

ASSET ACQUISITION AGREEMENT

THIS ASSET ACQUISITION AGREEMENT (this “**Agreement**”) is made and entered into as of December ____, 2017, by and between Shawnee Forward, Inc., an Oklahoma not for profit corporation (“**Purchaser**”), the Greater Shawnee Chamber of Commerce, Inc., an Oklahoma not for profit corporation (“**Chamber**”) and the Shawnee Economic Development Foundation, Inc., an Oklahoma not for profit corporation (“**SEDF**”). Collectively the Chamber and SEDF will be referred to as the “**Sellers.**” Collectively the Purchaser and Sellers will be referred to as the “**Parties.**”

WITNESSETH:

WHEREAS, the Sellers are engaged in the not for profit enterprises of fostering a positive business climate, leveraging resources that create, enhance and expand businesses within the greater Shawnee area, and broadening the horizons of existing businesses while educating prospective businesses about all that Shawnee, Oklahoma has to offer; and

WHEREAS, the Sellers desires to sell, and Purchaser desires to acquire, substantially all of the assets and liabilities of the Sellers as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing initial paragraph and recitals, and the representations, warranties, covenants, agreements and conditions contained in this Agreement, and intending to be legally bound, the Parties agree as follows:

ARTICLE 1. THE TRANSACTION

1.1 Sale and Acquisition of Assets. At Closing, Sellers shall sell, transfer and deliver to Purchaser, or cause to be sold, transferred and delivered to Purchaser, and Purchaser shall purchase from Sellers, all of the assets of Sellers (the “**Purchased Assets**”). The Purchased Assets include the following, wherever located:

(a) All machinery, equipment, inventory, fixtures, furniture, supplies, tools, dies, jigs, molds, vehicles and other tangible personal property (collectively, the “**Tangible Personal Property**”);

(b) All owned real property, leaseholds and subleaseholds therein, improvements, fixtures and fittings thereon, and easements, rights-of-way and appurtenances thereto (such as appurtenant rights in and to public streets) (collectively, the “**Owned Real Property**”);

(c) All rights to any intellectual property including but not limited to the use of the names and similar names of the Greater Shawnee Area Chamber of Commerce, Inc., and the Shawnee Economic Development Foundation, Inc.

(d) All leasehold improvements and rights to and under leases or subleases of real property (whether Sellers are lessees, sublessees or assignees) relating to real property (collectively, the “**Leased Real Property**”);

(e) All rights to and under contracts, agreements, instruments, Liens, guaranties or other similar arrangements, whether written or oral (collectively with the Tangible Personal Property Leases and Leased Real Property, the “**Contracts**”);

(f) All accounts receivable, notes receivable and other receivables reflected (the “**Receivables**”);

(g) All prepaid assets;

(h) All claims, deposits, prepayments, refunds, causes of action, choses in action, rights of recovery, rights of set-off, counterclaims and rights of recoupment, including for past, present or future damages for the breach, infringement or misappropriation of any Purchased Assets;

(i) All Permits;

(j) All books, records and other documents, including fixed asset records, sales and advertising materials (including price lists), technical and research data, books of account and records, ledgers, files, correspondence, plats, architectural plans, drawings and specifications, creative materials, studies, reports and other items; and

(k) All bank accounts and financial accounts that shall be transferred over into the name of Shawnee Forward, Inc. as of the date of this Agreement.

(l) To the extent not otherwise specifically included in this Section 1.1, all assets of every kind, character, nature and description, whether tangible or intangible, choate or inchoate, corporeal or incorporeal, matured or unmatured, known or unknown, contingent or fixed.

1.2 Corporate Governance. Upon Closing, the five (5) members of both executive committees of the SEDF and the Chamber plus one at-large member shall be voted in as the Board of Directors of the Purchaser by the then current Board of Directors of the Purchaser to form an eleven (11) member Board of Directors of the Purchaser. After two years, the terms for the Board of Directors will be staggered on a three-year basis. All future issues dealing with the Purchaser’s Board of Directors shall be decided by the Purchaser’s Board of Directors. In addition, two Advisory Boards, one for economic

development and one for chamber activities, shall be established. The initial members shall be the current board members of the SEDF and the Chamber who are willing to serve and who are not on the Executive Committees. These Advisory Boards shall advise the new Board of Directors on initial policies of Shawnee Forward and terminate six months after closing.

1.3 Membership in Purchaser. Those members in good standing of the Chamber and the SEDF as of the date the Chamber and SEDF vote on the approval of this Agreement and entitled to vote on the approval of the same shall become members in the Purchaser. The members voting rights and proportions shall be determined by the Board of Directors appointed in Section 1.2, *supra* or its appointees.

1.4 Assumption of Liabilities. At Closing, Purchaser shall assume all: (a) Liabilities arising after the Closing Date and relating solely to Purchaser's ownership of the Purchased Assets; and (b) All liabilities of the Sellers prior to the Closing Date.

1.5 Closing.

(a) Closing; the Closing Date. The closing of the sale and Acquisition of the Assets ("Closing") shall take place at _____ .m. January ____, 2018, or at such other time or on such other date as mutually agreed upon by the Parties (the "Closing Date"). All transactions which are to take place at Closing shall be considered to have taken place simultaneously, and no delivery or payment shall be considered to have been made until all the transactions have been completed. Title to, ownership of, control over and risk of loss of the Purchased Assets shall pass to Purchaser effective as of 12:01 a.m. on the day immediately following the Closing Date unless provided otherwise herein.

1.6 Deliveries by Sellers at Closing. At Closing, Sellers shall deliver the following to Purchaser, executed by Sellers, Sellers' Board of Directors or other parties as applicable:

(a) (i) One or more bills of sale, (ii) warranty deeds conveying the referenced Real Property herein, and (iii) such further documents or instruments of assignment, conveyance, transfer or confirmation as may be necessary or desirable to effectively transfer the Purchased Assets to Purchaser.

(b) Resolutions adopted by Sellers' Board of Directors approving all prior actions by Sellers, and its officers and directors, including, but not limited to, authorizing the execution and delivery by Sellers of this Agreement and all other Transaction Documents and transactions contemplated hereby and thereby.

(c) Certificates of good standing or existence for Sellers in its jurisdiction of organization and each jurisdiction in which Sellers is qualified to do business as a foreign organization.

(d) A certificate signed by the Executive committees of the Chamber and the SEDF certifying that commitments have been received in the amount of \$150,000.00 per year for three (3) years over the current funding of the Chamber and the SEDF.

ARTICLE 2.
REPRESENTATIONS AND WARRANTIES
OF SELLERS AND SELLERS' BOARD OF DIRECTORS

The Sellers and the Sellers' Board of Directors jointly and severally represent and warrant to the Purchaser as set forth in this Article 2. All references to "Sellers" in this Article 2 shall collectively include Sellers and any and all of their subsidiaries, as applicable, including the Subsidiaries.

2.1 Organization, Qualification and Power. The Sellers are not for profit corporations duly organized, validly existing and in good standing under the laws of the State of Oklahoma, and have the power and authority to own, operate, lease and encumber their facilities and assets.

2.2 Authority; Enforceability. Sellers and Sellers' Board of Directors have full power and authority to execute, deliver and perform this Agreement or any Transaction Document delivered or to be delivered pursuant to the Transaction, and the execution, delivery and performance of this Agreement by Sellers has been duly authorized by all necessary action on the part of Sellers. This Agreement has been duly executed and delivered by Sellers and Sellers' Board of Directors and constitutes the valid and legally binding obligation of Sellers and Sellers' Board of Directors, enforceable in accordance with its terms.

2.3 No Conflict. The Transaction will not: (a) violate any Law to which Sellers, Sellers' Board of Directors, the Purchased Assets are subject; (b) violate any provision of the Certificate of Incorporation, trust agreement, or bylaws, as amended, or any resolution adopted by the board of directors or Board of Directors of Sellers; (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, give any Person the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, Permit, instrument or other arrangement to which Sellers or any of Sellers' Board of Directors is a party or by which Sellers or any of Sellers' Board of Directors is bound or any of the Purchased Assets are subject (or result in the imposition of any Lien upon any of the Purchased Assets); or (d) cause Purchaser to become subject to or liable for the payment of any Tax.

2.4 Claims. There is no action, suit, proceeding, hearing, investigation, audit, charge, complaint, claim or demand pending or, to the Knowledge of the Sellers, threatened against or affecting the Sellers, any of its assets or properties, or the Sellers' shareholders or directors in their capacities as such, which would have a Material

Adverse Effect on Sellers, the Business or any of its assets, nor is there any outstanding injunction, judgment, order or decree against Sellers, any of its assets or properties, or any of its shareholders or directors in their capacities as such.

2.5 No Undisclosed Liabilities. All liabilities have been disclosed to the Purchaser as part of this transaction to the knowledge of the Sellers.

2.6 Insurance.

(a) Sellers have delivered to Purchaser accurate and complete copies of all policies of insurance (and pending applications for policies of insurance) to which Seller is a party.

(b) All policies of insurance to which Sellers are a party or that provide coverage to Sellers are valid, outstanding and enforceable, all premiums with respect to such insurance policies are currently paid in accordance with the terms of such policies and Sellers are in compliance with all other terms and conditions of such insurance policies. Sellers have not received any written or, to the Knowledge of Sellers, oral notice of cancellation, termination, non-renewal or reduction in or refusal of coverage under any policy of insurance within the past three (3) years or other indication that any insurance policy is no longer in full force and effect or will not be renewed and no material dispute with any insurance carrier exists with respect to the scope of any insurance coverage. Sellers have given notice to the applicable insurer in accordance with the terms of such policies of insurance of all material claims that may be insured by such policies within the past three (3) years. Such policies are in amounts and have coverages as required by any Contract to which Seller is a party or by which any of its assets or properties is bound.

2.7 Taxes.

(a) The Sellers have duly and timely filed all Tax Returns required to be filed by the Sellers on or before the Closing Date, and all such Tax Returns have been prepared in compliance with all applicable Laws and regulations and are true, correct and complete in all material respects.

(b) All Taxes owed by the Sellers shown as due on any Tax Return have been fully and timely paid.

(c) The Sellers are not now and have not at any time been a member of any affiliated group required to join in the filing of consolidated federal income Tax Returns, and has not otherwise joined in the filing of other Tax Returns on a consolidated, combined or unitary group basis. Since its organization, the Seller has been an entity disregarded from its members for federal income tax purposes (and, where applicable, state and local income tax purposes).

(d) No Authority with which the Seller does not file Tax Returns has asserted in writing or, to the Knowledge of the Seller, orally that the Seller is or may be required to pay Taxes to or file Tax Returns with that Authority.

(e) The Seller (i) is not a party to any "closing agreement" described in Code Section 7121 (or any comparable provision of state, local or foreign Tax law), and (ii) has not requested or received any Tax ruling, in either case that would have continuing effect after the Closing Date.

(f) No Authority has audited any Tax Return filed by Seller and there are no pending or, to the Knowledge of the Seller, threatened, actions, suits, proceedings, disputes, investigations, audits, charges, claims or demands of any kind relating to Taxes or the Tax Returns of Seller, the Business or its assets, and (ii) all deficiencies for Taxes asserted or assessed against the Seller have been fully and timely paid to, or otherwise settled with, the relevant Authority, or are properly reflected in the Financial Statements.

(g) The Seller has withheld from its employees, independent contractors, creditors, members and third parties and timely paid to the appropriate Authority proper and accurate amounts in all respects required to have been withheld or paid over for all periods ending on or before the Closing Date in compliance with all Tax withholding and remitting provisions of applicable Law and has complied in all material respects with all Tax information reporting provisions of applicable Law.

(h) There are no joint ventures, partnerships, limited liability companies or other arrangements or contracts to which the Seller is a party that could be treated as a partnership for federal income Tax purposes under applicable Law.

(i) The Seller (i) has not engaged in any transaction that, as of the date hereof, is a "listed transaction" under Treasury Regulations Section 1.8011-4(b)(2), and (ii) has disclosed in its Tax Returns all information required by the provisions of the Treasury Regulations issued under Code Section 6011 with respect to any "reportable transaction", as that term is defined in Code Section 6707A(c).

ARTICLE 3. REPRESENTATIONS AND WARRANTIES OF PURCHASER

The Purchaser hereby represents and warrants:

3.1 Organization and Good Standing. Purchaser is a not for profit corporation validly existing and in good standing under the laws of the State of Oklahoma.

3.2 Authority; Enforceability. Purchaser has full corporate power and authority to execute, deliver and perform this Agreement and the execution, delivery and

performance of this Agreement by Purchaser has been duly authorized by all necessary action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser and constitutes the valid and legally binding obligation of Purchaser, enforceable in accordance with its terms. Purchaser is not required to give any notice to, make any filing with or obtain any authorization, consent or approval of any Authority or Person in order for the Parties to consummate the Transaction.

ARTICLE 4. CLOSING AND POST-CLOSING COVENANTS

The Parties covenant and agree as follows:

4.1 General. In case at any time after the Closing any further action is necessary or desirable to carry out the purposes of this Agreement, each of the Parties shall take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, all at the sole cost and expense of the requesting Party.

4.2 Post-Closing Cooperation, Access to Information and Retention of Records. Without limiting the generality of Section 4.1, the Parties shall cooperate fully with each other after the Closing so that each Party has access to the records, Contracts and other information existing at the Closing Date.

4.3 Tax Matters.

(a) Any real and personal property taxes (or other similar Taxes) on the Purchased Assets with respect to any taxable period beginning before and ending after the Closing Date shall be paid by the Purchaser, and paid according to the custom for such Taxes.

(b) To the extent relevant to the Business or the Purchased Assets, each Party shall provide the other with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any audit or other examination by any taxing Authority or in connection with judicial or administrative proceedings relating to any liability for Taxes.

(c) Sellers shall be responsible for the payment of all Taxes, filing fees, recording fees and other similar expenses with respect to the sale and purchase of the Purchased Assets.

4.4 Employee Withholding. Pursuant to the “Standard Procedure” provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320, (a) Purchaser and Sellers shall report on a predecessor/successor basis as set forth therein, (b) Sellers will not be relieved from filing a Form W-2 with respect to any continuing Employees who were employees of Sellers on or prior to the Closing Date (“**Continuing Employees**”), and (c) Purchaser

will undertake to file (or cause to be filed) a Form W-2 for each such Continuing Employee with respect to the portion of the year during which such Continuing Employees are employed by Purchaser after the Closing Date, excluding the portion of such year that such Continuing Employee was employed by Sellers.

ARTICLE 5. MISCELLANEOUS

5.1 Confidentiality. All information, materials, data and documents in all forms (whether written or otherwise) relating to the terms contemplated by this Agreement or any Party (collectively, the “**Confidential Information**”) shall be treated and held as confidential by any Party receiving Confidential Information (“**Receiving Party**”) from a Party revealing Confidential Information (“**Disclosing Party**”). The Receiving Party shall refrain from using any such Confidential Information in any manner or for any purpose not in connection with this Agreement or in any manner or for any purpose detrimental to the assets or the Disclosing Party’s interest, and shall upon the failure to consummate the Transaction, deliver promptly to the Disclosing Party or destroy, at the request and option of the Disclosing Party, all tangible embodiments or electronic forms of such Confidential Information which are in its possession. For purposes of this Section 5.1, only representatives of the Receiving Party who have a reasonable need to know may receive or have access to Confidential Information, and then only if all necessary and appropriate measures are taken to protect such Confidential Information. The Receiving Party shall also take all necessary and appropriate measures to assure that its representatives who receive or have access to Confidential Information of the Disclosing Party observe and comply with the provisions of this Section 6.1. In the event that the Receiving Party is requested or required (by oral question or request for information for documents in any legal proceeding, interrogatories, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the Receiving Party shall notify the Disclosing Party promptly of the request or requirement so that the Disclosing Party may seek an appropriate protective order or waive compliance with the provisions of this Section 6.1. If, in the absence of a protective order or the receipt of a waiver under this Section 6.1, the Receiving Party is, on the advice of counsel, compelled to disclose any Confidential Information to any Authority or else stand liable for contempt, the Receiving Party may disclose the Confidential Information to the Authority; provided, however, that the Disclosing Party shall use its reasonable efforts to obtain, at the reasonable request of the Receiving Party, an order or such assurance that confidential treatment shall be accorded to such portion of the Confidential Information required to be disclosed as the Receiving Party shall designate.

5.2 Indemnification. The Sellers agree to indemnify and hold harmless the Purchaser for any claim(s) that may arise prior to the transfer to the Purchaser.

5.3 Publicity. No publicity release, announcement or other disclosure to Persons other than the Parties or their respective employees, representatives or

Purchasers (or prospective Purchasers) shall be issued by any Party (or its/their representatives or Affiliates) without prior consent to the form and substance thereof by the Purchaser. In the event any such publicity release announcement is required by Law to be made any Party, such Party shall use its reasonable efforts to consult in good faith with the Purchaser prior to the issuance of any such publicity release or announcement.

5.4 Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, each Party shall be responsible for its respective attorneys' fees and other costs incurred in such action or proceeding.

5.5 Notices. All notices, claims, consents, requests, instructions, approvals, demands and other communications under this Agreement shall be in writing and deemed duly given, if delivered: (a) personally by hand or by a nationally recognized overnight courier service, when delivered at the address specified in this Section 5.5; (b) by United States certified or registered first class mail when delivered at the address specified in this Section 5.5, on the date appearing on the return receipt therefor; or (c) by electronic mail when such electronic mail is transmitted to the electronic mail address specified in this Section 5.5. In the event that a Party is unable to deliver a notice, claim, consent, request, instruction, approval, demand, or other communication due to the inaccuracy of the postal address, pursuant to this Section 5.5 or the other Party's failure to notify the Party of a change of its address, as specified pursuant to this Section 5.5, such notice, claim, consent, request, instruction, approval, demand, or other communication shall be deemed to be effective upon confirmation by a nationally recognized overnight courier service of its failure to complete delivery to the other Party's address as set forth in this Section 5.5 (or other address duly given to the Party by the other Party in accordance with this Section 5.5).

Addresses and electronic mail addresses (unless and until written notice is given of any other address or electronic mail address) for purposes of this Section 6.4 are set forth below:

If to the Purchaser, to:

Shawnee Forward, Inc.
3701 N. Harrison St.
Shawnee, OK 74804

If to the Sellers, to:

Greater Shawnee Chamber of Commerce, Inc.
231 N. Bell
Shawnee, OK 74801

Shawnee Economic Development Foundation
131 N. Bell, Suite 208
Shawnee, OK 74801

5.6 Entire Agreement. This Agreement, including the initial paragraph and the recitals to this Agreement and all Schedules and Exhibits attached to this Agreement,

each of which are made a part of this Agreement by this reference, constitutes the entire understanding of the Parties, and supersedes any prior agreements or understandings, written or oral, between the Parties with respect to the subject matter of this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all of the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

5.7 Rights of Parties.

(a) Nothing in this Agreement, whether express or implied, is intended to confer any benefit, right or remedy under or by reason of this Agreement on any Persons other than the Parties and their respective successors and permitted assigns, nor is anything in this Agreement intended to relieve or discharge the obligation or Liability of any other Person to any Party, nor shall any provision give any other Person any right of subrogation or action over or against any Party.

(b) Nothing in this Agreement shall in any way modify or otherwise limit the rights or remedies available to any of the Parties with regard to a claim of fraud.

(c) The Parties shall be entitled as a result of misrepresentation or breach under this Agreement, to pursue any and all non-monetary relief to which any of them may otherwise be entitled at Law, in equity or otherwise.

5.8 Succession and Assignment. This Agreement shall be binding upon, and inure to the benefit of, the Parties and their representatives, successors and permitted assigns. None of the Parties may assign either this Agreement or delegate any of the rights, interests or obligations hereunder without the prior written approval of the other Parties.

5.9 Governing Law; Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, without giving effect to conflict of law principles thereof. Each Party hereby irrevocably submits to the exclusive personal jurisdiction of any state or federal court sitting in the State of Oklahoma in any action or proceeding arising out of or relating to this Agreement. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO

THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 6.8 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 5.8 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

5.10 Mediation. Each of the Parties acknowledges and agrees that they will attempt to resolve any dispute arising hereunder or under an indemnification claim as outlined herein through a mediation process of the Parties choosing, prior to the initiation of any action in a Court of proper jurisdiction as set forth in this Section 5.8 *supra*.

5.11 Counterparts; Exchange by Electronic Transmission. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. The Parties may execute this Agreement, the other Transaction Documents and all other agreements, and other documents contemplated hereby and thereby and exchange on the Closing Date counterparts of such documents by means of facsimile transmission or electronic mail and the Parties agree that the receipt of such executed counterparts shall be binding on such Parties and shall be construed as originals. After the Closing the Parties shall promptly exchange original versions of this Agreement and all other agreements, and other documents contemplated by this Agreement that were executed and exchanged by facsimile transmission or electronic mail pursuant to this Section 6.10, but failure to do so shall not affect the binding nature of the same.

5.12 Specific Performance. Each of the Parties acknowledges and agrees that the other Parties would be damaged irreparably in the event that any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, each of the Parties agrees that any other party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof in any action instituted in any court of the United States or any other state thereof having jurisdiction over the Parties in the matter, in addition to any other remedy (including monetary damages) to which it may be entitled, at law or in equity.

5.13 Severability. It is the desire and intent of the Parties that the provisions of this Agreement be enforced to the fullest extent permissible under the Laws and public policies applied in each jurisdiction in which enforcement is sought. Accordingly, if any particular provision of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid, prohibited or unenforceable for any reason, such provision, as to such jurisdiction, shall be ineffective, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of this Agreement or affecting

the validity or enforceability of such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be invalid, prohibited or unenforceable in such jurisdiction, it shall, as to such jurisdiction, be so narrowly drawn, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

5.14 No Third-Party Beneficiaries. Except as set forth in Article 5, nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties or their respective successors, heirs, personal representatives or permitted assigns, any rights or remedies under or by reason of this Agreement.

ARTICLE 6. DEFINITIONS

6.1 Certain Definitions. As used in this Agreement, the following terms shall have the respective meanings ascribed to them in this Section 6.1:

(a) **“Adverse Consequences”** means all actions, suits, proceedings, hearings, investigations, charges, claims, injunctions, judgments, orders, decrees, damages, diminution in value, losses, penalties, costs, amounts paid in settlement and fees, including court costs and reasonable attorneys’ fees.

(b) **“Affiliate”** of any Person means any Person, directly or indirectly controlling, controlled by or under common control with such Person or related by blood, marriage or adoption to such Person.

(c) **“Authority”** means any U.S. federal, state, local or foreign court or governmental or regulatory agency or authority.

(d) **“Closing Balance Sheet”** means the balance sheets of the Sellers as of the close of business on the Closing Date.

(e) **“Code”** means the Internal Revenue Code of 1986, as amended.

(f) **“Copyrights”** shall mean all copyrights and copyrightable subject matter, mask works, and other rights of authorship and any moral rights related thereto, and all applications and registrations therefor.

(g) **“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

(h) **“Employee”** means any employee of Sellers.

(i) **“Employee Benefit Plan”** means any (i) nonqualified pension, profit sharing, deferred compensation, stock purchase, stock option, incentive, bonus,

severance, retirement or any other type of employee benefit plan, program or arrangement which is an Employee Pension Benefit Plan, (ii) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan, (iii) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), or (iv) Employee Welfare Benefit Plan or material fringe benefit plan or program.

(j) **“Employee Pension Benefit Plan”** has the meaning specified in Section 3(2) of ERISA.

(k) **“Employee Welfare Benefit Plan”** has the meaning specified in Section 3(1) of ERISA.

(l) **“Indebtedness”** means, as of any particular time, the unpaid principal amount of, and accrued interest on or penalties of, (i) all indebtedness for borrowed money of the Sellers , (ii) all obligations of the Sellers evidenced by notes, loans, letters of credit, capital leases, mortgages, bonds, debentures and other similar instruments, (iii) all indebtedness of other Persons guaranteed or supported directly or indirectly in any manner, including through surety arrangements, letters of credit, capital leases or otherwise, by the Sellers , or in effect so guaranteed or supported directly or indirectly by the Sellers , (iv) all indebtedness of other Persons with respect to borrowed money, notes payable or amounts outstanding under letters of credit which amounts are secured by (or for the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien on any property or asset of the Sellers , whether or not the obligations secured thereby have been assumed, (v) all capital lease obligations of the Sellers , (vi) aged payables (greater than ninety (90) days), (vii) unfunded pension liabilities, (viii) deferred rent, (ix) deferred revenue, (x) warranty reserves, (xi) customer deposits and sums received in advance from customers, (xii) any amounts outstanding that are owed to any vendors of the Sellers as part of a vendor-financing program that are not otherwise reflected as a Liability on the Closing Balance Sheet, (xiii) any bonus, contingent compensation or other similar compensation to be paid to any Person by the Sellers that is not otherwise reflected as a Liability on the Closing Balance Sheet, (xiv) all negative cash and obligations arising from cash/book overdrafts, outstanding checks or wire transfers issued or initiated but not yet cleared, (xv) any fees, penalties, premiums or accrued and unpaid interest, with respect to the foregoing subsections (i)-(xv) (in the case of prepayments, terminations or otherwise); and (xvi) all restricted or trapped cash.

(m) **“Law”** means any federal, state, local, municipal, foreign, international, multinational or other constitution, statute, treaty, code, ordinance, principle of common law or other law (including any rule, regulation, plan, injunction, judgment, order, decree, ruling or charge thereunder or related thereto).

(n) **“Liability”** means any liability of any kind, character or description (whether known or unknown, whether asserted or unasserted, whether absolute or

contingent, whether accrued or unaccrued, whether disputed or undisputed, whether secured or unsecured, whether joint or several, whether vested or unvested, whether liquidated or unliquidated, whether due or to become due, or whether executory, determined, determinable, or otherwise).

(o) **“Lien”** means any charge, claim, equitable interest, community or other marital property interest, security interest, conditional sale agreement, mortgage, indenture, deed of trust, security agreement, pledge, hypothecation, option, restriction, encroachment, easement, servitude, right of first refusal, condition or other lien, encumbrance or defect of title of any kind or nature.

(p) **“Party”** or **“Parties”** means Purchaser, Sellers, and Sellers’ Board of Directors, individually or collectively, as applicable.

(q) **“Permitted Liens”** other than (i) Liens for Taxes that are not yet due and payable or that may hereafter be paid without material penalty or that are being contested in good faith for which adequate accruals or reserves have been established on the books and records of Sellers, (ii) statutory Liens of landlords and workers’, carriers’ and mechanics’ or other like Liens incurred in the ordinary course of business for amounts that are not yet due and payable or that are being contested in good faith for which adequate accruals or reserves have been established on the books and records of Sellers, (iii) Liens and encroachments which do not interfere with the present use of the properties or assets they affect, and (iv) Liens that are disclosed on the audited Financial Statements.

(r) **“Permits or Licenses”** means any license, permit, franchise, certificate of authority or order of an extension, modification, amendment or waiver of any of the foregoing, issued by any Authority and including any such license or permit required by state or federal departments or comparable Authorities in order to operate the Business.

(s) **“Person”** means an individual, a corporation, a partnership, a limited liability company or partnership, an association, an Authority, a trust or other entity or organization.

(t) **“Taxes”** means all federal, state, local or foreign income, gross receipts, license, employment, payroll, withholding, Social Security (or similar), unemployment, severance, premium, disability, excise, value-added, accumulated earnings, windfall profit, net worth, alternative or add-on minimum, estimated, sales, use, transfer, registration, real property, stamp, environmental (including taxes under Code §59A), personal property, use and occupancy, business and occupation, maritime, mercantile, tariff, custom, duty, capital stock, franchise, gift or estate and all other taxes, fees, assessments, levies, tariffs, charges or duties of any kind, character, nature or description, including any interest, penalties or additions thereto.

(u) **“Tax Returns”** means all returns, declarations, forms, reports, claims for refunds, information returns and other statements or documents relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

(v) **“Trademarks”** shall mean all trademarks, service marks, certification marks, trade dress, Internet domain name registrations, trade names, identifying symbols (including Twitter handles and other insignia used in social media), designs, product names, company names, slogans, logos or insignia, whether registered or unregistered, and all common Law rights, applications and registrations therefor, and all goodwill associated therewith.

(w) **“Transactions”** means the transactions contemplated by this Agreement, and the other Transaction Documents.

(x) **“Transaction Documents”** means this Agreement, the Company Agreement, and the Contracts to be delivered by the Parties in connection with this Agreement.

6.2 Construction. “Including” means “including without limitation” and does not limit the preceding words or terms. The word “or” is used in the inclusive sense of “and/or”. The singular shall include the plural and vice versa. Each word of gender shall include each other word of gender as the context may require. References to “Articles” or “Sections” or “Schedules” or “Exhibits” shall mean Articles or Sections of this Agreement or Schedules or Exhibits attached to this Agreement, unless otherwise expressly indicated. The title of each Article and the headings or titles preceding the text of the Sections are inserted solely for convenience of reference, and shall not constitute a part of this Agreement. The Parties have each participated in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

[The Remainder of This Page Intentionally Left Blank and Signature Pages Follows]