

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM459025

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>SEQUENCE:</b>	1		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
H2O Pod, Inc.		01/12/2018	Corporation:
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Kwik Tek, Inc.		
<b>Street Address:</b>	12000 East 45th Ave Unit 104		
<b>City:</b>	Denver		
<b>State/Country:</b>	COLORADO		
<b>Postal Code:</b>	80239		
<b>Entity Type:</b>	Corporation: COLORADO		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4208457	WATERMAT	
<b>Registration Number:</b>	4603171	TOW BOGGAN	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	3037338007		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	3037333722		
<b>Email:</b>	mike@airhead.com		
<b>Correspondent Name:</b>	Mike Pleiss		
<b>Address Line 1:</b>	12000 East 45th Ave Unit 104		
<b>Address Line 4:</b>	Denver, COLORADO 80239		
<b>NAME OF SUBMITTER:</b>	Mike Pleiss		
<b>SIGNATURE:</b>	/Mikepleiss/		
<b>DATE SIGNED:</b>	01/23/2018		
<b>Total Attachments: 74</b>			
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**ASSET PURCHASE AGREEMENT**

**DATED AS OF JANUARY 12, 2018**

**BY AND AMONG**

**KWIK TEK INC.,**

**H2O POD, INC.,**

**AND**

**THE SHAREHOLDERS OF H2O POD, INC.**

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## ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (this "Agreement") dated as of January 12, 2018, is by and among (i) **Kwik Tek Inc.**, a Colorado corporation ("Buyer"), (ii) **H2O Pod, Inc.**, an Illinois corporation ("Seller"), and (iii) the shareholders of Seller, each of who is a signatory to this Agreement (each, a "Shareholder," collectively, "Shareholders," and together with Seller, the "Selling Parties"). Buyer, Seller and Shareholders are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

A. Seller is engaged in the business of designing, distributing, and marketing globally non-inflatable foam water floats, mats, towables, and other water sports products used in recreational and commercial end-markets (collectively, the "Business").

B. Shareholders own all of the issued and outstanding stock of Seller.

C. The Selling Parties desire to sell, assign and transfer, and Buyer desires to purchase and acquire, the Transferred Assets and Assumed Liabilities associated with the Business, with the exception of the Excluded Assets and Excluded Liabilities, all on the terms and conditions set forth herein.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the representations, warranties and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE 1 DEFINED TERMS

**1.1 Definitions.** The following terms have the meanings specified or referred to in this Article 1:

"Action" means any action, arbitration, mediation, audit, claim, grievance, demand, hearing, investigation, litigation, proceeding, inquiry or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard, including any Action involving any Governmental Authority or arbitrator.

"Affiliate" of any specified Person means (a) any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person, and (b) any 10% shareholder, owner or member of such Person. For purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by Contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agreement" has the meaning set forth in the introductory paragraph hereto and includes the Disclosure Schedule and all of the Schedules and Exhibits attached hereto.

"Business Day" means any day that is not a Saturday, Sunday or statutory holiday in the State of Colorado.

“COBRA” means the health care coverage continuation requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code or, in the alternative, any state Law of similar effect.

“Code” means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder.

“Contingent Consideration” has the meaning set forth in Section 2.8.

“Contract” means any contract, agreement, understanding, arrangement, warranty, deed, power of attorney, purchase order, work order, commitment, assignment, certificate, covenant, assurance, undertaking, option, lease, license, insurance policy, sale and purchase order, commitment and other instruments of any kind, whether written or oral, to which a Person is a party, is otherwise bound or has any current or future obligation or Liability.

“Customer” means a current customer of Seller, subject to an existing Contract.

“Disclosure Schedule” means the disclosure schedule prepared by Seller and delivered to Buyer incident to the execution and delivery of this Agreement.

“Employees” means those Persons employed by Seller in connection with the Business immediately prior to the Closing, as set forth on Section 4.20 of the Disclosure Schedule.

“Encumbrance” means any charge, claim, community or other marital property interest, condition, equitable interest, lien (statutory or otherwise), option, pledge, security interest, mortgage, lease, sublease, right of way, easement, encroachment, servitude, right of first option, right of first refusal, or similar restriction or encumbrance of any kind, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income, exercise of any other attribute of ownership or financing statement under the applicable Laws of any jurisdiction.

“Environmental Laws” means all Laws and similar provisions having the force or effect of Law, all Permits with respect to environmental, public health and safety, occupational health and safety, product liability and transportation, including all such standards of conduct or bases of obligations relating to the presence, use, production, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, control or cleanup of any contaminant, waste, hazardous materials, substances, chemical substances or mixtures, pesticides, toxic chemicals, petroleum products or byproducts, asbestos, polychlorinated biphenyls, noise or radiation.

“Final Closing Working Capital Amount” means (a) the Closing Working Capital Amount set forth in the Closing Working Capital Notice if Seller accepts such amount or fails to object to such amount, in each case, as contemplated in Section 2.7(c); (b) the Closing Working Capital Amount reflected in the written acknowledgement executed by Buyer and Seller in accordance with Section 2.7(e)(i); or (c) the Closing Working Capital Amount determined by the Accounting Referee in accordance with Section 2.7(e)(ii), as the case may be.

“GAAP” means the generally accepted accounting principles in effect from time to time, including the rules and statements promulgated by the American Institute of Certified Public Accountants that are in effect in the United States of America for the period under consideration.

“Governmental Authority” means any (a) nation, state, commonwealth, province, territory, county, municipality, district or other jurisdiction of any nature or any political subdivision thereof, (b) federal, state, local, municipal, foreign or other government or (c) governmental or quasi-governmental authority

of any nature (including any governmental division, department, bureau, agency, commission, instrumentality, official, organization, body or other entity and any court, arbitrator or other tribunal).

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

“Historical Financials” means the balance sheets and statements of income and cash flow of Seller as of and for the three most recent full fiscal years ended 2014, 2015 and 2016.

“Indebtedness” means any of the following: (a) the principal of (i) any indebtedness for borrowed money, including bank overdrafts, (ii) any obligations evidenced by bonds, debentures, notes or other similar instruments and (iii) any obligations, contingent or otherwise, under banker’s acceptance credit or similar facilities; (b) any obligations to pay the deferred purchase price of property or services, except the accounts payable, other trade accounts payable and other current Liabilities arising in the Ordinary Course of the Business; (c) any guaranty of any of the foregoing; (d) obligations to pay rent or other payment amounts under Leases which would be required to be classified as a capital Lease on a balance sheet prepared in accordance with GAAP; (e) accrued interest or premium (if any) applicable to, and premiums, penalties or other costs or expenses that would arise as a result of repayment of, any of the foregoing; and (f) any other obligations accruable as indebtedness in accordance with GAAP.

“Intellectual Property” means any intellectual or industrial property and other proprietary rights that may exist or be created under the laws of any jurisdiction throughout the world, and any applications for registration and registrations of the foregoing property or rights (whether pending, existing, abandoned or expired), including:

(a) all registered or unregistered trademarks, service marks, trade names and general intangibles of a similar nature (including corporate names, logos, trade dress, slogans, and product names), and the goodwill associated therewith, and all rights in Internet web sites, Internet domain names, uniform resource locators, and keywords and purchased search terms;

(b) all patents and patent applications (including all original applications, divisionals, provisionals (even if expired), non-provisionals, continuations, continuations-in-part, re-examinations, extensions or reissues thereof), and all conceptions, inventions and discoveries that may be patentable;

(c) all registered and unregistered copyrights and other rights of authorship in both published and unpublished works and all moral rights therein, including all applications; and

(d) all information that derives economic value from not being generally known, and any other information that is proprietary or confidential, including, know-how, ideas, processes, documentation, information, data, customer lists, software (in both object code and source code form), data, process technology, plans, drawings, designs, and specifications.

“Intellectual Property Assets” means all Intellectual Property owned by Seller or used in or necessary for the conduct of the Business as currently conducted, except as otherwise excluded from this transaction by inclusion in Schedule 2.2(d) (Excluded Assets).

“Intellectual Property Licenses” means all licenses, sublicenses and other agreements by or through which other Persons, including Seller’s Affiliates, grant Seller exclusive or non-exclusive rights or interests in or to any Intellectual Property that is used in or necessary for the conduct of the Business as currently conducted, except as otherwise excluded from this transaction by inclusion in Schedule 2.2(d) (Excluded 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.

“Latest Financials” means the unaudited balance sheet of Seller as of November 30, 2017 and the related statements of income for the eleven (11) month period then ended.

“Law” means all laws, statutes, rules, regulations, codes, injunctions, judgments, orders, decrees, writs, rulings, awards, constitutions, ordinances, determinations, or common law of any jurisdiction or promulgated by any Governmental Authority.

“Leases” means all Contracts or concessions, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any real or personal property.

“Liability” means with respect to any Person, any liability or obligation of such Person of any kind, character or description, whether known or unknown, absolute or contingent, accrued or unaccrued, disputed or undisputed, liquidated or unliquidated, secured or unsecured, joint or several, due or to become due, vested or unvested, executory, determined, determinable or otherwise, and whether or not the same is required to be accrued on the financial statements of such Person.

“Losses” means any and all damages, costs, diminution in value, Liabilities, losses, judgments, penalties, fines, expenses, Taxes or other costs (including reasonable attorneys’ fees, costs of defense and costs of collection). For purposes of determining the amount of any Losses, any qualifications in the representations, warranties and covenants with respect to a Material Adverse Effect, materiality, material or similar terms shall be disregarded and will not have any effect with respect to the calculation of the amount of any Losses attributable to a breach of any representation, warranty or covenant set forth in this Agreement (including the Disclosure Schedule).

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate and whether or not durationally significant, materially adverse to (a) the Business, results of operations, prospects, condition (financial or otherwise) or assets of the Business, (b) the Transferred Assets or the Assumed Liabilities or (c) the ability of Seller, Shareholders or Buyer to consummate the transactions contemplated hereby on a timely basis.

“Net Revenue” means the net amount of revenue attributable to Seller Products less product returns, advertising or promotional allowances, warranty, discounts (including but not limited to customer and distributor discounts), any other short pay by the customer, and excluding amounts invoiced for any other product, shipping, taxes, duties or other similar amounts.

“Ordinary Course of the Business” an action taken by a Person will be deemed to have been taken in the Ordinary Course of the Business only if such action: (a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person; and (b) is not required to be authorized by the members, managers, partners, shareholders or board of directors, as applicable, of such Person.

“Person” means any individual, partnership (of any kind), limited liability company, corporation, association, joint stock company, trust, joint venture, unincorporated organization, firm, organization, company, business, entity, union, society or Governmental Authority.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date. All property taxes and similar ad valorem obligations levied with respect to the Transferred Assets for a taxable period that includes (but does not end on) the Closing Date shall be apportioned ratably based on the number of days in such period.

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

“Seller’s Knowledge” and other phrases of like substance means the actual knowledge that Robert C. Pole III and Jay Crookston has or should have had after a reasonable inquiry into the fact or matter represented or warranted, whether in his capacity as an officer, member, manager, shareholder, employee or agent of Seller.

“Seller Products” means those products licensed and supported by Seller prior to Closing, together with new releases and/or derivatives of those products which are released after Closing, except as otherwise excluded from this transaction by inclusion in Schedule 2.2(d) (Excluded Assets)

“Supplier” means any supplier of goods and services to which Seller has paid more than \$25,000 in the aggregate during the 12-month period ended October 31, 2017.

“Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, capital gain, intangible, environmental (including taxes under Section 59A of the Code or otherwise), custom duties, capital stock, franchise, profits, employee’s income withholding, foreign withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, value added, registration, alternative or add on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalties or additions to tax in respect of the foregoing, whether disputed or not, and including any obligation to indemnify, assume or succeed to the Liability of any other Person in respect of the foregoing.

“Tax Return” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

“Transaction Documents” means, collectively, the Bill of Sale, the Assignment and Assumption Agreement and the Intellectual Property Assignments and any other certificate, document or instrument executed in connection with the consummation of the transactions contemplated by this Agreement.

“Waterslide Agreement” means the License Agreement to be entered into between Buyer and Robert C. Pole III, at or prior to Closing, related to that certain Provisional Patent Application with the United States Patent and Trademark Office on November 20, 2017, Reference number 62588832 titled “Waterslide Appliance and System for Floating Mat”.

“Working Capital” means, with respect to Seller, at the time of determination, its current assets (excluding cash and cash equivalents and current assets that are Excluded Assets) *minus* its current liabilities (less any current liabilities that are Excluded Liabilities), as identified on the Estimated Closing Balance Sheet (a copy of which is attached hereto as Schedule 2.7(a)) as being included in the calculation of Working Capital, and all as determined in accordance with GAAP, applied on a consistent basis with prior periods.

“Working Capital Target Amount” means an amount equal to \$0.00.

“Works in Progress” means any and all work of Seller as of the Latest Financials that is not otherwise an Accounts Receivable due and owing to Seller as of the Closing Date.

**1.2** Other Definitions. Each of the following terms is defined in the Section set forth such opposite term:

<b><u>Definition</u></b>	<b><u>Location</u></b>
Accounting Referee .....	<u>Section 2.7(e)(i)</u>
Accounts Receivable .....	<u>Section 2.1(a)</u>
Annual True-Up Statement .....	<u>Section 2.8(c)</u>
Assigned Contracts .....	<u>Section 2.1(b)</u>
Assignment and Assumption Agreement .....	<u>Section 3.2(a)(ii)</u>
Assumed Liabilities .....	<u>Section 2.3</u>
Bill of Sale .....	<u>Section 3.2(a)(i)</u>
Books and Records .....	<u>Section 2.1(l)</u>
Business .....	Introduction
Buyer .....	Introduction
Buyer Indemnitee .....	<u>Section 7.2</u>
Cash Consideration .....	<u>Section 2.5(a)</u>
Costco Contingent Consideration .....	<u>Section 2.8(a)(ii)</u>
Claimed Amount .....	<u>Section 7.6</u>
Closing and Closing Date .....	<u>Section 3.1</u>
Closing Balance Sheet .....	<u>Section 2.7(b)</u>
Closing Cash .....	<u>Section 2.5(a)</u>
Closing Indebtedness .....	<u>Section 2.5(b)</u>
Closing Working Capital Amount .....	<u>Section 2.7(b)</u>
Closing Working Capital Notice .....	<u>Section 2.7(b)</u>
Contingent Consideration Period .....	<u>Section 2.8</u>
Employee Benefit Plan .....	<u>Section 4.22(a)</u>
Estimated Closing Balance Sheet .....	<u>Section 2.7(a)</u>
Estimated Closing Working Capital Amount .....	<u>Section 2.7(a)</u>
Excluded Assets .....	<u>Section 2.2</u>
Excluded Contracts .....	<u>Section 2.2(b)</u>
Excluded Liabilities .....	<u>Section 2.4</u>
Fundamental Representations .....	<u>Section 7.1</u>
Indemnification Acknowledgment .....	<u>Section 7.5(a)(ii)</u>
Indemnitee .....	<u>Section 7.5(a)</u>
Indemnitor .....	<u>Section 7.5(a)</u>
Intellectual Property Assignment Agreements .....	<u>Section 4.11(b)</u>
Intellectual Property Assignments .....	<u>Section 3.2(a)(iii)</u>
Notice of Claim .....	<u>Section 7.5(a)(i)</u>
Objection Notice .....	<u>Section 2.7(d)</u>
Party or Parties .....	Introduction
Permits .....	<u>Section 4.17(b)</u>
Permitted Encumbrance .....	<u>Section 4.7</u>
Purchase Price .....	<u>Section 2.5(a)</u>
Review Period .....	<u>Section 2.7(b)</u>
Seller .....	Introduction
Seller Indemnity .....	<u>Section 7.3</u>

Seller Noncompete Period .....	<u>Section 6.1(a)</u>
Selling Parties .....	Introduction
Shareholder .....	Introduction
Tangible Personal Property .....	<u>Section 2.1(e)</u>
Third Party Claim .....	<u>Section 7.5</u>
Transferred Assets .....	<u>Section 2.1</u>
Warranty Holdback Amount.....	<u>Section 2.5(c)</u>
Warranty Holdback Balance .....	<u>Section 2.5(c)</u>

**ARTICLE 2**  
**PURCHASE AND SALE OF TRANSFERRED ASSETS AND ASSUMED LIABILITIES**

**2.1 Purchase and Sale of Transferred Assets.** Subject to the terms and conditions set forth herein, at the Closing, Seller hereby assigns, transfers, conveys and delivers to Buyer, and Buyer hereby purchases from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller’s right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether, real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the “Transferred Assets”), including the following:

- (a) all accounts receivable of Seller (“Accounts Receivable”), except as set forth in Section 2.2(k);
- (b) all Contracts, including Intellectual Property Licenses, set forth on Schedule 2.1(b) (“Assigned Contracts”);
- (c) all Works in Progress;
- (d) all Intellectual Property Assets, including all Intellectual Property Assignment Agreements and all of Seller’s rights thereunder;
- (e) all inventory, finished goods, raw materials, packaging, supplies, parts and other inventories;
- (f) all furniture, fixtures, equipment, machinery, tools, vehicles, office, equipment, supplies, computers, telephones and other tangible personal property (the “Tangible Personal Property”);
- (g) all Permits which are held by Seller and required for the conduct of the Business as currently conducted or for the ownership and use of the Transferred Assets, including those listed in Section 4.17(b) of the Disclosure Schedule;
- (h) subject to Section 2.2(h), all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Business, the Transferred Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;
- (i) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes) other than any prepaid amounts for insurance policies of Seller;

(j) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to the Transferred Assets;

(k) subject to Section 2.2(g), all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Transferred Assets and the Assumed Liabilities;

(l) subject to Section 2.2(j), all books and records of Seller, including books of account, ledgers and general, financial and accounting records, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material research and intellectual property files relating to the Intellectual Property Assets and Intellectual Property Licenses ("Books and Records"); and

(m) all goodwill and the going concern value of the Business.

**2.2 Excluded Assets.** Notwithstanding the foregoing, the Transferred Assets will not include the following assets (collectively, the "Excluded Assets"):

(a) cash and cash equivalents in Seller's accounts as of the Closing Date;

(b) Contracts, including Intellectual Property Licenses, that are not Assigned Contracts (the "Excluded Contracts");

(c) 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;

(d) the assets, properties and rights specifically set forth on Schedule 2.2(d);

(e) any leased real property;

(f) the rights which accrue or will accrue to Seller or Shareholders under the Transaction Documents;

(g) insurance claims or benefits, including proceeds, that relate solely to the Excluded Assets;

(h) all rights to any Actions of any nature to the extent such relate solely to the Excluded Assets;

(i) all Tax assets attributable to the pre-Closing period (including duty and Tax refunds and prepayments) of Seller or any of its Affiliate;

(j) Books and Records relating solely to Excluded Assets;

(k) Accounts Receivable for Seller Products purchased by Amazon prior to the Closing; and

(l) prepaid expenses or advance payments relating to insurance policies of Seller.



**2.3 Assumed Liabilities.** Subject to the terms and conditions set forth herein, Buyer hereby assumes and agrees to pay, perform and discharge only the following Liabilities of Seller (collectively, the “Assumed Liabilities”) and no other Liabilities:

(a) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the Ordinary Course of the Business and do not relate to any failure to perform, improper performance, or other breach, default or violation by Seller on or prior to the Closing; *provided, however*, that any Liabilities incurred in connection with or otherwise related to sales of Seller Products to Amazon prior to the Closing shall be an Excluded Liability;

(b) all accounts payable by Seller to third parties incurred in the Ordinary Course of Business as of the Closing Date to the extent included in the calculation of Working Capital;

(c) those Liabilities of Seller set forth on Schedule 2.3(c).

**2.4 Excluded Liabilities.** Notwithstanding the provisions of Section 2.3 or any other provision in this Agreement to the contrary, Buyer does not assume and shall not be responsible to pay, perform or discharge any Liabilities of the Selling Parties or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “Excluded Liabilities”). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following:

(a) any Liabilities of the Selling Parties 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 the fees and expenses of counsel, accountants, consultants, advisors and others;

(b) any Liability for (i) Taxes of the Selling Parties (or any member, shareholder, Affiliate or Representative of the Selling Parties) or relating to the Business, the Transferred Assets or the Assumed Liabilities for any Pre-Closing Tax Period, (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of the Selling Parties or (iii) other Taxes of the Selling Parties (or any shareholder, member, Affiliate or Representative of the Selling Parties) that become a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract of Law;

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities relating to, resulting from or arising out of any Employee Benefit Plan;

(e) any Liabilities relating to, resulting from or arising out of the employment, engagement or termination by Seller of any current or former employees, contractors, directors or consultants;

(f) any Liabilities under the Excluded Contracts or any other Contracts, including Intellectual Property Licenses, (i) which are not validly and effectively assigned to Buyer pursuant to this Agreement, (ii) which do not conform to the representations and warranties with respect thereto contained

in this Agreement or (iii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to the Closing;

(g) any Liabilities associated with Indebtedness of Seller or the Business or any guarantee thereof;

(h) any Liabilities arising out of, in respect of or in connection with any claims (A) made in pending or future suits, actions investigation or other legal governmental or administrative proceedings of failure by the Selling Parties or any of their Affiliates to comply with any Law or Governmental Order (including any workers' compensation, employment practices or health and safety matters), or (B) made by any Shareholder in pending or future suits, claims or actions against Seller; and

(i) any Liabilities incurred in connection with or otherwise related to sales of Seller Products to Amazon prior to the Closing.

## **2.5 Purchase Price; Payment of Indebtedness.**

(a) Purchase Price. The aggregate purchase price for the Transferred Assets and the Assumed Liabilities shall be (i) \$200,000.00 (the "Cash Consideration"), which, at Closing, shall be (A) subject to adjustment in accordance with Section 2.6(b), (B) reduced by the amount of the Closing Indebtedness paid at Closing with respect to Section 2.5(b) (as adjusted, the "Closing Cash") and reduced by the Warranty Holdback Amount in accordance with Section 2.5(c) plus (ii) the Contingent Consideration earned in accordance with Section 2.8, if any, and (iii) subject to adjustment pursuant to Section 2.6(c) and Section 2.5(c) (as adjusted, the "Purchase Price"). The Closing Cash shall be delivered by Buyer to Seller in accordance with Section 3.2(b).

(b) Closing Indebtedness. At or prior to Closing, all of the Indebtedness of Seller shall be paid in full. Any Indebtedness of Seller existing at the time of Closing (the "Closing Indebtedness") shall be repaid in full at Closing out of the Cash Consideration in accordance with Section 2.5(a).

(c) Warranty Holdback. At Closing, Buyer will retain \$20,000.00 (the "Warranty Holdback Amount") to cover any warranty expenses (including offsets for any manufacturer or supplier refunds) actually incurred by Buyer or its Affiliates after Closing in connection with the sale of (i) any consumer-related Seller Products sold by Seller since May 1, 2016, and (ii) any commercial-related Seller Products sold by Seller since January 1, 2017. No later than July 20, 2018, Buyer will deliver to Seller its calculation of any deductions from the Warranty Holdback Amount and shall deliver to Seller, by wire transfer of immediately available funds, an amount equal to the remaining balance, if any, of the Warranty Holdback Amount (the "Warranty Holdback Balance"). If, within 20 days of delivery of the Warranty Holdback Amount, Seller disputes the amount or calculation of the Warranty Holdback Balance and Buyer and Seller are unable to agree upon a revised amount, then Buyer and Seller shall submit the matter to a mutually agreeable certified public accountant that is familiar with the retail sports industry and transactions of this nature. This certified public accountant shall be the final decision-maker regarding the final calculation of the Warranty Holdback Balance and the Parties shall equally share his/her costs. In regard to manufacturer or supplier refunds, Buyer shall make commercially reasonable efforts to obtain any such refunds that may be available and request that any such manufacturer and/or supplier provide such refunds where appropriate. Buyer shall also be under a duty to follow commercially reasonable business practices similar to those previously used by Seller in resolving any warranty claims that may arise during the pendency of this Agreement.

## **2.6 Working Capital Adjustment.**

(a) Adjustment to Purchase Price. The Purchase Price shall be subject to adjustment in accordance with this Section 2.6 and Section 2.7.

(b) Closing Adjustment. At the Closing: (i) if the Estimated Closing Working Capital Amount is less than the Working Capital Target Amount, then the Cash Consideration shall be decreased by such difference; and (ii) if the Estimated Closing Working Capital Amount is greater than the Working Capital Target Amount, then the Cash Consideration shall increased by such difference.

(c) Post-Closing Adjustment. After the Closing:

(i) if no adjustment to the Purchase Price is made at the time of Closing pursuant to Section 2.6(b):

(A) If the Final Closing Working Capital Amount is greater than the Working Capital Target Amount, then within 15 Business Days following the determination of the Final Closing Working Capital Amount in accordance with Section 2.7, Buyer shall deliver to Seller by wire transfer of immediately available funds an amount equal to the difference between the Final Closing Working Capital Amount and the Working Capital Target Amount; and

(B) If the Final Closing Working Capital Amount is less than the Working Capital Target Amount, then within 15 Business Days following the determination of the Final Closing Working Capital Amount in accordance with Section 2.7, Seller shall deliver to Buyer by wire transfer of immediately available funds an amount equal to the difference between the Final Closing Working Capital Amount and the Working Capital Target Amount.

(ii) if an adjustment to the Purchase Price is made at the time of Closing pursuant to Section 2.6(b):

(A) If the Final Closing Working Capital Amount is greater than the Estimated Closing Working Capital Amount, then within 15 Business Days following the determination of the Final Closing Working Capital Amount in accordance with Section 2.7, Buyer shall deliver to Seller by wire transfer of immediately available funds an amount equal to the difference between the Final Closing Working Capital Amount and the Estimated Closing Working Capital Amount; and

(B) If the Final Closing Working Capital Amount is less than the Estimated Closing Working Capital Amount, then within 15 Business Days following the determination of the Final Closing Working Capital Amount in accordance with Section 2.7, Seller shall deliver to the Company by wire transfer of immediately available funds an amount equal to the difference between the Final Closing Working Capital Amount and the Estimated Closing Working Capital Amount.

## **2.7 Working Capital Adjustment Procedures.**

(a) Preparation of the Estimated Closing Balance Sheet. Attached hereto as Schedule 2.7(a) is an estimated balance sheet of Seller as of immediately prior to the Closing Date as finally agreed upon by Seller and Buyer (the “Estimated Closing Balance Sheet”), together with Seller’s and Buyer’s joint calculation of the Working Capital of Seller as of immediately prior to the Closing (such amount, the “Estimated Closing Working Capital Amount”), determined in accordance with GAAP applied on a consistent basis with prior periods; *provided, however*, that for purposes of the calculation, (i) any Accounts Receivable that have not been collected within 60 days of invoice shall be considered a current liability as part of the reserve for doubtful accounts, and (ii) any Accounts Receivable for Seller Products

purchased before the Closing by Amazon are considered an Excluded Asset pursuant to Section 2.2(k) and shall not be included.

**(b)** Preparation of Closing Balance Sheet and Closing Working Capital Amount. As promptly as practicable, but not later than 60 days after the Closing Date, or such later date as Buyer and Seller agree in writing, Seller shall prepare and deliver to Buyer written notice (the “Closing Working Capital Notice”) containing a balance sheet of Seller as of immediately prior to the Closing Date (the “Closing Balance Sheet”), calculated in accordance with GAAP applied on a consistent basis with prior periods, together with Seller’s calculation of the Working Capital of Seller as of immediately prior to the Closing determined in accordance with GAAP applied on a consistent basis with prior periods and in a manner consistent with Schedule 2.7(a) (such amount, the “Closing Working Capital Amount”). Buyer shall have a period of 30 days (the “Review Period”) following Seller’s delivery of the Closing Working Capital Notice to review the Closing Balance Sheet and the Closing Working Capital Amount set forth in the Closing Working Capital Notice.

**(c)** Acceptance by Buyer. If (i) at any time during the Review Period, Buyer delivers written notice to Seller of its acceptance of Seller’s estimate of the Closing Working Capital Amount set forth in the Closing Working Capital Notice, or (ii) Buyer fails to deliver a timely Objection Notice in accordance with Section 2.7(d), then such estimated Closing Working Capital Amount shall be final, binding and conclusive on the Parties and shall be deemed to be the “Final Closing Working Capital Amount” for purposes of this Agreement.

**(d)** Disagreement by Buyer. If Buyer disagrees with Seller’s calculation of the Closing Working Capital Amount set forth in the Closing Working Capital Notice, then prior to the expiration of the Review Period, Buyer may deliver a written notice to Seller disagreeing with such calculation and setting forth Buyer’s objection to Seller’s calculation of the Closing Balance Sheet or the Closing Working Capital Amount (an “Objection Notice”). The Objection Notice shall specify in reasonable detail those items or amounts as to which Buyer disagrees.

**(e) Dispute Resolution.**

**(i)** If Buyer delivers a timely Objection Notice in accordance with Section 2.7(d), then Buyer and Seller shall, during the 30 days following such delivery, negotiate in good faith in order to attempt to resolve any disputed items or amounts and establish a mutually agreeable Closing Working Capital Amount. If, during such period, Buyer and Seller agree as to the Closing Working Capital Amount, then Buyer and Seller shall execute a written acknowledgement of such amount and the Closing Working Capital Amount so agreed upon shall be final, binding and conclusive on the Parties and shall be deemed to be the “Final Closing Working Capital Amount” for purposes of this Agreement. If, during such period, Buyer and Seller are unable to reach agreement, then the disputed items shall be resolved by a firm of independent accountants having no material relationship with either Party and reasonably acceptable to both Buyer and Seller (the “Accounting Referee”).

**(ii)** Within 20 days of the retention of the Accounting Referee, Buyer and Seller shall jointly submit the matter to the Accounting Referee and instruct the Accounting Referee that it: (A) shall act as an expert in accounting, and not as an arbitrator, to resolve, in accordance with GAAP applied on a consistent basis with prior periods and in a manner consistent with Schedule 2.7(a), only the matters and the dollar amounts specified in the Objection Notice that remain in dispute; (B) shall adjust the calculation of Closing Working Capital Amount based thereon to reflect such resolution; (C) may not determine an amount of the Closing Working Capital Amount in excess of that claimed by Seller or less than that claimed by Buyer; and (D) shall deliver to Buyer and Seller, as promptly as practicable and in any event within 75 days following the submission of the matters that remain in dispute to the Accounting

Referee for resolution, a written report setting forth the Accounting Referee's determination of the Closing Working Capital Amount and the calculation thereof. The Parties acknowledge and agree that, if any dispute is submitted to the Accounting Referee pursuant to this Section 2.7(e), the Closing Working Capital Amount determined by the Accounting Referee shall be final, binding and conclusive and shall be deemed to be the "Final Closing Working Capital Amount" for purposes of this Agreement.

**(iii)** The terms of appointment and engagement of the Accounting Referee shall be as agreed upon between Seller and Buyer, and any associated engagement fees shall be borne 50% by Seller and 50% by Buyer.

**(f)** Cooperation. Buyer and Seller will cooperate and assist as requested in the preparation of the Closing Balance Sheet and the calculation of the Closing Working Capital Amount by the other Party and the Accounting Referee, including the making available to the extent necessary of books, records, work papers, and personnel.

## 2.8 Contingent Consideration.

**(a)** Contingent Consideration. During the period from the Closing until December 31, 2021 (the "Contingent Consideration Period"), Buyer will pay contingent consideration ("Contingent Consideration"), if any, and subject to Buyer's right of setoff in accordance with Section 7.9), based on a percentage of the amount of Net Revenue attributable to sales of Seller Products by Buyer or its Affiliates, and on the terms and conditions set forth more fully below:

**(i)** During the Contingent Consideration Period, Contingent Consideration for sales of Seller Products by Buyer or its Affiliates (excluding sales to Costco Wholesale or any Costco affiliate), will be calculated as follows:

Net Revenue	Contingent Consideration
Net Revenue amounts above \$1,000,000 and less than or equal to \$3,000,000	2.5% of Net Revenue (excluding Costco Wholesale or Affiliate)
Net Revenue amounts above \$3,000,000 and less than or equal to \$5,000,000	3.5% of Net Revenue (excluding Costco Wholesale or Affiliate)
Net Revenue amounts above \$5,000,000	5.0% of Net Revenue (excluding Costco Wholesale or Affiliate)

**(ii)** During the Contingent Consideration Period, Contingent Consideration for sales of Seller Products by Buyer or its Affiliates to Costco Wholesale (including any Costco affiliate) ("Costco Contingent Consideration"), will be calculated as 2.5% of Net Revenue attributable to such sales starting with the first dollar of Net Revenue associated with Costco Wholesale (or Costco affiliate) sales.

**(iii)** Notwithstanding anything herein to the contrary, for the period beginning January 1, 2021 and ending on December 31, 2021, Contingent Consideration for sales of Seller Products by Buyer or its Affiliates shall be calculated in accordance with Sections 2.8(a)(i) and 2.8(a)(ii), *provided, however* that Contingent Consideration payable to Seller for such period shall be reduced by fifty-percent.

**(iv)** If other products of Buyer or its Affiliates are bundled with Seller Products resulting in Net Revenue during the Contingent Consideration Period, the Contingent Consideration for such sales will be calculated based on the pro-rata portion of the Net Revenue attributable to the Seller

Product based on the applicable price identified on the Buyer price list for the Seller Product part number(s) and the Buyer product part number(s).

(b) During the Contingent Consideration Period, Buyer will prepare quarterly statements setting forth the calculations necessary to determine the amount of the actual Contingent Consideration, including the Costco Contingent Consideration, to be paid (less amounts, if any, subject to Buyer's right of setoff in accordance with Section 7.9) to Seller for such fiscal quarter (the "Contingent Consideration Payments"). Buyer shall deliver such statements to Seller within 30 days of Buyer's fiscal quarter end, and shall deliver to Seller by wire transfer of immediately available funds an amount equal to Buyer's determination of such prior quarter's Contingent Consideration Payment.

(c) Within 75 days after the end of each fiscal year of the Contingent Consideration Period, Buyer will prepare and deliver to Seller a statement (the "Annual True-Up Statement") setting forth the calculations necessary to reconcile the Contingent Consideration Payments actually paid for the prior year with the actual Net Revenue attributable to sales of Seller Products for such fiscal year after taking into account (A) any change or resolution to amounts included as a result Buyer's right of setoff in accordance with Section 7.9, and (B) any uncollectible accounts receivable for which a Contingent Consideration Payment has already been made and actual cash collections from customers. Robert C. Pole III shall be the primary point of contact for Seller regarding the Annual True-Up Statement.

(i) If Buyer and Seller agree in writing on the calculations and amounts set forth in the Annual True-Up Statement, then within 15 days thereafter Buyer or Seller, as the case may be, will pay by wire transfer of immediately available funds to the other party an amount equal to the difference between the reconciled amounts set forth in the Annual True-Up Statement and the amount of the Contingent Consideration Payments actually paid during the prior fiscal year.

(ii) If within 30 days of delivery of the Annual True-Up Statement Buyer and Seller are unable to agree on the calculations and amounts set forth in Annual True-Up Statement, then the Parties shall submit the matter to an Accounting Referee to be resolved in a manner similar to the process described in Section 2.7(e).

(d) The Contingent Consideration Payments are speculative in that Buyer makes no representations, warranties, covenants, promises or guarantees as to the level of efforts it will expend in the development, marketing or sales of the Seller Products. Similarly, Buyer makes no representations, warranties, covenants, promises or guarantees as to the amount of resulting Net Revenue, or the amount of any Contingent Consideration Payments that may be earned by Seller during the Contingent Consideration Period. Seller acknowledges that Buyer may elect not to release the Seller Products for a period of time after Closing. Seller also acknowledges that Buyer may market and sell the Seller Products at its sole discretion and Buyer may discontinue all marketing and sales of the Seller Products during the Contingent Consideration Period for any or no reason.

## **2.9 Tax Cooperation; Allocation of Purchase Price.**

(a) Buyer and the Selling Parties agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business (including access to Seller's Books and Records) as is reasonably necessary for the audit by any Governmental Authority, and the prosecution or defense of any Action relating to any Tax. Buyer and the Selling Parties will retain all Books and Records with respect to Taxes pertaining to the Business for a period of at least six years following the Closing Date. Buyer and the Selling Parties will cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Business.

(b) The parties shall allocate the Purchase Price among the Transferred Assets acquired by Buyer in accordance with the requirements of Section 1060 of the Code and in the manner shown on Schedule 2.9(b). Following the Closing, any adjustment to the Purchase Price shall be allocated in such manner, and the parties will cooperate in good faith to agree upon a final allocation. If Buyer and Seller are unable to agree upon such final allocation, then the Parties shall submit the matter to a mutually agreeable certified public accountant that is familiar with transactions of this nature, and who shall be the final decision-maker regarding allocation of Purchase Price and the Parties shall equally share his/her costs. Buyer and Seller will timely file I.R.S. Form 8594 with their respective Tax Returns consistent with the above and the Parties will treat and report the transaction contemplated by this Agreement in all respects consistently for purposes of any Tax, including the calculation of gain, loss and basis with reference to the Purchase Price allocation made pursuant to such written agreement.

### ARTICLE 3 CLOSING

**3.1 Closing.** Subject to the terms and conditions of this Agreement, the transactions contemplated by this Agreement shall be consummated by the exchange of signatures by facsimile or other electronic transmission or, if such exchange is not practicable, at a closing (the “Closing”) to be held at the offices of Sparkman + Foote LLP, 1616 17th Street, Suite 564, Denver, Colorado 80202 at 10:00 a.m. (local time) on January 12, 2018 (the “Closing Date”) or such later date following the satisfaction or waiver of all of the conditions to the obligations of the Parties to consummate the transactions contemplated by this Agreement, including those of Article 3 hereof, to be performed on the Closing Date (other than conditions with respect to actions to be taken by the Parties at Closing).

**3.2 Closing Deliverables.** Subject to the terms and conditions of this Agreement, at the Closing, the following Persons shall deliver or cause to be delivered the following:

- (a) Seller shall have delivered, or cause to be delivered, to Buyer the following:
  - (i) a bill of sale in a form reasonably satisfactory to Buyer (the “Bill of Sale”) executed by Seller;
  - (ii) an assignment and assumption agreement in a form reasonably satisfactory to Buyer (the “Assignment and Assumption Agreement”) executed by Seller;
  - (iii) assignments of the Intellectual Property, including a Trademark Assignment Agreement and a Domain Name Assignment and Assumption Agreement, each in a form reasonably satisfactory to Buyer (collectively, the “Intellectual Property Assignments”), executed by Seller;
  - (iv) the Waterslide Agreement, executed by Robert C. Pole III;
  - (v) pay-off letters reasonably satisfactory to Buyer evidencing that all Indebtedness of Seller, including any principal, interest, fees or penalties outstanding or accrued thereunder, has been repaid in full prior to the Closing Date;
  - (vi) evidence reasonably satisfactory to Buyer that no Encumbrances of any kind (except for Permitted Encumbrances) have attached to any of the Transferred Assets at or prior to Closing, which evidence shall include UCC, Tax and federal lien searches or, if applicable, completed copies of any documents terminating such Encumbrance as of the Closing Date (including UCC financing statement amendments (Form UCC-3) to be filed on the Closing Date), all at the cost of the Buyer;

(vii) a certificate executed by an authorized officer of Seller, dated as of the Closing Date, certifying as to and, where appropriate, attaching copies of, (A) the resolutions duly adopted by the Board of Directors of Seller authorizing the execution, delivery and performance of this Agreement and the Transaction Documents to which Seller is a party, and the consummation of the transactions contemplated by this Agreement, (B) the written consent of the shareholders of Seller approving and adopting this Agreement, (C) the Articles of Incorporation and Bylaws of Seller, each as in effect at the Closing Date, and (D) the name, title, incumbency and signatures of the officers of Seller authorized to execute this Agreement and the Transaction Documents on behalf of Seller; and

(viii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer and Seller, as may be required to give effect to this Agreement and the transactions contemplated hereby.

(b) Buyer shall have delivered, or cause to be delivered, to Seller the following:

(i) the Closing Cash by wire transfer of immediately available funds to an account or accounts designated by Seller (such designation to have occurred not less than three Business Days prior to Closing);

(ii) a certificate executed by an authorized officer of Buyer, dated as of the Closing Date, certifying as to and, where appropriate, attaching copies of, (A) the resolutions duly adopted by the Board of Directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Transaction Documents to which Buyer is a party, and the consummation of the transactions contemplated by this Agreement, and (B) the name, title, incumbency and signatures of the officers of Seller authorized to execute this Agreement and the Transaction Documents on behalf of Buyer;

(iii) the Assignment and Assumption Agreement, executed by Buyer; and

(iv) the Waterslide Agreement, executed by Buyer.

#### **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE SELLING PARTIES**

Each of the Selling Parties, jointly and severally, represents and warrants to Buyer that, except to the extent referenced on the applicable section of the Disclosure Schedule in accordance with Section 8.1, the statements contained in this Article IV are true and complete as of the date hereof and will be true and complete as of the Closing:

##### **4.1 Seller Organization; Authority; Binding Effect; Capitalization; Trade Names.**

(a) Seller is a corporation duly incorporated and validly existing and in good standing under the Laws of the State of Illinois. Section 4.1(a) of the Disclosure Schedule sets forth an accurate and complete list of each jurisdiction in which Seller is qualified, licensed or admitted to do business as a foreign corporation, which represents each jurisdiction in which the operation of its business or the ownership of its assets requires Seller to be so qualified, licensed or admitted, and Seller is in good standing in each such jurisdiction. Seller has all requisite power and authority to enter into this Agreement and the Transaction Documents to which Seller is a party and to perform fully its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Documents to which Seller is a party and the performance by Seller of its obligations hereunder and thereunder have been duly and validly authorized by all necessary corporate action on the part of Seller. This Agreement is, and when executed and delivered in accordance with this Agreement, each other Transaction Document to which



Seller is a party will be, a valid and binding obligation of Seller enforceable in accordance with its terms to the extent that Seller is a party thereto, except as such enforceability may be limited by bankruptcy, insolvency, reorganization and similar Laws affecting creditors generally and by the availability of equitable remedies.

(b) Shareholders own all of the issued and outstanding stock of Seller and no other rights, convertible securities, options, or other securities exist with respect to Seller. Seller has no subsidiaries and does not own, beneficially or of record, any equity interest in any Person.

(c) Section 4.1(c) of the Disclosure Schedule sets forth an accurate and complete list of each assumed name, trade name and fictitious name used by Seller. Each assumed name, trade name or fictitious name set forth on Section 4.1(c) of the Disclosure Schedule has been duly registered with the appropriate Governmental Authority in Seller's home jurisdiction.

**4.2 Shareholder Authorization; Execution and Validity.** Shareholders have all requisite power and authority to execute and deliver this Agreement and each of the Transaction Documents to which such Shareholder is a party and to perform such Shareholder's obligations hereunder and thereunder. The execution, delivery and performance by Shareholders of this Agreement and the other Transaction Documents to which such Shareholder is a party, and the consummation by Shareholders of the transactions contemplated hereby and thereby, have been duly authorized by all necessary action of Shareholders (including entity action, if applicable), and no other action on the part of Shareholders is necessary with respect thereto. This Agreement and each of the Transaction Documents to which such Shareholder is a party, when duly and validly executed and delivered by such Shareholder, will constitute a legal, valid and binding obligation of such Shareholder and will be enforceable against such Shareholder in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization and similar Laws affecting creditors generally and by the availability of equitable remedies.

#### **4.3 No Violations; Consents.**

(a) The execution and delivery of this Agreement and the other Transaction Documents and the performance by the Selling Parties of their obligations hereunder and thereunder do not and will not conflict with or violate any provision of the organizational documents of Seller. Except as set forth on Section 4.3(a) of the Disclosure Schedule, the execution and delivery of this Agreement and the other Transaction Documents to which the Selling Parties are a party and the performance of their respective obligations hereunder and thereunder do not and will not (i) conflict with or result in a breach of the terms, conditions or provisions of, (ii) constitute a default under, (iii) result in the creation of any Encumbrance upon the Transferred Assets pursuant to, (iv) give any third party the right to modify, terminate or accelerate any obligation under, (v) result in a violation of, any Law to which the Business is subject, or any agreement or instrument, order, judgment or decree to which Seller is subject or by which any of the Transferred Assets is bound.

(b) Section 4.3(b) of the Disclosure Schedule sets forth an accurate and complete list or description of (i) each filing that Seller is or will be required to make, (ii) each notice that Seller is or will be required to give and each consent, approval, license, order, waiver or authorization that Seller is or will be required to obtain from any Person (including any Governmental Authority) in connection with (A) the execution and delivery of this Agreement and any Transaction Documents and (B) the consummation or performance of the transactions contemplated by this Agreement.

#### **4.4 Financial Statements; Undisclosed Liabilities.**

(a) Attached to Section 4.4(a) of the Disclosure Schedule are the Historical Financials and Latest Financials. The Historical Financials and Latest Financials are accurate and complete in all material respects and fairly present the financial position of Seller as of the dates specified and the results of operations of Seller for the periods covered thereby in accordance with GAAP, subject, in the case of the Latest Financials, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes. Seller maintains a standard system of accounting established and administered in accordance with GAAP.

(b) Seller does not have any Liabilities or obligations of any nature (absolute, accrued, contingent or otherwise) that are not either (i) reflected or fully reserved against on the Latest Financials or incurred in the Ordinary Course of the Business subsequent to the date of the Latest Financials, or (ii) set forth in Section 4.4(a) of the Disclosure Schedule.

**4.5 Interim Changes.** Seller has operated the Business in the Ordinary Course of the Business and, except as set forth in Section 4.5 of the Disclosure Schedule, since October 31, 2017, Seller has not suffered or been subject to a Material Adverse Effect. Without limiting the generality of the foregoing, since October 31, 2017, there has been no:

- (a) change in any method of accounting or accounting practice of the Business;
- (b) incurrence, assumption or guarantee of any Indebtedness except unsecured current obligations and Liabilities incurred in the Ordinary Course of the Business;
- (c) write-offs or write-downs of any Accounts Receivable or accounts payable, other than in the Ordinary Course of the Business;
- (d) transfer, assignment, sale or other disposition of any of the Transferred Assets shown or reflected in the Latest Financials;
- (e) new Contract (or amendment to any existing Contract) obligating Seller to purchase goods or services for a period of 90 days or more, any amendment or termination of any Assigned Contract or any waiver of material claims or rights of Seller against third parties other than in the Ordinary Course of the Business;
- (f) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Transferred Assets;
- (g) transfer, assignment or grant of any license or sublicense of any material rights under or with respect to any Intellectual Property Assets or Intellectual Property Licenses;
- (h) acceleration, termination, modification to or cancellation of any Assigned Contract or Permit;
- (i) capital expenditures that would constitute an Assumed Liability;
- (j) imposition of any Encumbrance upon any of the Transferred Assets;

(k) entry into any employment agreement or collective bargaining agreement covering any of the Employees, written or oral, or modification of the terms of any such existing agreement;

(l) loan to, or entry into any other transaction with, any Employee;

(m) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(n) purchase, lease or other acquisition of the right to own, use or lease any property or assets, except in the Ordinary Course of the Business; or

(o) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

**4.6 Assigned Contracts.** Seller has delivered or made available to Buyer an accurate and complete copy of each Assigned Contract and each Excluded Contract. The Assigned Contracts and Excluded Contracts are all the Contracts of Seller. Except as set forth in Section 4.6 of the Disclosure Schedule, with respect to each Assigned Contract: (i) such Assigned Contract is legal, valid, binding and enforceable upon Seller and each of the other parties thereto (except as the enforceability thereof may be limited by any applicable bankruptcy, reorganization, insolvency or other Laws affecting creditors' rights generally or by general principles of equity) and is in full force and effect; (ii) assuming that the Parties obtain the consent of the counterparties to such Assigned Contract (if required under the terms of such Assigned Contract), such Assigned Contract will continue to be legal, valid, binding, enforceable, and in full force and effect on identical terms following the consummation of the transactions contemplated hereby; (iii) Seller is not and, to Seller's Knowledge, no other party is, in breach or default, and no event has occurred which, with the giving of notice or the lapse of time or both, would constitute a breach or default, or permit termination, modification, or acceleration, under such Assigned Contract; (iv) to Seller's Knowledge, no other party has indicated to Seller a present intent to cancel or otherwise not renew any Assigned Contract; (v) such Assigned Contract does not contain any exclusivity, non-solicitation provision, "most favored nation," preferential pricing or similar provision; and (vi) Seller has not and no other party has (in writing or, to Seller's Knowledge, otherwise) repudiated any provision of such Assigned Contract.

**4.7 Title to Assets.** Seller has good and valid title to, or a valid leasehold interest in, all of the Transferred Assets. All such Transferred Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "Permitted Encumbrances"):

(a) Encumbrances for Taxes not yet due and payable or being contested in good faith by appropriate procedures and for which there are adequate accruals or reserves on the Latest Financials;

(b) mechanics', carriers', workmen's, repairmen's or other like Encumbrances arising or incurred in the Ordinary Course of the Business or amounts that are not delinquent and which are not, individual or in the aggregate, material to the to the Business or the Transferred Assets;

(c) easements, rights of way, zoning ordinances and other similar Encumbrances affecting real property which are not, individually or in the aggregate, material to the Business or the Transferred Assets, which do not prohibit or interfere with the current operation of any real property and which do not render title to any real property unmarketable; or

(d) Encumbrances arising under original purchase price conditional sales contracts and equipment Leases with third parties entered into in the Ordinary Course of the Business which are not, individually or in the aggregate, material to the Business or the Transferred Assets.

**4.8 Warranties; Product Recalls.** Except as set forth in Section 4.8 of the Disclosure Schedule, (a) there is no Action, notice of violation or investigation from, by or before any Government Authority, or any claim or lawsuit pending or to Sellers Knowledge threatened, relating to any product (including the packaging and advertising related thereto) designed, formulated, manufactured, processed or sold by or on behalf of Seller, and (b) there has not been, nor is there under consideration by Seller, any recall or post-sale warning of a material nature conducted by or on behalf of Seller concerning any such product. All such products complied and comply in all material respects with Applicable Laws, and there have not been, and there are no, material design or, to Sellers Knowledge, material manufacturing defects or deficiencies (latent or otherwise) in such products.

**4.9 Condition and Sufficiency of Assets.** Except as set forth in Section 4.9 of the Disclosure Schedule, and except for ordinary wear and tear, the Tangible Personal Property included in the Transferred Assets is in good operating condition and repair and is adequate for the uses to which it is being put. The Tangible Personal Property is not in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Transferred Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property and assets necessary to conduct the Business as currently conducted. None of the Excluded Assets are material to the Business.

**4.10 Real Property.** Seller (a) does not own and has never owned any fee interest in or to any real property, and (b) does not currently lease any real property.

**4.11 Intellectual Property.**

(a) Section 4.11(a) of the Disclosure Schedule lists all (i) Intellectual Property Registrations and (ii) Intellectual Property Assets that are not registered but that are material to the operation of the Business. All required filings and fees related to the Intellectual Property Registrations have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and all Intellectual Property Registrations are otherwise in good standing. Seller has provided Buyer with accurate and complete file histories, documents, certificates, office actions, correspondence and other materials related to all Intellectual Property Registrations.

(b) Except as set forth in Section 4.11(b) of the Disclosure Schedule, Seller owns exclusively all right, title and interest in and to the Intellectual Property Assets, free and clear of Encumbrances. Without limiting the generality of the foregoing, Seller has entered into binding, written agreements with every current and former employee or independent contractor, in each case who was involved in the creation or modification of the Intellectual Property Assets, whereby such employees and independent contractors (i) assign to Seller any ownership interest and right they may have in the Intellectual Property Assets and (ii) acknowledge Seller's exclusive ownership of all Intellectual Property Assets (such agreements are referred to herein as "Intellectual Property Assignment Agreements"). Seller has provided Buyer with accurate and complete copies of all such agreements and any agreements regarding any ownership interest in the Intellectual Property Assets. Seller is in full compliance with all Laws applicable to the Intellectual Property Assets and Seller's ownership and use thereof.

(c) Section 4.11(c) of the Disclosure Schedule lists all Intellectual Property Licenses. Seller has provided Buyer with accurate and complete copies of all such Intellectual Property Licenses. All such Intellectual Property Licenses are legal, valid, binding and enforceable upon Seller and each of

the other parties thereto (except as the enforceability thereof may be limited by any applicable bankruptcy, reorganization, insolvency or other Laws affecting creditors' rights generally or by general principles of equity) and are in full force and effect, and to Seller's Knowledge such other parties are in full compliance with the terms and conditions of such Intellectual Property Licenses.

(d) The Intellectual Property Assets and Intellectual Property Licenses as currently or formerly owned, licensed or used by Seller or proposed to be used by Buyer, and the conduct of the Business as currently and formerly conducted by Seller and proposed to be conducted by Buyer have not, do not and will not infringe, violate or misappropriate the Intellectual Property of any Person. Seller has not received any communication, and no Action has been instituted, settled or, to Seller's Knowledge, threatened that alleges any such infringement, violation or misappropriation, and none of the Intellectual Property are subject to any outstanding Governmental Order.

(e) Section 4.11(e) of the Disclosure Schedule lists all licenses, sublicenses and other agreements pursuant to which Seller grants rights or authority to any Person with respect to any Intellectual Property Assets or Intellectual Property Licenses. Seller has provided Buyer with accurate and complete copies of all such agreements. All such agreements are legal, valid, binding and enforceable upon Seller and each of the other parties thereto (except as the enforceability thereof may be limited by any applicable bankruptcy, reorganization, insolvency or other Laws affecting creditors' rights generally or by general principles of equity) and are in full force and effect, and Seller and, to Seller's Knowledge, such other parties are in full compliance with the terms and conditions of such agreements. No Person has infringed, violated or misappropriated, or is infringing, violating or misappropriating, any Intellectual Property Assets.

**4.12 Accounts Receivable.** All Accounts Receivable reflected in the Latest Financials or since arisen (except such accounts receivable as have been collected since such date) arose in the Ordinary Course of Business, are valid and enforceable claims and are current and collectible, subject in each case to the reserve for bad debts reflected in the Latest Financials, and the goods and services sold and delivered that gave rise to such accounts were sold and delivered in conformity with all applicable express and implied warranties, purchase orders, agreements and specifications. Such accounts receivable are not subject to any valid defense, offset or counterclaim. Section 4.12 of the Disclosure Schedule sets forth an accurate and complete schedule of the Accounts Receivable as of October 31, 2017, including an accurate aging report for each Account Receivable.

**4.13 Accounts Payable.** All accounts payable of Seller are valid and genuine and have arisen out of bona fide business transactions in the Ordinary Course of the Business, and are not delinquent as of the Closing Date. Since September 30, 2017 and as of the Closing Date, and except as set forth in Section 4.13 of the Disclosure Schedule, Seller has not delayed or postponed the payment of any account payable and there are no unpaid invoices or bills representing amounts alleged to be owed by Seller, or other alleged obligations of Seller, which Seller has disputed or determined to dispute or refuse to pay. Section 4.13 of the Disclosure Schedule contains an accurate aging report for each account payable as of October 31, 2017.

**4.14 Customers and Suppliers.** Section 4.14 of the Disclosure Schedule contains an accurate and complete list of the names of (i) the Customers (excluding direct to consumer e-commerce) who generated revenue for Seller in excess of \$10,000 for the 12-month period ended October 31, 2017, and specifying the amount of revenue attributable to each such Customer during such applicable period, and (ii) Suppliers and the amounts paid to each such Supplier during the 12-month period ended October 31, 2017. To Seller's Knowledge, no event has occurred that could materially and adversely affect Seller's relations with any such Customer or Supplier. No Customer (or former customer of Seller) who generated revenue for Seller in excess of \$10,000 or Supplier (or former Supplier) during the 12 months preceding Closing,

has canceled, terminated or delivered any notice (in writing, or to Seller's Knowledge, otherwise) to terminate any of such customer's or Supplier's Contracts with Seller. No Customer or Supplier during the 12 months preceding Closing has delivered any written notice to decrease such Customer's usage of Seller's services or products or such Supplier's supply of services or products to Seller. Seller has not received any notice and to Seller's Knowledge no current Customer or Supplier may terminate or adversely alter its business with respect to the Business, as a result of the transactions contemplated hereby.

#### **4.15 Security and Privacy.**

(a) Seller has security policies, facilities, software and systems necessary and reasonable for the protection of Seller's data and protection of access to Seller's databases, information and systems. To Seller's Knowledge, there are no deficiencies with respect to the security of the policies, facilities, software and systems used in connection with the provision of services to customers of Seller. Seller has full right and authority to transfer to Buyer all personal data in the possession of Seller.

(b) There has been no breach of security which resulted in (i) the loss of data processed, or confidential information stored, for customers of Seller, or (ii) or would reasonably be expected to result in a Liability for Seller.

(c) Seller has complied with, is not in violation of, and has not received any notices of violation with respect to, the applicable provisions of Customer Contracts and applicable Laws regarding personally identifiable information or other personal information. All transfers to third parties by Seller of personally identifiable information have been conducted in compliance with applicable Laws.

**4.16 Insurance.** Seller has in effect and has continuously maintained insurance coverage for its operations, personnel and assets, and for the Transferred Assets and the Business. A complete and accurate list of all such insurance policies is set forth in Section 4.16 of the Disclosure Schedule and a complete and accurate copy of each of such policy has previously been provided or made available to Buyer. Section 4.16 of the Disclosure Schedule also sets forth a summary of Seller's current insurance coverage (listing type, carrier and limits) and includes a list of all pending claims and any claim made in the past three years relating to Seller or the Business. Seller is not in default or breach with respect to any provision contained in any such insurance policies, nor has Seller failed to give any notice or to present any claim thereunder in due and timely fashion.

#### **4.17 Compliance with Laws; Permits.**

(a) Seller has complied, and is now complying, in all material respects with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Transferred Assets.

(b) Section 4.17(b) of the Disclosure Schedule lists all licenses, franchises, permits, registrations, certificates, Contracts, marketing rights, consents, authorizations, accreditations, approvals and other operating authority issued by any Governmental Authority or private party (including all renewals or assignments thereof, collectively, the "Permits") necessary or advisable for Seller to operate and conduct the Business as now conducted or to occupy any premises in which the Business is operated or conducted, and there does not exist any waiver or exemption relating thereto. The Permits are in full force and effect and, to Seller's Knowledge such Permits will be in full force and effect for the benefit of Buyer following the Closing Date. There is no default on the part of the Selling Parties or any Employee or, to the Seller's Knowledge, on the part of any other party under any of the Permits. There exist no grounds for revocation, termination, suspension, restriction, amendment or limitation of any of the Permits. No notices have been received by the Selling Parties with respect to any threatened, pending, or possible

revocation, termination, suspension, restriction, amendment, nonrenewal or limitation of the Permits. To Seller's Knowledge, the transactions contemplated hereby will not impair Buyer's right to utilize the Permits as a result of the Closing. To Seller's Knowledge, no investigation or review by any Governmental Authority of the Selling Parties or any Employee is pending or threatened, and no Governmental Authority has notified the Selling Parties of its intention to conduct any such investigation or review. Seller has delivered or made available accurate and complete copies of all Permits to Buyer.

(c) Except as provided on Section 4.17(c) of the Disclosure Schedule, no notice to, consent, approval, order or authorization of, or declaration or filing with, any Governmental Authority or other Person (including any shareholder of Seller) is required to be obtained or made by Seller in connection with the consummation of the transactions contemplated by this Agreement.

**4.18 Litigation.** Section 4.18 of the Disclosure Schedule sets forth an accurate and complete list of all Actions that existed (regardless of whether settled), or that is pending or, to Seller's Knowledge, threatened, against, relating to or affecting Seller, the Business or any officer, manager, director or employee thereof in his or her capacity as such, or any of Seller's assets, properties or businesses, and which involve a monetary claim or claims or injunctive or other equitable relief. Section 4.18 of the Disclosure Schedule hereto sets forth, as to each matter identified therein, the names of the Parties, the forum for such matter, a summary of the details of the matter, the settlement or other disposition of the matter (including the monetary value of such settlement or other disposition) or, if such matter is still pending, a statement to that effect. Except as set forth in Section 4.18 of the Disclosure Schedule hereto:

(a) there is not in effect any Governmental Order against, relating to or affecting Seller, or any officer, director or employee thereof in his or her capacity as such; and

(b) Seller is not in default under any Governmental Order respecting Seller, and Seller is not subject to or a party to any order, judgment, decree or ruling arising out of any Action under any applicable Laws respecting antitrust, monopoly, restraint of trade, unfair competition or similar matters.

#### **4.19 Environmental and Safety Matters.**

(a) Seller has complied and is in compliance with all Environmental Laws and Permits issued pursuant to Environmental Laws for the conduct of the Business and the occupation of any properties on which the Business has been conducted. Seller is not, nor has Seller been, subject to or threatened by any Governmental Authority or other Person with any Action, notice of violation, citation, order, directive, judgment or settlement, alleging or addressing any violation of any Environmental Law.

(b) There are no past or present circumstances, conditions, events or incidents that would or would be reasonably likely to form the basis of a claim, demand or Action under any Environmental Laws against Seller or Buyer post-Closing.

**4.20 Employees; Contractors.** Section 4.20 of the Disclosure Schedule hereto sets forth: (a) a complete list of all of Employees and their respective titles and rates of pay; and (b) a complete list of all independent contractors of Seller, a description of the services provided, their respective number of hours worked and their respective rates of pay. Seller has no employment agreement with any of its Employees, and all such Employees are employed on an "at will" basis. No former employees of Seller are utilizing COBRA health insurance. All Persons with whom Seller has engaged as independent contractors are properly classified as independent contractors for Tax purposes.

#### **4.21 Labor Matters.**

(a) Seller is not a party to or bound by any collective bargaining agreement, nor has Seller experienced any claims of unfair labor practices, or other collective bargaining disputes. To Seller's Knowledge, Seller has not committed any unfair labor practice.

(b) Seller is in compliance with all applicable Laws regarding employment and employment practices, terms and conditions of employment and wages and hours and occupational safety and health, and is not engaged in any unfair labor practice within the meaning of Section 8 of the National Labor Relations Act; (ii) there are no charges, administrative proceedings or formal employee-related complaints pending or, to Seller's Knowledge, threatened, or any investigation pending or, to Seller's Knowledge, threatened before a court or the Equal Employment Opportunity Commission or the Department of Labor or any other Governmental Authority; (iii) Seller has withheld all amounts required by Law or by Contract to be withheld from the wages, salaries and other payments to Employees; and (iv) Seller is not liable in any respect for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing. There have been no workers' compensation claims initiated by any employee during the past three full fiscal years.

#### **4.22 Employee Benefit Matters.**

(a) Section 4.22(a) of the Disclosure Schedule contains an accurate and complete list of each benefit, retirement, employment, compensation, incentive, stock option, restricted stock, stock appreciation right, phantom equity, change in control, severance, vacation, paid time off, fringe-benefit and other similar agreement, plan, policy, program and other arrangement (and any amendments thereto), whether or not reduced to writing, in effect and covering one or more Employees, former employees and the beneficiaries and dependents of any such Employee or former employee of the Business, that is maintained, sponsored, contributed to, or required to be contributed to by Seller, or under which Seller has or may have any Liability for premium or benefit (as listed on Section 4.22(a) of the Disclosure Schedule, each, an "Employee Benefit Plan").

(b) No Employee Benefit Plan exists that could (i) result in the payment to any Employee of any money or other property or (ii) accelerate or provide any other rights or benefits (including funding of compensation or benefits through a trust or otherwise) to any Employee, as a result of the execution of this Agreement or any Transaction Document or otherwise related in any way to the transactions contemplated hereby or thereby.

**4.23 Tax Returns; Taxes.** Seller has filed all federal, state, local and foreign Tax Returns and Tax reports required by any Governmental Authority to be filed by Seller. Seller has paid all Taxes, assessments, governmental charges, penalties, interest and fines due or claimed to be due by any Governmental Authority. There is no pending Tax examination or audit of, nor any Action asserted or, to Seller's Knowledge, threatened against Seller by any Governmental Authority, and Seller has not been granted any extension of the limitation period applicable to any Tax claims. There are no Encumbrances on any of the Transferred Assets that arose in connection with any failure (or alleged failure) to pay any Tax.

**4.24 Affiliate Interests.** Except as disclosed in Section 4.24 of the Disclosure Schedule, Seller is not a party to any transaction or Contract with (a) any Shareholder, (b) any Employee (other than customary transactions with Employees in the Ordinary Course of the Business), (c) any relative of any such Employee or such Shareholder or (d) any Affiliate of Seller or such Employee, such Shareholder or relative. None of the Persons mentioned in this Section 4.24 has asserted or threatened to assert any Action against Seller, the Business, Shareholders, Employee or the Transferred Assets.



**4.25 Brokers.** Except as set forth in Section 4.25 of the Disclosure Schedule, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Seller.

**4.26 Solvency.** Seller is not entering into the transactions contemplated by this Agreement with the intent to hinder, delay or defraud any Person to which Seller is, or may become, indebted. The Purchase Price (when taking into account the Assumed Liabilities) is not less than the reasonably equivalent value of the Transferred Assets. Seller's assets, at a fair valuation, exceed Seller's liabilities, and after the Closing and after giving effect to the transactions contemplated by this Agreement, Seller will not be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair salable value of its assets will be less than the amount required to pay its probable Liability on debts as they become absolute and matured).

**4.27 Full Disclosure.** No representation or warranty of the Selling Parties in this Agreement and no statement contained in the Disclosure Schedule contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to the Selling Parties that the statements contained in this Article V are true and complete as of the date hereof and will be true and complete as of the Closing Date:

**5.1 Organization and Authorization.** Buyer is a corporation duly incorporated and existing in good standing under the Laws of the State of Colorado. Buyer has all requisite power and authority to enter into this Agreement and the other Transaction Documents to which Buyer is a party and to assume and perform fully its obligations hereunder and thereunder. The execution and delivery of this Agreement and the other Transaction Documents to which Buyer is a party and the performance by Buyer of its obligations hereunder and thereunder have been duly and validly authorized by all necessary corporate action. This Agreement is, and when executed and delivered in accordance with the terms hereof, each of the other Transaction Documents to which Buyer is a party will be, a valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization and similar Laws affecting creditors generally and by the availability of equitable remedies.

**5.2 Consents and Approvals.** No filings with, notices to, or approvals of any Governmental Authority are required to be obtained or made by Buyer for the consummation by Buyer of the transactions contemplated hereby.

**5.3 No Violations.** The execution, delivery of this Agreement and the other Transaction Documents to which Buyer is a party and the performance by Buyer of its obligations hereunder and thereunder do not and will not conflict with or violate any provision of the articles of incorporation or bylaws of Buyer. The execution and delivery of this Agreement and the other Transaction Documents to which Buyer is a party and the performance by Buyer of its obligations hereunder and thereunder do not and will not (a) conflict with or result in a breach of the terms, conditions or provisions of, (b) constitute a default under, (c) result in the creation of any Encumbrance upon its assets pursuant to, (d) give any third party the right to modify, terminate or accelerate any obligation under, (e) result in a violation of or (f) require any authorization, consent, approval, exemption or other action by or notice to any court or Governmental Authority or any third party pursuant to, in each case, any Law or any Contract, order, judgment or decree to which Buyer is subject.

**5.4 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Buyer.

**5.5 No Guarantee of Success.** Buyer agrees and acknowledges that Seller has not and does not make any warranty or guarantee with respect to any future success related to the sales or profitability of Seller Products or of any other Transferred Assets.

**5.6 Full Disclosure.** No representation or warranty of Buyer contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

## **ARTICLE 6 COVENANTS OF PARTIES**

### **6.1 Noncompetition and Nonsolicitation.**

**(a)** Except as otherwise expressly set forth in this Agreement and except as contemplated in the Waterslide Agreement, in return for the Purchase Price, each Selling Party agrees that, during the three-year period following the Closing Date (the "Seller Noncompete Period"), such Person will not, directly or indirectly, either for himself, itself or herself, or for any other Person except Buyer, participate in or otherwise benefit from any business, entity or enterprise which engages anywhere in the United States in any business which is in competition with the Business. For purposes of this Agreement, the term "participate" includes any direct or indirect ownership or interest in any business, entity or enterprise, whether as an officer, director, employee, shareholder, partner, member, sole proprietor, agent, representative, independent contractor, consultant, franchisor, franchisee, creditor, owner or otherwise, and whether or not for compensation or remuneration of any kind; *provided, however*, that the term "participate" will not include ownership of less than 2% of the stock of a publicly-held corporation whose stock is traded on a national securities exchange or in the over-the-counter market. Further, during the Seller Noncompete Period, no Selling Party will, directly or indirectly, induce or attempt to (i) hire or induce any employee of Buyer or its Affiliates, including employees of Buyer that were employed by Seller until the Closing, to leave the employ of Buyer or its Affiliates or in any way interfere with the relationship between Buyer or its Affiliates and any employee thereof, or (ii) induce or attempt to induce any customer, vendor, supplier or subcontractor of Buyer or its Affiliates, including customers, vendors, suppliers or subcontractors of Buyer that were customers, vendors, suppliers or subcontractors of Seller until the Closing, to cease doing business, or reduce the amount of business conducted with Seller or the Business at any time prior to or after the Closing, with Buyer or its Affiliates. The Selling Parties acknowledge and agree that: (A) the products and services provided by Seller in connection with the Business can be utilized by its customers throughout the United States without regard to the state in which such customers are located, and as a result, the Business is and can be national in scope; (B) to obtain the value of the assets and goodwill purchased by Buyer hereunder, it is reasonable that the geographic area of the restrictions set forth in this Section 6.1 be nationwide; (C) this Section 6.1 is necessary to protect the goodwill of the assets purchased by Buyer hereunder; (D) this Section 6.1 is, for the foregoing reasons, reasonable with respect to its duration, geographical area and scope; and (E) that, but for the agreements contained in this Section 6.1, Buyer would not have entered into this Agreement.

**(b)** The Selling Parties agree that Buyer would suffer irreparable harm from a breach by any Selling Party of any of the covenants or agreements contained in this Section 6.1. In the event of an alleged or threatened breach by any Selling Party of any of the provisions of this Section 6.1, Buyer or its successors or assigns may, in addition to all other rights and remedies existing in its favor, and without

posting bond or other security, apply to any court of competent jurisdiction for specific performance or injunctive or other relief in order to enforce or prevent any violations of the provisions hereof.

(c) In the event that any covenant contained in this Section 6.1 should ever be adjudicated to exceed the time, geographic, product or service, or other limitations permitted by applicable Law in any jurisdiction, then any court is expressly empowered to reform such covenant, and such covenant will be deemed reformed, in such jurisdiction to the maximum time, geographic, product or service, or other limitations permitted by applicable Law. The covenants contained in this Section 6.1 and each provision of this Agreement are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written will not invalidate or render unenforceable the remaining covenants or provisions of this Agreement, and any such invalidity or unenforceability in any jurisdiction will not invalidate or render unenforceable such covenant or provision in any other jurisdiction. In addition, in the event of any breach of this Section 6.1, The Seller Noncompete Period will automatically be extended for a period equal to the length of time such breach existed.

**6.2 Confidentiality.** From and after the Closing, each of the Selling Parties will, and will cause its Affiliates to, hold, and will use their best efforts to cause their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that such Selling Party can show such information (a) is generally available to and known by the public through no fault of such Selling Party, any of their Affiliates or their respective Representatives or (b) is lawfully acquired by such Selling Party, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If such Selling Party or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or other requirements of Law, such Selling Party will promptly notify Buyer in writing and will disclose only that portion of such information such Selling Party is advised by its counsel in writing is legally required to be disclosed, provided that such Selling Party will use best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

### **6.3 Employees and Employee Benefits.**

(a) On the Closing Date, Seller will terminate all Employees of the Business who are actively at work on the Closing Date, and, Buyer may offer employment to all such Employees on an “at will” basis.

(b) Seller will be solely responsible, and Buyer will have no obligations whatsoever for, any compensation or other amounts payable to any Employee (or former employee) of Seller, including hourly pay, commission, bonus, salary, accrued vacations, benefits due under any Employee Benefit Plan, or severance pay payable to any Employee (or former employee) of Seller for any period relating to the service with Seller at any time prior to the Closing Date and Seller will pay all such amounts to all entitled Employees on or prior to the Closing Date. Without limiting the generality of the foregoing, on or prior to the Closing Date, Seller shall pay to each Employee cash in an amount sufficient to pay to such Employee the dollar value of the amount of vacation time, sick pay or other paid time off accrued by such Employee prior to the Closing Date.

(c) Seller will remain solely responsible for the satisfaction of all claims for benefits under its Employee Benefit Plan. Seller also will remain solely responsible for all worker’s compensation claims of any Employees (or former employees) or agents of Seller which relate to events occurring prior to the Closing Date. Seller will pay, or cause to be paid, all such amounts to the appropriate Persons when due.

**6.4 Maintenance of Seller.** Each of the Selling Parties covenants and agrees that prior to one month following the date that is the five year anniversary of the Closing Date, such Person will not cause or allow Seller to: (i) commence any proceedings under the present or any future federal or state bankruptcy Law; (ii) consent to or fail to file an answer to the filing of any bankruptcy Action commenced against Seller; (iii) file a petition or consent seeking liquidation or reorganization under any insolvency statute; (iv) seek, consent to, or acquiesce in the appointment of a custodian, receiver, liquidator, trustee or assignee in bankruptcy or insolvency of Seller; (v) make a general assignment for the benefit of creditors; (vi) sell all or substantially all of the equity interests in Seller either through a merger, stock sale or otherwise; or (vii) dissolve.

**6.5 Public Announcements.** Following the Closing, unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no Selling Party will make any public announcements in respect of this Agreement or any of the Transaction Documents, or the transactions contemplated hereby or thereby, or otherwise communicate with any news media without the prior written consent of Buyer. Notwithstanding anything herein to the contrary, following the Closing and after consulting with Buyer, the Seller Parties shall be entitled to contact vendors, suppliers and other contacts developed throughout the pendency of the Business to announce that this transaction has closed and that Buyer shall be the point of contact for future activity related to the Business.

**6.6 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 Transferred Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities will be treated as Excluded Liabilities.

**6.7 Receivables.** From and after the Closing and except as set forth in Section 2.2(k), if any Selling Party or their Affiliates receives or collects funds relating to any Accounts Receivable or Transferred Assets, the Selling Parties and their Affiliates will remit such funds to Buyer within 10 Business Days after its receipt thereof.

**6.8 Payment of Excluded Liabilities.** In addition to payment of Taxes pursuant to Sections 4.23 and 6.9, Seller shall pay, or make adequate provision for the payment, in full all of the Excluded Liabilities and other Liabilities of Seller under this Agreement. If any such Liabilities are not so paid or provided for, or if Buyer reasonably determines that failure to make any payments will impair Buyer's use or enjoyment of the Transferred Assets or conduct of the Business, Buyer may, at any time after the Closing Date, elect to make all such payments directly (but shall have no obligation to do so) without prejudice to its rights under Article 7.

**6.9 Transfer and Other 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) will be borne and paid by Seller when due. Seller will, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer will cooperate with thereto as necessary), including by filing and paying any state or local sales and use Tax Returns no later than 60 days after the Closing (or at such earlier date as may be required by the relevant state or municipality).

**6.10 Further Assurances.** Following the Closing, each of the Parties will, and will 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. Subsequent to Closing, should Buyer wish to receive any consultation or employment assistance from any Seller Party then the scope and terms of such relationship shall be reduced to writing as may be mutually agreed by the applicable parties.

## ARTICLE 7 INDEMNIFICATION

**7.1 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties (together with the Buyer Indemnitee's or Seller's right to assert a claim for indemnification under this Article 7, as applicable) contained in this Agreement will survive the Closing and will remain in full force and effect until the date that is 18 months from the Closing Date; *provided, however*, (a) the representations and warranties in Section 4.23 (Tax Returns; Taxes) will survive for a period of 60 days from and after the expiration of the applicable statute of limitations, (b) the representations and warranties in Section 4.1 (Seller Organization; Authority; Binding Effect; Capitalization), Section 4.2 (Shareholder Authorization; Execution and Validity), Section 4.7 (Seller's Business; Title to Assets), and Section 4.25 (Brokers) will survive indefinitely (the representations and warranties referenced in clauses (a) and (b) are collectively, the "Fundamental Representations"), and (c) any claim for or based on any intentional or willful misrepresentation in any representation or warranty of any Selling Party in this Agreement or any other Transaction Document or involving fraud or willful misconduct shall survive indefinitely. All covenants and agreements of the Parties contained herein will survive the Closing indefinitely or for the period explicitly specified therein or if not so specified, until they have been satisfied in full. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the Party seeking indemnification to the Party from whom indemnification is sought prior to the expiration date of the applicable survival period will not thereafter be barred by the expiration of the relevant representation or warranty and such claims will survive until finally resolved.

**7.2 Indemnification by the Selling Parties.** From and after the Closing, the Selling Parties will, jointly and severally, indemnify, defend and hold harmless Buyer and its shareholders, members, managers, officers, employees, Affiliates and agents (each a "Buyer Indemnitee", and collectively, the "Buyer Indemnitees") against and in respect of all Losses incurred by such Persons arising from or relating to: (a) any inaccuracy or breach of any of the representations or warranties made by the Selling Parties in this Agreement or any other Transaction Document or any other agreement, document or instrument delivered by the Selling Parties in connection with the Closing (without regard to any materiality qualification contained in any such representation or warranty); (b) any breach of the covenants and agreements made by the Selling Parties in this Agreement or any other Transaction Document or any other agreement, document or instrument delivered by the Selling Parties in connection with the Closing; (c) the Excluded Liabilities and the Excluded Assets; or (d) the apportionment or distribution by Seller of the Purchase Price to Shareholders.

**7.3 Indemnification by Buyer.** From and after the Closing, Buyer will indemnify, defend and hold harmless the Selling Parties and their officers, employees, Affiliates and agents (each, a "Seller Indemnitee" and collectively, the "Seller Indemnitees") against and in respect of Losses incurred by such Persons arising from or relating to: (a) any inaccuracy or breach of any of the representations or warranties made by Buyer in this Agreement or any other Transaction Document or any other agreement, document or instrument delivered by Buyer in connection with the Closing (without regard to any materiality qualification contained in any such representation or warranty); (b) any breach of the covenants and agreements made by Buyer in this Agreement or any other Transaction Document or any other agreement, document or instrument delivered by Buyer in connection with the Closing; and (c) any Assumed Liabilities.

#### 7.4 Certain Limitations.

(a) Subject to Section 7.4(b), the right to indemnification provided in Section 7.2 and Section 7.3 will be subject to the following limitations:

(i) The Selling Parties will not be liable to any Buyer Indemnitee for indemnification under subsection (a) of the first sentence of Section 7.2 until the aggregate amount of all Losses in respect of indemnification under subsection (a) of the first sentence of Section 7.2 exceeds \$25,000.00, in which event the Selling Parties will be liable for all such Losses in excess of \$25,000.00.

(ii) Buyer will not be liable to the Seller Indemnitees for indemnification under subsection (a) of Section 7.3 until the aggregate amount of all Losses in respect of indemnification under subsection (a) of Section 7.3 exceeds \$25,000.00, in which event Buyer will be liable for all such Losses in excess of \$25,000.00.

(iii) The Selling Parties' aggregate liability for indemnification pursuant to subsection (a) of the first sentence of Section 7.2 shall not exceed (i) 50,000.00 for non-Fundamental Representations and (ii) an amount equal to the Purchase Price for Fundamental Representations.

(b) The limitations on the indemnification obligations of the Selling Parties that are set forth in Section 7.4(a) shall not apply to:

(i) any claim for indemnification made by any Buyer Indemnitee pursuant to subsections (b) through (d) of the first sentence of Section 7.2; or

(ii) any claim for or based on any intentional or willful misrepresentation in any representation or warranty of any Selling Party in this Agreement or any other Transaction Document or involving fraud or willful misconduct.

(c) The right of setoff against the Contingent Consideration as set forth in Section 7.9 shall be the sole recourse for Buyer Indemnitees for any claim for indemnification for breach of non-Fundamental Representations under subsection (a) of Section 7.2.

#### 7.5 Indemnification Procedures for Third Party Claims.

(a) The rights and obligations of a Buyer Indemnitee or Seller Indemnitee claiming a right of indemnification hereunder (each, an "Indemnitee") from a Party (each, an "Indemnitor") in any way relating to a claim made by a third party (each, a "Third Party Claim") will be governed by the following:

(i) The Indemnitee will give prompt written notice to the Indemnitor of the commencement of any Third Party Claim, or any threat thereof, or any state of facts which Indemnitee determines will give rise to a claim by the Indemnitee against the Indemnitor based on the indemnity agreements contained in this Agreement setting forth, in reasonable detail, the nature and basis of the claim and the estimated amount thereof, to the extent known, and any other relevant information in the possession of the Indemnitee (a "Notice of Claim"). The Notice of Claim will be accompanied by any relevant documents in the possession of the Indemnitee, to the extent not privileged, relating to the claim (such as copies of any summons, complaint or pleading which may have been served and or any written demand or document evidencing the same). No failure to give a Notice of Claim will affect, limit or reduce the indemnification obligations of an Indemnitor hereunder, except to the extent such failure actually materially

prejudices such Indemnitor's ability to successfully defend the Third Party Claim giving rise to the indemnification claim.

**(ii)** In the event that an Indemnitee furnishes an Indemnitor with a Notice of Claim, then upon the written acknowledgment by the Indemnitor given to the Indemnitee within 30 days of receipt of the Notice of Claim, stating that the Indemnitor is undertaking and will prosecute the defense of the Third Party Claim under such indemnity agreements, providing reasonable assurances to the Indemnitor's financial capacity to satisfy any final judgment or settlement, and confirming that the Indemnitor fully indemnifies the Indemnitee with respect to any Losses from such Third Party Claim (an "Indemnification Acknowledgment"), then the Third Party Claim covered by the Notice of Claim may be defended by the Indemnitor, at the sole cost and expense of the Indemnitor; *provided, however*, that the Indemnitee is authorized to file any motion, answer or other pleading that may be reasonably necessary or appropriate to protect its interests. However, in the event that the Indemnitor does not furnish an Indemnification Acknowledgment that complies with the foregoing, the Indemnitee may, upon written notice to the Indemnitor, assume the defense (with legal counsel chosen by the Indemnitee) and defend the Third Party Claim, at the sole cost and expense of Indemnitee. Notwithstanding receipt of an Indemnification Acknowledgment, the Indemnitee will have the right to employ its own counsel in respect of any such Third Party Claim, but the fees and expenses of such counsel will be at the Indemnitee's own cost and expense, unless (A) the employment of such counsel and the payment of such fees and expenses will have been specifically authorized by the Indemnitor in connection with the defense of such Third Party Claim or (B) the Indemnitee will have reasonably concluded based upon the advice of counsel that there may be specific defenses available to the Indemnitee which are different from or in addition to those available to the Indemnitor, in which case the costs and expenses incurred by the Indemnitee will be borne by the Indemnitor.

**(iii)** The Indemnitee or the Indemnitor, as the case may be, who is controlling the defense of the Third Party Claim, will keep the other fully informed of such Third Party Claim at all stages thereof, whether or not such Party is represented by counsel. The Parties agree to render to each other such assistance as they may reasonably require of each other in order to ensure the proper and adequate defense of any such Third Party Claim. Subject to the Indemnitor furnishing the Indemnitee with an Indemnification Acknowledgment in accordance with Section 7.5(a)(ii), the Indemnitee will cooperate with the Indemnitor and provide such assistance, at the sole cost and expense of the Indemnitor, as the Indemnitor may reasonably request in connection with the defense of any such Third Party Claim, including providing the Indemnitor with access to and use of all relevant corporate records (other than privileged materials) and making available its officers and employees for depositions, pre-trial discovery and as witnesses at trial, if required. In requesting any such cooperation, the Indemnitor will have due regard for, and attempt to not be disruptive of, the business and day to day operations of the Indemnitee and will follow the requests of the Indemnitee regarding any documents or instruments which the Indemnitee believes should be given confidential treatment.

**(b)** The Indemnitor will not make or enter into any settlement of any Third Party Claim which Indemnitor has undertaken to defend, without the Indemnitee's prior written consent (which consent will not be unreasonably conditioned, withheld or delayed), unless (i) there is no obligation, directly or indirectly, on the part of the Indemnitee to contribute to any portion of the payment for any of the Losses, (ii) the Indemnitee receives a general and unconditional release with respect to the claim (in form, substance and scope reasonably acceptable to the Indemnitee), and (iii) there is no finding or admission of any violation of Law by, or effect on any other claim that may be made against, the Indemnitee.

(c) Any claim for indemnification that may be made under more than one subsection under Section 7.2 or Section 7.3 may be made under the subsection that the claiming Party may elect in its sole discretion, notwithstanding that such claim may be made under more than one subsection.

**7.6 Indemnification Procedure for Claims Between the Parties.** Upon obtaining knowledge of a Loss that will entitle Indemnitee to indemnification, Indemnitee will deliver a Notice of Claim to Indemnitor. The Notice of Claim will state in reasonable detail the nature and estimated amount of any such Loss, to the extent known, giving rise to the right of indemnification hereunder (the “Claimed Amount”). The Indemnitor will have 30 days after receipt of a Notice of Claim to respond to such Notice of Claim stating whether or not it disputes its Liability or the amount thereof, and its basis for any objection, and thereafter the parties will cooperate reasonably to resolve any disputed amounts. If the Indemnitor fails to respond to such Notice of Claim within such 30-day period, the Indemnitor will be deemed to have acknowledged its responsibility for such Loss, and in such event, or if the Indemnitor does not dispute its Liability, then the Indemnitor will promptly pay and discharge in full any such Loss which is not contested within 45 days after receipt of such Notice of Claim.

**7.7 Tax Treatment of Indemnification Payments.** All indemnification payments under this Agreement will be treated by the Parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

**7.8 Effect of Investigation.** The representations, warranties and covenants of the Indemnitor and the Indemnitee’s right to indemnification with respect thereto, will not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnitee (including any of its Representatives) or by reason of the fact that the Indemnitee or any of its Representatives knew or should have known that any such representation or warranty is, was or might be inaccurate.

**7.9 Right to Setoff.** Subject to the limitations and provisions set forth in this Article 7, Buyer shall have the right to setoff, appropriate and apply from the Contingent Consideration any amounts payable or to be payable to or on behalf of Seller pursuant to the terms of this Agreement against any amounts determined as payable to any Buyer Indemnitee by or on behalf of the Selling Parties under this Agreement. Buyer shall provide prompt written notice to the Selling Parties of Buyer’s intent to setoff any such payments against any amounts determined as payable to any Buyer Indemnitee by or on behalf of the Selling Parties under Article 7 of this Agreement.

## **ARTICLE 8 MISCELLANEOUS**

**8.1 Disclosure Schedule.** The information in the Disclosure Schedule constitutes (a) exceptions to particular representations, warranties, covenants and obligations of the Selling Parties as set forth in this Agreement or (b) descriptions or lists of equity interests, assets and liabilities and other items referred to in this Agreement. If there is any inconsistency between the statements in this Agreement and those in the Disclosure Schedule (other than an exception expressly set forth as such in the Disclosure Schedule with respect to a specifically identified representation or warranty), the statements in this Agreement will control. The statements in the Disclosure Schedule, and those in any supplement to the Disclosure Schedule, shall relate to the numerically corresponding Section or subsection of this Agreement identified in the Disclosure Schedule and to those Sections or subsections of this Agreement to which it is readily applicable (based solely on the face of the disclosure and without further investigation) that such disclosure relates and not to any other Section or subsection of this Agreement.

**8.2 Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including fees and disbursements of Representatives incurred in connection with this Agreement, the



Transaction Documents and the transactions contemplated hereby and thereby will be paid by the Party incurring such costs and expenses.

**8.3 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder will be in writing and will 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 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 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 such other address for a Party as will be specified in a notice given in accordance with this Section 8.3):

If to Buyer, to:

Kwik Tek Inc., DBA Airhead Sports Group  
12000 E. 45th Ave. Unit 104  
Denver, CO 80239  
Attention: Aaron Kramer and Terry Bates  
Facsimile: (303) 733-8007

with a copy to (which will not constitute notice hereunder):

Falconhead Capital, LLC  
645 Madison Avenue, 9th Floor  
New York, NY 10022  
Attention: Colbey Arden  
Facsimile: (212) 634-3305

and (which will not constitute notice hereunder):

Sparkman + Foote LLP  
1616 17th Street, Suite 564  
Denver, CO 80202  
Attention: Nicholas D. Claassen  
Facsimile: (720) 449-3322

If to a Selling Party, to:

H2O Pod, Inc.  
1700 Park Street  
Naperville, IL 60563  
Attention: Robert C. Pole III  
Facsimile: 630-357-0592

with a copy to (which will not constitute notice hereunder):

Steamboat Lawyers Group, PLLC  
P.O. Box 775565  
Steamboat Springs, CO 80477  
Attention: Jason M. Lacy  
Facsimile: 877-566-6419

**8.4 Interpretation.** For purposes of this Agreement, (a) the words “include,” “includes” and “including” will be deemed to be followed by the words “without limitation,” (b) the word “or” is not exclusive, (c) the words “herein,” “hereof,” “hereby,” “hereto,” and “hereunder” refer to this Agreement as a whole. Unless the context otherwise requires, references herein (i) to Sections, Schedules and Exhibits, mean the Sections of, and Schedules and Exhibits attached to, this Agreement, (ii) to any agreement, instrument or other document means to such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, and (iii) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement will 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 Schedules and Exhibits referred to herein will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

**8.5 Headings.** The headings in this Agreement are for reference only and will not affect the interpretation of this Agreement.

**8.6 Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Except as provided in Section 6.1(c), upon such determination that any term or other provision is invalid, illegal or unenforceable, the Parties will 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.

**8.7 Entire Agreement.** This Agreement and the other Transaction Documents constitute the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous 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 Schedules, the statements in the body of this Agreement will control.

**8.8 Successors and Assigns.** This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns. Neither Seller nor any Shareholder may assign its rights or obligations hereunder without the prior written consent of Buyer. Following Closing, Buyer may assign its rights and obligations hereunder without the prior consent of Seller or Shareholders. No assignment will relieve the assigning Party of any of its obligations hereunder.

**8.9 No Third-Party Beneficiaries.** Except as provided in Article 7, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or will confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement. Without limiting the generality of the foregoing, (a) no employee of the Company shall have any rights, as an employee, under this Agreement or under any of the other Transaction Documents to which he or she is not personally a party and (b) other than as an express party to this Agreement or the other Transaction Documents, if applicable, no creditor of any of the Parties shall have any rights under this Agreement or any of the other Transaction Documents. Nothing in this Agreement shall be deemed or construed to affect any change or amendment to any Employee Benefit Plans, and nothing in this Agreement modifies or shall be deemed to modify the ability of any such Employee Benefit Plans to be amended or terminated in accordance with its terms.

**8.10 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 will be effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party will 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 will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or exercise of any other right, remedy, power or privilege.

**8.11 Governing Law; Waiver of Jury Trial.**

(a) This Agreement will be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of Law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Colorado; *provided, however*, that solely as it relates to Cathryn DeGraff Crookston, the provisions of Section 6.1 will be governed by and construed in accordance with the internal laws of the State of Illinois without giving effect to any choice or conflict of Law provision or rule (whether of the State of Illinois or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Illinois.

(b) Except as otherwise expressly provided in this Agreement, the Parties agree that any Action seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement, the Transaction Documents or the transactions contemplated by this Agreement shall be brought only to the exclusive jurisdiction of the District Court, County of Denver, State of Colorado (and if such Court shall not have subject matter jurisdiction, any Colorado State Court and the United States District Court for the District of Colorado), and each of the Parties hereby consents to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such Action and irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of the venue of any such Action in any such court or that any such Action which is brought in any such court has been brought in an inconvenient forum. The Parties agree that, after a legal dispute is before a court as specified in this Section 8.11(b), and during the pendency of such dispute before such court, all Actions with respect to such dispute or any other dispute, including any counterclaim, cross-claim or interpleader, shall be subject to the exclusive jurisdiction of such court. Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court, either by delivery in any method contemplated by Section 8.3 hereof or in any other manner authorized by Law. Each Party agrees that a final judgment in any Action described in this Section 8.11 after the expiration of any period permitted for appeal and subject to any stay during appeal shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable Laws.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION ARISING OUT OR RELATING TO THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (I) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL

ACTION, (II) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (III) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (IV) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT, BY AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.11(c).

**8.12 Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties will be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

**8.13 Remedies Cumulative.** Except as otherwise set forth herein, the various rights and remedies herein provided will be cumulative and not exclusive of any other rights or remedies herein provided or any rights or remedies provided by Applicable Law.

**8.14 Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement will become effective when duly executed and delivered by each Party. Counterparty signature pages to this Agreement may be delivered by facsimile or electronic delivery (e.g., by email of a PDF signature page) and each such counterpart signature page will constitute an original for all purposes.

**8.15 Attorney's Fees.** If any Action relating to this Agreement or any of the transactions contemplated by this Agreement or the enforcement thereof is brought against any Party, the prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

*[remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the date on the cover page hereto.

**BUYER:**

**Kwik Tek Inc.**

By: 

Name: Aaron Kramer

Title: President

**SELLER:**

**H2O Pod, Inc.**

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

Name: Robert C. Pole III

Title: President

[Shareholder Signatures on Following Page]

[Signature Page to Asset Purchase Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed as of the date on the cover page hereto.

**BUYER:**

**Kwik Tek Inc.**

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

Name: Aaron Kramer

Title: President

**SELLER:**

**H2O Pod, Inc.**

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

Name: Robert C. Pole III

Title: President

[Shareholder Signatures on Following Page]

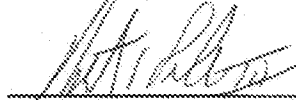
[Signature Page to Asset Purchase Agreement]

**TRADEMARK**

**REEL: 006255 FRAME: 0468**

SHAREHOLDERS:

Robert C. Pole III



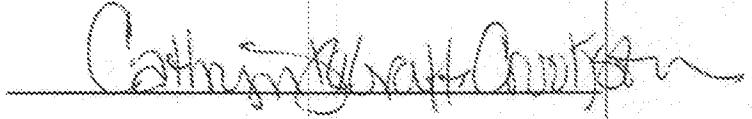
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Jay Crookston



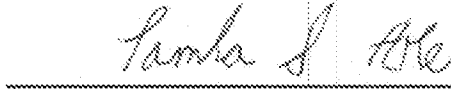
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Cathryn DeGraff Crookston



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Pamela S. Pole



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TRADEMARK

REEL: 006255 FRAME: 0469

**Schedule 2.1(b)**  
Assigned Contracts

The Contracts set forth on Section 4.6 of the Disclosure Schedules



**Schedule 2.2(d)**  
Excluded Assets

Provisional Patent Application with the United States Patent and Trademark Office on November 20, 2017, Reference number 62588832 titled "Waterslide Appliance and System for Floating Mat"

\*Note: As a material part of this Asset Purchase Agreement, the parties have entered into the WaterSlide Agreement which governs the relationship among the parties regarding the above excluded asset.

**Schedule 2.3(c)**  
Assumed Liabilities

None

**Schedule 2.7(a)**

Estimated Closing Working Capital Amount Example  
(Attached)

**WaterMat**  
Working Capital

\$ Actual	<i>Per Watermat</i>		<i>Adjusted</i>
	<b>Dec 2017</b>	<b>Adjustments</b>	<b>Dec 2017</b>
<b>Current Assets</b>			
1030 Accounts Receivable	915		915
1030 Amazon Dispute Receivable	20,523	(20,523) <sup>1</sup>	-
<b>Total Accounts Receivable</b>	<b>21,438</b>	<b>(20,523)</b>	<b>915</b>
1040 Prepaid Insurance	2,840	(2,840) <sup>2</sup>	-
1042 Prepaid Expenses	792		792
<b>Total Other Assets</b>	<b>3,632</b>	<b>(2,840)</b>	<b>792</b>
<b>Total Current Assets</b>	<b>25,071</b>	<b>(23,364)</b>	<b>1,707</b>
<b>Current Liabilities</b>			
2020 Accounts Payable	31,743		31,743
2080 Illinois Dept. of Revenue Sales Tax	3,245	(3,245) <sup>3</sup>	-
<b>Total Current Liabilities</b>	<b>34,988</b>	<b>(3,245)</b>	<b>31,743</b>
<b>Total Working Capital</b>	<b>(9,917)</b>	<b>(20,119)</b>	<b>(30,036)</b>

<sup>1</sup>- Per APA Amazon Receivables are excluded assets and not included in the calculation of working capital

<sup>2</sup>- Per APA Prepaid Insurance is an excluded asset and not included in the calculation of working capital

<sup>3</sup>- Per APA Watermat assumes responsibility for all Accrued sales tax and any other form of taxes

**Schedule 2.9(b)**  
Tax Allocation  
(Attached)

22,481	Purchase Price	200,000
22,481	Warranty Holdback	(20,000)
81,292	Working Capital Adjustment	(30,036)
81,292	Contingent Consideration	
31,743	Liabilities Assumed	
181,707	Adjusted Purchase Price	

	Total Assets at 12/31/17	Excluded Assets	Acquired/Liabilities Assumed	Allocation of Purchase Price
Cash	8,447	8,447	-	-
Accounts Receivable	21,438	20,523	915	915
Other Current Assets	3,632	2,840	792	792
Other Assets	11,640		11,640	11,640
Goodwill			13,947	168,360
<b>Total Assets</b>	<b>45,158</b>		<b>13,947</b>	<b>181,707</b>
Accounts Payable	31,743		31,743	
Other Current Liabilities	3,245	3,245	(0)	
Line of Credit/Incremental Borrowings	22,789	22,789		
<b>Total Liabilities</b>	<b>57,777</b>		<b>31,743</b>	

93%

(b) By no later than five (5) business days prior to the Closing, Buyer and Seller shall use commercially reasonable efforts to agree upon an allocation of the Purchase Price among the Tangible Assets acquired by Buyer in accordance with the requirements of Section 1609 of the Code, and to reduce such allocation to a written agreement to be executed by Buyer and Seller. All a minimum, 60% of the allocation of the Purchase Price shall be made to goodwill. If Buyer and Seller are able to agree upon such an allocation, Buyer and Seller will (a) file Form 8594 with their respective last returns consistent with such allocation, and the parties will treat and report the transaction contemplated by this agreement in all respects consistently for purposes of any Tax, including the calculation of gain, loss and basis with reference to the Purchase Price allocation made pursuant to such written agreement.

- 21.321 Section 2.2(a) of the agreement states that cash as of the closing date shall be excluded from this transaction.
- 21.322 Section 2.2(k) of the agreement states that A/R for seller products purchases by Amazon prior to closing are excluded from this transaction.
- 21.323 Section 2.2(l) of the agreement states that prepaid insurance payments are to be excluded from this transaction.
- 21.324 Section 2.4(g) of the agreement states that any liabilities associated with the indebtedness of the seller or business is shall be excluded.
- 21.325 Section 2.5(c) of the agreement states that \$20,000 will be heldback by the Buyer as a warranty. This amount is expected to be paid no later than 7/20/18. Upon release of this warranty it would increase the purchase price and be allocated to Goodwill.
- 21.326 Section 2.8 of the agreement discusses a contingent consideration agreement whereas the buyer is to pay the seller an amount based on certain revenue levels through 12/31/2021. Since the amount is not agreed upon at the time of the transaction any amounts paid under this agreement during the term will be added to the purchase price upon payment. Increase Goodwill and disclosed on an amended 8594 as applicable.

2.8 Contingent Consideration

2.8.1 Contingent Consideration. Buyer agrees that the Contingent Consideration shall be determined as follows:

Year	Contingent Consideration
2018	2,500,000
2019	2,500,000
2020	2,500,000
2021	2,500,000
2022	2,500,000
2023	2,500,000
2024	2,500,000
2025	2,500,000
2026	2,500,000
2027	2,500,000
2028	2,500,000
2029	2,500,000
2030	2,500,000

2.9 Purchase Price Payment of Goodwill

2.9.1 Contingent Consideration. Buyer agrees that the Contingent Consideration shall be determined as follows:

Year	Contingent Consideration
2018	2,500,000
2019	2,500,000
2020	2,500,000
2021	2,500,000
2022	2,500,000
2023	2,500,000
2024	2,500,000
2025	2,500,000
2026	2,500,000
2027	2,500,000
2028	2,500,000
2029	2,500,000
2030	2,500,000

**DISCLOSURE SCHEDULES**  
**TO THE**  
**ASSET PURCHASE AGREEMENT**  
**DATED AS OF JANUARY 12, 2018**  
**BY AND AMONG**  
**KWIK TEK INC.,**  
**H2O POD, INC.,**  
**AND**  
**THE SHAREHOLDERS OF H2O POD, INC.**

**Section 4.1**

**Seller Organization; Authority; Binding Effect; Capitalization; Trade Names.**

- (a) H2O Pod, Inc is incorporated in the State of Illinois
- (c) dba The WaterMat Company



**Section 4.3**

**No Violations; Consents.**

(a) none

(b) none

**Section 4.4**

**Financial Statements; Undisclosed Liabilities.**

- (a) Please see attached letter from Seller's accountants detailing the items in the Historical Financials and the Latest Financials that don't comply with GAAP.
  
- (b) None

**Section 4.5**  
**Interim Changes.**

- (a) none
- (b) none
- (c) none
- (d) none
- (e) none
- (f) none
- (g) none
- (h) none
- (i) none
- (j) none
- (k) none
- (l) none
- (m) none
- (n) none
- (o) none

**Section 4.6**  
**Assigned Contracts.**

List of special pricing arrangements: No contracts exist with these customers

- Bart's WaterSports
- Commercial Recreation Specialists (CRS)
- Amazon

Miscellaneous subscriptions for software and business services to be transitioned after closing

- BigCommerce: \$299 monthly subscription for hosting [www.theWaterMat.com](http://www.theWaterMat.com) website
  - Charged to credit card ending 0805. Next payment auto-paid January 11, 2018
- Soundest/Omnisend: \$75 monthly subscription for eMail marketing
  - Premium Service Plan gives us up to 120,000 emails per month
  - Charged to credit card ending 0805. Next payment auto-paid January 14, 2018
- LogMeIn.com: Screen share web service, Join.me
  - \$249 Pro Service level annual subscription
  - Charged to credit card ending 0805. Due for renewal on February 9, 2017
- DropBox: \$9.99/month subscription for File storage and sharing
  - Charged to credit card ending 0805. Next payment auto-paid 1/10/17
- Canva for Work: \$12.95/month Graphics design package for website images.
  - Charged to credit card ending 0805. Next payment auto-paid Feb 17, 2018
- GoDaddy: Domain name registry for thewatermat.com is set to automatically renew 5/11/2021
  - Charged to credit card ending 0805. Next payment auto-paid 1/10/18
- Tundra.com: Secondary website for international customers.
  - Free service. Rarely used. They make money on cut of shipping costs
- Google G-Suite: \$40/month subscription for Google docs/email/sheets
  - Charged to credit card ending 0805. Next payment auto-paid February 1, 2018
- Comcast: \$86/month for 888-MAT-FUN customer service line.
  - Charged to credit card ending 0805. Next payment auto-paid 1/20/18

#### **Section 4.8**

##### **Warranties; Product Recalls.**

No warranty claims or recalls other than what has already been discussed and documented for pending warranty claims where we have made arrangements with the customer to replace in Spring, 2018 (document attached)

**Section 4.9**

**Condition; Sufficiency of Assets.**

Any and all tangible assets are in good working order

**Section 4.11**  
**Intellectual Property.**

(a) All IP registrations and assets have been documented and provided.

Patent:

RESCUE MAT, US Patent #7,744,436 B2, June 29, 2010

Trademarks:

WaterMat® registered trademark #4208457, USPTO, September 18, 2012.

TOW BOGGAN® registered trademark #86102686, USPTO, September 9, 2014

URL's

thewatermat.com  
towboggan.com  
rescuemat.com  
watermatyoga.com  
yogawatermat.org  
yogawatermat.fitness

(b) None

(c) None

(e) None

**Section 4.12**

**Accounts Receivable.**

Accounts receivable as of 12/31/17 is \$915. Aging schedule attached



**Section 4.13**

**Accounts Payable.**

Accounts payable as of 12/31/17 is \$31,743.38 Aging schedule attached

**Section 4.14**  
**Customers and Suppliers.**

Customers:

1. Amazon – No contact name or number – 2017 sales - \$65,500.10
2. CRS – Andy Berens / Ron Romens - 877.896.8442 2017 sales – \$35,690
3. Bart’s Watersports – Mike Wilson – 574.834.7666 – 2017 sales - \$35,174.00

Suppliers:

USA Gym Supply

319 McKinley

Great Bend, KS

620-792-2209

Mark Ball (Owner)

[sales@usagymsupply.com](mailto:sales@usagymsupply.com)

Yih Ji Plastic Co. LTD

No. 5 Gunagfu Rd. , Jiatai Industrial park

Taibao city, Chiayi Country 612 Taiwan

886-5-2382568

E-mail: [yihji.plastic@msa.hinet.net](mailto:yihji.plastic@msa.hinet.net)

Att: Frank Chou

**Section 4.16**

**Insurance.**

Policy with Great American # PL371774102. No pending claims or ever had any claims since the WaterMat business was formed. Policy attached.

**Section 4.17**

**Compliance with Laws; Permits.**

(b) none

(c) none

**Section 4.18  
Litigation.**

None

## Section 4.20

### Employees; Contractors.

No employees.

No contracts exist with these contractors

- Tyler J. Claypool (Category 6) IT Web site
- Christelle Chopard (Life Creations) YogaWaterMat
- Craig Maxey Customer service
- Claire Crookston Social media

**Section 4.22**  
**Employee Benefit Matters.**

(a) none

**Section 4.24  
Affiliate Interests.**

None



**Section 4.25**  
**Brokers.**

none

## TRADEMARK ASSIGNMENT AGREEMENT

This **TRADEMARK ASSIGNMENT AGREEMENT** (this "Assignment") is effective as of January 12, 2018, by and between H2O Pod, Inc., an Illinois corporation ("Assignor"), and Kwik Tek Inc., a Colorado corporation ("Assignee"). Assignor and Assignee are sometimes individually referred to herein as a "Party" and collectively as the "Parties."

Assignor, Assignee and the other signatories thereto are parties to an Asset Purchase Agreement, of even date herewith (the "Purchase Agreement"), pursuant to which, among other things, Assignor has agreed to sell, convey, assign, transfer and deliver to Assignee, and Assignee has agreed to purchase, accept and take from Assignor, the Marks (as defined below). The execution and delivery of this Assignment is a condition to the closing of the transactions contemplated by the Purchase Agreement. In the event of a conflict between this Assignment and the Purchase Agreement, the Purchase Agreement will control.

### AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor hereby agrees as follows:

1. Assignor does hereby assign to Assignee all of Assignor's right, title and interest in and to the trademarks, trademark registrations, trademark applications and intent to use trademark applications set forth on Schedule 1 (the "Marks"), together with that portion of Assignor's business in connection with which it uses, or has an intent to use, the Marks and the goodwill of the business symbolized by the Marks.

2. Assignor acknowledges that, subsequent to the date hereof, Assignor shall not claim to possess any right, title or interest in and to such Marks and shall take no actions jeopardizing the existence or enforceability of the Marks or Assignee's rights therein. Assignor will not adopt or use or register or seek to register any name or mark anywhere in the world which is identical in word or design to the Marks or so similar thereto as to constitute a colorable imitation thereof or to suggest some association between Assignor and Assignee or sponsorship and/or endorsement of Assignor by Assignee.

3. Assignor agrees to assist Assignee in every legal way to evidence, record and perfect this Assignment and to apply for and obtain recordation of and from time to time enforce, maintain, and defend the assigned rights. If Assignee is unable for any reason whatsoever to secure Assignor's signature to any document it is entitled to under this Assignment, Assignor hereby irrevocably designates and appoints Assignee and its duly authorized officers and agents, as his agents and attorneys-in-fact with full power of substitution to act for and on his behalf and instead of Assignor, to execute and file any such document or documents and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Assignor.

4. Assignor represents and warrants to Assignee that, other than as disclosed in the Disclosure Schedule to the Purchase Agreement: (a) Assignor was the sole owner of all rights, title and interest in the Marks, (b) Assignor has not assigned, transferred, licensed, pledged or otherwise encumbered the Marks or agreed to do so, (c) Assignor has full power and authority to enter into this Assignment and to make the assignment set forth herein, (d) no claim or demand of any person has been made nor is there any proceeding that is pending, or to the knowledge of Assignor after due inquiry, threatened, nor is there a reasonable basis therefor, which (i) challenges the rights of Assignor with respect to the Marks, (ii) asserts that Assignor is infringing or is otherwise in conflict with, or is, required to pay any royalty, license fee, charge or other amount with regard to the Marks, or (iii) claims that any

default exists under any agreement or arrangement, and (e) the Marks are not subject to any outstanding order, ruling, decree, judgment or stipulation by or with any court, arbitrator, or administrative agency, or have been the subject of any litigation within the last five years, whether or not resolved in favor of Assignor.

5. This Assignment shall be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of Law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of Laws of any jurisdiction other than those of the State of Colorado.

\* \* \* \* \*

IN WITNESS WHEREOF, Assignor has executed this Assignment as of the date first written above.

H2O Pod, Inc.

By: [Signature]  
Name: Robert C. Pole III  
Title: President

STATE OF Colorado )  
 ) ss.  
COUNTY OF Loutt )

On January 11, 2018, before me, Martha J. Bonin, Notary Public, personally appeared, Robert C. Pole III, personally known to me, or who proved to me on the bases of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My commission expires: 2-3-2018

Martha J. Bonin  
Notary

MARTHA J. BONIN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20144003105  
MY COMMISSION EXPIRES FEBRUARY 3, 2018

SCHEDULE 1

MARKS

Trademark	Serial / Registration No.	Registration Date	Jurisdiction	Status
WaterMat	85048294/4208457	9/18/2012	USPTO	Live
TowBoggan	86102686/4603171	9/09/2014	USPTO	Live

**WATERMAT**

**Word Mark** WATERMAT  
**Goods and Services** (7) US: US 022 025 036 092, 05 & 09: Floating device made of foam, for recreational use; FIRST USE: 2002073; FIRST USE IN COMMERCE: 2002073  
**Standard Characters Claimed**  
**Mark Drawing Code** (4) STANDARD CHARACTER MARK  
**Serial Number** 85048294  
**Filing Date** May 28, 2010  
**Current Date** 1A  
**Original Filing Basis** 1A  
**Published for Opposition** July 3, 2012  
**Registration Number** 4208457  
**Registration Date** September 18, 2012  
**Owner** (REGISTRANT) H2O Prod. Inc. CORPORATION INDIANA 480 Green Court Elmhurst INDIANA 46518  
**Assignment Recorded** ASSIGNMENT RECORDED  
**Attorney of Record** Howard S. Michael  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL (PP)  
**Live/Dead Indicator** LIVE



**Word Mark** TOW BOGGAN  
**Goods and Services** (7) US: US 022 025 036 092, 05 & 09: Ride-on toys for use on water; FIRST USE: 20130601; FIRST USE IN COMMERCE: 20140101  
**Mark Drawing Code** (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS  
**Design Search Code** 98.01.03 - Ocean; Ripples (multiple waves); Waves; ripon sea (multiple waves)  
**Serial Number** 86102686  
**Filing Date** October 27, 2013  
**Current Date** 1A  
**Original Filing Basis** 1B  
**Published for Opposition** April 15, 2014  
**Registration Number** 4603171  
**Registration Date** September 9, 2014  
**Owner** (REGISTRANT) H2O Prod. Inc. AKA The WaterMat CORPORATION INDIANA 480 Pennsylvania Ave Green Elm ILINOIS 60137  
**Description of Mark** The color(s) blue is/are claimed as a feature of the mark. The mark consists of the wording "TOW BOGGAN" in stylized font above wave designs representing a toboggan as shown in the color blue.  
**Type of Mark** TRADEMARK  
**Register** PRINCIPAL  
**Live/Dead Indicator** LIVE