcy Court has not entered such an Order, or such assignment is not attainable pursuant to Sections 105, 363, or 365 of the Bankruptcy Code, then such Purchased Asset shall not be transferred hereunder and, provided that all conditions to Closing under ARTICLE VIII have been satisfied or waived, the Closing shall proceed with respect to the remaining Purchased Assets, but with a reduction in the Purchase Price to account for the Purchased Asset that is not transferred hereunder; *provided, however*, (i) as Buyer may reasonably request, Seller and Buyer will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Buyer and (ii) Buyer shall not be required to proceed with Closing if any Necessary Consent is not obtained, the Bankruptcy Court has not entered an order as described in this Section, or

such assignment is not attainable pursuant to Sections 105, 363, or 365 of the Bankruptcy Code with respect to any material Purchased Asset.

(b) Notwithstanding anything to the contrary contained in this Agreement, if it is determined by Buyer or Seller before, at or after the Closing that any Affiliate of Seller owns or possesses any assets or properties that would be deemed to be Purchased Assets if such Affiliate were a Seller under this Agreement (such assets and properties, the “**Affiliate Purchased Assets**”), then Seller shall, upon Buyer’s request, promptly cause such Affiliate of Seller to transfer, assign, convey and deliver to Buyer such Affiliate Purchased Assets in accordance with the terms and conditions of this Agreement; *provided* that Buyer shall not be obligated to pay any additional amounts to Seller in consideration for the transfer of such Affiliate Purchased Assets to Buyer other than those amounts that Buyer is obligated to pay pursuant to Section 2.7.

**Section 2.7 Purchase Price.** The aggregate purchase price (the “**Purchase Price**”) for the Purchased Assets shall be the sum of (i) Seven Million Seven Hundred and Fifty Thousand Dollars (\$7,750,000), plus (ii) an amount equal to the Inventory Value (collectively, the “**Cash Purchase Price**”). The excess of the Cash Purchase Price over the amount of the Deposit shall be paid, at the Closing, by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer no later than two (2) Business Days prior to the Closing Date.

### **ARTICLE III** **CLOSING**

**Section 3.1 Closing.** Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “**Closing**”) shall take place at the offices of Bryan Cave Leighton Paisner LLP, 161 North Clark Street, Suite 4300, Chicago, Illinois 60601, at 11:59 p.m. Central Time (the “**Effective Time**”), on the first day that is three (3) Business Days after the satisfaction or waiver of all of the conditions to Closing set forth in ARTICLE VIII (other than those to be satisfied at the Closing itself, but subject to the satisfaction or, if permitted by Law, waiver of such conditions at the Closing), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the “**Closing Date**.”

#### **Section 3.2 Closing Deliverables.**

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale in a form mutually agreed upon by Buyer and Seller (the “**Bill of Sale**”) and duly executed by Seller, transferring the tangible personal property included in the Purchased Assets to Buyer;

(ii) an assignment and assumption agreement in a form mutually agreed upon by Buyer and Seller (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets (including any Intellectual Property and other intangible assets) and the Assumed Liabilities;

(iii) with respect to each parcel of Owned Real Property, a special warranty deed in a form mutually agreed upon by Buyer and Seller (each, a “**Deed**”) and duly executed and notarized by Seller;

(iv) with respect to each Lease, an Assignment and Assumption of Lease substantially in a form mutually agreed upon by Buyer and Seller (each, an “**Assignment and Assumption of Lease**”), duly executed by Seller and, if necessary, Seller’s signature shall be witnessed and/or notarized;

(v) a copy of the Sale Order;

(vi) the Seller Closing Certificate;

(vii) the FIRPTA Certificate;

(viii) the certificates of the Secretary of Seller required by Section 8.2(f) and Section 8.2(g);

(ix) a borrowing base certificate consistent with the borrowing base certificate attached hereto as Exhibit A disclosing the current Inventory Value, based upon an appraisal of the Inventory conducted within thirty days prior to the Closing Date; and

(x) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement (including any other documents that may be required by the Sale Order or pursuant to any other direction by the Bankruptcy Court to be effected on or prior to the Closing).

(b) At the Closing, Buyer shall deliver the following:

(i) the Cash Purchase Price to Seller, less the Deposit;

(ii) the Assignment and Assumption Agreement duly executed by Buyer to Seller;

(iii) with respect to each Lease, an Assignment and Assumption of Lease duly executed by Buyer and, if necessary, Buyer’s signature shall be witnessed and/or notarized, to Seller;

(iv) the Buyer Closing Certificate to Seller; and

(v) the certificates of the Secretary of Buyer required by Section 8.3(f) and Section 8.3(g) to Seller.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows as of the Agreement Date and as of the Closing Date:

**Section 4.1 Organization and Good Standing.** Seller is a corporation validly existing and in good standing under the Laws of the state of Ohio. Seller has the requisite corporate power and corporate authority to own and use its properties and assets and to carry on its business as now conducted. Seller is duly qualified to do business in each jurisdiction where the character of its business or the nature of its properties and assets makes such qualification necessary, except for any failure to be so qualified which would not, individually or in the aggregate, have a Material Adverse Effect.

**Section 4.2 Authority; Validity.** Subject to Bankruptcy Court approval, Seller has the requisite corporate power and corporate authority to enter into and perform its obligations under this Agreement and the Transaction Documents to which Seller is a party and to consummate the transactions contemplated hereby and thereby. Subject to Bankruptcy Court approval, the execution, delivery, and performance by Seller of this Agreement and the Transaction Documents to which it is a party have been duly and validly authorized by all requisite action on the part of Seller. This Agreement has been duly and validly executed and delivered by Seller and each Transaction Document to which Seller is a party will be duly and validly executed and delivered by Seller at the Closing. Subject to Bankruptcy Court approval, this Agreement constitutes, and upon execution and delivery by Seller, each Transaction Document to which Seller is a party will constitute, the legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability is limited by general principles of equity.

**Section 4.3 Consents.** Seller is not required to give any notice to, make any filing with, or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby (including the compliance with any provisions hereof or thereof) except (a) for the approval of the Bankruptcy Court and any notices, filings, and consents required in connection with the Bankruptcy Case, including, without limitation, the entry of the Sale Order, and (b) as set forth in Section 4.3 of the Disclosure Schedules. Notwithstanding the foregoing, Seller represents that it has obtained the consent of its secured lenders to the transactions contemplated under this Agreement.

**Section 4.4 No Conflict.** The execution and delivery of this Agreement and the Transaction Documents by Seller and the consummation of the transactions contemplated hereby and thereby will not breach of any of the terms of, constitute a default under, conflict with, give rise to any right of consent, termination, or cancellation, result in the creation or imposition of any Encumbrance upon any Purchased Asset, or cause any acceleration of any obligation of Seller under (a) the Organizational Documents of Seller, (b) any Contract to which Seller is a party or by which any of the Purchased Assets are bound, or (c) any Law or Order applicable to Seller, any of the Purchased Assets, or the Business.

**Section 4.5 Title.** Subject to the terms of the Sale Order and Section 2.6, Seller will transfer good and marketable title to, or, in the case of any assets leased or licensed by Seller, a valid leasehold or licensed interest in, all of the Purchased Assets, free and clear of all Encumbrances but subject to Permitted Encumbrances. Upon the Closing and subject to entry of the Sale Order, Buyer will acquire exclusive, good and marketable title (or in the case of any leased or licensed Purchased Asset, a valid leasehold or licensed interest in or valid rights to use) the Purchased Assets and no restrictions will exist on the right of Buyer (or its designated Affiliate(s)) to resell or license any of the Purchased Assets or Assumed Liabilities or engage in the Business.

**Section 4.6 Assigned Contracts.** Each of the Assigned Contracts is in full force and effect and is a valid and binding obligation of Seller and, to Seller's Knowledge, the other parties thereto, enforceable in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity, or (b) as set forth on Section 4.6 of the Disclosure Schedules attached hereto. Upon entry of the Sale Order and payment of the Cure Amounts, the Assigned Contracts shall be assigned by Seller to Buyer.

**Section 4.7 Undisclosed Liabilities.** Seller has no liabilities that would constitute an Assumed Liability hereunder or to which, to Seller's Knowledge, Buyer would become subject under applicable Law, in each case, that have not been disclosed to Buyer, disclosed on the Financial Statements, or incurred by Seller after the date of the Interim Financial Statements in the ordinary course of business (none of which results from or is related to any breach of Contract, breach of warranty, tort, infringement or violation of Law).

**Section 4.8 Real Property.**

(a) Seller does not own any Real Property other than the Real Property described in Section 4.8(a) of the Disclosure Schedules (the "**Owned Real Property**"). Seller is the sole legal and equitable owner of Owned Real Property and possesses good and marketable, indefeasible fee simple title thereto. All improvements on the Owned Real Property are in good operating condition and repair, normal wear and tear expected, are supplied with utilities and other services necessary for the operation of the Business as currently conducted at such improvements and, to Seller's Knowledge, safe for their current occupancy and use and are suitable for the conduct of the Business.

(b) Seller is the lessor of real property (the "**Leased Real Property**") under the Contracts described in Section 4.8(b) of the Disclosure Schedules (the "**Leases**") and the Leases are unexpired and in force and effect as of the Closing Date. Seller is the sole legal and equitable owner of the leasehold interest in the Leased Real Property and possesses good and marketable, indefeasible title thereto. All improvements on the Leased Real Property are in good operating condition and repair, normal wear and tear expected, are supplied with utilities and other services necessary for the operation of the Business as currently conducted at such improvements and, to Seller's Knowledge, safe for their current occupancy and use and are suitable for the conduct of the Business. Seller is not in default under the terms of any Lease which default gives or would, with the passage of

time, give the lessor of such Leased Real Property the right to terminate or adversely alter the terms of such Lease.

(c) Except as set forth in Section 4.8(c) of the Disclosure Schedules, Seller has not received written notice of, and, to Seller's Knowledge, there is no threatened (i) condemnation, eminent domain, expropriation, or similar Proceeding affecting the Real Property; (ii) proceeding to change the zoning classification of any portion of the Real Property; or (iii) imposition of any special assessments affecting the Real Property, which would, individually or in the aggregate, have a Material Adverse Effect. Buyer shall have the right to cause to be conducted an environmental assessment or assessments for the Real Property.

**Section 4.9 Environmental Matters.** Except as set forth in Section 4.9 of the Disclosure Schedules, or as would not, individually or in the aggregate, be material to the operation of the Business or to the Purchased Assets:

(a) The current operations of the Business comply in all respects with all Laws concerning environmental, health, or safety matters ("**Environmental Laws**"), and Seller has not received written notice alleging that the activities of the Business violate any Environmental Laws;

(b) (1) to Seller's Knowledge, there has been no Release of any Hazardous Substances that requires reporting under applicable Environmental Laws at, on, or under the Real Property, and (2) the Real Property has not been used by Seller, or to Seller's Knowledge, by any other Person, as a landfill or storage, treatment, or disposal site for any Hazardous Substance or non-hazardous solid wastes as defined under the Resource Conservation and Recovery Act of 1976, as amended;

(c) neither the Facility nor any aspect of the Business is subject to any Order with or from any Governmental Authority under any Environmental Law;

(d) all material Permits required to be obtained or filed by Seller under any Environmental Law in connection with the Purchased Assets as normally operated prior to Closing have been duly obtained or filed; and

(e) Seller has made available or provided Buyer with copies of all material documents, records, and information in Seller's possession concerning the environmental condition of the Real Property.

**Section 4.10 Intellectual Property.**

(a) Section 4.10(a) of the Disclosure Schedules sets forth a true and complete list of all pending applications for Intellectual Property owned by Seller and used in the Business.

(b) Except as disclosed on Section 4.10(b) of the Disclosure Schedules, and except as would not be material to the Business or the Purchased Assets, to Seller's Knowledge, (i) the Business as currently conducted by Seller does not infringe or

otherwise violate any Person's Intellectual Property rights, and no such claims are pending or threatened in writing against Seller, and (ii) no Person is infringing or otherwise violating any of the Intellectual Property.

(c) Except as disclosed on Section 4.10(c) of the Disclosure Schedules, to Seller's Knowledge, the Purchased Assets and any rights provided to Buyer pursuant to the Transaction Documents include all Intellectual Property rights required to operate the Facility and the Business as currently conducted by Seller. None of the IT Assets nor any other Intellectual Property set forth on Section 2.1(c) of the Disclosure Schedules (including, for the avoidance of doubt, the IBM AS 400, Seller's "Power 8" Software, and any related Software code) is a derivative work of, or is otherwise dependent on, any RTG Asset. Further, none of the product-related images, information, or data created, maintained, or stored in the Seller's "Stibo System" are maintained, used, or incorporated in any RTG Asset (including any point-of-sale system included therein).

(d) Seller exclusively owns all right, title and interest in the Software and any other Intellectual Property included in the Purchased Assets. Seller has taken such actions as are necessary or desirable to maintain and protect each item of Intellectual Property owned by Seller, including making all necessary filings and recordings and has paid all required fees and Taxes to record and maintain its ownership of each item of the its registered Intellectual Property in the U.S. Patent and Trademark Office, the U.S. Copyright Office, and the applicable domain name registrars. Each item of Intellectual Property included in the Purchased Assets will be owned or available for use by Buyer on identical terms and conditions following the Closing.

(e) Seller has taken commercially reasonable steps to design, engineer, install and operate the Software and the IT Assets included in the Purchased Assets in a secure manner. To the Seller's Knowledge, the security of the Software and the IT Assets included in the Purchased Assets have not been compromised. The Software included in the Purchased Assets does not contain any "viruses", "worms", "time-bombs", "key-locks", or any other devices that could disrupt or interfere with the operation of such Software or the IT Assets, or the integrity of the data, information or signals the IT Assets produce. To Seller's Knowledge, the Software included in the Purchased Assets does not include or install any spyware, adware, or other similar software that monitors the use of such Software or contacts any remote computer without the knowledge and express consent of the user(s) of such Software and remote computer. The IT Assets included in the Purchased Assets are adequate in all material respects for the operation of the Business as currently conducted.

#### **Section 4.11 Employment Matters.**

(a) Seller has provided to Buyer a list of all of the Employees of Seller as of the Agreement Date, together with all relevant information regarding compensation, status, and tenure. Seller is in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to the Employees.

(b) There are no collective bargaining agreements to which Seller is a party relating to any of Seller's Employees. To Seller's Knowledge, there is no pending application for certification of a collective bargaining agent involving any of Seller's Employees. Since January 1, 2016, there has not been, nor, to Seller's Knowledge, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor activity or dispute affecting Seller or any of the its Employees.

**Section 4.12 Taxes.**

(a) Seller has timely filed all material Tax Returns required to be filed in all jurisdictions in which such Tax Returns are required to be filed (subject to any filing extension), and all Taxes due and payable have been paid, except for any unpaid Taxes which are to be paid at Closing. All such Tax Returns were complete, accurate and prepared in compliance with all applicable Laws.

(b) There is no pending, or, to Seller's Knowledge, threatened, audit or examination of any of Seller's Tax Returns. No claim has been made in writing by any Governmental Authority in a jurisdiction where Seller does not file Tax Returns to the effect that such filings may be required with respect to the Business by that jurisdiction. To Seller's Knowledge, there is no presently outstanding dispute or claim concerning any liability for Taxes of Seller or otherwise on account of the Business. To Seller's Knowledge, there are no Encumbrances (other than Permitted Encumbrances) on any Purchased Assets that arose in connection with any failure or alleged failure to pay any Tax.

**Section 4.13 Contracts.** Except as set forth in Section 4.13 of the Disclosure Schedules:

(a) each Assigned Contract is a valid and binding agreement of Seller, enforceable against Seller in accordance with its terms, except as such enforceability is limited by general principles of equity;

(b) Seller is not in material breach of or default under any Assigned Contract, and, to Seller's Knowledge, no event has occurred that with the passage of time or giving of notice or both would constitute such a breach or default, result in a loss of material rights, result in the payment of any damages or penalties or result in the creation of any Encumbrance thereunder or pursuant thereto other than Permitted Encumbrances;

(c) to Seller's Knowledge, no other Person party to any Assigned Contract has breached in any material respect any provision, or is in material default under, any Assigned Contract;

(d) Seller has not, at any time since January 1, 2016, received any written notice or, to Seller's Knowledge, other communication, in each case regarding any actual, alleged or potential violation or breach of, or default under, any of the Assigned Contracts;

(e) there are no pending renegotiations of any of the Assigned Contracts and Seller has not received written notice from any Person party to any Assigned Contract regarding the termination, cancelation or material change to the terms of, any such Assigned Contract; and

(f) the Business does not rely upon or use rights under any Assigned Contract that has expired or been terminated.

**Section 4.14 Proceedings.** Except for the Bankruptcy Case and as set forth in Section 4.14 of the Disclosure Schedules, there is no Proceeding or Order pending, outstanding, or, to Seller's Knowledge, threatened, against Seller that seeks to restrain or prohibit or otherwise challenge the consummation, legality, or validity of the transactions contemplated hereby or that would have, if determined adversely to Seller's interests, individually or in the aggregate, a Material Adverse Effect. Except for Orders of the Bankruptcy Court, there are no Orders outstanding against Seller, the Business, or any Purchased Asset.

**Section 4.15 Compliance With Laws.** Except as set forth in Section 4.9 and Section 4.15 of the Disclosure Schedules, Seller is not, and has not been in the past three (3) years, in violation in any material respect of any Law applicable to the operation of the Business and holds all Permits required for Seller to conduct the Business as currently conducted. No proceeding is threatened in writing or, to Seller's Knowledge, threatened orally, to terminate, revoke, impair or limit any Permit included within the Purchased Assets, nor has any event occurred which would give rise to any right of notice, modification, acceleration, payment, cancellation or termination thereunder. Seller has taken all necessary action to maintain each such Permit, and no loss or expiration of any such Permit is pending or, to Seller's Knowledge, threatened or reasonably foreseeable (other than expiration upon the end of any term). Seller has conducted the Business and any export transactions in all material respects in accordance with all applicable U.S. export and re-export controls, including the United States Export Administration Act and Export Administration Regulations, the International Traffic in Arms Regulations, and Foreign Assets Control Regulations, other U.S. economic sanction requirements and customs regulations and, to Seller's Knowledge, all other applicable import/export controls in other countries in which Seller conducts the Business.

**Section 4.16 Insurance.** Seller is, and will through the Closing Date be, insured with, to Seller's Knowledge, responsible insurers (including general liability insurance coverage of the Purchased Assets, Owned Real Property and Leased Real Property, and professional liability coverage) against risks normally insured against by similar businesses under similar circumstances. Seller has not failed to give any notice or present any claim under any insurance policy or binder in due and timely fashion, has not received notice of cancellation or non-renewal of any insurance policy or binder and is not aware of any threatened or proposed cancellation or non-renewal of any insurance policy or binder. There are no outstanding claims under any such policy that have gone unpaid for more than thirty (30) days, or as to which the insurer has disclaimed liability.

**Section 4.17 Brokers.** Neither Seller nor any Person acting on behalf of Seller has paid or become obligated to pay any fee or commission to any broker, finder, investment

banker, agent, or intermediary for or on account of the transactions contemplated by this Agreement for which Buyer is or will become liable.

**Section 4.18 No Other Representations and Warranties.** Except for the representations and warranties contained in this ARTICLE IV, neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Purchased Assets furnished or made available to Buyer and its Representatives (including management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law.

## **ARTICLE V**

### **REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows as of the Agreement Date and as of the Closing Date.

**Section 5.1 Organization.** Buyer is a limited liability company validly existing and in good standing under the Laws of the state of South Carolina. Buyer has the requisite corporate power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

**Section 5.2 Authority; Validity.** Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the Transaction Documents to which Buyer is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery, and performance by Buyer of this Agreement and the Transaction Documents to which it is a party have been duly and validly authorized by all requisite action on the part of Buyer. This Agreement has been duly and validly executed and delivered by Buyer and each Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer. This Agreement constitutes, and upon execution and delivery by Buyer, each Transaction Document to which Buyer is a party will constitute, the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except in each case as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity.

**Section 5.3 Consents.** Except for the consents contemplated by Section 8.2(j) or as set forth on Section 5.3 of the Disclosure Schedules, Buyer is not required to give any notice to, make any filing with, or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby.

**Section 5.4 No Conflict.** Except as set forth on Section 5.4 of the Disclosure Schedules and assuming receipt of the consents referred to in Section 5.3, the execution and delivery of this Agreement and the Transaction Documents by Buyer and the consummation of

the transactions contemplated hereby and thereby will not breach of any of the terms of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) the Organizational Documents of Buyer; (b) any contract or agreement with respect to which Buyer is a party or otherwise bound, (c) any Order applicable to Buyer, or (d) any Law.

**Section 5.5 Availability of Funds.** Buyer has, or will have at Closing, sufficient cash in immediately available funds, available lines of credit, or other sources of funds to satisfy all of its obligations hereunder so as to permit Buyer to consummate the transactions contemplated by this Agreement and the Transaction Documents.

**Section 5.6 No Brokers.** Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent, or intermediary for or on account of the transactions contemplated by this Agreement for which Seller is or will become liable, and Buyer shall hold harmless and indemnify Seller from any claims with respect to any such fees or commissions that Seller has become liable to pay.

**Section 5.7 Litigation.** There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect Buyer's ability to perform its obligations under this Agreement or any Transaction Documents or to consummate the transactions contemplated hereby or thereby.

**Section 5.8 Assigned Contracts.** Buyer is and will be capable of satisfying the conditions contained in Section 365(f)(2)(B) of the Bankruptcy Code with respect to the Assigned Contracts and shall, consistent with Section 6.3, cooperate with Seller to provide proof of such capability as is necessary to satisfy counterparties to such Assigned Contracts or to satisfy the Bankruptcy Court.

## **ARTICLE VI**

### **ACTIONS PRIOR TO THE CLOSING DATE**

**Section 6.1 Operations Prior to the Closing Date.** From and after the Agreement Date through the Closing, except as expressly contemplated by this Agreement and subject to the bidding procedures for the Auction as set forth in the Sale Procedures Order, as disclosed in Section 6.1 of the Disclosure Schedules, with the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), or as otherwise required by Law:

- (a) Seller shall, subject to Seller's obligations and duties as a debtor in possession and except as may be actually required in connection with the Bankruptcy Case:
  - (i) comply in all material respects with all Laws with respect to the conduct of the Business and maintain in full force and effect all Permits;
  - (ii) use commercially reasonable efforts to keep available the services of its current Employees and agents employed or retained as of the bankruptcy petition date;

(iii) maintain the Purchased Assets in good operating condition and repair, subject to ordinary wear and tear;

(iv) comply in all material respects with contractual obligations under the Assigned Contracts; and

(v) not take any action inconsistent with this Agreement or with the consummation of the Closing.

(b) Seller shall not:

(i) other than the sale of Inventory in the ordinary course of business and other than the incurrence of Encumbrances pursuant to any debtor-in-possession financing of Seller or Order of the Bankruptcy Court authorizing Seller's use of cash collateral, sell, lease (as lessor), transfer, or otherwise dispose of, or mortgage or pledge or voluntarily impose, or suffer to be imposed, any Encumbrance on any of the Purchased Assets;

(ii) amend, modify, or terminate any of the Assigned Contracts other than non-material amendments made in the ordinary course;

(iii) amend or modify any Organizational Document of Seller;

(iv) incur any liability, whether absolute, fixed or contingent, except in the ordinary course of business consistent with past practices;

(v) institute or settle any Proceeding or threatened Proceeding with any Governmental Authority, or for an amount involving in excess of \$25,000 in the aggregate, or involving equitable or injunctive relief; provided that Seller may institute or settle any Proceeding or threatened Proceeding as is required, in Seller's business judgment, for collection of Seller's accounts receivable;

(vi) except as required by Law or in connection with the Bankruptcy Case, disclose the existence or the terms of this Agreement or the transactions contemplated hereby to the public or any customer, supplier or Employee of Seller, without obtaining the prior written approval of Buyer (not to be unreasonably withheld or delayed) relating to the contents and manner of presentation and publication thereof; provided that Seller shall, as soon as reasonably practicable after making any such communication required by applicable Law, give Buyer a copy of the proposed disclosure; or

(vii) enter into any Contract or commit to take any action prohibited by this Section 6.1.

## **Section 6.2 Reasonable Efforts.**

(a) Each of Seller and Buyer shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate

with the other in doing, all things necessary, proper, or advisable to consummate, in the most expeditious manner practicable, the transactions contemplated hereby, including, without limitation, using reasonable best efforts to: (i) cause the conditions precedent set forth in ARTICLE VIII to be satisfied, (ii) obtain, at the earliest practicable date but consistent with the provisions of this Agreement and the Sale Procedures Order, all necessary Governmental Authorizations and make all necessary registrations, declarations, and filings, (iii) obtain Bankruptcy Court approval of the Sale Order, and (iv) apply for its Federal Firearms License and Special Occupational Taxpayers license by Buyer.

(b) From the Agreement Date until the date on which the Sale Procedures Order is entered by the Bankruptcy Court (the “**Non-Solicitation Period**”), neither Seller, nor any of its Affiliates, nor any of its or their Representatives will directly or indirectly (i) directly solicit, initiate, or encourage any inquiries or proposals regarding any merger, consolidation, sale of assets, assumption of liabilities, or similar transaction involving Seller that, if consummated, would constitute an Alternative Transaction, (ii) participate in any discussions or negotiations with third parties regarding an Alternative Transaction, or (iii) enter into any Contract regarding any Alternative Transaction; *provided, however*, that during the Non-Solicitation Period, so long as Seller is not in breach of this Agreement, nothing in this Agreement shall prohibit Seller, its Affiliates, and its and their Representatives from participating in any discussions or furnishing to any entity any information relating to Seller or its assets with respect to any unsolicited proposal, inquiry, or expression of interest that constitutes, or which may lead to, a bid for Seller’s assets.

(c) Subject to any restrictions under applicable Laws, Seller and Buyer (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification, or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto. Unless otherwise required by Law, neither Seller nor Buyer shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation, or other inquiry with respect to this Agreement or the transactions contemplated hereby without consulting with the other Party in advance and, to the extent permitted by any such Governmental Authority, giving the other Party the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable Laws, each of Buyer and Seller shall furnish the other with copies of all correspondence, filings, and communications between it (or its respective Representatives) and the Governmental Authority or members of its staff with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to confidentiality agreements existing as of the Agreement Date or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business), or any such filing, notification, or request for approval. Each Party shall furnish the other with such necessary information and assistance as such other Party may reasonably request in connection with their preparation of necessary filings, registration, or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval.

(d) Seller shall use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with Buyer in doing, all things necessary, proper, or advisable to cause, in the most expeditious manner practicable, all material Permits to be transferred to Buyer as of the Closing Date and Seller shall execute any and all applications, forms or other documents of any Governmental Authority necessary, proper, or advisable to cause such transfer of such Permits. Seller shall be responsible for any fees or other payments due in connection with any such Permit transfers.

**Section 6.3 Bankruptcy Court Approval.** Seller and Buyer acknowledge that this Agreement and the consummation of the transactions contemplated hereby are subject to Bankruptcy Court approval. Seller will use its reasonable best efforts to file the Bankruptcy Case on or before May 1, 2018. Seller and Buyer acknowledge that (a) each must comply with the Sale Procedures Order, and (b) Buyer must provide adequate assurance of future performance within the meaning of Bankruptcy Code section 365(f)(2)(B) with respect to the Assigned Contracts. With respect to each Assigned Contract, Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each Assigned Contract. Buyer agrees that it will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information, and other documents or information for filing with the Bankruptcy Court and making Buyer's Representatives available to testify before the Bankruptcy Court. Buyer acknowledges that Seller has no duty to maintain any letters of credit to secure performance or payment under any Assigned Contracts after the Closing, and Buyer agrees to reasonably cooperate with Seller in Seller's efforts to secure the release of any such letters of credit posted by Seller, such cooperation to include, if necessary, the provision by Buyer of a letter of credit to secure Buyer's payment and/or performance under any Assigned Contracts after the Effective Time.

**Section 6.4 Sale Order.** Subject to Seller's right to pursue an Alternative Transaction in accordance with the terms of this Agreement, Seller will use its reasonable best efforts to consummate the transactions contemplated hereby by seeking, with one or more appropriate motion or motions and the entry of appropriate Orders of the Bankruptcy Court (all such motions and Orders being in form and substance reasonably satisfactory to Buyer), such Orders, among other things approving this Agreement and the purchase of the Purchased Assets by Buyer, free and clear of all Encumbrances, and the assumption of the Assumed Liabilities pursuant to Bankruptcy Code section 363(b), (f), (1), and (m) and Section 365 (the "**Sale Order**"). The Sale Order will be in a form and of a substance agreeable to Seller and Buyer in their reasonable discretion.

**Section 6.5 Sale Procedures Order.** On the same day on which the Bankruptcy Case is filed, Seller shall also file a motion pursuant to Bankruptcy Code Sections 105 and 363 and other applicable Law seeking entry and approval of the Sale Procedures Order. Seller will use its reasonable best efforts to seek a "first day" hearing on the motion to approve the Sale Procedures Order, subject to the Bankruptcy Court's calendar and approval. The "Sale Procedures Order," as entered by the Bankruptcy Court, shall be in a form consistent

with the terms of this Agreement and in substantially the same form as Exhibit B attached hereto (as may be modified by the Parties prior to its entry by the Bankruptcy Court).

**Section 6.6 Break-Up Fee.** In consideration of the substantial time and resources that Buyer has devoted and will devote to the transactions contemplated hereby and subject to the terms and conditions stated herein, and subject in all respects to Bankruptcy Court approval, Seller agrees to pay the Break-Up Fee, plus a reimbursement to Buyer in cash in an amount equal to all of Buyer's reasonable and actual out-of-pocket and third-party costs and expenses, including expenses of counsel and other outside consultants, incurred and documented by Buyer or its Affiliate(s) in connection with Buyer's due diligence investigation of Seller and the Business, the negotiation, execution and delivery of this Agreement and the other Transaction Documents and the transactions contemplated by this Agreement, and incurred in connection with the Bankruptcy Case, subject to a cap of \$400,000 (the "**Expense Reimbursement**"), in accordance with Section 10.2 hereof. The Break-Up Fee and Expense Reimbursement shall be payable first from the sale proceeds from an Alternative Transaction and otherwise from Seller's cash balances. Subject to Bankruptcy Court approval, Seller's obligation to pay the Break-Up Fee and Expense Reimbursement shall be given administrative expense super-priority pursuant to 11 U.S.C. § 507(a)(2); *provided, however*, that Seller's obligation to pay the Break-Up Fee and Expense Reimbursement shall become operative only if and to the extent that the Bankruptcy Court enters the Sale Procedures Order. The Break-Up Fee and the Expense Reimbursement are integral parts of the transactions contemplated by this Agreement and are not a penalty but rather are reasonable amounts that will compensate Buyer for the efforts and resources expended and opportunities foregone while negotiating this Agreement.

**Section 6.7 Deposit.**

(a) Buyer will deposit with Seller's counsel Four Hundred Thousand Dollars (\$400,000.00) (the "**Deposit**") within two (2) Business Days after the Bankruptcy Court enters a Sale Procedures Order consistent with Section 6.5. Seller acknowledges that the Deposit shall not be property of Seller and shall not become property Seller's estate in the Bankruptcy Case. The Deposit shall be held in an interest-bearing account and shall be disbursed pursuant to the terms of this Agreement. Upon receipt by Seller's counsel of the Deposit, the Deposit shall be deemed to be a Good Faith Deposit under the Sales Procedures Order.

(b) Disposition of Deposit. If this Agreement is terminated by Seller pursuant to Section 10.1(c)(i), as its sole and exclusive remedy and complete liquidated damages, Seller shall retain the Deposit, together with any interest accrued thereon, but only to the extent necessary to satisfy any damages to which Seller is entitled as a result of such termination ("**Seller Damages**"). If this Agreement is terminated pursuant to any provision other than Section 10.1(c)(i), then in each case the Deposit, together with any interest accrued thereon, shall be returned to Buyer. If the Closing occurs, the Deposit shall be delivered to Seller and credited towards the Purchase Price.

**Section 6.8 Notice of Developments.** Until the Closing, Seller shall give prompt written notice to Buyer upon becoming aware (a) of any development constituting a Material Adverse Effect or which will or is reasonably expected to result in a material breach by

Seller of this Agreement or otherwise result in any of the conditions set forth in ARTICLE VIII becoming incapable of being satisfied, (b) that any representation or warranty made by Seller herein was untrue or inaccurate as of the Agreement Date or would be untrue or inaccurate as of the Closing Date, (c) of any matter or event first arising or occurring after the Agreement Date that, if existing or occurring on or before the Agreement Date, would have been required to be set forth, disclosed, or described in the Disclosure Schedules to this Agreement in order for any representation or warranty made by Seller herein to be true and correct, (d) of any development materially and adversely affecting the ability of Seller to consummate the transactions contemplated by this Agreement (including any written notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, or objecting to the consummation of any of the transactions contemplated by this Agreement), (e) of any written notice or other written communication from any Governmental Authority (other than the Bankruptcy Court) in connection with the transactions contemplated by this Agreement, and (f) of any competing proposals to purchase any of the Purchased Assets. Seller shall have the right, from time to time prior to the Closing, to amend or supplement the schedules to this Agreement with respect to any matter described in clause (c) above. No disclosure pursuant to this Section 6.7 and no amendment or supplement of the schedules to this Agreement pursuant to the preceding sentence shall be deemed to prevent or cure any misrepresentation, breach of warranty, or breach of covenant, or to otherwise affect or diminish any representation, warranty, covenant, or obligation of Seller in this Agreement, for purposes of determining whether any condition set forth in Section 8.2 has been satisfied; provided, however, this Section 6.7 shall not constitute a covenant or agreement for purposes of Section 8.2(b).

**Section 6.9 Communications with Customers and Suppliers.** Seller agrees that, on and after the Agreement Date, Buyer and its Representatives may communicate with Seller's Employees and customers and vendors of the Business regarding the transactions contemplated under this Agreement.

**Section 6.10 List of Contracts.** Prior to the Closing Date, Seller shall provide Buyer with a list and copies of all then-executory Contracts and unexpired Leases to which it is a party, or a schedule setting forth the name of the counterparty thereto, a description of the type and quantity of goods covered thereby, an estimated dollar value thereof, and the delivery and/or other key performance dates thereunder.

## **ARTICLE VII**

### **ADDITIONAL AGREEMENTS**

**Section 7.1 Employees.** Buyer will offer new employment effective as of the Effective Time to the Employees of Seller set forth in that certain confidential side letter delivered by Buyer to Seller contemporaneously with this Agreement (the "**Side Letter**"), as may be amended by Buyer in its discretion prior to the Effective Time. Those Employees who accept Buyer's offer of employment made pursuant to this Section 7.1 and commence working for Buyer as of the Effective Time are referred to herein as "**Transferred Employees.**" Buyer shall not have any obligations on account of any employee who is not a Transferred Employee. Any Transferred Employees will be hired by Buyer on salary and benefit terms acceptable to the

Buyer, in its discretion, and Buyer shall not be liable with respect to any liabilities arising out of any such Transferred Employee's employment by Seller.

**Section 7.2 Confidentiality.**

(a) Seller covenants and agrees that, from and for a period of two (2) years after the Closing, Seller shall, and shall use its commercially reasonable efforts to cause its Affiliates and Representatives to, (i) treat and hold as confidential any proprietary information relating to the Business or the Purchased Assets that was provided or exchanged between Seller and Buyer in connection with this Agreement and any confidential information relating to the negotiation of the transactions contemplated hereby (the "**Business Confidential Information**") and (ii) refrain from using and disclosing the Business Confidential Information except to the extent (A) necessary in connection with their obligations under this Agreement or with respect to winding up their affairs following the Closing, (B) approved in writing in advance by Buyer, (C) required by Law, or (D) compelled by Order to disclose such Business Confidential Information, provided, however, that prior to any such compelled disclosure, Seller shall give Buyer reasonable advance notice of any such disclosure and shall cooperate with Buyer in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of such information.

(b) Buyer covenants and agrees to keep confidential information provided to Buyer pursuant to this Agreement; *provided, however*, that disclosure of matters that become a matter of public record without any fault of Buyer shall not constitute a breach of any confidential agreement.

**Section 7.3 Collection of Accounts Receivable.** On or before the Closing Date, Buyer, Seller, and Seller's secured lenders shall enter into a separate agreement with respect to the collection of Seller's accounts receivable by Buyer (in a form agreeable to all such parties).

**Section 7.4 Public Announcements.** Unless otherwise required by applicable Law or by obligations of Buyer or Seller pursuant to any listing agreement with or rules of any securities exchange, Buyer and Seller shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement, the transactions contemplated hereby, or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), which written consent may be via e-mail.

**Section 7.5 Bulk Sales Laws.** The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

**Section 7.6 Transfer Taxes.** All transfer, documentary, sales, use, stamp, registration, value added, and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the other Transaction Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due.

Buyer shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Seller shall cooperate with respect thereto as necessary).

**Section 7.7 Further Assurances.** Following the Closing, each of Parties shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the other Transaction Documents.

**Section 7.8 No Other Representations or Warranties.**

(a) Buyer acknowledges that, except for the representations and warranties contained in ARTICLE IV, neither Seller nor any Person on behalf of Seller makes any express or implied representation or warranty with respect to Seller, the Business, or any of the Purchased Assets (including any representations and warranties as to the condition of any of the Purchased Assets or their fitness for a particular purpose) or with respect to any information provided by or on behalf of Seller to Buyer.

(b) Buyer agrees that (i) Buyer is purchasing the Purchased Assets on an “AS IS” and “WITH ALL FAULTS” basis based solely on Buyer’s own investigation of the Purchased Assets and the representations and warranties set forth in ARTICLE IV and (ii) neither Seller nor any real estate broker or other Representative of Seller has made any warranties or representations, express, implied, or statutory, written or oral, respecting the Purchased Assets, any part of the Purchased Assets, the financial performance of the Purchased Assets or the Business, or the physical condition of any of the Purchased Assets other than the representations and warranties set forth in ARTICLE IV. Buyer further acknowledges that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Seller and Buyer after good faith arms-length negotiation in light of Buyer’s agreement to purchase the Purchased Assets “AS IS” and “WITH ALL FAULTS”. EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER MAKES NO EXPRESS WARRANTY, NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE PURCHASED ASSETS.

**Section 7.9 Firearms Acquisition and Disposition Records.** On the Closing Date and subject to and in accordance with applicable Law, Seller shall close its Firearms Acquisition and Disposition Records and, as promptly as practicable after the Closing (but in any event, within thirty days), shall deliver such Firearms Acquisition and Disposition Records to the Bureau of Alcohol, Tobacco, Firearms and Explosives in connection with the discontinuance of Seller’s licensed business pursuant to 27 CFR §478.127. For the avoidance of doubt, Buyer shall not be responsible for any liabilities or obligations relating to or arising out of Seller’s Firearms Acquisition and Disposition Records, and any such liabilities or obligations shall be Excluded Liabilities under this Agreement.

**Section 7.10 Seller Name Change.** Seller acknowledges and agrees that all of the rights of Seller in and to the trade names, fictitious names, and other names used in connection

with the Business (the “Names”) will be transferred hereunder to Buyer effective as of the Closing Date. From and after the Closing Date, none of Seller, or any of its successors, heirs, Representatives, assignees or Affiliates, shall have the right to use such Names or any names similar thereto, except as necessary to effect the change of the name of Seller (consistent with the terms hereof) or to evidence that such changes have occurred. At the Closing, Seller shall deliver to Buyer all documents required to be filed by Seller with the appropriate Governmental Authority in the State of Ohio and such other states in which Seller is qualified or registered to do business as a foreign corporation, to change the name of Seller to a name which does not contain such Names or any names similar thereto, and Seller shall file all such documents and effect such change of names within three (3) Business Days following the Closing, with evidence thereof promptly delivered to Buyer.

## **ARTICLE VIII** **CONDITIONS TO CLOSING**

**Section 8.1 Conditions to Obligations of All Parties.** The obligations of each Party to consummate the transactions contemplated by this Agreement shall be subject to the following conditions:

(a) No Governmental Authority having enacted, issued, promulgated, enforced, or entered any Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall have become a Final Order.

**Section 8.2 Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer’s waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Seller contained in Section 4.1, Section 4.2, Section 4.5, and Section 4.17 of this Agreement shall be true and correct in the aggregate in all material respects (without giving effect to any limitation as to materiality or Material Adverse Effect set forth therein), in each case at and as of the date of this Agreement and the Closing Date with the same force and effect as though then made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). All other representations and warranties of Seller contained in ARTICLE IV shall be true and correct in all material respects as of the Agreement Date and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a Material Adverse Effect.

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants, and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Since the Agreement Date, no event has occurred, the effects of which are continuing, that has had, or would reasonably be expected to have, a Material Adverse Effect.

(d) Seller shall have delivered to Buyer duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(a).

(e) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 8.2(a), Section 8.2(b), and Section 8.2(c) have been satisfied (the “**Seller Closing Certificate**”).

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

(g) Buyer shall have received a certificate of the Secretary (or equivalent officer) of Seller certifying the names and signatures of the officers of Seller authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

(h) Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the “**FIRPTA Certificate**”) that Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code duly executed by Seller.

(i) No Order shall have been entered and no stay shall exist that restrains or prohibits the consummation of the transactions contemplated by this Agreement.

(j) Buyer or Seller, as applicable, shall have received all consents set forth on Section 4.3 and Section 5.3 of the Disclosure Schedules.

**Section 8.3 Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller’s waiver, at or prior to the Closing, of each of the following conditions:

(a) The representations and warranties of Buyer contained in Section 5.1, Section 5.2, and Section 5.5 of this Agreement shall be true and correct in the aggregate in all material respects (without giving effect to any limitation as to materiality or material adverse effect set forth therein), in each case at and as of the date of this Agreement and the Closing Date with the same force and effect as though then made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date). All other representations and warranties of Buyer contained in ARTICLE V shall be true and correct in all respects as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, which shall be true and correct in all respects as of that specified date), except where the failure of such representations and warranties to be true and correct would not have a material adverse effect on Buyer's ability to consummate the transactions contemplated hereby.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the other Transaction Documents to be performed or complied with by it prior to or on the Closing Date.

(c) Buyer shall have delivered to Seller the Purchase Price, duly executed counterparts to the Transaction Documents (other than this Agreement) and such other documents and deliveries set forth in Section 3.2(b).

(d) Buyer shall have delivered to Seller a final form of Schedule 2.5 of the Disclosure Schedules, provided that the Cure Amount Cap shall not have materially increased from the Cure Amount Cap listed on Section 2.5 of the Disclosure Schedules as of the Agreement Date.

(e) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 8.3 and Section 8.3(b) have been satisfied (the "**Buyer Closing Certificate**").

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

(g) Seller shall have received a certificate of the Secretary (or equivalent officer) of Buyer certifying the names and signatures of the officers of Buyer authorized to sign this Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

**ARTICLE IX**  
**DUE DILIGENCE**

**Section 9.1 Due Diligence.** After the Agreement Date and prior to the Closing Date, Seller shall (a) afford Buyer's Representatives timely access during normal business hours to the offices, properties (including the Facility), Employees, outside accountants, agreements, and other documentation and financial records with respect to the Business, the Purchased Assets, and the Assumed Liabilities to the extent Buyer reasonably deems necessary (including any environmental audits and investigations, a physical counting of Inventory, and inspection of Purchased Assets), and permit Buyer and its Representatives to make copies of such materials, and (b) furnish to Buyer or its Representatives such additional information concerning the Purchased Assets, the Business, and the Assumed Liabilities as shall be reasonably requested by Buyer or its Representatives; provided that, if requested by Seller, Buyer shall submit to Seller written requests for such access, information, or cooperation, including reasonable detail regarding the requested access, information, or cooperation, a reasonable period in advance of the time at which such access, information, or cooperation is to be provided, and all such requests shall be submitted only to such individual or individuals as Seller may designate from time to time to receive such requests. Notwithstanding anything herein to the contrary, no such access, information, or cooperation shall be permitted or required to the extent that it would require Seller to disclose information subject to attorney-client privilege, *provided* that Seller shall identify any instance where such information is not disclosed and describe with reasonable particularity such withheld information. Further, Seller shall otherwise cooperate and assist, to the extent reasonably requested by Buyer, with Buyer's investigation of Seller, the Business, the Purchased Assets, and the Assumed Liabilities. Without limiting the generality of the foregoing, to the extent not provided to Buyer as of the Agreement Date, Seller shall provide to Buyer true, correct and complete copies of all Contracts and unexpired Leases entered into prior to the date hereof, no later than 15 days after the date hereof but in any case at least 30 days prior to the Closing Date.

**ARTICLE X**  
**TERMINATION**

**Section 10.1 Termination.** This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer if:

(i) any of the conditions set forth in Section 8.1 or Section 8.2 shall not have been satisfied by July 6, 2018 (the "**Drop Dead Date**"), other than as a result of the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(ii) if a Governmental Authority issues a Final Order prohibiting the transactions contemplated hereby where such Final Order was requested, encouraged, or supported by Seller;

(iii) if Buyer is not the successful bidder at the Auction; provided that if Buyer is the only back-up bidder, then Buyer shall not be permitted to terminate this Agreement pursuant to this Section 10.1(b)(iii) until after the earlier of (A) the closing of an Alternative Transaction or (B) the Drop Dead Date; *provided, however*, that Buyer shall be permitted to terminate this Agreement pursuant to this Section 10.1(b)(iii) only if Buyer is not in material breach of any of its representations, warranties, covenants, or agreements contained herein;

(iv) if Buyer is the successful bidder at the Auction and the Closing does not occur on or before the Drop Dead Date; *provided, however*, that Buyer shall not be permitted to terminate this Agreement pursuant to this Section 10.1(b)(iv) if (I) the failure of the Closing to occur is caused by the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing or (II) Buyer is in material breach of any of its representations, warranties, covenants, or agreements contained herein;

(v) there has been a material breach by Seller of any representation or warranty contained herein or in the due and timely performance of any covenant or agreement contained herein, Buyer has notified the Seller of such breach in writing, and the breach has not been cured within five (5) Business Days after delivery of such notice (or such longer notice and cure period as may be set forth in any other provision of this Agreement); or

(vi) if the Seller has filed any pleading or entered into any agreement (other than this Agreement and motions for the entry of Orders of the Bankruptcy Court consistent with the transactions contemplated hereby) relating to or otherwise regarding the sale, transfer, lease or other disposition, directly or indirectly, of all or a material portion of the Purchased Assets or regarding an Alternative Transaction (including in either instance, for the avoidance of doubt, a credit bid, deed in lieu, exercise of rights and remedies or foreclosure with respect to some or all of the Purchased Assets);

(c) by Seller if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would render any of the conditions specified in ARTICLE VIII incapable of being satisfied and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date or is not cured within ten (10) Business Days (whichever is later), provided that that Drop Dead Date shall be extended for such ten (10)-Business Day period if such date is later;

(ii) if a Governmental Authority issues a Final Order prohibiting the transactions contemplated hereby where such Order was requested or actively encouraged or supported by Buyer;

(iii) if Buyer is not the successful bidder at the Auction;

(iv) if the Closing shall not have occurred and an Alternative Transaction shall not have closed on or before the Drop Dead Date, *provided, however,* that Seller shall be permitted to terminate this Agreement pursuant to this Section 10.1(c)(iv) only if Seller is not in material breach of any of its representations, warranties, covenants, or agreements contained herein; or

(v) if Buyer has modified Schedule 2.5 of the Disclosure Schedules after the Agreement Date and such modification(s) has (or have) materially increased the Cure Amount Cap listed on Section 2.5 of the Disclosure Schedules as of the Agreement Date;

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

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited;

(ii) any Governmental Authority issues a Final Order prohibiting the transactions contemplated hereby where such Order was not requested, encouraged, or supported by Seller or Buyer; or

(iii) if, in accordance with the terms and conditions of this Agreement, Seller enters into one or more agreements to sell, transfer, or otherwise dispose of any material portion of the Purchased Assets in a transaction or series of transactions (other than in the ordinary course of business) with one or more Persons, other than Buyer (an “**Alternative Transaction**”) that actually closes.

### **Section 10.2 Effect of Termination.**

(a) In the event of termination of this Agreement by Buyer or Seller pursuant to this ARTICLE X, all rights and obligations of the Parties under this Agreement shall terminate without any liability of any Party to any other Party, except for (i) any obligation of Seller to disburse (or cause the disbursement of) the Deposit in accordance with Section 6.7(b), (ii) any obligations of Seller to pay the Break-Up Fee and Expense Reimbursement as required by Section 10.2(b), (iii) the obligations of Buyer pursuant to Section 7.2(b), and (iv) other than as set forth in Section 10.2(b), no such termination shall relieve any Party from any damages, losses, or liabilities suffered or incurred by the other Party arising out of any intentional breach of any covenant in this Agreement by a Party that occurs upon or prior to the termination of this Agreement. The provisions of this Section 10.2 (and, to the extent applicable to the interpretation or enforcement of such provisions, ARTICLE I and ARTICLE XI), shall expressly survive the termination of this Agreement.

(b) In the event of a termination of this Agreement pursuant to Section 10.1(a), Section 10.1(b), Section 10.1(c)(iii), or Section 10.1(c)(iv) (but in the case of Section 10.1(c)(iv), only upon the closing of an Alternative Transaction, and in the case of Section 10.1(b)(iv), only if the Fee Criteria are satisfied as of the termination), Seller shall pay to Buyer the Break-Up Fee and the Expense Reimbursement within two (2) Business Days following such termination or if later, in the case of a termination pursuant to Section 10.1(c)(iv), upon the closing of an Alternative Transaction. In the event of a termination of this Agreement pursuant to the subsections of this Section 10.2 pursuant to which Buyer is entitled to the return of the Deposit and payment of the Break-Up Fee and the Expense Reimbursement, Buyer may elect, as the sole and exclusive remedy of Buyer, to (i) receive the Deposit and payment of the Break-Up Fee and Expense Reimbursement from Seller, and in such event Seller shall not have any further liability whatsoever to Buyer hereunder, or (ii) pursue its equitable remedies, including, without limitation, specific performance of this Agreement or the obligations of Seller hereunder. In the event of a termination of this Agreement pursuant to which Seller is entitled to retain the Deposit, Seller may elect, as the sole and exclusive remedy of Seller, to (i) retain the Deposit, and in such event Buyer shall not have any further liability whatsoever to Seller hereunder, or (ii) pursue its equitable remedies, including, without limitation, specific performance of this Agreement or the obligations of Buyer hereunder.

## **ARTICLE XI** **MISCELLANEOUS**

**Section 11.1 Expenses.** Except as otherwise expressly provided herein (including Section 6.6 hereof), all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 11.2 Notices.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with non-automatic confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 11.2):

If to Seller:

AcuSport Corporation  
One Hunter Place  
Bellefontaine, Ohio 43311  
Attention: President and COO  
Chief Financial Officer  
Facsimile: 937.592.2595  
E-mail: jbroering@AcuSport.com

jflanagan@AcuSport.com

with a copy to:

Bryan Cave Leighton Paisner LLP  
161 North Clark Street  
Suite 4300  
Chicago, Illinois 60601  
Attention: Ben Sidbury  
Jason DeJonker  
Facsimile: 704-749 9339  
E-mail: ben.sidbury@bclplaw.com  
jason.dejonker@bclplaw.com

If to Buyer:

Ellett Brothers, LLC  
267 Columbia Avenue  
Chapin, SC 29036  
Attention: Bradley P. Johnson  
E-mail: BradJohnson@Ellett.com

with a copy to:

McDermott Will & Emery LLP  
340 Madison Avenue  
New York, New York 10173  
Attention: Frank Steinherr  
Timothy W. Walsh  
Facsimile: 646-219-6778  
E-mail: fsteinherr@mwe.com  
twwalsh@mwe.com

**Section 11.3 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; (c) the word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and such phrase shall not simply mean “if”; and (d) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Articles, Sections, Disclosure Schedules, and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**Section 11.4 Headings.** The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

**Section 11.5 Severability.** If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

**Section 11.6 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of Parties with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous representations, warranties, understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the other Transaction Documents, the Exhibits, and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

**Section 11.7 Successors and Permitted Assigns.** This Agreement shall be binding upon and shall inure to the benefit of Parties and their respective successors and permitted assigns. Neither Party may assign its rights or obligations hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that Buyer may, without the prior approval of Seller, assign any or all of its rights and interests hereunder to any Affiliate of Buyer, to a lender of Buyer, or, following the Closing, in whole or in part to any successor-in-interest to any Person acquiring all or any portion of the Purchased Assets. No assignment shall relieve the assigning Party of any of its obligations hereunder.

**Section 11.8 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 11.9 Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each Party. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

**Section 11.10 Governing Law; Consent to Jurisdiction and Venue; Waiver of Jury Trial.**

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Ohio applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of Laws or any other Law that would make the laws of any other jurisdiction other than the State of Ohio applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; *provided, however*, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in a Ohio state court or a federal court sitting in the State of Ohio, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding. Parties consent to service of process by mail (in accordance with Section 11.2) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLER, BUYER, OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

**Section 11.11 Specific Performance for Post-Closing Covenants.** (a) Each Party recognizes that if such Party breaches or refuses to perform any such covenant, monetary damages alone would not be adequate to compensate the non-breaching Party or Parties for their injuries, (b) the non-breaching Party or Parties shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of such covenants, (c) if any Proceeding is brought by the non-breaching Party or Parties to enforce such covenants, the Party in breach shall waive the defense that there is an adequate remedy at law, (d) each Party agrees to waive any requirement for the security or posting of any bond in connection with any Proceeding seeking specific performance of such covenants, and (e) each Party agrees that the only permitted objection that it may raise in response to any action for specific performance of such covenants is that it contests the existence of a breach or threatened breach of such covenants.

**Section 11.12 No Special Damages.** Notwithstanding anything to the contrary set forth in this Agreement, no Party shall be liable to or otherwise responsible to any other Party

or any other Person for exemplary, punitive, consequential, indirect, incidental, or other special damages (including loss of revenue, income, or profits or loss in value of assets or securities) for any matter arising out of or relating to this Agreement or any other Transaction Document and the transactions contemplated hereby or thereby, regardless of how caused and regardless of the theory of recovery.

**Section 11.13 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**Section 11.14 Non-recourse.** This Agreement may only be enforced against, and any claim, action, suit or other legal proceeding based upon, arising out of, or related to this Agreement, or the negotiation, execution or performance of this Agreement, may only be brought against the entities that are expressly named as Parties. No past, present or future director, officer, employee, incorporator, manager, member, partner, stockholder, Affiliate, agent, attorney or other Representative of any Party or of any Affiliate of any Party, or any of their successors or permitted assigns, shall have any liability for any obligations or liabilities of any Party under this Agreement or for any claim, action, suit, or other legal proceeding based on, in respect of or by reason of the transactions contemplated hereby.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**ACUSPORT CORPORATION**

By: James Broering  
Name: Jim Broering  
Title: President and Chief Operating Officer

**ELLETT BROTHERS, LLC**

By: \_\_\_\_\_  
Name: Bradley P. Johnson  
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**ACUSPORT CORPORATION**

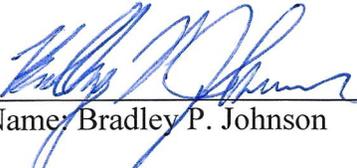
By:

\_\_\_\_\_  
Name:

Title:

**ELLETT BROTHERS, LLC**

By:

  
\_\_\_\_\_  
Name: Bradley P. Johnson

Title: Chief Executive Officer

**Exhibit A**

Borrowing Base Certificate

Date 4/26/18  
Name AcuSport CorporationA/R As of: 4/25/18  
Inventory As of: 4/25/18

The undersigned, *AcuSport Corporation* ("Borrower"), pursuant to that certain Credit Agreement dated as of *June 4, 2015* (as amended, restated, modified, supplemented, refinanced, renewed, or extended from time to time, the "Credit Agreement"), entered into among Borrower, the lenders signatory thereto from time to time and Wells Fargo Bank, N.A. as the arranger and administrative agent (in such capacity, together with its successors and assigns, if any, "Agent"), hereby certifies to Agent that the following items, calculated in accordance with the terms and definitions set forth in the Credit Agreement for such items are true and correct, and that Borrower is in compliance with and, after giving effect to any currently requested Revolving Loans, will be in compliance with, the terms, conditions, and provisions of the Credit Agreement.

**Accounts Receivable**

Accounts Receivable Balance per Aging Report Assigned To Wells Fargo Capital Finance	20,512,642.15
Less Ineligibles (detailed on page 2)	6,764,226.46
Eligible Accounts Receivable	13,748,415.69
Accounts Receivable Availability before Sublimit(s)	11,686,153.34
<b>Net Available Accounts Receivable after Sublimit(s)</b>	<b>11,686,153.34</b>

**Inventory**

Inventory Balance Assigned To Wells Fargo Capital Finance	14,187,395.39
Less Ineligibles (detailed on page 3)	106,104.12
Eligible Inventory	14,081,291.27
Inventory Availability before Sublimit(s)	6,647,049.36
<b>Available Inventory after Sublimit(s)</b>	<b>6,647,049.36</b>

**Summary & Other Assets**

<b>Total Revolver Collateral Availability</b>		<b>18,333,202.70</b>
<b>Revolver Availability before Reserves</b>	<b>Total Credit Line</b> <u>48,000,000.00</u>	<b>18,333,202.70</b>
		<i>Suppressed Availability</i> -
<b>Reserves</b>		
MTM Reserve		-
Rent Reserve		37,000.00
OH Use Tax Liability		82,000.00
Excess Slow Moving		-
Availability Block		1,500,000.00
AR Exceeding Sub-Limits		-
<b>Total Reserves Calculated after the Credit Line</b>		<b>1,619,000.00</b>
<b>Total Revolver Availability after Reserves before Loan Balance and LCs</b>		<b>16,714,202.70</b>
Letter of Credit Balance	As of: <u>4/25/18</u>	-
Revolver Loan Ledger Balance	As of: <u>4/25/18</u>	13,737,721.45
<b>Revolver Net Availability</b>		<b>2,976,481.25</b>
<b>Term Loan</b>		<b>3,776,809.00</b>
<b>Total Loan Balance</b>		<b>17,514,530.45</b>

Additionally, the undersigned hereby certifies and represents and warrants to the Lender Group on behalf of Borrower that (i) as of the date hereof, each representation and warranty contained in or pursuant to any Loan Document, any agreement, instrument, certificate, document or other writing furnished at any time under or in connection with any Loan Document, and as of the effective date of any advance, continuation or conversion requested above is true and correct in all material respects (except to the extent any representation or warranty expressly related to an earlier date), (ii) each of the covenants and agreements contained in any Loan Document have been performed (to the extent required to be performed on or before the date hereof or each such effective date), (iii) no Default or Event of Default has occurred and is continuing on the date hereof, nor will any thereof occur after giving effect to the request above, and (iv) all of the foregoing is true and correct as of the effective date of the calculations set forth above and that such calculations have been made in accordance with the requirements of the Credit Agreement.

\_\_\_\_\_  
Authorized Signer

**Accounts Receivable Availability Detail**

Name: AcuSport Corporation

Report based on Aging dated:

Division Name:	4/25/18	CRO00		Total
	CRO00	Terms > 120 Days	Terms < 121 Days	
<b>Aging Spreads:</b>				
Post dated	-	-	-	-
0 - 30 DOI	13,771.25	(7,888.53)	5,452,510.62	5,458,393.34
31 - 60 DOI	383,670.32	(22,897.81)	3,743,674.92	4,104,447.43
61 - 90 DOI	578,011.46	(14,896.62)	2,798,174.78	3,361,289.62
91 - 120 DOI	198,187.97	83,338.97	737,302.58	1,018,829.52
121+ DOI	3,140,130.37	25,136.73	3,404,415.14	6,569,682.24
	<b>4,313,771.37</b>	<b>62,792.74</b>	<b>16,136,078.04</b>	<b>20,512,642.15</b>
<b>A/R Aging Balance:</b>				
<b>Ineligibles:</b>				
ERS Past Due2-> 120 DOI or > 60 DPD for terms < 121; > 0 DPD for all others	1,246,551.88	39,645.23	3,485,951.76	4,772,148.87
ERS Past Due Credits	5,995.29	17,760.08	2,484.70	26,240.07
ERS CrossAge @-25%	184,565.95	967.84	1,077,106.98	1,262,640.77
ERS Intercompany	-	20,887.87	15,850.69	36,738.56
ERS Foreign	-	-	-	-
ERS Government	-	-	1,707.35	1,707.35
ERS COD	-	-	45,977.60	45,977.60
ERS Debit Memo	178,367.89	138,398.39	140,868.71	457,634.99
ERS Employee Sales	-	-	2,053.32	2,053.32
ERS Progress Billing	-	-	-	-
ERS Extended Terms > 210 for Range Terms, > 300 for New Cust & Terms > 120 (Excluding Vance & Fin Feather)	1,076.08	8,881.89	-	9,957.97
ERS Finance Charges	-	-	-	-
ERS Guaranteed	-	-	-	-
ERS Samples	-	-	-	-
ERS Consignment Sales	-	-	-	-
ERS Bill & Hold	-	-	-	-
ERS Bankrupt/Doubtful	-	-	-	-
ERS Shortpay	-	-	15,849.47	15,849.47
ERS Other1-Post Dated	-	-	-	-
ERS Other2-VMI Accounts	-	-	-	-
ERS Other3-Notes Receivable AR	-	-	81,141.87	81,141.87
ERS Other4-Aesthetic Finishers AR	-	-	-	-
ERS Other5-CDNN Sports Inc. (firearm liquidator)	-	-	-	-
ERS Contra	-	(507.68)	26,643.30	26,135.62
ERS Other6	-	-	-	-
ERS Other7	-	-	-	-
ERS Other8	-	-	-	-
Manual Contra - O/S Checklist	-	-	20,000.00	20,000.00
Manual Contra - Unvouchered AP GL #000200000200	1,000.00	-	-	1,000.00
Manual Contra - Accrued Miscellaneous GL #000-2400-000-00	-	-	-	-
Manual Deferred Revenue-Merchandising Software License Fee	-	-	5,000.00	5,000.00
Manual Manual5	-	-	-	-
Manual Manual6	-	-	-	-
Manual Manual7	-	-	-	-
Manual Concentration Cap	-	-	-	-
Manual Reserve grossed up as Ineligible	-	-	-	-
Manual Reserve grossed up as Ineligible	-	-	-	-
Manual Reserve grossed up as Ineligible	-	-	-	-
Manual Dilution Ineligible (grossed up)	-	-	-	-
<b>Total Ineligible A/R:</b>	<b>1,617,557.09</b>	<b>226,033.62</b>	<b>4,920,635.75</b>	<b>6,764,226.46</b>
Eligible A/R	2,696,214.28	(163,240.88)	11,215,442.29	13,748,415.69
Advance Rate	85%	85%	85%	
<b>A/R Availability before Sublimit(s)</b>	<b>2,291,782.14</b>	<b>(138,754.75)</b>	<b>9,533,125.95</b>	<b>11,686,153.34</b>
<b>Line Limit or Sublimit(s)</b>	7,000,000.00	3,000,000.00		
<b>Net A/R Availability</b>	<b>2,291,782.14</b>	<b>(138,754.75)</b>	<b>9,533,125.95</b>	<b>11,686,153.34</b>
<b>AR Exceeding Sub-Limit</b>	-	-	-	-

**AR CONCENTRATIONS**

AcuSport Corporation

As of: 4/25/2018

**Consolidated**

#	Customer Name Calc	% or \$ Allowed of Eligible AR	% of Eligible	% of AR	Total	Post dated	0 - 30 DOI	31 - 60 DOI	61 - 90 DOI	91 - 120 DOI	121+ DOI	Ineligibles		Conc Cap	Conc IE	% of Balance
												Total	Eligible A/R			
1	TROP GUN SHOP LTD	10%	0%	16%	3,275,530.80	-	506,755.17	62,450.90	87,449.85	166,069.85	2,452,805.03	3,275,530.80	-	1,374,841.57	-	0%
2	TARGET SPORTS RETAIL LLC	10%	0%	3%	525,255.99	-	-	-	-	-	525,255.99	525,255.99	-	1,374,841.57	-	0%
3	FRONTIER JUSTICE	10%	3%	2%	426,688.16	-	20,783.98	7,194.78	692.58	19,059.98	378,956.84	60,195.59	366,492.57	1,374,841.57	-	0%
4	BIG R	10%	3%	2%	426,096.68	-	168,422.06	257,670.96	156.87	(184.29)	31.08	-	426,096.68	1,374,841.57	-	0%
5	MILLER JONAS DBA	10%	0%	2%	367,834.22	-	-	99,958.49	89.00	89.00	267,697.73	367,834.22	-	1,374,841.57	-	0%
6	POINT BLANK RANGE & GUN SHOP	10%	0%	2%	349,540.70	-	97,368.49	15,942.08	9,586.54	20,142.88	206,500.71	349,540.70	-	1,374,841.57	-	0%
7	TURNERS OUTDOORSMAN CORP OFFIC	10%	2%	1%	282,430.25	-	6,610.73	201,507.52	74,312.00	-	-	-	282,430.25	1,374,841.57	-	0%
8	BUCK DOES MERCANTILE LLC	10%	2%	1%	255,899.41	-	1,498.52	3,350.21	5,304.53	1,250.15	244,496.00	45,489.67	210,409.74	1,374,841.57	-	0%
9	SHEEPDOG FIREARMS LLC	10%	0%	1%	251,280.25	-	100.00	46,993.44	100.00	2,601.38	201,485.43	251,280.25	-	1,374,841.57	-	0%
10	KNOXVILLE OPERATIONS LLC DBA	10%	2%	1%	248,310.14	-	7,206.26	-	-	-	241,103.88	-	248,310.14	1,374,841.57	-	0%
<b>Total Analyzed</b>			<b>11%</b>	<b>31%</b>	<b>6,408,866.60</b>	-	<b>808,745.21</b>	<b>695,068.38</b>	<b>177,691.37</b>	<b>209,028.95</b>	<b>4,518,332.69</b>	<b>4,875,127.22</b>	<b>1,533,739.38</b>		-	

<b>CONSOLIDATED TOTAL AR</b>	<b>100%</b>	<b>20,512,642.15</b>	<b>-</b>	<b>5,458,393.34</b>	<b>4,104,447.43</b>	<b>3,361,289.62</b>	<b>1,018,829.52</b>	<b>6,569,682.24</b>
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Remaining AR	69%	14,103,775.55	-	4,649,648.13	3,409,379.05	3,183,598.25	809,800.57	2,051,349.55
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Ineligible AR Prior to Concentration Ineligible	6,764,226.46
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Net Eligible AR Prior to Concentration Ineligible	13,748,415.69
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**Concentration Caps or Limits per LSA:**

Names (Customer_Name_Calc)	% or Dollar Cap
All Others	10%

**AR DILUTION**

**Per Field Exam**

<i>Dilution Calculation Detail:</i>	<i>Range &amp; New Cust Terms</i>	<i>Terms &gt; 120 Days</i>	<i>Terms &lt; 121 Days</i>
<i>Allowed Dilution</i>	5.0%	5.0%	5.0%
<i>Current Dilution (per Field Exam-Consolidated Method)</i>	1.7%	1.7%	1.7%
<i>Dilution Reserve %</i>	0.0%	0.0%	0.0%
<b><i>Eligible Receivables</i></b>	2,696,214.28	(163,240.88)	11,215,442.29
<b><i>Dilution Ineligible</i></b>	-	-	-
<b><i>Dilution Ineligible (grossed up)</i></b>	-	-	-
Lookback period per Credit Agreement	12	12	12
Field exam cutoff date	11/30/17	11/30/17	11/30/17

Inventory Availability Detail

Name: AcuSport Corporation

Based on the Inventory Perpetual dated: 4/25/18

Loan ID #:	CRO10	CRO11	CRO12	CRO13	CRO14	CRO15	CRO16	CRO17	
Inventory Category:	Ammunition	HandGuns	LongGuns	Other	Pending Putaway	6-9 Months From Receipt Date	9-12 Months From Receipt Date	Over 12 Months From Receipt Date	Total
ERS Inventory Total:	893,977.00	2,663,177.15	2,039,294.70	1,695,738.08		1,919,402.26	2,750,535.13	2,225,271.07	14,187,395.39
Manual Inventory Total:									
<b>Total Gross Inventory:</b>	<b>893,977.00</b>	<b>2,663,177.15</b>	<b>2,039,294.70</b>	<b>1,695,738.08</b>	<b>-</b>	<b>1,919,402.26</b>	<b>2,750,535.13</b>	<b>2,225,271.07</b>	<b>14,187,395.39</b>
ERS Books, Tapes, Software	-	-	-	-	-	41.66	847.00	-	888.66
ERS Knives & Promotional Items	-	-	-	-	-	-	-	-	-
ERS Inventory Subject to 503b9 Claims	-	-	-	8,215.46	-	-	-	-	8,215.46
ERS Ineligible4	-	-	-	-	-	-	-	-	-
ERS Ineligible5	-	-	-	-	-	-	-	-	-
ERS Small Locations	-	-	-	-	-	-	-	-	-
ERS Ineligible6	-	-	-	-	-	-	-	-	-
ERS Ineligible7	-	-	-	-	-	-	-	-	-
ERS Ineligible8	-	-	-	-	-	-	-	-	-
ERS Ineligible9	-	-	-	-	-	-	-	-	-
ERS Ineligible10	-	-	-	-	-	-	-	-	-
ERS Ineligible11	-	-	-	-	-	-	-	-	-
ERS Ineligible12	-	-	-	-	-	-	-	-	-
ERS Ineligible13	-	-	-	-	-	-	-	-	-
ERS Ineligible14	-	-	-	-	-	-	-	-	-
ERS Ineligible15	-	-	-	-	-	-	-	-	-
Manual Rebate Receivable GL #000120001200		97,000.00							97,000.00
Manual Manual2									
Manual Manual3									
Manual Manual4									
Manual Manual5									
Manual Manual6									
Manual Manual7									
Manual Manual8									
Manual Manual9									
Manual Manual10									
Manual Manual11									
Manual Manual12									
Manual Reserve grossed up as Ineligible									
Manual Reserve grossed up as Ineligible									
Manual Reserve grossed up as Ineligible									
Manual Appraisal Reserve (grossed up)									
<b>Total Ineligible Inventory:</b>	<b>-</b>	<b>97,000.00</b>	<b>-</b>	<b>8,215.46</b>	<b>-</b>	<b>41.66</b>	<b>847.00</b>	<b>-</b>	<b>106,104.12</b>
Eligible Inventory	893,977.00	2,566,177.15	2,039,294.70	1,687,522.62	-	1,919,360.60	2,749,688.13	2,225,271.07	14,081,291.27
Advance Rate	60.52%	60.52%	60.52%	60.52%	60.52%	53.40%	46.28%	0.00%	47.20%
<b>Availability before Sublimit</b>	<b>541,034.88</b>	<b>1,553,050.41</b>	<b>1,234,181.15</b>	<b>1,021,288.69</b>	<b>-</b>	<b>1,024,938.56</b>	<b>1,272,555.67</b>	<b>-</b>	<b>6,647,049.36</b>
<b>Sublimits</b>									<b>18,000,000.00</b>
<b>Net Inventory Availability</b>	<b>541,034.88</b>	<b>1,553,050.41</b>	<b>1,234,181.15</b>	<b>1,021,288.69</b>	<b>-</b>	<b>1,024,938.56</b>	<b>1,272,555.67</b>	<b>-</b>	<b>6,647,049.36</b>

Appraisal Review									
As of: <u>April 30, 2017</u>									
	Ammunition	HandGuns	LongGuns	Other	Pending Putaway	6-9 Months From Receipt Date	9-12 Months From Receipt Date	Over 12 Months From Receipt Date	
Eligible Inventory per Appraisal	893,977.00	2,566,177.15	2,039,294.70	1,687,522.62	-	1,919,360.60	2,749,688.13	2,225,271.07	
Appraised NOLV %	71.20%	71.20%	71.20%	71.20%	71.20%	71.20%	71.20%	0.00%	
% times the NOLV	85%	85%	85%	85%	85%	75%	65%	85%	
% of NOLV	60.52%	60.52%	60.52%	60.52%	60.52%	53.40%	46.28%	0.00%	
Appraised Value	541,034.88	1,553,050.41	1,234,181.15	1,021,288.69	-	1,024,938.56	1,272,555.67	-	
Appraisal Reserve	-	-	-	-	-	-	-	-	
Appraisal Ineligible (grossed up)	-	-	-	-	-	-	-	-	

Consolidated AR Past Due Analysis (per Credit Agreement)

AcuSport Corporation

As of: 4/25/18

Currency: USD

#	Customer Name Calc	% of Total PD	Total Balance	Post dated	0 - 30 DOI	31 - 60 DOI	61 - 90 DOI	91-120 DOI	121+ DOI	Total Past Due	Total ERS Ineligible
1	TROP GUN SHOP LTD	51%	3,275,530.80	-	506,755.17	62,450.90	87,449.85	166,069.85	2,452,805.03	2,454,165.16	3,275,530.80
2	TARGET SPORTS RETAIL LLC	11%	525,255.99	-	-	-	-	-	525,255.99	525,255.99	525,255.99
3	MILLER JONAS DBA	6%	367,834.22	-	-	99,958.49	89.00	89.00	267,697.73	267,786.73	367,834.22
4	POINT BLANK RANGE & GUN SHOP	4%	349,540.70	-	97,368.49	15,942.08	9,586.54	20,142.88	206,500.71	208,815.02	349,540.70
5	SHEEPDOG FIREARMS LLC	4%	251,280.25	-	100.00	46,993.44	100.00	2,601.38	201,485.43	204,086.81	251,280.25
6	CAPITAL AREA FIREARMS LLC	4%	169,195.66	-	-	-	-	-	169,195.66	169,195.66	169,195.66
7	BAYPORT HOLDINGS INC DBA	3%	153,361.29	-	-	-	-	-	153,361.29	153,361.29	153,361.29
8	SHOOTERS ALLEY LLC DBA	3%	127,280.07	-	-	-	-	-	127,280.07	127,280.07	127,280.07
9	DGS TOTAL RANGE LTD	1%	69,615.39	-	-	-	-	-	69,615.39	69,615.39	69,615.39
10	FRONTIER JUSTICE	1%	426,688.16	-	20,783.98	7,194.78	692.58	19,059.98	378,956.84	60,195.59	60,195.59
	Total Analyzed	28%	5,715,582.53	-	625,007.64	232,539.69	97,917.97	207,963.09	4,552,154.14	4,239,757.71	5,349,089.96
	Remaining AR	72%	14,797,059.62	-	4,833,385.70	3,871,907.74	3,263,371.65	810,866.43	2,017,528.10	532,391.16	1,389,136.50
	Total AR	100%	20,512,642.15	-	5,458,393.34	4,104,447.43	3,361,289.62	1,018,829.52	6,569,682.24	4,772,148.87	6,738,226.46

**Inventory by Location (Top 20)**

**AcuSport Corporation**

	Period	Activity date	Location_calc	extended_value_calc
1	201804	20180425	One Hunter Place, Bellefontaine, OH 43311	13,711,152.62
2	201804	20180425	3015 South 1030 West, Salt Lake City, UT 84119-3355	476,242.77
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
			Subtotal top 20	<b>14,187,395.39</b>
			All others	-
			Grand total inventory	<b>14,187,395.39</b>

**Exhibit B**

Sale Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re: ) Chapter 11  
 )  
AcuSport Corporation, ) Case No. \_\_\_-\_\_\_\_  
 )  
Debtor. ) Honorable \_\_\_\_\_

**ORDER (I) ESTABLISHING BIDDING  
PROCEDURES FOR THE SALE OF CERTAIN  
OF DEBTOR’S ASSETS; (II) APPROVING BREAK-UP FEE;  
(III) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION  
AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES; (IV) APPROVING FORM AND MANNER OF THE SALE, CURE, AND  
OTHER NOTICES; AND (V) ESTABLISHING AUCTION AND HEARING DATES**

Upon the motion [Docket No. \_\_\_] (the “*Motion*”)<sup>1</sup> for entry of an order (this “*Order*” or the “*Bidding Procedures Order*”): (i) establishing bidding procedures, which are attached as Exhibit 1 hereto (the “*Bidding Procedures*”), to be employed in connection with the proposed sale (the “*Sale*”) of certain of Debtor’s assets (the “*Proposed Sale Assets*”); (ii) approving the form of Asset Purchase Agreement, dated as of April 30, 2018, by and between Debtor and Ellet Brothers, LLC (“*Buyer*”), including the proposed break-up fee and expense reimbursement, together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto (the “*Stalking Horse APA*”); (iii) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases (the “*Assumption and Assignment Procedures*”); (iv) approving the form and manner of the sale, cure, and other notices; and (v) establishing auction and hearing dates (collectively, the “*Bidding Procedures Relief*”); and the Court having considered the Motion and the arguments of counsel made at the hearing on the Motion (the “*Bidding Procedures Hearing*”); and due and sufficient notice of the Bidding Procedures Hearing and the relief sought therein having been given under the particular

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<sup>1</sup> Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed to them in the Motion.

circumstances; and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion and all objections thereto (the “*Objections*”) and it appearing that the Bidding Procedures Relief requested in the Motion is in the best interest of Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby,

**FOUND AND DETERMINED THAT:**

A. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and this Motion in the Southern District of Ohio is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief requested in this Motion are sections 105, 363, 364, 365, and 503 of title 11 of the United States Code (the “*Bankruptcy Code*”), rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and rule 6004-1 of the Local Rules of Bankruptcy Procedure for the Southern District of Ohio (the “*Local Rules*”).

B. The relief granted herein is in the best interests of Debtor, its estate and creditors, and other parties in interest.

C. Debtor has articulated good and sufficient business reasons for the Court to (i) approve the form of Stalking Horse APA and Buyer as the Stalking Horse Bidder, (ii) approve the Bidding Procedures, the Break-up Fee and Expense Reimbursement, the Assumption and Assignment Procedures, the form and manner of notice as set forth in the Motion, the Auction, and the Sale Hearing as set forth herein, (iii) set the date for the Auction, the Sale Hearing, and the other dates set forth herein, and (iv) grant the relief requested in the Motion as provided herein.

D. Due, sufficient and adequate notice of the Bidding Procedures Hearing and the

relief granted in this Order has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required. Debtor's notice of the Motion and the relief requested in the Motion for which approval was sought at the Bidding Procedures Hearing is appropriate and reasonably calculated to provide all interested parties with timely and proper notice under Bankruptcy Rules 2002, 4001, 6004, and 6006, and no other or further notice of, or hearing on, this Order and that portion of the Motion being approved hereby is required.

E. Debtor's proposed notice of the Sale, the Cure Notice, and other notices contemplated hereunder with respect to the Sale, the Auction, the Assumption and Assignment Procedures, and the Sale Hearing are appropriate and reasonably calculated to provide all interested parties with timely and proper notice thereof and no further notice of each is necessary or required.

F. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, and incorporated herein by reference as if fully set forth herein, and the Break-up Fee and Expense Reimbursement are fair, reasonable, and appropriate, were negotiated in good faith by Debtor and Proposed Purchaser and represent the best method for maximizing the value of Debtor's estates in connection with the Sale.

G. The Break-up Fee and Expense Reimbursement, to the extent payable under the Stalking Horse APA, (i) shall be deemed an actual and necessary cost of preserving Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code, (ii) are of substantial benefit to Debtor's estate, (iii) are reasonable and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will be expended by Proposed Purchaser, (iv) have been negotiated by the parties and their respective advisors at arm's length and in good faith, and (v) are necessary to ensure that Proposed Purchaser will continue to pursue the proposed Sale of the Proposed Sale Assets. The Break-up Fee and Expense Reimbursement are

material inducements for, and a condition of, Proposed Purchaser's entry into the Stalking Horse APA. Proposed Purchaser is unwilling to commit to purchase the Proposed Sale Assets under the terms of the Stalking Horse APA unless Proposed Purchaser receives the Break-up Fee and Expense Reimbursement.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED as set forth herein.
2. Any objection to the Motion, to the extent not resolved, waived, or withdrawn, and all reservations of rights included therein, is hereby overruled and denied on the merits.
3. The Bidding Procedures, including references therein to the Stalking Horse APA, are hereby APPROVED and shall apply with respect to the proposed Sale and the assumption and assignment of contracts and unexpired leases contemplated by the Motion. Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.
4. As it relates to the Proposed Sale Assets, the form of Stalking Horse APA is approved. Buyer is approved as the Stalking Horse Bidder.

**Auction and Bidding Procedures**

5. Debtor is authorized (a) to conduct an auction (the "***Auction***") with respect to the Proposed Sale Assets and/or particular lots of Debtor's assets. The Auction, if any, shall be conducted on May 31, 2018, at the offices of Allen Kuehnle Stovall & Neuman LLP, 17 South High Street, Suite 1220, Columbus, Ohio 43215 (the "***Auction Site***"), or such other place and time as Debtor shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction. Debtor is authorized, subject to the terms of this Bidding Procedures Order, to take all actions necessary, in the discretion of Debtor, to conduct and implement such Auction.

6. Debtor may (a) select, in its business judgment, pursuant to the Bidding Procedures, the highest or otherwise best offer(s) and the Successful Bidder or Bidders, and (b) reject any bid that, in Debtor's business judgment, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules or the Bidding Procedures, or (iii) contrary to the best interests of Debtor and its estate, creditors, interest holders or parties in interest.

7. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

8. Proposed Purchaser is deemed a Qualified Bidder, and the bid of Proposed Purchaser for the Proposed Sale Assets is deemed a Qualified Bid. In the event there are no other Qualifying Bids, the Debtor shall accept the bid of the Proposed Purchaser.

9. Debtor shall return the Deposit (as defined in the Stalking Horse APA) to Proposed Purchaser and pay to Proposed Purchaser the Break-up Fee and Expense Reimbursement, as applicable, as and when provided for pursuant to the terms of the Stalking Horse APA.

#### **Additional Notice Provisions**

10. Within one (1) business day after the entry of this Bidding Procedures Order (the "**Mailing Date**") or as soon thereafter as practicable, the Debtor shall serve a copy of this Bidding Procedures Order, along with the Bidding Procedures attached hereto as Exhibit 1, by first-class mail, postage prepaid, upon (a) the Office of the United States Trustee for the Southern District of Ohio; (b) Debtor's twenty (20) largest unsecured creditors; and (c) the agent for the Debtor's primary secured lender group, Wells Fargo Bank, National Association; and (d)

all other parties requesting notice in the Case (collectively, “*Sale Notice Parties*”). Except for the required notice expressly provided in this paragraph, Debtor shall not be required to provide any further notice of the Motion and/or the relief requested therein, the Bidding Procedures, this Bidding Procedures Order, the Auction, or the relevant dates and deadlines with respect to the foregoing.

**Assumption and Assignment Procedures**

11. The Assumption and Assignment Procedures are hereby APPROVED.
12. Within five (5) business days after the entry of this Bidding Procedures Order or as soon as practicable thereafter, Debtor will file with this Court and serve the Cure Notice on each counterparty to an executory contract or unexpired lease related to the Proposed Sale Assets, which Cure Notice shall: (a) state the amounts necessary to cure defaults, if any, that Debtor believes are necessary to assume such contracts or leases in accordance with Section 365 of the Bankruptcy Code (the “*Cure Amounts*”); (b) notify the non-Debtor counterparty that such party’s contracts or leases may be assumed and assigned to Successful Bidder of the Proposed Sale Assets at the conclusion of the Auction; (c) state the date of the Sale Hearing and that objections to any of the Cure Amounts or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by Debtor; and (d) state the deadline by which the non-Debtor counterparty shall file an objection to the Cure Amounts or to the assumption and assignment of applicable contracts or leases; provided, however, that the inclusion of a contract, lease, or agreement on the Cure Notice shall not constitute an admission that such contract, lease, or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and/or assigned. Debtor reserves all rights, claims, and causes of action with respect to the contracts, leases, and agreements listed on the Cure Notice.
13. Any objection to the Cure Amounts or the assumption and assignment of the

applicable contracts or leases must be filed with the Court and served so as to be received by:

(a) the Office of the United States Trustee for the Southern District of Ohio; (b) Debtor's twenty (20) largest unsecured creditors or counsel to the official committee of unsecured creditors appointed in this Case, if applicable; (c) the agent for Debtor's primary secured lender group, Wells Fargo Bank, National Association; (d) counsel for Debtor; (e) counsel for the Proposed Purchaser; and (f) all other parties requesting notice in the Case (collectively, "***Cure Notice Parties***"). Any such objection must also state (x) the basis for such objection and (y) with specificity what Cure Amount the non-Debtor counterparty to the relevant executory contracts or unexpired leases believes is required (in all cases with appropriate documentation in support thereof).

14. Any objection solely to the Cure Amounts, or any subset thereof, may not prevent or delay Debtor's assumption and assignment of assumed and assigned contracts or leases. If an entity objects solely to one or more Cure Amounts, Debtor may, with the consent of the relevant Successful Bidder, hold the total amounts claimed by such objecting non-Debtor counterparty in reserve pending further order of the Court or mutual agreement of the parties. So long as the applicable amount is held in reserve, and if there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract or lease, Debtor may, without further delay, assume and assign such contract or lease. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to funds held in reserve.

15. If no objection to the Cure Amounts is timely received on or before May 30, 2018, the Cure Amounts set forth on the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract or lease or other document as of the date of the Cure Notice.

16. On or before June 1, 2018, each Successful Bidder shall provide to Debtor a list

of those executory contracts and unexpired leases that the Successful Bidder elects to have assumed and assigned (the “*Buyer Designated Contracts*”) to such Successful Bidder at closing pursuant to Section 365 of the Bankruptcy Code.

17. On or before June 1, 2018, Debtor shall file with the Court: (a) the list of Buyer Designated Contracts, and (b) a description of each Successful Bidder and information as to each Successful Bidder’s ability to perform Debtor’s obligations under Buyer Designated Contracts.

18. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by any Successful Bidder under any applicable executory contract or unexpired lease, then such non-Debtor counterparty shall file a written objection with the Court and serve on the Cure Notice Parties and the applicable Successful Bidder so that such objection is received no later than June 4, 2018.

19. To the extent that any non-Debtor counterparty does not timely file and serve an objection as set forth above herein, such counterparty will be: (a) deemed to have consented to the Cure Amounts, if any, set forth in the Cure Notice; (b) barred, estopped, and enjoined from asserting any additional Cure Amounts under any assumed and assigned executory contracts or unexpired leases; (c) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contracts or unexpired leases to Successful Bidder; and (d) barred from objecting to adequate assurance of future performance by the assignee.

#### **Additional Provisions**

20. Debtor is authorized and empowered to take such actions as may be necessary to implement and effect the terms and requirements established under this Bidding Procedures Order.

21. A Sale Hearing to approve the Sale to any Successful Bidder, free and clear of all interests, shall be held on June 5, 2018, unless otherwise continued upon request of Debtor.

22. Objections, if any, to any Sale must be filed with this Court by May 31, 2018 and served by mail upon counsel for the Debtor.

23. This Bidding Procedures Order shall be binding on and inure to the benefit of Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estate of Debtor.

24. This Bidding Procedures Order shall constitute the findings of fact and conclusions of law of this Court.

25. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

26. The requirement set forth in Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of Ohio that any motion or other request for relief be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

27. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order, including, but not limited to, any matter, claim or dispute arising from or relating to the Bidding Procedures and the implementation of this Bidding Procedures Order.

IT IS SO ORDERED.

Submitted By:

/s/

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*Proposed Counsel for Debtor and  
Debtor in Possession, AcuSport Corporation*

**EXHIBIT 1**

**Bidding Procedures**

**[attached]**

### **Bidding Procedures**

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed with respect to the sale (the “**Sale**”) of the assets (the “**Assets**”) of AcuSport Corporation, debtor and debtor in possession (“**Debtor**”) in the chapter 11 case pending in the U.S. Bankruptcy Court for the Southern District of Ohio (the “**Bankruptcy Court**”) under Case Number [\_\_\_\_\_].

On May 1, 2018, Debtor filed a *Motion for an Order (I) Establishing Bidding Procedures for the Sale of Certain of Debtor’s Assets; (II) Approving Break-up Fee; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure and Other Notices; and (V) Establishing Auction and Hearing Dates* (the “**Bidding Procedures Motion**”) (Dkt. No. \_\_\_\_). On \_\_\_\_\_, 2018, the Bankruptcy Court entered an order approving the Bidding Procedures set forth herein (the “**Bidding Procedures Order**”). The Bidding Procedures Order also set June 5, 2018 as the date and time the Bankruptcy Court will conduct a sale hearing (the “**Sale Hearing**”). At the Sale Hearing, Debtor shall seek entry of an order from the Bankruptcy Court authorizing and approving the Sale of certain of the Assets to Ellet Brothers, LLC (“**Proposed Buyer**”), pursuant to the terms of that certain Asset Purchase Agreement, dated as of April 30, 2018, by and between Debtor and Proposed Buyer (together with all related documents and agreements as well as all exhibits, schedules, and addenda thereto, the “**Stalking Horse APA**”)<sup>2</sup> or another Qualified Bidder (as defined below) that Debtor determines to have made the highest or best offer for such Assets.

### **Assets to be Sold**

Debtor is offering for sale the Assets and Qualified Bidders may submit bids for substantially all or certain of the Assets.

### **The Bidding Process**

Debtor and its advisors, after consultation with Debtor’s secured lenders, shall (i) determine whether any person is a Qualified Bidder, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate any offers made to purchase the Assets (collectively, the “**Bidding Process**”). Debtor, after consultation with Debtor’s secured lenders, shall have the right, in the exercise of its fiduciary duties, to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process.

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<sup>2</sup> For purposes of the Stalking Horse APA, the value of Debtor’s inventory as of the closing shall be calculated using the advance rate methodology as set forth on Debtor’s borrowing base certificate pursuant to its senior secured lending facility provided as of Closing, consistent with the calculation of the value of Inventory (as defined in the Stalking Horse APA) as set forth on the borrowing base certificate attached as Exhibit A to the Stalking Horse APA.

### **Participation and Bid Requirements**

Any person that wishes to participate in the Bidding Process (a “*Potential Bidder*”) must become a “Qualified Bidder” (defined below). As a prerequisite to becoming a Qualified Bidder, a Potential Bidder must deliver (unless previously delivered) the following materials (a “*Bid*”) to the Debtor and to Debtor’s counsel at the addresses specified below, by the Bid Deadline (as defined below):

- i. Each Bid must include the amount of the proposed cash purchase price. Each Bid must also include an estimation of the total value ascribed to such Bid by the Potential Bidder, taking into account cash and, if applicable, any non-cash contributions to the value of such bid (the “*Proposed Bid Value*”); provided that no Proposed Bid Value shall be binding on Debtor, its secured lenders, any creditors committee, or any of their professional advisors in connection with their evaluation of the value provided to Debtor, its estate, and its constituents by such Bid.
- ii. Each Bid for all or substantially all of Debtor’s assets or for the Proposed Sale Assets as defined in the Stalking Horse APA must have a cash purchase price equal to or greater than \$7,750,000.00 plus the Estimated Inventory Purchase Price (as defined below) plus \$800,0000 (representing the Break-Up Fee and Expense Reimbursement) plus \$100,000 (the “*Minimum Bid Amount*”).
- iii. Each Bid must be accompanied by a cash deposit in the amount of five percent (5%) of the Proposed Bid Value designated by such Potential Bidder (the “*Bid Deposit*”). The Bid Deposit shall be disbursed only as follows: (a) if the Qualified Bidder becomes the Successful Bidder, its Bid Deposit will be applied to the purchase price, or as otherwise provided under any letter of intent between Debtor and such Successful Bidder, and (b) if such Qualified Bidder is not the Successful Bidder at the Auction, then its Bid Deposit shall be returned to it (subject to the other provisions of these Bidding Procedures and the terms of its letter of intent with Debtor).
- iv. Each Bid must be based on the form of Stalking Horse APA attached to the Bidding Procedures Motion, and must include binding, executed transaction documents, signed by an authorized representative of such Potential Bidder, pursuant to which the Potential Bidder proposes to effectuate the purchase some or all of the Proposed Sale Assets. Each Bid must also include a copy of such Bidder’s proposed form of asset purchase agreement (including all exhibits thereto) (a “*Counter APA*”) marked against the Stalking Horse APA to show all changes requested by the Bidder (including those related to purchase price and to remove any provisions that apply only to a Stalking Horse Bidder, if applicable). Each Bidder’s Bid and Counter APA must clearly and specifically explain which of the Assets are included in such Bid.

- v. Each Bid must be for (a) all or substantially all of Debtor's Assets; (b) the Proposed Sale Assets as set forth in the Stalking Horse APA; or (c) other specifically identified assets or combinations of assets of Debtor. All lots shall be determined by Debtor (in consultation with its secured lenders and its professional advisors) and shall be announced to all Potential Bidders and other interested parties.
- vi. Each Bid must identify the executory contracts and unexpired leases with respect to which the Potential Bidder seeks assignment from Debtor.
- vii. Each Bid must identify all liabilities that the Potential Bidder proposes to assume.
- viii. Each Bid must include written evidence demonstrating appropriate corporate authorization to consummate the proposed transaction; provided that, if the Potential Bidder is an entity specially formed for the purposes of effectuating the transaction, then the Bidder must furnish written evidence of the approval of the transaction by the equity holder or holders of such Potential Bidder.
- ix. Each Bid must fully disclose the identity of each entity that will be bidding on Debtor's assets, including any equity holders in the case of a Potential Bidder that is an entity specially formed for the purpose of effectuating the contemplated transaction, or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements, or understandings concerning a collaborative or joint bid or any other combination concerning the proposed Bid. Each Bid must also fully disclose any connections or agreements with Debtor, the Stalking Horse Purchaser, or any other known, potential, prospective Potential Bidder, or any officer, director, or equity security holder of Debtor.
- x. Each Bid must include written evidence that Potential Bidder has the necessary financial ability to close the proposed transaction, including compliance with Section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts and leases to be assumed and assigned.
- xi. Each Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the proposed transaction and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals.
- xii. Each Bid must provide the identity and contact information for the Potential Bidder and full disclosure of any affiliates of the Potential Bidder. The Potential Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from Debtor to the reasonable satisfaction of Debtor.
- xiii. The Bid may not be conditioned on obtaining financing, internal approvals, or due diligence time or cost requirements of any kind, provided that a Bid may be subject to the satisfaction of specific conditions in all material respects at closing.

- xiv. Each Bid must be irrevocable until seven (7) business days after the Sale Hearing; provided that if the Potential Bidder submitting such Bid becomes a Successful Bidder or a Back-up Bidder, such Bid shall continue to remain irrevocable until after the closing of the proposed transaction.
- xv. The Bid must not entitle the Potential Bidder to any break-up fee or transaction fee, expense reimbursement, termination, or similar type of fee or payment. By submitting a Bid, a Potential Bidder waives the right to pursue a substantial contribution claim under Section 503 of the Bankruptcy Code related in any way to the submission of its Bid or participation in any Auction.
- xvi. Each Bid must include a commitment to close the proposed transaction by no later than July 6, 2018.

A “**Qualified Bidder**” is a Potential Bidder that delivers the documents described in subparagraph (i) – (xvi) above, and that Debtor determines is reasonably likely (based on financial information submitted by the Bidder, the availability of financing, experience and other consideration deemed relevant by Debtor) to submit a *bona fide* offer and be able to consummate a sale if selected as the Successful Bidder for the Proposed Sale Assets or other assets subject to such Bid (such Bid, a “**Qualified Bid**”). Prior to the Auction, Debtor shall notify each Potential Bidder whether Debtor has determined that such Bidder is a Qualified Bidder. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder shall be a Qualified Bidder.

#### **Due Diligence**

Any person that wishes to participate in the Bidding Process must be a Qualified Bidder. Neither the Debtor nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Qualified Bidder. The Debtor will afford any Qualified Bidder the time and opportunity to conduct reasonable due diligence; provided, however, that the Debtor shall not be obligated to furnish any due diligence information after the Bid Deadline. The Debtor will designate an employee or other representative to coordinate all reasonable requests for additional information and due diligence access from such Qualified Bidders. Neither the Debtor nor any of their respective representatives are obligated to furnish any information to any person other than a Qualified Bidder.

#### **Bid Deadline**

A Potential Bidder that desires to make a Bid shall deliver written copies of its Bid to Huron Transaction Advisory, LLC and Bryan Cave Leighton Paisner LLP not later than 4:00 p.m. (Eastern Time) on May 29, 2018. Bids shall be provided by email to Geoffrey Frankel, Huron Transaction Advisory, LLC, at [gfrankel@hurontransactionadvisory.com](mailto:gfrankel@hurontransactionadvisory.com), and Jason DeJonker, Bryan Cave Leighton Pasiner LLP, at [jason.dejonker@bclplaw.com](mailto:jason.dejonker@bclplaw.com). In the event that a bid is determined to be a Qualified Bid, Debtor shall deliver a copy of any such Qualified Bid to the Stalking Horse Purchaser via email.

**“As Is, With All Faults”**

The Sale shall be on an “as is” and “with all faults” basis and without representations, warranties, or guarantees, express, implied or statutory, written or oral, of any kind, nature, or description by Debtor, its agents, its representatives or its estate. By submitting a bid, each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, warranties, or guarantees, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or any letter of intent entered into with any respective Successful Bidder (defined below).

**Free of Any and All Interests**

All of Debtor’s right, title and interest in and to the Assets shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “*Interests*”) to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale of the Assets with the same validity and priority as such Interests applied against the Assets.

**The Auction and Auction Procedures**

If a Qualified Bid, other than that submitted by the Stalking Horse Purchaser, has been received by Debtor, Debtor may conduct an auction (the “*Auction*”) with respect to the Proposed Sale Assets and/or particular lots of the Assets. The Auction shall be conducted at the offices of Allen Kuehnle Stovall & Neuman LLP, 17 South High Street, Suite 1220, Columbus, Ohio 43215 (the “*Auction Site*”) on May 31, 2018 at 10:00 a.m. EDT, or such other place and time as Debtor shall notify all Qualified Bidders who have submitted Qualified Bids and expressed their intent to participate in the Auction as set forth above.

Except as otherwise provided herein, based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as Debtor determines is relevant, Debtor may conduct the Auction in any manner that it determines will achieve the maximum value for the Assets. Debtor thereafter may offer the Proposed Sale Assets in such successive rounds as Debtor determines to be appropriate so as to obtain the highest or otherwise best bid or combination of bids for the Assets. Except as otherwise provided herein, Debtor also may set opening bid amounts in each round of bidding as Debtor determines to be appropriate.

If Qualified Bidders submit additional bids at the Auction (such bid, an “*Overbid*”), Debtor shall review each Overbid on the basis of the financial and contractual terms and the factors relevant

to the sale process, including those factors affecting the speed and certainty of consummating the proposed transaction. Debtor may consult with Debtor's professionals with respect to the consideration of the value or other attribute or attributes of each Overbid.

As soon as practicable after the conclusion of the Auction, Debtor shall (x) review each Qualified Bid and Overbid on the basis of the financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the proposed transaction, and (y) identify the highest or otherwise best offers for the Proposed Sale Assets or relevant portions thereof (to the extent any such bid is acceptable to Debtor, each a "**Successful Bid**" and each Qualified Bidder making such bid, a "**Successful Bidder**"). At the Sale Hearing, Debtor may present any Successful Bids and Back-up Bids (as defined below) to the Court for approval. Debtor reserves all rights not to submit any bid which is not acceptable to Debtor for approval to the Court. Debtor acknowledges that the Bid of Stalking Horse Bidder, if applicable, is a Qualified Bid and shall be submitted to the Court for approval in the event that there are no other Successful Bids. Except as otherwise provided herein, Debtor, in the exercise of its fiduciary duties, may adopt rules for bidding at the Auction that, in its business judgment, will better promote the goals of the bidding process, the Bankruptcy Code or any order of the Court entered in connection herewith.

If an Auction is conducted, a Qualified Bidder other than the Successful Bidder that submits the next highest or otherwise best Bid at the Auction for the Proposed Sale Assets or relevant portions thereof, as determined by Debtor in the exercise of its business judgment and in consultation with its professional advisors and its secured lenders, shall be designated as a back-up bidder (a "**Back-up Bidder**" and such bid, a "**Back-up Bid**"). Each Back-up Bidder shall be required to keep its initial Bid (or if such Back-up Bidder submitted one or more subsequent bids at the Auction, the Back-up Bidder's Overbid) open and irrevocable until after the closing of the relevant transaction with the Successful Bidder with respect to such assets.

If no Qualified Bids other than the Qualified Bid of the Stalking Horse Bidder are submitted by the Bid Deadline, Debtor shall cancel the Auction and shall accept the bid of the Qualified Bidder (in which case, such Qualified Bid shall be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder).

#### **Minimum Bid Increment**

There shall be a minimum bid increment of at least \$100,000.00 for all bids made by Qualified Bidders in respect of Bids for the Proposed Sale Assets as a whole (the "**Minimum Bid Increment**"). Debtor reserves the right to set similar Minimum Bid Increments for portions or lots of the Proposed Sale Assets, as may be appropriate under the circumstances, in Debtor's discretion. All overbids must be made in cash, provided that the value of any overbid not made in cash (but via, *inter alia*, the assumption of debt obligations of Debtor) shall be determined by Debtor in its sole discretion (in consultation with its professional advisors and secured lenders).

### **Initial Overbid Amount**

There shall be an initial overbid amount that a Qualified Bidder for the Proposed Sale Assets as a whole (other than the Stalking Horse Bidder) must bid in excess of the Stalking Horse Purchase Price to exceed the Stalking Horse Purchase Price (the “*Initial Overbid Amount*”), defined as the sum of (i) the amount of the Break-up Fee and Expense Reimbursement; plus (ii) the Minimum Bid Increment. No later than two business days prior to the Bid Deadline, Debtor shall (in consultation with its secured lenders and professional advisors) circulate the then-current amount of the Inventory Value (as defined in the Stalking Horse APA) by writing to each Potential Bidder. The amount set forth in such notice shall be the “*Estimated Inventory Value*” for purposes of those parties wishing to be a Qualified Bidder.

### **Acceptance of Qualified Bids**

Debtor shall sell the Assets to any Successful Bidder only upon the approval of a Successful Bid by the Bankruptcy Court after the Sale Hearing. Debtor’s presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute Debtor’s acceptance of the bid. Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

### **Sale Hearing**

A Sale Hearing is scheduled for June 5, 2018 with Objections to the Sale of the Property to be filed on or before 4:00 p.m. (prevailing Eastern time) on May 31, 2018. Following the approval of the Sale of the Assets to any Successful Bidder at the Sale Hearing other than the Proposed Buyer, if the Successful Bidder fails to consummate an approved Sale within ten (10) days following the Sale Hearing, Debtor shall be authorized, but not required, to deem the Back-up Bid as the Successful Bid, and Debtor shall be authorized, but not required, to consummate the Sale of the Assets with the Back-up Bidder without further order of the Bankruptcy Court. Debtor, in the exercise of its business judgment, reserves its right to change the date of the Sale Hearing in order to achieve the maximum value for the Assets.

### **Modifications**

Debtor may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of Debtor, its estate and creditors.

### **Miscellaneous**

The Auction and Bidding Procedures are solely for the benefit of Debtor and the Stalking Horse Bidder and nothing contained in the Bidding Procedures Order or Bidding Procedures shall

create any rights in any other person or bidder (including without limitation rights as third party beneficiaries or otherwise) other than the rights expressly granted to a Successful Bidder under the Bidding Procedures Order.

By submitting a Proposed Bid, each Proposed Bidder shall be deemed to have accepted these Bidding Procedures and the Bidding Procedures Order, including, without limitation, Debtor's right, in consultation with its secured lenders and professional advisors, to identify and designate the highest or otherwise best offers for the Proposed Sale Assets or relevant portions thereof.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Bankruptcy Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order.

**EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

In re:	)	Chapter 11
	)	
AcuSport Corporation,	)	Case No. 18-52736
	)	
Debtor.	)	Honorable John E. Hoffman, Jr.

**ORDER (I) APPROVING AND AUTHORIZING SALE OF CERTAIN OF DEBTOR’S ASSETS PURSUANT TO SUCCESSFUL BIDDER’S ASSET PURCHASE AGREEMENT, FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (III) GRANTING RELATED RELIEF**

Upon the motion [Docket No. \_\_\_] (the “*Sale Motion*”)<sup>1</sup> for entry of an order (this “*Order*”) (i) approving the sale of certain of Debtor’s assets to Successful Bidder, (ii) authorizing such sale free and clear of all liens, claims, encumbrances, and other interests, (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases, and (iv) granting related relief; and the Court having considered the Sale Motion and the arguments of counsel made at the hearing on the Sale Motion (the “*Sale Hearing*”); and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular

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<sup>1</sup> Capitalized terms, unless otherwise noted or defined herein, shall have the meanings ascribed to them in the Sale Motion or the APA (as defined below), as the context requires.

circumstances; and it appearing that no other or further notice need be provided; and the Court having reviewed the Sale Motion and all objections thereto (the “*Objections*”); and it appearing that the relief requested in the Sale Motion is in the best interest of Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby,

**FOUND AND DETERMINED THAT:**

**Determination with Respect to the Findings of Fact and Conclusions of Law**

A. The findings of fact and conclusions of law set forth in this Order constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this case pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are hereby adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are hereby adopted as such. Any findings of fact or conclusions of law stated by the Court on the record at the Sale Hearing are hereby incorporated, to the extent they are not inconsistent with this Order.

**Jurisdiction, Final Order, and Statutory Predicates**

B. This Court has jurisdiction to hear and determine the Sale Motion and over Debtor, its estate, and the Purchased Assets, as defined in the Asset Purchase Agreement dated as of April 30, 2018 (the “*APA*”), by and between Debtor and Ellett Brothers, LLC (“**Ellett Brothers**” or “*Successful Bidder*” (to the extent Ellett Brothers is the Successful Bidder as provided for in the Bidding Procedures Order), a copy of which is attached hereto as Exhibit A, pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and the Sale Motion in the Southern District of Ohio is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory and legal predicates for the relief requested in the Sale Motion are sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 2002-1, 6004-1, and 9014-1 of the Local Bankruptcy Rules, Forms and Procedures for the United States Bankruptcy Court for the Southern District of Ohio (the “**Local Rules**”).

D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth in this Order.

E. On May 16, 2018, the Court entered the *Order (I) Establishing Bidding Procedures for the Sale of Certain of Debtor’s Assets; (II) Approving Break-Up Fee; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure, and Other Notices; and (V) Establishing Auction and Hearing Dates* (the “**Bidding Procedures Order**”) [Docket No. 109].

F. The Purchased Assets constitute property of Debtor’s estate, and title to the Purchased Assets is vested in Debtor’s estate within the meaning of section 541(a) of the Bankruptcy Code.

G. Successful Bidder is a good faith purchaser under section 363(m) of the Bankruptcy Code and as such, in the absence of a stay pending appeal, may close the transaction contemplated by the APA at any time on or after entry of this Order, and cause has been shown

as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

**Notice of the Sale, Sale Hearing, and the Cure Amounts**

H. Actual written notice of the Sale Motion and the Sale Hearing and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein have been afforded to all known creditors and other interested persons and entities, including the following parties: (i) the Office of the United States Trustee for Region 9 (“*US Trustee*”); (ii) counsel to the Official Committee of Unsecured Creditors (“*Committee*”); (iii) counsel to the agent for Debtor’s primary secured lender group, Wells Fargo Bank, National Association (“*Agent*”); (iv) all parties that have expressed interest in a purchase or acquisition of the Purchased Assets; and (v) all other parties requesting notice in the Case.

I. In accordance with the provisions of the Bidding Procedures Order, Debtor has served the *Notice of Bidding Procedures for the Sale of Certain Assets at Auction and Subsequent Sale Hearing and Objection Deadlines* [Docket No. 109, Exhibit 1] (the “*Sale Notice*”) on the following parties: (i) the US Trustee; (ii) counsel for the Committee; (iii) counsel for the Agent; (iv) all parties that were served with notice of the *Motion for an Order (I) Establishing Bidding Procedures for the Sale of Certain of Debtor’s Assets; (II) Approving the Break-Up Fee; (III) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (IV) Approving Form and Manner of the Sale, Cure, and Other Notices; and (V) Establishing Auction and Hearing Dates* [Docket No. 19] (excluding the top-20 list of Debtor’s creditors); (v) all parties that have expressed interest in a purchase or acquisition of the Purchased Assets; and (vi) all other parties requesting notice in the Case. The Sale Notice provided all interested parties with timely and proper notice of the Sale, Sale Objection Deadline, Bid Deadline, Auction, and Sale Hearing described therein.

J. In accordance with the provisions of the Bidding Procedures Order, Debtor served the *Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and Proposed Cure Amounts* [Docket No. 109, Exhibit 2] (the “**Cure Notice**”) upon each counterparty to any potentially assumed executory contract and unexpired lease and its counsel (if known) (the “**Contract Counterparties**”). The Cure Notice (i) stated the amounts sufficient to cure defaults, if any, to assume such contracts or leases in accordance with section 365 of the Bankruptcy Code (the “**Cure Amounts**”); (b) notified the counterparty that such party’s contracts or leases may be assumed and assigned to Successful Bidder of the Purchased Assets at the conclusion of the Auction; (c) stated the date of the Sale Hearing and that any objections to any of the Cure Amounts or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by Debtor; and (d) stated the deadline by which the counterparty shall file an objection to the Cure Amounts or to the assumption and assignment of applicable contracts or leases. Pursuant to Bankruptcy Rule 6006(c), the Court finds that the service of the Cure Notice was adequate, sufficient and appropriate under the circumstances, in compliance with the Bidding Procedures Order, and no further notice need be given in respect of establishing the Cure Amounts. The Contract Counterparties have had an opportunity to object to the Cure Amounts set forth in the Cure Notice.

K. As evidenced by the affidavits of service previously filed with the Court, proper, timely, adequate and sufficient notice of the Sale Motion, Auction, Sale Hearing, and Sale has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014 and Local Rules 2002-1, 6004-1, and 9014-1. Debtor also has complied with all obligations to provide notice of the contemplated Auction, the Sale Hearing and the Sale as required by the Bidding Procedures Order, and has also complied with all other aspects and requirements of the Bidding Procedures Order. The notices

described in paragraphs H through J herein were adequate, sufficient and appropriate under the circumstances, and no other or further notice of the Sale Motion, Sale Hearing, Sale or assumption and assignment of the potentially assumed executory contracts and unexpired leases is required, other than a notice of a final schedule of the executory contracts and unexpired leases to be assumed by Debtor and assigned to Successful Bidder under section 365 of the Bankruptcy Code (the “*Assigned Contracts*”).

L. The Cure Notice provided Successful Bidder and each Contract Counterparty with proper notice of the potential assumption and assignment of the Assigned Contracts and any Cure Amounts relating thereto, and the procedures set forth therein with regard to any such Cure Amounts satisfy section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

M. Debtor has articulated good and sufficient reasons for the Bankruptcy Court to grant the relief requested in the Sale Motion.

N. The disclosures made by Debtor concerning the Sale Motion, the Sale, the APA, and the Sale Hearing, were good, complete and adequate.

**Good Faith of Successful Bidder**

O. Successful Bidder is purchasing the Purchased Assets in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is, therefore, entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, among other things: (a) subject to the exclusivity provisions in the APA (which created certain restrictions on solicitation of offers from the execution date through the entry of the Bidding Procedures Order), Successful Bidder recognized that Debtor was free to deal with any other party interested in acquiring the Purchased Assets; (b) Successful Bidder complied with the provisions in the Bidding Procedures Order; (c) Successful Bidder agreed to subject its bid to the competitive bidding procedures set

forth in the Bidding Procedures Order; (d) Successful Bidder did not induce or cause the chapter 11 filing by Debtor; (e) all payments to be made by Successful Bidder and other agreements or arrangements entered into by Successful Bidder in connection with the Sale have been disclosed; (f) Successful Bidder has not violated section 363(n) of the Bankruptcy Code by any action or inaction; and (g) the negotiation and execution of the APA and any other agreements or instruments related thereto were at arms' length and in good faith.

**Highest or Otherwise Best Offer**

P. Debtor solicited offers and noticed the Auction in accordance with the provisions of the Bidding Procedures Order. Debtor: (a) provided notice of the Auction; (b) conducted the sale process in a non-collusive manner; and (c) afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets.

Q. [No other Qualified Bid was received by the Bid Deadline. Accordingly, on June \_\_, 2018, Debtor filed the *Notice of Successful Bidder* [Docket No. \_\_] with the Court.]

R. The APA constitutes the highest or otherwise best offer for the Purchased Assets and will provide a greater recovery for Debtor's estate than would be provided by any other available alternative. Debtor's determination, in consultation with the Committee and the Agent, that the APA constitutes the highest or best offer for the Purchased Assets constitutes a valid and sound exercise of Debtor's business judgment.

S. The APA represents a fair and reasonable offer to purchase the Purchased Assets, including the Assigned Contracts, under the circumstances of this Case. No other person or entity or group of entities has offered to purchase the Purchased Assets for greater economic value to Debtor's estate than Successful Bidder.

T. Approval of the Sale Motion and the APA and the consummation of the transactions contemplated thereby are in the best interests of Debtor, its creditors, its Employees, its estate, and other parties in interest.

U. Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale outside of a plan of reorganization.

**No Fraudulent Transfer**

V. The consideration provided by Successful Bidder pursuant to the APA is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, and the District of Columbia. The APA was not entered into and will not be consummated for the purpose of hindering, delaying or defrauding creditors of Debtor, and neither Debtor nor Successful Bidder has entered into the APA or is consummating the transactions contemplated thereby with any fraudulent or otherwise improper purpose.

**Validity of Transfer**

W. Debtor has full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, and no further consents or approvals are required for Debtor to consummate the transactions contemplated by the APA, except as otherwise set forth in the APA.

X. The transfer of each of the Purchased Assets in accordance with this Order, including the Assigned Contracts, to Successful Bidder will be, as of the Closing Date, a legal, valid and effective transfer of such assets and will vest Successful Bidder with all right, title, and interest of Debtor to the Purchased Assets free and clear of all Encumbrances (as defined below) accruing, arising or relating to any time prior to the Closing Date, except for any Permitted Encumbrances and Assumed Liabilities under the APA.

**Section 363(f) of the Bankruptcy Code Is Satisfied**

Y. Successful Bidder would not have entered into the APA and would not consummate the transactions contemplated thereby (by paying the Purchase Price and assuming the Assumed Liabilities) if the sale of the Purchased Assets to Successful Bidder, and the sale and assumption and assignment of the Assigned Contracts to Successful Bidder, were not, except as otherwise provided in the APA with respect to the Assumed Liabilities, free and clear of all Encumbrances of any kind or nature whatsoever, or if Successful Bidder would, or in the future could, be liable for any of such Encumbrances, including, but not limited to the following (except and only to the extent expressly provided in the APA or this Order): (1) Cure Amounts with respect to Assigned Contracts, up to the Cure Amount Cap and then only in strict accordance with Successful Bidder's undertakings with respect thereto; (2) any liabilities or obligations arising out of or relating to Debtor's ownership or operation of the Business and the Purchased Assets prior to the Closing Date; (3) any liabilities or obligations relating to or arising out of the Excluded Assets; (4) any liabilities or obligations under any Contract that is not an Assigned Contract; (5) any liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities arising on or before the Closing Date and (ii) any other Taxes of Debtor (other than Taxes allocated to Successful Bidder under the APA) for any taxable period; (6) any liabilities or obligations of Debtor relating to or arising out of (i) the employment, or termination of employment, of any Employee (including accrued payroll, deferred compensation, accrued benefits, bonuses, paid time off, accrued vacation or other ordinary course expenses of any Employees), or (ii) workers' compensation claims of any Employee; (7) any liabilities or obligations relating to, resulting from, or arising out of any Environmental Laws to the extent relating to, resulting from, or arising out of the operation of the Business or the ownership of the Purchased Assets on or prior to the Closing Date; (8) any

liabilities or obligations relating to or arising out of any Benefit Plan; (9) any liabilities or obligations of Debtor arising or incurred in connection with the negotiation, preparation, investigation and performance of the APA, the other transaction documents and the transactions contemplated thereby, and any alternative thereto, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others; and (10) all liabilities or obligations for fees, costs and expenses incurred and/or owed in connection with the administration of the Case.

Z. Successful Bidder (i) is not, and shall not be considered, a successor to Debtor, (ii) has not, *de facto* or otherwise, merged with or into Debtor, (iii) is not a continuation or substantial continuation, and is not holding itself out as a mere continuation, of Debtor or its estate, business or operations, or any enterprise of Debtor, and (iv) does not have a common identity of incorporators, directors or equity holders with Debtor. Successful Bidder shall have no, and shall not be deemed to have or to have assumed or become obligated by operation of law or in equity for, any liability or Encumbrance except as expressly assumed under the APA.

AA. Debtor may sell the Purchased Assets, including the Assigned Contracts, free and clear of all Encumbrances (except for the Assumed Liabilities) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code shall be satisfied on the Closing Date of the Sale in accordance with this Order. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of the Encumbrances who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Encumbrances, if any, attach to the cash proceeds of the Sale attributable to the Purchased Assets in which such holder alleges an Encumbrance, to the same extent and in the same order of priority, and with the same

validity, force and effect that such Encumbrance had prior to the Sale, subject to any claims and defenses Debtor and its estate may possess with respect thereto, and by the other relief granted herein.

**Assumption and Assignment of Executory Contracts and Leases**

BB. The sale and assumption and assignment of the Assigned Contracts pursuant to the terms of this Order is integral to the APA, is in the best interests of Debtor and its estate, creditors and other parties in interest and represents the reasonable exercise of sound and prudent business judgment by Debtor.

CC. Pursuant to the terms of the APA and on the Closing Date, Debtor shall assume and assign to Successful Bidder each of the Assigned Contracts identified in Section 2.5 of the Disclosure Schedules to the APA that is capable of being assumed and assigned. Debtor shall be responsible for the payment of Cure Amounts solely with respect to the Assigned Contracts specifically set forth on Section 2.5 of the Disclosure Schedules to the APA in an aggregate amount not to exceed the Cure Amount Cap. Successful Bidder shall assume and perform and discharge the Assumed Liabilities, if any, under the Assigned Contracts, including pursuant to any contract or lease assignment agreements, as applicable. Successful Bidder has provided adequate assurance of its future performance under the Assigned Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code to any counterparty to an Assigned Contract that requests such assurance and shall have no further obligation to provide assurance of performance to any counterparty, except to the extent of timely-filed objections to such adequate assurance information.

**Compelling Circumstances for an Immediate Sale**

DD. To enhance Debtor's level of liquidity, to preserve the value of Debtor's estate, and to increase the amount of claims paid by Debtor, and to maximize the amount of funding

available to provide for a timely exit from this Case, it is essential that the Sale of the Purchased Assets occur within the time constraints set forth in the APA, as modified by the Bidding Procedures Order. Time is of the essence in consummating the Sale.

EE. Given all of the circumstances of this Case and the adequacy and fair value of the Purchase Price under the APA, the proposed Sale of the Purchased Assets to Successful Bidder constitutes a reasonable and sound exercise of Debtor's business judgment and should be approved.

FF. The Sale does not constitute a *de facto* or *sub rosa* plan of reorganization or liquidation because it does not propose to (i) impair or restructure existing debt of, or equity interests in, Debtor, (ii) impair or circumvent voting rights with respect to any plan proposed by Debtor, (iii) circumvent chapter 11 safeguards, including those set forth in sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests.

GG. The consummation of the Sale is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the Sale.

**IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED THAT:**

**General Provisions**

1. The relief requested in the Sale Motion is GRANTED AND APPROVED as set forth in this Order, and the Sale contemplated thereby is APPROVED.

2. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order and above are fully incorporated into this Order by reference.

3. Notice of the Sale Motion, the Sale Hearing, and the Sale was adequate, fair and equitable under the circumstances and complied in all respects with section 102(1) of the

Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rules 2002-1 and 6004-1 and the Bidding Procedures Order. All objections to the Sale Motion or the relief requested therein that have not been withdrawn, waived or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits or have been otherwise satisfied or adequately provided for pursuant to this Order.

**Approval of the APA**

4. The APA and the terms and conditions thereof are hereby APPROVED, and Debtor is authorized and directed to enter into all related agreements and such other ancillary documents consistent with the terms hereof and in furtherance thereof.

5. Pursuant to section 363(b) of the Bankruptcy Code, Debtor is authorized and directed to take any and all actions necessary or appropriate to (i) consummate the Sale of the Purchased Assets to Successful Bidder pursuant to and in accordance with the terms and conditions of the APA, (ii) close the Sale as contemplated in the APA and this Order, and (iii) execute and deliver, close, perform under, consummate, and implement the APA, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA and the Sale or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the APA and such ancillary documents. [In the event that the Break-Up Fee and Expense Reimbursement are due and owing under the APA, upon the Closing Date, Debtor shall pay such Break-Up Fee and Expense Reimbursement to Ellett Brothers, LLC first from the Sale proceeds.]

6. This Order shall be binding in all respects upon Debtor, its estate, all holders of equity interests in Debtor, all holders of any Claim(s) (as defined in the Bankruptcy Code) against Debtor, whether known or unknown, any holders of Liens (as defined in the Bankruptcy

Code) and Encumbrances on all or any portion of the Purchased Assets, all Contract Counterparties, Successful Bidder, all successors and assigns of Successful Bidder, any other bidders for the Purchased Assets, any trustees, if any, subsequently appointed in the Case or upon a conversion to chapter 7 under the Bankruptcy Code of Debtor's case, and all employee benefit plans in which Debtor participated. This Order and the APA shall inure to the benefit of Debtor, its estate, its creditors, Successful Bidder, and their respective successors and assigns. Unless otherwise ordered by the Court, nothing contained in any plan of reorganization or liquidation or order of any type or kind entered in this Case or any subsequent chapter 7 or chapter 11 case for Debtor or any related proceedings subsequent to the entry of this Order shall directly conflict with or derogate from the provisions of the APA or the terms of this Order.

#### **Transfer of the Purchased Assets**

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, Debtor is authorized and directed to transfer the Purchased Assets on the Closing Date. The Purchased Assets (including the Assigned Contracts) shall be transferred to Successful Bidder upon and as of the Closing Date, and such transfer shall constitute a legal, valid, binding and effective transfer of such Purchased Assets and, upon payment of the Purchase Price in accordance with Paragraph 15 of this Order, shall be free and clear of all Liens, Claims, interests, rights of setoff, netting and deductions, rights of first offer, first refusal and any other similar contractual rights, and any successor or successor-in-interest liability theories (collectively, the "Encumbrances"), except for the Assumed Liabilities under the APA. Upon the Closing Date in accordance with this Order, Successful Bidder shall take title to and possession of the Purchased Assets subject only to the Assumed Liabilities; provided, however, that Successful Bidder shall not be relieved of liability with respect to the Assumed Liabilities and any obligations accruing under the Assigned Contracts as provided in paragraph 19 of this Order. All Encumbrances shall

attach to the proceeds of the Sale to the same extent and with the same validity, priority, force and effect that they now have as against the Purchased Assets, subject to any claims and defenses Debtor and its estate may possess with respect thereto (including the challenge rights of the Committee pursuant to the final cash collateral order entered in this case, Docket No. 129, the “*Final Cash Collateral Order*”).

8. The Sale of the Purchased Assets to Successful Bidder and the sale and assumption and assignment of the Assigned Contracts to Successful Bidder, shall be, except as otherwise provided in the APA and this Order, free and clear of all Encumbrances of any kind or nature whatsoever, including, but not limited to, in respect of the following: (1) Cure Amounts with respect to Assigned Contracts, up to the Cure Amount Cap and then only in strict accordance with Successful Bidder’s undertakings with respect thereto; (2) any liabilities or obligations arising out of or relating to Debtor’s ownership or operation of the Business and the Purchased Assets prior to the Closing Date; (3) any liabilities or obligations relating to or arising out of the Excluded Assets; (4) any liabilities or obligations under any Contract that is not an Assigned Contract; (5) any liabilities or obligations for (i) Taxes relating to the Business, the Purchased Assets or the Assumed Liabilities arising on or before the Closing Date and (ii) any other Taxes of Debtor (other than Taxes allocated to Successful Bidder under the APA) for any taxable period; (6) any liabilities or obligations of Debtor relating to or arising out of (i) the employment, or termination of employment, of any Employee (including accrued payroll, deferred compensation, accrued benefits, bonuses, paid time off, accrued vacation or other ordinary course expenses of any Employees), or (ii) workers’ compensation claims of any Employee; (7) any liabilities or obligations relating to, resulting from, or arising out of any Environmental Laws to the extent relating to, resulting from, or arising out of the operation of the Business or the ownership of the Purchased Assets on or prior to the Closing Date; (8) any

liabilities or obligations relating to or arising out of any Benefit Plan; (9) any liabilities or obligations of Debtor arising or incurred in connection with the negotiation, preparation, investigation and performance of the APA, the other transaction documents and the transactions contemplated thereby, and any alternative thereto, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others; and (10) all liabilities or obligations for fees, costs and expenses incurred and/or owed in connection with the administration of the Case.

9. Except as expressly provided by the APA or in this Order, all persons and entities holding Encumbrances on all or any portion of the Purchased Assets hereby are forever barred, estopped and permanently enjoined from asserting against Successful Bidder or its successors or assigns, their property or the Purchased Assets, such Encumbrances and all claims and rights relating thereto. On the Closing Date, each holder of an Encumbrance is authorized and directed (at Debtor's expense) to execute such documents and take all other actions as may be deemed by Successful Bidder to be necessary or desirable to release its Encumbrances on the Purchased Assets, as provided for herein, as such Encumbrances may have been recorded or may otherwise exist.

10. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of Debtor to sell and transfer the Purchased Assets, including the sale, assumption and assignment of the Assigned Contracts, to Successful Bidder in accordance with the terms of the APA and this Order.

11. All persons and entities that are in possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to Successful Bidder or its assignee at the Closing.

12. Upon the Closing Date of the Sale in accordance with this Order, a certified copy of this Order may be filed with the appropriate clerk and/or recorded with the appropriate recorder to cancel any Encumbrances of record.

13. If any person or entity that has filed statements or other documents or agreements evidencing Encumbrances on all or any portion of the Purchased Assets shall not have delivered to Debtor prior to the Closing Date of the Sale in accordance with this Order, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of Liens and easements and any other documents necessary or desirable to Successful Bidder for the purpose of documenting the release of all Encumbrances, which the person or entity has or may assert with respect to all or any portion of the Purchased Assets, Debtor is hereby authorized and directed, and Successful Bidder is hereby authorized, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Purchased Assets.

14. This Order shall govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons and entities is hereby authorized and directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

15. On the Closing Date, Successful Bidder shall transmit the Purchase Price to Agent and Debtor (and Ellet Brothers, to the extent it is not the Successful Bidder and otherwise is

entitled to the Break-Up Fee and Expense Reimbursement under the APA) as otherwise provided on the closing statement (which shall be in form agreeable to Debtor, Successful Bidder (and Ellet Brothers, to the extent it is not the Successful Bidder and otherwise is entitled to the Break-Up Fee and Expense Reimbursement under the APA), and Agent). Debtor shall cause a portion of Purchase Price to be remitted to **[Debtor's counsel]**, to be held subject to further order of this Court, in a segregated account for the sole and exclusive benefit of the "Carveout Professionals" (as defined Final Cash Collateral Order), in an amount equal to the maximum, aggregate, unpaid "Carveout" (as defined in the Final Cash Collateral Order) as of the Closing Date, which amount shall be deemed allocated among the respective Carveout Professionals in accordance with the Final Cash Collateral Order. Upon the receipt of such amount by **[Debtor's counsel]**, Agent's obligations regarding the Carveout shall be deemed fully satisfied and discharged. From the next amount of Sale proceeds after funding the Carveout in such manner, Debtor shall cause such proceeds of the Sale to be remitted to Agent and applied subject to the terms of the Final Cash Collateral Order.

**Executory Contracts and Leases**

16. Debtor is authorized and directed to assume and sell and assign the Assigned Contracts to Successful Bidder free and clear of all Encumbrances, except for Successful Bidder's obligation to pay certain applicable Cure Amounts in excess of the Cure Amount Cap, if any, and the obligations expressly provided for in paragraph 19 of this Order. With respect to each Assigned Contract, the payment of the applicable Cure Amount (if any) by Debtor, or Debtor and Successful Bidder if the Cure Amount exceeds the Cure Amount Cap pursuant to the APA and paragraph 16 of this Order, shall (a) effect a cure of all monetary defaults existing thereunder as of the Closing Date, (b) compensate the applicable Contract Counterparty for any actual pecuniary loss resulting from such default, and (c) together with the assumption of the

Assigned Contracts by Successful Bidder, constitute adequate assurance of future performance thereof; provided, however, that to the extent any counterparty to the Assigned Contracts timely interposed an objection to adequate assurance of future performance of Successful Bidder, the hearing as to such objectors shall be continued until a further hearing before the Court. As of the Closing Date, Successful Bidder shall be deemed to have acquired and assumed the Assigned Contracts pursuant to sections 363 and 365(f) of the Bankruptcy Code. The assignment by Debtor of such Assigned Contracts shall not be a default thereunder and Successful Bidder is entitled to the protections afforded under section 363(m) of the Bankruptcy Code with respect thereto.

17. Debtor shall be liable for the payment of all Cure Amounts with respect to the Assigned Contracts, up to the Cure Amount Cap. Debtor and Successful Bidder shall cooperate concerning the resolution of any disputed Cure Amounts.

18. Any provision in or effect of any Assigned Contract that prohibits or conditions the assignment of such Assigned Contract or allows the party to such Assigned Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assigned Contract constitutes an unenforceable anti-assignment provision that is void and of no force and effect pursuant to section 365(f) of the Bankruptcy Code. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by Debtor and assignment to Successful Bidder of the Assigned Contracts have been satisfied, and such assumption and assignment shall not constitute a default thereunder. Upon the Closing and the payment of the required Cure Amounts, in accordance with sections 363 and 365 of the Bankruptcy Code, Successful Bidder shall be fully and irrevocably vested with all right, title and interest of Debtor under each Assumed Contract.

19. Notwithstanding anything in the APA to the contrary, Successful Bidder may add or remove executory contracts and unexpired leases from the list of Assigned Contracts at any time until two (2) business days prior to the Closing Date.

20. Successful Bidder shall be obligated for rent, fees, charges or other expenses or obligations arising under or relating to any Assigned Contract, solely to the extent arising after the Closing Date and not relating to breaches or defaults occurring on or prior to the Closing Date.

21. Upon the Closing and the payment of the Cure Amounts applicable to any Assigned Contract, Successful Bidder shall be deemed to be substituted for Debtor as a party to such Assigned Contract, and Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability to the Contract Counterparties under such Assigned Contracts.

22. Upon the Closing and the payment of the applicable Cure Amounts, if any, the Assigned Contracts shall remain in full force and effect, and no default shall exist thereunder nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

23. There shall be no rent accelerations or increases, assignment fees, deposits, increases or any other fees charged to Successful Bidder or Debtor as a result of the assumption and assignment (including any change in control) of the Assigned Contracts.

24. Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against Debtor, its estate, Successful Bidder, or any of their respective successors and assigns any increased rent or fees, assignment fee, default, breach or claim or pecuniary loss or condition to

assignment, arising under or related to the Assigned Contracts existing as of the Closing Date or arising by reason of the Case or the Closing.

25. Notwithstanding anything to the contrary in this Order or the APA (a) Debtor shall not assume and assign any Assigned Contracts that are the subject of a timely asserted objection to Successful Bidder's adequate assurance of future performance under section 365(b)(1)(C) of the Bankruptcy Code, absent the consent of the non-debtor party to such Assigned Contracts or further order of the Court, (b) upon the later to occur of: (i) entry of an order of the Court approving Debtor's assumption and assignment of an Assigned Contract or (ii) the Closing Date, Debtor shall pay the counter-party to any Assigned Contract the undisputed portion of the Cure Amount attributable to such Assigned Contract, with any disputed portion of such Cure Amount being escrowed by Debtor pending either agreement among the non-debtor party to such Assigned Contract and Debtor, or further order of the Court determining the allowed amount of such disputed Cure Amount, and (c) all timely asserted objections to Successful Bidder's adequate assurance of future performance under section 365(b)(1)(C) of the Bankruptcy Code and to the Cure Amounts are fully preserved.

**Miscellaneous**

26. Effective upon the Closing Date and transfer of the Sale proceeds in accordance with Paragraph 15 herein, all persons and entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against Successful Bidder, its successors and assigns, or the Purchased Assets, including, without limitation the Assigned Contracts, with respect to (a) any Encumbrance arising prior to the Closing Date, (b) any theory of claim or remedy sounding in successor liability, or (c) revoking, terminating,

failing or refusing to renew any license, permit or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

27. Except as otherwise provided in this Order and to the maximum extent available under applicable law and to the extent provided for under the APA, Successful Bidder shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of Debtor with respect to the Purchased Assets, including the Assigned Contracts and, to the maximum extent available under applicable law and to the extent provided for under the APA, all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been transferred to Successful Bidder as of the Closing Date. All existing licenses or permits applicable to the Purchased Assets shall remain in place for Successful Bidder's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Purchased Assets sold, transferred or conveyed to Successful Bidder on account of the filing or pendency of this Case or the consummation of the Sale.

28. Except for the Permitted Encumbrances and Assumed Liabilities, Successful Bidder shall not have any liability for any obligation of Debtor arising under or related to any of the Purchased Assets. Without limiting the generality of the foregoing, Successful Bidder shall not be liable for any Claims against Debtor or any of its predecessors or affiliates. By virtue of the Sale, Successful Bidder and its affiliates, successors and assigns shall not be deemed or considered to (a) be a legal successor or otherwise be deemed a successor to Debtor, (b) have, de facto or otherwise, merged with or into Debtor or (c) be a continuation or substantial continuation, or be holding itself out as a mere continuation, of Debtor or its estate, business or

operations, or any enterprise of Debtor, in each case by any law or equity, and Successful Bidder has not assumed nor is it in any way responsible for any liability or obligation of Debtor or Debtor's estate, except with respect to the Assumed Liabilities. Successful Bidder shall have no successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, *de facto* merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, with respect to Debtor or any obligations of Debtor arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Purchased Assets prior to the Closing.

29. The transactions contemplated by and consummated under the APA are undertaken by Successful Bidder without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Assigned Contracts), unless such authorization and such Sale are duly stayed pending such appeal. Successful Bidder is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code. The APA and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. Debtor and Successful Bidder have not engaged in any conduct that would cause or permit the APA or the consummation of the transactions contemplated thereby to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

30. Pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Order shall be effective immediately upon its entry, and Debtor and Successful Bidder are authorized to close the Sale immediately upon entry of this Order.

31. No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

32. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

33. The APA and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court but after consultation with the Committee (during the term of its existence) and the Agent, provided that any such modification, amendment or supplement does not have a material adverse effect on Debtor's estate or on the interests of Successful Bidder.

34. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a) and Local Rule 9006-1.

35. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Sale Motion filed in this Case, the terms of this Order shall govern.

36. (a) After the Closing Date, Debtor shall receive in trust and remit any payment or revenue received by Debtor that belongs to Successful Bidder pursuant to the terms of the APA to Successful Bidder within two (2) business days of Debtor's receipt thereof and, prior to such transmission, such payments shall be held by Debtor in trust for Successful Bidder; and (b) after the Closing Date, Successful Bidder shall receive in trust and remit any payment or revenue received by Successful Bidder that belongs to Debtor pursuant to the terms of the APA to Debtor

within two (2) business days of Successful Bidder's receipt thereof and, prior to such transmission, such payments shall be held by Successful Bidder in trust for Debtor.

37. Debtor is authorized and directed to change its corporate name in the domestic jurisdictions in which it is registered or authorized to do business to names mutually agreed upon between Debtor and Successful Bidder, and to provide Successful Bidder with evidence of such name changes upon request thereof. Upon the filing of a Certification of Counsel, following consultation with Successful Bidder, the Committee, the Agent, and the US Trustee, the caption of all pleadings shall be changed as stated in such Certification of Counsel (with any necessary reflection that the case was formerly known as In re AcuSport Corporation), and all pleadings shall be filed under the new caption.

38. The Court shall retain jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order and the APA, all amendments thereto and any releases, waivers and consents hereunder and thereunder, and each of the agreements executed in connection therewith to which Debtor is a party or which has been assigned by Debtor to Successful Bidder, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to any of the foregoing.

IT IS SO ORDERED.

Submitted By:

/s/ Draft

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**EXHIBIT A**

**Asset Purchase Agreement**