

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	
	§	Chapter 11
KATERRA INC., <i>et al.</i> , ¹	§	
	§	Case No. 21-31861 (DRJ)
Debtors.	§	
	§	(Jointly Administered)
	§	

**NOTICE OF SELECTION OF STALKING HORSE BIDDER
FOR SPOKANE, WA (“CLT”) FACILITY AND RELATED ASSETS**

PLEASE TAKE NOTICE that on July 6, 2021, the United States Bankruptcy Court for the Southern District of Texas (the “Court”) entered the *Order (I) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (II) Approving Bid Protections, (III) Scheduling Certain Dates with Respect Thereto, (IV) Approving the Form and Manner of Notice Thereof, and (V) Approving Contract Assumption and Assignment Procedures*, [Docket No. 370] (the “Bidding Procedures Order”).²

PLEASE TAKE FURTHER NOTICE that on July 22, 2021, in accordance with paragraphs 9–11 of the Bidding Procedures Order, the Debtors selected Blue Varsity LLC to act as the Stalking Horse Bidder for the Spokane, Washington (“CLT”) Facility and related assets, substantially on the terms of and in accordance with the Stalking Horse Agreement attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE THAT consistent with the Bidding Procedures Order, the Stalking Horse Agreement provides for, among other things, (a) a Breakup Fee equal to 3% of the Purchase Price, and (b) an Expense Reimbursement provision for reasonable, actual, and documented out-of-pocket fees and expenses of the Stalking Horse Bidder of up to 1% of the Purchase Price.

PLEASE TAKE FURTHER NOTICE THAT any objection to the designation of the Stalking Horse Bidder or to the Bid Protections set forth herein and in the Stalking Horse Agreement (a “Stalking Horse Objection”) shall filed no later than on July 27, 2021 (the “Objection Period”).

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://cases.primeclerk.com/katerra>. The location of Debtor Katerra Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 9305 East Via de Ventura, Scottsdale, Arizona 85258.

² Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order or the Stalking Horse Agreement, as applicable.

PLEASE TAKE FURTHER NOTICE that, if a timely Stalking Horse Objection is filed, the proposed designation of the Stalking Horse Bidder and Bid Protections provided for under the Stalking Horse Agreement shall not be deemed approved unless approved by separate order of the Court.

PLEASE TAKE FURTHER NOTICE that, if no Stalking Horse Objection is timely filed and served with respect to the Stalking Horse Bid, the Bid Protections with respect to such Stalking Horse Bidder shall be deemed approved without further order of the Court upon the expiration of the Objection Period, and shall be payable in accordance with, and subject to the terms of, the Stalking Horse Agreement.

PLEASE TAKE FURTHER NOTICE that the Debtors and the Stalking Horse Bidder reserve all of their rights to amend, modify, change, revise or otherwise alter in any respect the Stalking Horse Agreement in accordance with the terms of the Stalking Horse Agreement and the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that copies of all documents filed in these chapter 11 cases are available: (a) free of charge upon request to Prime Clerk LLC (the notice and claims agent retained in these chapter 11 cases) by (i) calling (877) 329-1824 (Toll Free) or +1 (347) 532-7909 (International); or (ii) visiting the Debtors' restructuring website at <https://cases.primeclerk.com/katerra>; or (b) for a fee via PACER by visiting <http://www.txs.uscourts.gov>.

[Remainder of page intentionally left blank.]

Houston, Texas
July 22, 2021

/s/ Matthew D. Cavanaugh

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Certificate of Service

I certify that on July 22, 2021, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Matthew D. Cavanaugh

Matthew D. Cavanaugh

Exhibit A

Stalking Horse Agreement

Execution Copy

ASSET PURCHASE AGREEMENT

DATED AS OF JULY 22, 2021

BY AND AMONG

BLUE VARSITY LLC, AS PURCHASER,

MERCER INTERNATIONAL INC., AS GUARANTOR, AND

KATERRA INC. and KATERRA CONSTRUCTION LLC, AS SELLERS

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of July 22, 2021, by and among Blue Varsity LLC, a Washington State corporation (“Purchaser”), Mercer International Inc., a Washington State corporation (“Guarantor”), Katerra Inc., a Delaware corporation (“Katerra Parent”) and Katerra Construction LLC (“Katerra LLC”, and together with Katerra Parent, the “Company” or “Seller”). Purchaser and Seller are referred to herein individually as a “Party” and collectively as the “Parties”. Capitalized terms used in herein shall have the meanings set forth herein or in Article XI.

RECITALS

WHEREAS, on June 6, 2021 the Company filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “Bankruptcy Court”), which cases are jointly administered for procedural purposes as *In re Katerra Inc., et al.*, case number 21-31861 (DRJ) (collectively, the “Bankruptcy Case”); and

WHEREAS, Purchaser desires to purchase the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller desires to sell, convey, assign, and transfer to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363, 365, 1129 and 1141 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court (together, the “Bankruptcy Rules”), all on the terms and subject to the conditions set forth in this Agreement and the Sale Order and subject to entry of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, and intending to be legally bound hereby, Purchaser and Seller hereby agree as follows.

ARTICLE I

PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363, 365, 1129 and 1141 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order, at the Closing, Seller shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from Seller, all of Seller’s right, title, and interest as of the Closing in and to all tangible and intangible assets of Katerra LLC and Katerra Parent located at the CLT Factory (as defined in Schedule 1.1(a)) as of the date hereof, plus any additional assets transferred or relocated to the CLT Factory on or before the Closing Date, free and clear of all Encumbrances other than Permitted Encumbrances, and the following assets, free and clear of all Encumbrances other than Permitted Encumbrances (collectively, the “Acquired Assets”), but in all cases excluding any of the Excluded Assets:

(a) the real property, together with all buildings, structures, improvements and fixtures located thereon, and all easements and other rights and interests appurtenant thereto, listed on Schedule 1.1(a) (the “Acquired Real Property”);

(b) the Contracts listed on Schedule 1.1(b), to the extent assignable under applicable Law (the “Assigned Contracts”);

(c) the intellectual property set forth on Schedule 1.1(c) (the “Assigned Intellectual Property”); and

(d) the assets, rights and other items listed on Schedule 1.1(c).

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign, or convey, and Seller shall retain all right, title and interest to, in and under the Excluded Assets. The Purchaser shall have the right, exercisable in Purchaser’s sole discretion at any time prior to or during the Bankruptcy Court hearing to consider the Sale Order, to designate any of the Acquired Assets as Excluded Assets; provided, however, that designating Acquired Assets as Excluded Assets shall not affect the Purchase Price.

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Sale Order, effective as of the Closing, in addition to the payment of the Cash Payment in accordance with Section 2.1, Purchaser shall irrevocably assume from Seller (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Seller shall irrevocably convey, transfer, and assign to Purchaser, all of the following Liabilities, without duplication and only to the extent not paid, performed, discharged or otherwise satisfied prior to the Closing and no other Liabilities (collectively, the “Assumed Liabilities”):

(a) other than with respect to Cure Costs, all Liabilities and the obligations of Seller under the Assigned Contracts that arise for any period from and after the Closing;

(b) all cure costs determined by the Bankruptcy Court pursuant to section 365 of the Bankruptcy Code to be necessary to cure all defaults in connection with the assumption and assignment of the Assigned Contracts (the “Cure Costs”);

(c) all Liabilities arising out of the ownership or operation of the Acquired Assets from and after the Closing Date, including, without limitation, the condition of the Acquired Real Property (regardless of whether such condition existed prior to or exists after the Closing Date) and the design, construction, engineering, maintenance and repair or environmental condition of the Acquired Real Property;

(d) (1) all accrued but unpaid Taxes (other than Income Taxes of Seller) attributable to or arising out of the conduct of the Acquired Assets for any period (or portion thereof) from and after the Closing Date; *provided*, that Purchaser shall assume all accrued but unpaid real property and personal property Taxes with respect to any period that are subject to the

Real and Personal Property Tax Adjustment pursuant to Section 2.1(a); and (2) any Transfer Taxes under Section 9.1;

- (e) all Liabilities relating to amounts required to be paid, or actions required to be taken or not to be taken, by Purchaser under this Agreement;
- (f) any employment-related liability assumed under Section 6.10; and
- (g) all Liabilities set forth on Schedule 1.3(g).

1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, Seller or relating to the Acquired Assets, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, event, thing or circumstances taking place or not taking place prior to the Closing, other than the Assumed Liabilities, including the following:

- (a) all Income Taxes of Seller;
- (b) all Liabilities relating to or arising out of the Excluded Assets;
- (c) all Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the Business or the Acquired Assets to the extent such Action relates to the Business or the Acquired Assets for any period on or prior to the Closing Date;
- (d) all product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller prior to the Closing Date;
- (e) all recall, design defect or similar claims of any products manufactured or sold or any service performed by Seller prior to the Closing Date;
- (f) all Liabilities arising under or in connection with any present or former employee benefit plan providing benefits to any present or former employee of Seller;
- (g) except as provided in Section 6.10, all Liabilities with respect to any present or former employees, officers, directors, individual independent contractors or consultants of Seller, including for wages or other work-related benefits, bonuses, accrued vacation, workers' compensation, employee deferred compensation including stock option plans, grants and agreements, severance, retention, termination or other payments, provided, that all such Liabilities with respect to the Transferred Employees shall only be Excluded Liabilities to the extent arising prior to the Closing;

(h) all trade accounts payable;

(i) all Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that do not constitute part of the Acquired Assets or Assumed Liabilities;

(j) all Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same);

(k) all Liabilities under the Excluded Contracts;

(l) all Liabilities associated with debt, loans or credit facilities of Seller and/or the Business or the Acquired Assets; and

(m) all Liabilities arising out of, in respect of or in connection with the failure by Seller to comply with any Law or Governmental Order,

(all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the “Excluded Liabilities”).

1.5 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Seller shall provide timely and proper written notice of the Sale Order to all parties to any executory Contracts or unexpired leases to which Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Contracts to be assumed by Seller and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The Sale Order shall provide that as of and conditioned on the occurrence of the Closing, Seller shall assign or cause to be assigned to Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description and date of the Assigned Contract (if available), the other party to the Assigned Contract and the address of such party for notice purposes, a notice filed in connection with the Sale Order or a separate motion for authority to assume and assign such Assigned Contracts. Such notice shall also set forth Seller’s good faith estimate of the Cure Costs. At the Closing, Seller shall, pursuant to the Sale Order assume and assign to Purchaser (the consideration for which is included in the Purchase Price), all Assigned Contracts that may be assigned by any such Seller to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.5(b). At the Closing, Purchaser shall (i) pay all Cure Costs and (ii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract that arise during the period after the Closing (other than as a result of or in respect of any breach by the Seller) pursuant to section 365 of the Bankruptcy Code. Schedule 1.5(b) sets forth the Cure Costs in respect of each Assigned Contract.

(b) Excluding or Adding Assigned Contracts Prior to Closing. Purchaser shall have the right to notify Seller in writing of any Assigned Contract (other than any Contracts set forth on Schedule 1.5(b), which, for the avoidance of doubt, shall be Assigned Contracts) that it

does not wish to assume or a Contract to which Seller is a party that Purchaser wishes to add as an Assigned Contract until the conclusion of the Auction (as defined in the Bidding Procedures Order), or, if Purchaser is designated as the successful Bidder or Backup Bidder (as defined in the Bidding Procedures Order) at any time prior to the Closing Date, and (i) any such previously considered Assigned Contract that Purchaser no longer wishes to assume shall be automatically deemed removed from the Schedules related to Assigned Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that Purchaser wishes to assume as an Assigned Contract shall be automatically deemed added to the Schedules related to Assigned Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Seller to sell and assign to Purchaser, in each case, without any adjustment to the Purchase Price.

(c) Non-Assignment. Notwithstanding the foregoing, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract (i) is terminated by any party thereto other than Seller, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights under such Contract, and such Consent or Governmental Authorization has not been obtained prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder. In addition, a Permit shall not be assigned to, or assumed by, Purchaser to the extent that such Permit requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights under such Permit, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Assigned Contract is deemed not to be assigned pursuant to clause (ii) of the first sentence of this Section 1.5(c), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of such Contract or the closing of the Bankruptcy Case, if shorter), Seller and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of Seller's rights and obligations with respect to any such Assigned Contract, under which (1) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Seller or its Affiliates) under such Assigned Contract with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Purchaser shall assume any related burden (including the amount of any related Tax benefit obtained by Seller or its Affiliates) and obligation (including performance) with respect to such Assigned Contract, in each case to the extent arising from and after the Closing. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Assigned Contract after the Closing, such Assigned Contract shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement, the Sale Order and the Bankruptcy Code.

ARTICLE II

CONSIDERATION; PAYMENT; CLOSING

2.1 Consideration; Payment.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of the Assumed Liabilities and (ii) a cash payment of \$50,000,000 *minus* the Real and Personal Property Tax Adjustment (the "Cash Payment").

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to the Company the Cash Payment *less* the Deposit (the "Closing Date Payment"). The Closing Date Payment shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Seller at least two Business Days prior to the date such payment is to be made.

2.2 Deposit.

(a) Purchaser has made or will, within one (1) Business Day of the later of the date hereof and the execution of a definitive agreement governing the making, holding and release thereof, make, an earnest money deposit (the "Deposit") into escrow with a designee of the Company in the amount of ten percent (10%) of the Cash Payment by wire transfer of immediately available funds pursuant on or prior to the date hereof. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any of Seller or Purchaser and shall be applied against payment of the Purchase Price on the Closing Date. In the event that a result of a further Order of the Bankruptcy Court, the Purchaser and/or the Guarantor provides "debtor in possession" loans to the Seller and/or its Affiliates, the Purchaser may, at its sole discretion and direction, release the Deposit to the Seller and the same shall be and be deemed to be a loan by the Purchaser to the Seller and/or its Affiliates as "debtor in possession" loans approved by further order of the Bankruptcy Court. In such event, the Purchaser shall not have any obligations to make or provide the Deposit.

(b) If this Agreement has been terminated by the Company pursuant to Section 8.1(d) or 8.1(f), then the Company shall retain the Deposit.

(c) If this Agreement has been terminated by any Party, other than as contemplated by Section 2.2(b), then the Deposit shall be returned without any set-off or deduction to Purchaser within five (5) Business Days after such termination.

(d) The Parties agree that the Company's right to retain the Deposit, as set forth in Section 2.2(b), is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Seller for their respective efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision.

2.3 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the “Closing”) will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 300 North LaSalle Street, Chicago, Illinois 60654) at 10:00 a.m. Central Time on the first (1st) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing), or at such other place and time as the Parties may agree. The date on which the Closing actually occurs is referred to herein as the “Closing Date”.

2.4 Closing Deliveries by Seller. At or prior to the Closing, Seller shall deliver to Purchaser:

- (a) a copy of the Sale Order, as entered by the Bankruptcy Court;
- (b) an officer’s certificate, dated as of the Closing Date, executed by a duly authorized officer of the Company certifying that the conditions set forth in Sections 7.2(a) and 7.2(b) have been satisfied;
- (c) the Acquired Assets, including a quit claim deed (as customary in the applicable jurisdiction) with respect to the Acquired Real Property, conveying to Purchaser fee simple title to the Acquired Real Property, subject to Permitted Encumbrances; and
- (d) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement, including, as applicable, a bill of sale and an assignment and assumption agreement duly executed by Seller with respect to the Acquired Assets.

2.5 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) the Company:

- (a) the Closing Date Payment;
- (b) an officer’s certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied.

2.6 Withholding. Purchaser shall be entitled to deduct and withhold from consideration otherwise payable pursuant to this Agreement such amounts as it is required to deduct and withhold with respect to the making of such payment under any provision of U.S. federal, state, local or non-U.S. Tax Law; provided that to the extent each Seller provides an IRS Form W-9 to Purchaser, the parties agree that no withholding shall be required; provided further that to the extent Purchaser determines that an amount is required to be deducted and withheld, Purchaser shall provide Seller, at least three Business Days prior to the date the applicable payment is scheduled to be made, (a) with written notice of the intent to deduct and withhold, which shall include a copy of the calculation of the amount to be deducted and withheld and any provision of applicable U.S. federal, state, local or non-U.S. Law pursuant to which such deduction or withholding is required; and (b)

a reasonable opportunity to provide forms or other evidence that would exempt such amounts from withholding (or reduce such withholding). To the extent such amounts are so deducted or withheld and timely paid over to the appropriate Governmental Body, such amounts shall be treated for all purposes as having been paid to the Person in respect of whom such withholding was required to be made. Purchaser and Seller shall cooperate in good faith to reduce or otherwise eliminate any such withholding obligation to the extent permitted by applicable Law.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Schedules delivered by the Company concurrently herewith and Sections 6.5(a) and 10.10, Seller represents and warrants to Purchaser as follows as of the date hereof.

3.1 Organization and Qualification. Seller (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted, subject to the provisions of the Bankruptcy Code, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Katerra LLC further represents and warrants that (a) its only Subsidiaries are Perimeter Building Services LLC, Skyview Concrete LLC¹, Katerra Affordable Housing LLC, Bristlecone 28th Ave, LLC, Bristlecone Residential LLC, and Edge@LoHi, LLC, (b) none of the foregoing Subsidiaries is material to the business or operations of the Business and (c) none of the Subsidiaries own, or have any interest in, or Contract involving, the Business, the Acquired Assets or the Assumed Liabilities, or own or have possession or control of any other asset that is used in the Business.

3.2 Authorization of Agreement. The execution, delivery, and performance of this Agreement by Seller, and the consummation by Seller of the transactions contemplated hereby, subject to entry of the Sale Order, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by Seller. Subject to entry of the Sale Order, this Agreement has been duly and validly executed and delivered by Seller, and, assuming this Agreement is a valid and binding obligation of Purchaser, this Agreement constitutes a valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except as limited by the application of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other Laws relating to or affecting creditors' rights or general principles of equity (whether considered in a proceeding in equity or at law) (the "Enforceability Exceptions").

¹ SM Note: Part 4, Question 15 of the Schedules of Assets does not list Skyview Concrete LLC. Please confirm.

3.3 Conflicts; Consents.

(a) Except as set forth on Schedule 3.3(a) and assuming that (y) the Sale Order is entered, and (z) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 3.3(b) are made, given or obtained (as applicable), the execution, delivery and performance by Seller of this Agreement and the consummation by Seller of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of the Company; (ii) violate any Law applicable to the Company, the Business or by which any property or asset of the Company is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of the Company under, any Contract; except, in each case, for any such violations, breaches, defaults or other occurrences that are not material to any of the Business, the Acquired Assets or Assumed Liabilities.

(b) Except as set forth on Schedule 3.3(b), Seller is not required to file, seek or obtain any notice, authorization, approval, Order, permit, or consent of or with any Person in connection with the execution, delivery and performance by Seller of this Agreement or the consummation by Seller of the transactions contemplated hereby, except (i) entry of the Sale Order, (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, is not material to the Business or any of the Acquired Assets, or (iii) as may be necessary as a result of any facts or circumstances relating to Purchaser or any of its Affiliates.

3.4 Title to Acquired Assets. The Company owns good title to the Acquired Assets, free and clear of all Encumbrances, except for Permitted Encumbrances. Other than the owners of the personal property and intellectual property leased or licensed to Seller, no Persons other than Seller are engaged in the operation of, or hold rights, title and interest in, the Acquired Assets that are used or useful in the operation of the Business.

3.5 Permits; Compliance with Laws. Except as set forth on Schedule 3.5, the Company (a) is in compliance, in all material respects, with all applicable Laws with respect to the ownership and operation of the Acquired Assets, and during the prior two (2) years the Company has not received any written notice of any action or proceeding against it alleging any failure to comply in any material respect with any such Laws and (b) the Company and each of its Subsidiaries hold all licenses, franchises, permits, certificates, approvals and authorizations from Governmental Bodies necessary for the lawful ownership and operation of the Acquired Assets, all of which are set forth at Schedule 3.5 (collectively, "Permits"), except in each case as would not reasonably be expected to be material to any of the Acquired Assets. Seller is in compliance with the material terms of all the Permits, and all of the Permits are valid and in full force and effect, and no Action is pending or, to the Knowledge of Seller, threatened, the object of which is to revoke, limit or otherwise affect any Permit. Except as otherwise disclosed on Schedule 3.5, Seller is not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which it is a party, except where such default or violation would not be material to the ownership and operation of the Business. No investigation by any Governmental Body with respect to the Acquired Assets or Assumed Liabilities is pending or, to the Company's knowledge, threatened, and during the

prior two (2) years the Company has not received any written notice of any such investigation, except, in each case, for any such investigation that would not reasonably be expected to be material to any of the Acquired Assets.

3.6 Brokers. Except as set forth on Schedule 3.6, there is no investment banker, broker, finder or other such intermediary that has been retained by, or has been authorized to act on behalf of, the Company and is entitled to a fee or commission in connection with the transactions contemplated by this Agreement from the Company. Purchaser shall have no liability with respect to any such fee or commission.

3.7 Insurance. To Seller's Knowledge, Schedule 3.7 sets forth a true and complete list of all insurance policies (the "Existing Insurance Policies") maintained by the Seller applicable to the Acquired Assets, together with the insurer, the amount of the coverage, the type of insurance, the policy number and any pending Claims thereunder. The Seller is up-to-date in the payment of all premiums and other amounts payable under the Existing Insurance Policies to maintain the Existing Insurance Policies in full force and effect, and the Seller shall continue to make all such payments until Closing. To Seller's Knowledge, as of the date hereof all such policies are in full force and effect in all material respects and are sufficient for compliance by the Seller with all applicable Laws.

3.8 Contracts. Schedule 3.8 sets forth (a) a complete and accurate list of all material Contracts of the Seller and all Contracts of the Seller that are material to the ownership and/or operation of the Business or Acquired Assets or material to the Assumed Liabilities and that are still in effect. Except with respect to any default arising solely as a consequence of the Bankruptcy Case and any defaults occurring in the period prior to the commencement of the Bankruptcy Case which shall be cured in connection with the assumption and assignment of the Assigned Contracts and payment of the Cure Costs, each Assigned Contract is in full force and effect and no event has occurred which, with or without the giving of notice or lapse of time, or both, would constitute a default thereunder. Upon entry of the Sale Order, none of the Assigned Contracts requires the consent of any party to its assignment in connection with the transactions contemplated by this Agreement.

3.9 Intellectual Property.

(a) The Assigned Intellectual Property is all of the intellectual property used by the Sellers that is material to the ownership and operation of the Business and Acquired Assets in the Ordinary Course.

(b) There are no inquiries, investigations or Actions, and Seller has not received written notice from any third party: (i) alleging infringement by Seller, in the operation of the Business or ownership of the Acquired Assets, of intellectual property rights of any Person; or (ii) challenging or threatening to challenge Seller's right, title, or interest with respect to its ownership, use of, or continued use or right to preclude others from using any Assigned Intellectual Property as currently used, or the validity, enforceability or registrability of any such intellectual property.

3.10 Taxes. As at July 22, 2021, except as set forth in Schedule 3.10, there were no Encumbrances (other than Permitted Encumbrances) for Taxes upon the Acquired Assets.

3.11 Real Property. With respect to the Acquired Real Property, Seller has good and marketable fee simple title, free and clear of all Encumbrances, other than Permitted Encumbrances. On the Closing Date, Seller shall convey to Purchaser at the Closing good and marketable fee simple title to the Acquired Real Property, free and clear of all Encumbrances, other than Permitted Encumbrances. Seller has not leased or otherwise granted to any Person the right to use or occupy the Acquired Real Property or any portion thereof, and there are no Persons in possession or Person having the right to occupy or use any of the Acquired Real Property. Seller has no leases of any real property. The civic addresses of the parcels comprising the Acquired Real Property are: (i) 19202 E. Garland Avenue, Spokane Valley, Washington 99216, (ii) 19210 E. Garland Lane, Spokane Valley, Washington 99216, (iii) 19220 E. Garland Lane, Spokane Valley, Washington 99216.²

3.12 Status of Acquired Assets. To Sellers' knowledge, since the commencement of the Bankruptcy Case, no Equipment or other tangible personal property has been removed or transferred from the Business or otherwise sold, leased, assigned or transferred, other than as would not materially adversely affect the operation of the Acquired Assets or the Business. The Acquired Assets constitute all of the assets of every nature and kind whatsoever necessary for Purchaser to conduct and operate the Business immediately after the Closing the manner previously conducted by Seller.

3.13 Full Disclosure. There has been no event, transaction or information regarding the Business or Acquired Assets that has come to the Seller's Knowledge that has not been disclosed to the Buyer in writing that could reasonably be expected to have a Material Adverse Effect.

3.14 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (it being understood that Purchaser and the Purchaser Group have relied only on such express representations and warranties), Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that neither the Company nor any other Person on behalf of the Company makes, and neither Purchaser nor any member of the Purchaser Group has relied on, the accuracy or completeness of any express or implied representation or warranty with respect to the Company or any of its Subsidiaries, the Acquired Assets or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any projections, any confidential information memorandum or similar document, or in any diligence materials, including in any dataroom or datasite or elsewhere) to Purchaser or any of its Affiliates or Advisors on behalf of the Company or any of its Affiliates or Advisors. Without limiting the foregoing, neither the Company nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates

² SM Note: There are four parcels of land listed in the title commitment, but only three civic addresses listed. Please also confirm the ZIP Code of the main site as listed here, which is different than the ZIP Code listed at footnote #1.

or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors or any discussions with respect to any of the foregoing information.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Company as follows as of the date hereof.

4.1 Organization and Qualification. Each of the Purchaser and Guarantor (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby. The Purchaser is a wholly-owned Subsidiary of the Guarantor.

4.2 Authorization of Agreement. The execution, delivery and performance of this Agreement by each of the Purchaser and Guarantor, and the consummation by each of the Purchaser and Guarantor of the transactions contemplated hereby, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by Purchaser or Guarantor. This Agreement has been duly and validly executed and delivered by each of the Purchaser and Guarantor, and, assuming this Agreement is a valid and binding obligation of Seller, this Agreement constitutes a valid and binding obligation of each of the Purchaser and Guarantor, enforceable against each of the Purchaser and Guarantor in accordance with its terms, except as limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

(a) The execution, delivery and performance by each of the Purchaser and Guarantor of this Agreement and the consummation by each of the Purchaser and Guarantor of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of Purchaser or Guarantor, respectively; (ii) violate any Law applicable to Purchaser or Guarantor or by which any property or asset of Purchaser or Guarantor is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance on any property or asset of Purchaser or Guarantor under, Contract; except, in each case, for any such violations, breaches, defaults or other occurrences that

would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser or Guarantor to consummate the transactions contemplated hereby.

(b) Neither Purchaser nor Guarantor is required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser or Guarantor of this Agreement or the consummation by Purchaser or Guarantor of the transactions contemplated hereby, except where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser or Guarantor to consummate the transactions contemplated hereby.

4.4 Financing. Purchaser has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Closing Date Payment, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other transactions contemplated by this Agreement. Purchaser is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts and the related Assumed Liabilities.

4.5 Brokers. All of whose fees and expenses will be borne solely by Purchaser, there is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that is entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

4.6 No Litigation. There are no Actions pending or, to Purchaser's or Guarantor's knowledge, threatened against or affecting Purchaser or Guarantor that will adversely affect Purchaser's or Guarantor's performance under this Agreement or the consummation of the transactions contemplated by this Agreement.

4.7 No Additional Representations or Warranties. Except for the representations and warranties contained in this Article IV, Seller acknowledges that neither Purchaser nor Guarantor nor any other Person on behalf of Purchaser or Guarantor makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to Seller by Purchaser or Guarantor.

ARTICLE V

BANKRUPTCY COURT MATTERS

5.1 Bankruptcy Actions.

(a) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, the Company shall use reasonable best efforts to obtain entry by the Bankruptcy Court of the Sale Order.

(b) Purchaser shall promptly take all actions as are reasonably requested by the Company to assist in obtaining the Bankruptcy Court's entry of the Sale Order and any other Order

reasonably necessary in connection with the transactions contemplated by this Agreement as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such representatives of Purchaser and its Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code.

(c) Each of the Company and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the transactions contemplated by this Agreement and (ii) keep the other reasonably apprised of the status of material matters related to the transactions contemplated by this Agreement, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by Seller from the Bankruptcy Court or any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement. Seller will provide Purchaser with a reasonable opportunity to review and comment upon all motions, applications, petitions, schedules and supporting papers relating to the transactions contemplated by this Agreement prepared by Seller (including forms of Orders and notices to interested parties) prior to the filing thereof in the Bankruptcy Case.

(d) The Company’s obligations under this Agreement and in connection with the transactions contemplated hereby and thereby are subject to entry of and, to the extent entered, the Sale Order. Nothing in this Agreement shall require the Company to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders. From and after the date hereof, and subject to the terms herein, Seller shall not take any action that is reasonably likely to result in, or fail to take any action that could reasonably likely result in, the reversal, voiding, modification or staying of the Sale Order. Seller shall comply with all applicable notice and other requirements of the Bankruptcy Code, Bankruptcy Rules, and the terms of the Bidding Procedures Order in connection with the transactions contemplated herein.

5.2 Cure Costs. Subject to the entry of the Sale Order, Purchaser shall, on or prior to the Closing (or, in the case of any Contract that is to be assigned following the Closing, on or prior to the date of such assignment), pay the Cure Costs so that such Acquired Assets may be assumed by Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement.

5.3 Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Permitted Encumbrances), and (iii) the performance by Seller of its obligations under this Agreement; and (b) find (i) that Purchaser is a “good faith” buyer within the meaning of section 363(m) of the Bankruptcy Code not a successor to Seller, (ii) issue injunctive relief preventing any Person from taking action inconsistent with the Sale Order and the Purchaser’s use and operation of the Acquired Assets as provided in the Sale Order free and clear of all liens, claims, encumbrances and interests, and (iii) grant Purchaser the protections of section 363(m) of the Bankruptcy Code. Seller shall comply with all of its

obligations under the Sale Order (after its entry by the Bankruptcy Court). Seller shall use its reasonable best efforts to cause the Sale Order to become a final Order as soon as practicable after its entry.

5.4 Bidding Procedures Order. The terms of this Agreement shall be subject in all respects, including for the avoidance of doubt, with respect to any backup bidder requirements, to the Bidding Procedures Order. Seller shall comply with the terms and conditions of the Bidding Procedures Order, including the key dates and deadlines therein.

5.5 Break Fee. In the event that this Agreement is terminated pursuant to Section 8.1(i), contemporaneously with the closing of an Alternative Transaction underlying such termination, Seller shall pay to Purchaser a cash amount equal to three percent (3%) of the Purchase Price (as may be increased by another order of the Bankruptcy Court) (the “Break-Up Fee”) and the Expense Reimbursement (as defined in the Bidding Procedures Order) in a cash amount not to exceed one percent (1%) of the Purchase Price (as may be increased by another order of the Bankruptcy Court). Buyer shall be paid by Seller, in cash, the Break-Up Fee and Expense Reimbursement from the sale proceeds at closing on such Alternative Transaction notwithstanding anything contained herein to the contrary. No bidder other than the Purchaser shall be entitled to a Break-Up Fee or Expense Reimbursement. For the avoidance of doubt, and notwithstanding anything contained herein to the contrary, the amount of the Break-Up Fee and Expense Reimbursement, once triggered pursuant to the terms of this Agreement, shall act as a credit toward any Closing by the Purchaser as the high bidder or as the Backup Bidder (as defined in the Bidding Procedures Order). Seller and Purchaser agree that, in the event that Purchaser is not the Successful Bidder (as defined in the Bidding Procedures Order), and the Alternative Transaction with the Successful Bidder does not close, if and only if Buyer is the Backup Bidder, Purchaser shall promptly consummate the transactions set forth in this Agreement upon the terms and conditions as set forth herein, including the Purchase Price as the same may be modified by Buyer at the Auction (as defined in the Bidding Procedures Order).

5.6 Appeals. If an appeal is taken, or petition for certiorari or motion for rehearing or re-argument filed, or a stay pending appeal is requested from the Bidding Procedures Order, the Sale Order or any other Order in connection with the Bankruptcy Case, Seller will promptly notify Purchaser in writing of such appeal, petition, motion or stay request and Seller, with input from Purchaser, will take reasonable best efforts to defend against such appeal, petition, motion or stay request. Notwithstanding the foregoing, nothing in this Agreement precludes the parties from consummating the transactions contemplated by this Agreement if the Sale Order has been entered and has not been stayed and Buyer and Purchaser mutually waive in writing the condition to Closing that the Sale Order be a final Order.

ARTICLE VI COVENANTS AND AGREEMENTS

6.1 Conduct of Seller. Until the earlier of the termination of this Agreement and the Closing, except (w) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (x) as required by applicable Law, (y) as set forth on Schedule 6.1 or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall operate the Acquired Assets only in the Ordinary Course

consistent with past practice, shall use reasonable best efforts to preserve intact the Acquired Assets, reasonable wear and tear excepted, and as necessary to keep all of the Acquired Assets in substantially the same condition as at the date hereof, and shall not:

- (a) sell, assign, license, transfer, convey, or waive or release any right or claim relating to any of the Acquired Assets, lease, surrender, relinquish or otherwise dispose of any portion of the Acquired Assets;
- (b) increase the total number of employees working as part of the Acquired Assets by more than 5%, except for construction workers in the Ordinary Course consistent with past practice;
- (c) increase the compensation payable (whether through the payment of, or agreement to pay, bonus amounts or otherwise) to any employees; provided that the foregoing shall not apply to employees working as part of the Acquired Assets for an amount of up to an addition 5% of any such employee's compensation;
- (d) subject any portion of the Acquired Assets to any Encumbrance, except for Permitted Encumbrances;
- (e) incur any capital expenditures (other than for reasonably necessary repairs and Ordinary Course maintenance);
- (f) amend or modify in any respect or terminate any Assigned Contract;
- (g) take any action that could reasonably be expected to adversely affect the value of the Acquired Assets in any material respect;
- (h) sell, lease, remove from the Acquired Real Property, transfer, license or otherwise dispose of, abandon or permit to lapse, fail to take any material action necessary to maintain, enforce or protect, or permit or create any Encumbrance (other than Permitted Encumbrances) on any of the Acquired Assets; or
- (i) agree or commit to do any of the foregoing.

Nothing contained in this Agreement is intended to give Purchaser or its affiliates, directly or indirectly, the right to control or direct the business of Seller prior to the Closing.

6.2 Access to Information and Purchased Assets.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Article VIII), the Company will provide Purchaser and its Advisors with reasonable access in accordance with the Bidding Procedures Order and upon reasonable advance notice and during regular business hours to the Acquired Assets, including the Acquired Real Property, and the books and records (including the right to copies at Purchaser's expense) of the Company and its Subsidiaries with respect to the Business, the Acquired Assets and Assumed Liabilities, in order for Purchaser and its Advisors to access information regarding the Business, the Acquired Assets and Assumed Liabilities as Purchaser reasonably deems necessary in

connection with effectuating the transactions contemplated by this Agreement; provided that (i) such access does not unreasonably interfere with the normal operations of the Company and its Subsidiaries, (ii) such access will occur in such a manner as the Company reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement, (iii) such access is permitted in accordance with the Bidding Procedures Order and the Bankruptcy Case, (iv) all requests for access will be directed to Houlihan Lokey, Inc. or such other Person(s) as the Company may designate in writing from time to time and (v) nothing herein will require the Company to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would cause significant competitive harm to the Company or any of its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (B) would require the Company or any of its Subsidiaries to disclose any financial or proprietary information of or regarding the Affiliates of the Company or otherwise disclose information regarding the Affiliates of the Company that the Company deems to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws or the provisions of any agreement to which the Company or any of its Subsidiaries; provided that, in the event that the Company withholds access or information in reliance on the foregoing clause (C) or (D), the Company shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to Purchaser that such access or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law. In addition to the foregoing, Purchaser and its Advisors may conduct environmental assessments of Seller, the Business and the Acquired Real Property upon reasonable notice to Seller.

(b) The information provided pursuant to this Section 6.2 will be used solely for the purpose of effecting the transactions contemplated hereby, and will be governed by all the terms and conditions of the Confidentiality Agreement. Purchaser will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Advisors. The Company makes no representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and Purchaser may not rely on the accuracy of any such information, in each case, other than the Express Representations.

(c) Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, noteholder or other material business relation of the Company or its Subsidiaries prior to the Closing with respect to the Company, its Subsidiaries, their business or the transactions contemplated by this Agreement without the prior consent of the Company for each such contact (which shall not be unreasonably withheld, conditioned or delayed).

6.3 Regulatory Approvals.

(a) The Company will (i) make or cause to be made all filings and submissions required to be made by the Company under any applicable Laws for the consummation of the transactions contemplated by this Agreement, all of which are set forth on Schedule 6.3, (ii) cooperate with Purchaser in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with the foregoing and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with

such filings and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances in connection with such filings.

(b) Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of the Purchaser Group under any applicable Laws for the consummation of the transactions contemplated by this Agreement, (ii) cooperate with the Company in exchanging such information and providing such assistance as the Company may reasonably request in connection with all of the foregoing, and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable best efforts to take all actions necessary to obtain all of its required clearances.

(c) From the date hereof until Closing, Seller shall comply with all applicable Laws and Permits as same pertain to the Business or Acquired Assets.

6.4 Reasonable Efforts; Cooperation.

(a) Subject to the other terms of this Agreement provisions hereof, each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party and its Advisors in connection with any step required to be taken as a part of its obligations hereunder.

(b) The obligations of the Company pursuant to this Agreement, including this Section 6.4, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case) and each of Seller's obligations as a debtor-in-possession to comply with any order of the Bankruptcy Court (including the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

6.5 Notification of Certain Matters.

(a) The Company will promptly notify Purchaser of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body related to or in connection with the transactions contemplated by this Agreement; (iii) promptly upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause, any of the representations and warranties contained in Article III to be untrue or inaccurate such that the condition set forth in Section 7.2(a) not to be satisfied. If the subject matter of any such notification required by the previous sentence requires any change in the Schedules, the Company shall deliver to Purchaser prior to the Closing a supplement to such Schedule (the "Updated Schedules") with such change; provided that in no event will any Updated Schedule serve to amend, supplement or modify the Schedules for purposes of Section 7.2(a) or limit the remedies available to Purchaser under or with respect to this

Agreement; provided further that if the Closing occurs, the Updated Schedules will be considered and deemed to be part of the Schedules for all purposes under this Agreement, and each reference in this Agreement to a particular Schedule will mean such Schedule in, or as updated by, the Updated Schedules; and (iv) the occurrence of any fact or circumstance that could reasonably be expected to have a Material Adverse Effect.

(b) Purchaser will promptly notify the Company of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body related to or in connection with the transactions contemplated by this Agreement; (iii) any Actions relating to or involving or otherwise affecting Purchaser or its Affiliates that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.6 or that relate to the transactions contemplated by this Agreement; and (iv) any breach or inaccuracy of any representation or warranty contained in this Agreement at any time during the term hereof that could reasonably be expected to cause the conditions set forth in Article VII not to be satisfied; provided that the delivery of any notice pursuant to this Section 6.5(a) will not limit the remedies available to Seller under or with respect to this Agreement.

6.6 Further Assurances. From time to time, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement. From the date hereof until the Closing, each Party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy its closing conditions set forth in Article VII hereof.

6.7 Insurance Matters.

(a) Purchaser acknowledges that, upon Closing, all insurance coverage provided in relation to the Acquired Assets that is maintained by the Company or any of its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage with respect to the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies (the "Existing Insurance Policies"). From the date hereof until Closing, Seller shall cause the Existing Insurance Policies not to be cancelled or terminated or any other coverage thereunder to lapse, unless simultaneously with such terminations, cancellation or lapse, replacement policies underwritten by insurance companies providing the current coverage or insurance companies of nationally recognized standing providing coverage equal to or greater than the coverage under the cancelled, terminated or lapsed policies, and where possible, for substantially similar premiums, are in full force and effect.

(b) The Company hereby acknowledges and agrees that all Insurance Claim Proceeds (if any) shall belong to and be for the sole benefit of the Purchaser and the Company shall promptly assign and transfer all such Insurance Claim Proceeds to the Purchaser.

6.8 Receipt of Misdirected Assets; Misidentified assets. From and after the Closing, if Seller or any of its respective Affiliates receives any right, property or asset that is an Acquired Asset, Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by such Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to Seller, and such asset will be deemed the property of Seller held in trust by Purchaser for Seller until so transferred. From and after the Closing, if Purchaser and Seller discover that any asset previously deemed an Excluded Asset should have been included as an Acquired Asset, and both Purchaser and Seller agree as to this classification, Seller shall promptly transfer such asset to Purchaser. If Purchaser asserts an Excluded Asset should have been an Acquired Asset because such asset is necessary for the operation of the Business, but Seller disagrees, the Parties shall first attempt in good faith to resolve the dispute, after which the Parties will submit such dispute to the Bankruptcy Court to determine the proper classification of such asset.

6.9 Transfer of Governmental Authorizations.

(a) From and after the date hereof, Seller, on the one hand, and Purchaser, on the other hand, shall reasonably cooperate to transfer to Purchaser as of the Closing Date all Governmental Authorizations included in the Acquired Assets.

(b) In addition, at any time prior to the Closing Date, Purchaser may, at its sole discretion and at its sole expense, request for Seller to maintain in effect any Governmental Authorization for up to three (3) months after the Closing for the purposes of passing through the benefits of such Governmental Authorization to Purchaser, and (i) provided Purchaser timely pays any costs associated with such Governmental Authorization, including any costs referred to in clause (iii) below, Seller shall use commercially reasonable efforts to maintain in effect such Governmental Authorization, (ii) Seller and Purchaser shall use commercially reasonable efforts to agree on arrangements for the purposes of passing through the benefits of such Governmental Authorization to Purchaser, and (iii) any such arrangements described in the foregoing shall be at the sole expense of Purchaser.

6.10 Employees. At a time to be mutually agreed by the Parties that is prior to the Closing (and in any event, not later than three (3) days before the Closing), Purchaser shall provide written offers of employment to all of the employees of Seller listed on Schedule 6.10 (each a “Transferred Employee” and collectively, the “Transferred Employees”), effective as of and contingent upon the Closing, with remuneration and benefits that are reasonably similar in the aggregate to those of Sellers as of immediately prior to the Closing Date and consistent with the Guarantor's overall compensation practices. Purchaser shall provide a copy of such offer form to Seller in advance of circulation so that Seller can review and comment on it. Seller shall use reasonable best efforts to terminate, or cause to be terminated, the employment of each Transferred Employee, effective as of the Closing Date. Seller shall be solely responsible for any financial or other commitments or Liabilities related to the Transferred Employees up to and including the

Closing, including any and all claims or obligations for severance pay or other separation benefits with respect to Transferred Employees who decline an offer of employment made by Purchaser.

6.11 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification of the business, condition, operations, liabilities, and prospects of the Company with respect to the Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser and the Purchaser Group have relied solely on the results of the Purchaser Group's own independent investigation and verification and have not relied on, are not relying on, and will not rely on, Seller, any Subsidiary, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in any dataroom, any information presentation, or any projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other Seller Party, or any failure of any of the foregoing to disclose or contain any information, except for the representations and warranties made by Seller to Purchaser herein (as qualified by the Schedules) (the "Express Representations") (it being agreed that Purchaser and the Purchaser Group have relied only on the Express Representations). Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group may rely in connection with the transactions contemplated by this Agreement; and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (1) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in any dataroom, information presentation, projections, meetings, calls or correspondence with management of the Company and its Subsidiaries, any of the Seller Parties or any other Person on behalf of the Company, its Subsidiaries or any of the Seller Parties or any of their respective Affiliates or Advisors and (2) any other statement relating to the historical, current or future business, condition, results of operations, assets, liabilities, properties, contracts, and prospects of the Company or any of its Subsidiaries, or the quality, quantity or condition of the Company's or its Subsidiaries' assets, are, in each case, specifically disclaimed by the Company, on its behalf and on behalf of the Seller Parties, and Seller. Purchaser, on its own behalf and on behalf of the Purchaser Group: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that neither the Company, nor any other Person (including the Seller Parties), has made, is making or is authorized to make, and Purchaser, on its own behalf and on behalf of the Purchaser Group, hereby waive, all rights and claims it or they may have against any Seller Party with respect to the accuracy of, any omission of, or any misstatement with respect to, (A) any potentially material information regarding the Company, its Subsidiaries or any of their respective assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities) or operations and (B) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a

particular purpose, or condition of the Company's or its Subsidiaries' business, operations, assets, liabilities, prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Representations.

(b) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it will not assert, institute, or maintain, and will cause each member of the Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.11, including any such Action with respect to the distribution to Purchaser or any member of the Purchaser Group, or Purchaser's or any member of the Purchaser Group's use, of the information, statements, disclosures or materials in any information presentation, dataroom, or projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other Seller Party or any failure of any of the foregoing to disclose any information.

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that the covenants and agreements contained in this Section 6.11 (i) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for three (3) years; and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this Section 6.11, Seller would not enter into this Agreement.

6.12 Guarantor Guarantee.

(a) Guarantor hereby unconditionally and irrevocably guarantees to Seller the due and punctual payment and performance by Purchaser of Purchaser's obligations under this Agreement, including payment of the Purchase Price (subject to the terms and conditions hereof and thereof) (the "Guaranteed Obligations"). The foregoing sentence is an absolute, unconditional and continuing guaranty of the full and punctual discharge and performance of the Guaranteed Obligations. Should a default occur in the discharge or performance of all or any portion of the Guaranteed Obligations when due, the obligations of Guarantor hereunder shall become immediately due and payable.

(b) This guarantee shall not be impaired whatsoever by any modification or other alteration of any of the Guaranteed Obligations, including the modification or amendment (whether material or otherwise) of any obligation of Purchaser or Seller under this Agreement. The liability of Guarantor is direct and unconditional and may be enforced without requiring Purchaser first to resort to any other right, remedy or security.

6.13 Sellers' Obligations. Each of the Sellers hereby acknowledges and agrees that their representations and warranties made hereunder are made jointly and severally, and their respective covenants and obligations under this Agreement are joint and several responsibilities. Each of the Sellers agrees to be jointly and severally responsible for any damage, loss, cost and expense for which either of them may be responsible hereunder, including as contemplated by Section 8.2 herein.

ARTICLE VII

CONDITIONS TO CLOSING

7.1 Conditions Precedent to the Obligations of Purchaser and Seller. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by each of Seller and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) No court or other Governmental Body has issued, enacted, entered, promulgated or enforced any Law or Order (that is final and non-appealable and that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement; and

(b) the Bankruptcy Court shall have entered the Sale Order, and the Sale Order must be a final Order.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) the representations and warranties made by Seller herein shall be true and correct as of the Closing Date in all material respects (other than those already qualified by “materiality” or “Material Adverse Effect” and words of similar import set forth therein which shall be true and correct in all respects), as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct only as of such date);

(b) Seller shall have performed in all material respects all of the covenants and agreements required to be performed by Seller under this Agreement at or prior to the Closing;

(c) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4;

(d) since the date of this Agreement there shall not have occurred any Material Adverse Effect; and

(e) Seller shall have performed all actions, if any, required of Seller pursuant to this Agreement to convey title to the Acquired Property subject only to the Permitted Encumbrances, and First American Title Insurance Company, or another licensed title company or companies reasonably satisfactory to Purchaser (the “Title Company”) shall be irrevocably committed to issue to Purchaser an American Land Title Association Owner’s Form Policy Title Policy, insuring Purchaser’s fee simple title to the Acquired Real Property, subject only to the Permitted Encumbrances, which policy shall be consistent, in all material respects, with the Title Commitment (the “Title Policy”), provided the exception noted thereon at paragraph 26 of Schedule B, Part II with respect to Wolff Principal Holdings, LP shall be deleted therefrom, subject

to Purchaser's payment of any required premiums and fees to the Title Company and delivery of such documentation by Purchaser as required by the Title Company in order to issue to Purchaser the Title Policy (the "Title Condition"), provided that in the event Title Company shall be unable or unwilling to perform the Title Condition notwithstanding Seller's and Purchaser's fulfillment of the foregoing requirements, Seller may select a replacement title insurer, which shall be a nationally recognized title insurance company reasonably acceptable to Purchaser, to perform the Title Condition.

7.3 Conditions Precedent to the Obligations of the Company. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects (other than those already qualified by materiality or similar qualification contained therein, which shall be true in all respects), in each case as of the date hereof and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby;

(b) Purchaser shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 2.5.

ARTICLE VIII

TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of the Company and Purchaser;

(b) by written notice of either Purchaser or the Company, upon the issuance by any Governmental Body of an Order restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or declaring unlawful the transactions contemplated by this Agreement, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;

(c) by written notice of either Purchaser or the Company, if the Closing shall not have occurred on or before August 12, 2021 (the “Outside Date”); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of such Party;

(d) by written notice from the Company to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied, including a breach of Purchaser’s obligation to consummate the Closing; provided that: (i) if such breach is curable by Purchaser then the Company may not terminate this Agreement under this Section 8.1(d) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) ten (10) days after the Company notifies Purchaser of such breach, and (ii) the right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to the Company at any time the Company is in material breach of any covenant, representation or warranty hereunder;

(e) by written notice from Purchaser to the Company, upon a breach of any covenant or agreement on the part of Seller, or if any representation or warranty of Seller will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied, including a breach of Seller’s obligation to consummate the Closing; provided that (i) if such breach is curable by Seller then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) thirty (30) days after Purchaser notifies the Company of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to Purchaser at any time that Purchaser is in material breach of, any covenant, representation or warranty hereunder;

(f) by written notice from the Company to Purchaser, if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived in writing by Purchaser and Purchaser fails to complete the Closing at the time required by Section 2.3;

(g) by written notice from the Purchaser to Seller, if all of the conditions set forth in Sections 7.1 and 7.3 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Seller fails to complete the Closing at the time required by Section 2.3;

(h) by Purchaser if (x) the Bankruptcy Case is dismissed or converted into a case under chapter 7 of the Bankruptcy Code or (y) an examiner with expanded powers that affect the Business, Purchased Assets or Assumed Liabilities or prevent the Closing from occurring or a trustee is appointed in the Bankruptcy Case; or

(i) by written notice of either Purchaser or the Company, if Seller enters into an Alternative Transaction, the Bankruptcy Court approves an Alternative Transaction, or automatically if an Alternative Transaction is consummated; provided that Seller shall enter into

or consummate an Alternative Transaction and/or seek Bankruptcy Court approval thereof, as applicable, if in accordance with the Bidding Procedures Order and if Seller reasonably determines in good faith, after consultation with its professionals, through the date of the Auction (if held), that the Alternative Transaction is in the best interests of Seller's bankruptcy estates and that the failure to enter into or consummate an Alternative Transaction and/or seek Bankruptcy Court approval thereof, as applicable, could reasonably be expected to violate the fiduciary duties of Seller's directors and officers (or equivalent with respect to entities that are not corporations) under applicable Law; and further provided that any termination pursuant to this Section 8.1(i) is subject to Purchaser's right to payment of the Break-Up fee and Expense Reimbursement in accordance with Section 5.6 and a refund of the Deposit in accordance with Section 2.2.

8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become void and there shall be no liability on the part of any Party or any of its partners, officers, directors or shareholders; provided that Section 1.1, Section 2.2(b), Section 2.2(c), Section 5.6, this Section 8.2 and Article X shall survive any such termination; provided further that no termination will relieve any Party from any liability for damages (including damages based on the loss of the economic benefits of the transactions contemplated by this Agreement, including the Purchase Price, to Seller), losses, costs, or expenses (including reasonable legal fees and expenses) resulting from any breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by a party to consummate the Closing if and when it is obligated to do so hereunder).

ARTICLE IX

TAXES

9.1 Transfer Taxes. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use, or other Taxes and recording charges payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne and timely paid by Purchaser only to the extent not exempt under the Bankruptcy Code, as applicable to the transfer of the Acquired Assets pursuant to this Agreement, and Purchaser shall timely file all Tax Returns related to any Transfer Taxes. Seller and Purchaser shall use commercially reasonable efforts and cooperate in good faith to exempt all such transactions from any Transfer Taxes, including pursuant to section 1146(a) of the Bankruptcy Code.

9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local income Tax purposes, Purchaser, Seller, and their respective Affiliates shall allocate the Purchase Price (and any Assumed Liabilities treated as part of the Purchase Price for applicable income Tax purposes) among the Acquired Assets in accordance with the methodology set forth in Schedule 9.2 (the "Allocation Methodology"). Within ninety (90) days following Closing, Purchaser shall provide a proposed allocation to Seller setting forth the allocation of the Purchase Price (and other amounts treated as purchase price for U.S. federal income Tax purposes) among the Acquired Assets in accordance with the Allocation Methodology (the "Allocation"). If Seller delivers a written objection within thirty (30) days after receipt of the draft Allocation proposed

by Purchaser, then Purchaser and Seller shall negotiate in good faith to resolve any such objection, and, if Seller and Purchaser cannot resolve such dispute within thirty (30) days of Purchaser's receipt of Seller's objection, then a nationally recognized accounting firm mutually acceptable to Purchaser and Seller, acting reasonably, shall resolve such dispute and the resolution of such dispute shall be final and binding on the Parties. The Parties and their respective Affiliates shall file all Tax Returns in accordance with such Allocation (as finally determined under this Section 9.2) and not take any Tax-related action inconsistent with the Allocation, in each case, unless otherwise required by a "determination" within the meaning of Section 1313(a) of the Code.

9.3 Cooperation. Purchaser and Seller shall reasonably cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Action, audit, litigation, or other proceeding with respect to Taxes.

9.4 Allocation of Tax Liability. For all purposes under this Agreement, in the case of any Straddle Period, the portion of Taxes (or any Tax refund and amount credited against any Tax) that are allocable to the portion of the Straddle Period ending on the Closing Date will be (i) in the case of property Taxes and other Taxes imposed on a periodic basis without regard to income, gross receipts or sales, deemed to be the amount of such Taxes (or Tax refund or amount credited against Tax) for such entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of such Straddle Period ending on the end of the Closing Date and the denominator of which is the number of calendar days in such entire Straddle Period, and (ii) in the case of all other Taxes, determined as though the taxable year of the Company terminated at the end of the Closing Date.

9.5 Transferred Employees. Purchaser and Seller hereby agree to follow the alternate procedure for United States employment tax withholding as provided in Section 5 of Rev. Proc. 2004-53, 2004-34 I.R.B. 320. Accordingly, Seller shall have no United States employment tax reporting responsibilities, and Purchaser or its Affiliate, as the successor employer to Seller, shall have full United States employment tax reporting responsibilities, for any transferred employees subject to United States employment taxes following the close of business on the Closing Date. In addition, Purchaser and Seller hereby agree to adopt the "alternative procedure" of Revenue Procedure 2004-53 for purposes of filing IRS Forms W-4 (Employee's Withholding Allowance Certificate) and W-5 (Earned Income Credit Advance Payment Certificate). This Section 9.5 shall survive the Closing Date.

ARTICLE X

MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and

agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for twenty (20) years following the Closing Date, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and the Seller Parties acknowledge and agree, on their own behalf and on behalf of the Purchaser Group or the Seller Parties, as the case may be, that the agreements contained in this Section 10.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for twenty (20) years; and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this Section 10.1, none of the Parties would enter into this Agreement.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein (including, for the avoidance of doubt, Section 5.6 and Section 8.2), all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that all Transfer Taxes will be allocated pursuant to Section 9.1.

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail, if transmitted prior to 5:00PM local time of the recipient on a Business Day, otherwise on the next succeeding Business Day, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser and/or Guarantor:

Mercer International Inc.
Suite 1120, 700 West Pender Street
Vancouver, B.C. V6C 1G8
Attention: Brian Merwin, Vice President Corporate Development
Email: brian.merwin@mercerint.com

with a copy to (which shall not constitute notice):

Sangra Moller LLP
1000 Cathedral Place
925 West Georgia Street
Vancouver, B.C. V6C 3L2
Attention: Harjit Sangra
Email: hsangra@sangramoller.com

with a copy to (which shall not constitute notice):

Haynes and Boone, LLP
1221 McKinney Street
Suite 4000
Houston, TX 77010
Attention: Patrick L. Hughes
Email: patrick.hughes@haynesboone.com

Notices to Seller:

Katerra Inc.
9305 E. Via de Ventura, Suite 200
Scottsdale, AZ 85258
Attention: Marc Liebman
Email: marc.liebman@alvarezandmarsal.com

with a copy to (which shall not constitute notice):

Kirkland & Ellis LLP
601 Lexington Avenue
New York, NY 10022
Attention: Joshua A. Sussberg, P.C.
Christine A Okike
Email: joshua.sussberg@kirkland.com
christine.okike@kirkland.com

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attention: Joshua M. Altman
Dan Latona
Email: josh.altman@kirkland.com
dan.latona@kirkland.com

Kirkland & Ellis LLP
3330 Hillview Avenue
Palo Alto, CA 94304
Attention: Rodin M. Hai-Jew, P.C.
Katya Boyko
Neil Datar
Email: rodin.hai-jew@kirkland.com
katya.boyko@kirkland.com
neil.datar@kirkland.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and Seller and shall inure to the benefit of and be so binding on the Parties and their respective

successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case; provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and the Company, and any attempted assignment or delegation without such prior written consent shall be null and void.

10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and the Company or (b) waived only in a writing executed by the Person against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

10.6 Third Party Beneficiaries. Except for the Seller Parties, which are intended third party beneficiaries of this Agreement and shall be entitled to enforce the terms of this Agreement as if a direct party hereto, and except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party or any Subsidiary of Seller will have any liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; however, each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules, and any disclosure in the Disclosure Statement will be deemed a disclosure against any representation or warranty set forth in this Agreement, in each case to the

extent that the disclosure made is reasonably apparent to be applicable to such other section of the Schedules and such other representations or warranties set forth in this Agreement. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course or consistent with past practice, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules, Updated Schedules, or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Schedules or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the transactions contemplated by this Agreement. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise,

this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Seller nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Seller pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any action, in each case in accordance with Section 10.12, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (y) for the period during which such action is pending, plus ten (10) Business Days or (z) by such other time period established by the court presiding over such action, as the case may be. In no event will this Section 10.12 be used, alone or together with any other provision of this Agreement, to require Seller to remedy any breach of any representation or warranty of Seller made herein.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) in the event the Bankruptcy Case is closed, or if the Bankruptcy Court is unwilling or unable to hear such Action, in the United States District Court for the Southern District of New York (or, if the United States District Court for the Southern District of New York declines to accept jurisdiction over a particular matter, any state or federal court within the State of New York) ((a) and (b), the “Chosen Courts”), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to this agreement to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of

the State of Texas applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Texas or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Texas to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.15 No Right of Set-Off. Other than with respect to the amounts contemplated by Section 5.5, Purchaser, on its own behalf and on behalf the Purchaser Group and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment, or similar rights that Purchaser, any member of the Purchaser Group or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

10.16 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one Party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a facsimile machine, .PDF or other electronic transmission, will be treated in all manner and respects as an original contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party or pursuant to any such contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such contract will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or contract was transmitted or

communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a contract and each such party forever waives any such defense.

10.17 Publicity. Neither the Company nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld, conditioned or delayed, unless, in the reasonable judgment of Purchaser or the Company, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange or quotation system on which Guarantor lists or has listed its securities, provided that the Party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof.

10.18 Bulk Sales Laws. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the “bulk sales,” “bulk transfers” or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement.

10.19 Fiduciary Obligations. Through the date of the Auction (if held), nothing in this Agreement, or any document related to the transactions contemplated hereby, will require Seller or any of their respective directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations. For the avoidance of doubt, through the date of the Auction (if held), Seller retains the right to pursue any transaction or restructuring strategy that, in Seller’s business judgment, will maximize the value of their estates.

10.20 Further Assurances. The Parties agree (a) to furnish upon request to each other such further information, (b) to execute, acknowledge and deliver to each other such other documents and (c) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

10.21 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement shall remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

10.22 Waiver of Rescission. Seller and Purchaser acknowledge that, following the Closing, the payment of money, as limited by the terms of this Agreement, shall be adequate compensation for Breach of any representation, warranty, covenant or agreement contained herein or for any other claim arising in connection with or with respect to the Contemplated Transactions. As the payment of money shall be adequate compensation, following Closing, Seller and Purchaser waive any right to rescind this Agreement or any of the transactions contemplated hereby.

ARTICLE XI

ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

11.1 Certain Definitions.

(a) “Action” means any action, claim (including a counterclaim, cross-claim, or defense), complaint, grievance, summons, suit, litigation, arbitration, mediation, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation, of any kind whatsoever, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body.

(b) “Advisors” means, with respect to any Person, the accountants, attorneys, consultants, advisors, investment bankers, or other representatives of such Person.

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

(d) “Alternative Transaction” means any transaction (or series of transactions), whether direct or indirect, concerning a sale, merger, acquisition, issuance, financing, recapitalization, reorganization, liquidation or disposition, in each case, pursuant to which the Acquired Assets are to be sold, disposed of, leased or transferred to any Person other than Purchaser or any of its Affiliates or any plan of reorganization or liquidation that does not contemplate or that does not permit the sale of the Acquired Assets to Purchaser pursuant to this Agreement.

(e) “Bidding Procedures Order” means any order(s) of the Bankruptcy Court approving the *Debtors’ Motion for Entry of an Order Approving Bidding Procedures for the Sale of the Debtors’ Assets* [Docket No. 30] and the Bidding Procedures attached to the Bidding Procedures Order as Exhibit 1.

(f) “Business” means the business carried on by Kattera LLC prior to the Bankruptcy Case, being the ownership and operation of a cross-laminated timber facility located at 19202 Garland Avenue, Spokane Valley, Washington 99027.

(g) “Business Day” means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(h) “Code” means the United States Internal Revenue Code of 1986, as amended.

(i) “Confidentiality Agreement” means that certain letter agreement, dated as of June 9, 2021, by and between the Company and the Purchaser.

(j) “Consent” means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(k) “Contract” means any contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license or other agreement that is binding upon a Person or its property.

(l) “Encumbrance” means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, judgments, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

(m) “Equipment” means any and all furniture, fixtures, equipment, machinery, rolling stock, construction materials, furnishings, accessions and other personal property owned by Seller or used in the Business, including all trade fixtures, supplies, including maintenance and repair supplies and spares (including grease, oils, chemicals and containers in which any of them are stored), furniture, desks, chairs, tables, tools, all computer and computer equipment, telephones, other office equipment and supplies, motor vehicles, replacement parts, inventory and all other fixed assets or tangible personal property of Seller, whether located on the Acquired Real Property or elsewhere.

(n) “Excluded Assets” means all (i) Tax refunds, Tax assets or other Tax attribute of Seller (or any Affiliate thereof), (ii) Contracts of Seller other than the Assigned Contracts, but specifically excluding those Contracts listed on Schedule 11.1(n) (such Contracts, the “Excluded Contracts”), (iii) any shares of stock or other equity interests held by Seller in any Subsidiary or any other Person, and (iv) all intellectual property owned by Seller other than the Assigned Intellectual Property.

(o) “GAAP” means United States generally accepted accounting principles as in effect from time to time.

(p) “Governmental Authorization” means any permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(q) “Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

(r) “Income Tax” means any federal, state, local, or foreign Tax based on or measured by reference to net income.

(s) “Insurance Claim Proceeds” means all claims for and any proceeds received or receivable in respect of the Business or the Acquired Assets under the Existing Insurance Policies with respect to any damage or loss occurring at any time from and after the date hereof to the Closing Date, including, for greater certainty any amounts paid after Closing and whether or not a claim has been filed or, if filed, accepted by the provider thereof prior to Closing.

(t) “knowledge” or “knowledge of the Company” or “knowledge of Seller” means the actual knowledge of Marc Liebman after reasonable inquiry into the relevant subject matter.

(u) “Law” means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

(v) “Liability” means, as to any Person, any debt, adverse claim, liability (including any liability that results from, relates to or arises out of tort or any other product liability claim), duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(w) “Material Adverse Effect” means any event, change, occurrence, or effect (each, an “Effect”) that, individually or in the aggregate with all other Effects, has had, or would reasonably be expected to have, a material adverse effect on the Acquired Assets and/or the Assumed Liabilities, taken as whole; provided that none of the following shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) Effects in, arising from or relating to general business or economic conditions affecting the industry in which the Company and its Subsidiaries operate, (ii) Effects in, arising from or relating to national or international political or social conditions, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States, (iii) Effects in, arising from or relating to financial, banking, or securities markets generally (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, contract or index and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated by this Agreement), (iv) Effects in, arising from or relating to changes in, GAAP, (v) Effects in, arising from or relating to changes in, Laws, (vi) Effects in, arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement in accordance with

the terms hereof or at the request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Purchaser, including the impact thereof on the relationships, contractual or otherwise, of the business of the Company or any of its Subsidiaries with employees, customers, lessors, suppliers, vendors or other commercial partners, (vii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (viii) the effect of any action taken by the Purchaser or its Affiliates with respect to the transactions completed by this Agreement or any breach by the Purchaser of this Agreement, or (ix) (A) the commencement or pendency of the Bankruptcy Case; (B) any objections in the Bankruptcy Court to (1) this Agreement or any of the transactions contemplated hereby or thereby or (2) the reorganization of Seller or (3) the assumption or rejection of any Assigned Contract; except in the case of the clauses (i), (ii), (iii), (iv) or (v), to the extent such Effects have a materially disproportionate impact on the Acquired Assets, as compared to other participants engaged in the industries and geographies in which Seller operate.

(x) “Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body, including any order entered by the Bankruptcy Court in the Bankruptcy Case.

(y) “Ordinary Course” means the ordinary and usual course of operations of the Acquired Assets taken as a whole taking into account the commencement of the Bankruptcy Case.

(z) “Permitted Encumbrances” means (i) Encumbrances for utilities and current Taxes not yet due and payable or being actively and timely contested in good faith or the non-payment of which is permitted or required under the Bankruptcy Code; (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments and any matters of public record against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets and, in the case of the Acquired Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of Acquired Real Property, including as it relates to the operation of the Acquired Assets, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Acquired Real Property, as applicable, (iv) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable, (v) matters which would be disclosed by an accurate survey or inspection of the Acquired Real Property; (vi) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion, (vii) any Encumbrances set forth on Schedule 11.1(z), and (viii) any Encumbrances that are removed or released by operation of the Sale Order on or prior to the Closing Date.

(aa) “Person” means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, estate, Governmental Body or other entity or group.

(bb) “Purchaser Group” means Purchaser, any Affiliate of Purchaser and each of their respective former, current or future Affiliates, officers, directors, employees, agents, successors or permitted assigns.

(cc) “Real and Personal Property Tax Adjustment” means, with respect to the applicable Straddle Period, an amount equal *to the sum of* (x) any unpaid real or personal property Taxes of Seller attributable to or arising out of the conduct of the Acquired Assets that are attributable to the pre-Closing portion of the applicable Straddle Period, as determined in accordance with Section 9.4, and which (to the extent such Taxes for the entire Straddle Period is not known at the Closing) are based on the amount of such Taxes for the immediately preceding Tax period (that is not a Straddle Period) for which a final Tax amount is known (which, for the avoidance of doubt, shall be reflected as a positive number), *plus* (y) any prepayment, overpayment, or credit of real or personal property Taxes made by or relating to the Seller Parties for the Acquired Assets that are attributable to the post-Closing portion of the applicable Straddle Period, as determined in accordance with Section 9.4 (which, for the avoidance of doubt, shall be reflected as a negative number).

(dd) “Sale Order” means an order substantially in the form that incorporates the protections and terms provided herein and which in all events is otherwise reasonably acceptable to the Parties.

(ee) “Seller Parties” means Seller and its Subsidiaries and each of their respective former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(ff) “Straddle Period” means any taxable period that includes (but does not end on) the Closing Date.

(gg) “Subsidiary” or “Subsidiaries” means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(hh) “Tax” or “Taxes” means any federal, state, local, foreign or other income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, ad valorem/personal property, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative minimum or estimated tax, including any interest, penalty or addition thereto.

(ii) “Tax Return” means any return, claim for refund, report, statement or information return relating to Taxes required to be filed with a Governmental Body, including any schedule or attachment thereto, and including any amendments thereof.

(jj) “Title Commitment” means the commitment for title insurance issued by First American Title Insurance Company dated June 22, 2021 under File No: NCS-1072981-CHI2.

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11.3 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP consistently applied. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control.

(b) The terms “hereof,” “herein” and “hereunder” and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” Where the context permits, the use of the term “or” will be equivalent to the use of the term “and/or.”

(d) The words “to the extent” shall mean “the degree by which” and not “if.”

(e) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(f) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(g) The word “will” will be construed to have the same meaning and effect as the word “shall”. The words “shall,” “will,” or “agree(s)” are mandatory, and “may” is permissive.

(h) All references to “\$” and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(i) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(j) Any reference to any agreement or contract will be a reference to such agreement or contract, as amended, modified, supplemented or waived in writing.

(k) Any reference to any particular Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Code section or Law, the reference to such Code section or Law means such Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

[Signature page(s) follow.]


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

SELLER:

KATERRA INC.

By: 
Name: Marc Liebman
Title: Chief Transformation Officer

KATERRA CONSTRUCTION LLC

By: 
Name: Marc Liebman
Title: Chief Transformation Officer

PURCHASER:

BLUE VARSITY LLC

By: _____
Name: _____
Title: _____

GUARANTOR:

MERCER INTERNATIONAL INC.

By: _____
Name: _____
Title: _____

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

SELLER:

KATERRA INC.


By: _____
Name: _____
Title: _____

KATERRA CONSTRUCTION LLC

By: _____
Name: _____
Title: _____


PURCHASER:

BLUE VARSITY LLC

By:  _____
Name: _____ David M. Gandossi
Title: _____ Authorized Signatory

GUARANTOR:

MERCER INTERNATIONAL INC.

By:  _____
Name: _____ David M. Gandossi
Title: _____ Chief Executive Officer and President