

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM506953

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
Garage Flooring LLC		10/10/2018	Limited Liability Company: COLORADO
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Garage Flooring LLC of Colorado		
<b>Street Address:</b>	632 W. Gunnison Avenue		
<b>City:</b>	Grand Junction		
<b>State/Country:</b>	COLORADO		
<b>Postal Code:</b>	81501		
<b>Entity Type:</b>	Limited Liability Company: COLORADO		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	5486238	TRUCONTAIN	
<b>Registration Number:</b>	4745440	THE GARAGE RACK	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	9709863401		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	(970) 986-3400		
<b>Email:</b>	jhowe@hfak.com		
<b>Correspondent Name:</b>	John T. Howe		
<b>Address Line 1:</b>	200 Grand Avenue		
<b>Address Line 2:</b>	Suite 400		
<b>Address Line 4:</b>	Grand Junction, COLORADO 81501		
<b>NAME OF SUBMITTER:</b>	John T. Howe		
<b>SIGNATURE:</b>	/John T. Howe/		
<b>DATE SIGNED:</b>	01/23/2019		
<b>Total Attachments: 62</b>			
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EXECUTION VERSION

ASSIGNMENT  
(Trademarks)

WHEREAS, Berkeley Research Group, LLC, a Delaware limited liability company, having a principal place of business at 201 S. Main Street, Suite 450, Salt Lake City, Utah 84111 ("Receiver"), is the duly appointed receiver over the property of Better Life Technology, L.L.C., a Kansas limited liability company ("BLT"), Garage Flooring LLC, a Colorado limited liability company ("GF" or "Assignor"), and Better Life Disc, Inc., a Kansas corporation ("BLDI"), pursuant to that certain Order Appointing Receiver entered on or about August 30, 2018 ("Receivership Order") in the pending case styled Opus Bank v. Better Life Technology, L.L.C., et al., Case No. 18-CV-4721 ("Receivership Case") in the District Court of Johnson County, Kansas ("District Court"); and

WHEREAS, on or about October 5, 2018, the District Court entered its Order and Decree Authorizing Sale of Receivership Property ("Sale Order") pursuant to which the District Court approved an Asset Purchase Agreement dated as of September 17, 2018 ("APA") between the Receiver, in its capacity as receiver for, among other things, the assets of GF, and Garage Flooring LLC of Colorado, a Colorado limited liability company ("GFLLC" or "Assignee"); and

WHEREAS to the fullest extent authorized pursuant to the Receivership Order and the Sale Order, and on behalf of GF, the Receiver wishes to assign and convey to GFLLC all right, title and interest in and to the Marks identified in Schedule A hereto; and

WHEREAS, The Marks are Receivership Assets as defined under the AP Agreement (as herein defined) pursuant to that certain Receivership Order; and

WHEREAS, Garage Flooring LLC of Colorado, a Colorado limited liability company ("*Assignee*"), having a principal place of business at 632 W. Gunnison Avenue, Grand Junction, Colorado 81501, pursuant to, and in accordance with, the APA (unless otherwise defined herein, terms defined in the AP Agreement are used herein as therein defined); and additionally in accordance with the Sale Order, shall acquire the Marks from Assignor and Assignor shall convey the Marks to Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and consistent with the Receivership Order, the Sale Order, and the APA, Assignor does hereby assign unto the said Assignee all right, title and interest in and to the said Marks, together with the goodwill of the business symbolized by the Marks, and the right to recover for past infringements thereof. Assignor agrees to execute all documents and assignments and to perform such other acts as Assignee may reasonably request to have such Marks transferred to it or its Assignee and to secure to it the rights hereby conveyed.

[SIGNATURE PAGES FOLLOW]

ASSIGNOR:

BERKELEY RESEARCH GROUP, LLC,  
COURT-APPOINTED RECEIVER FOR  
BETTER LIFE TECHNOLOGY, L.L.C.,  
GARAGE FLOORING, LLC AND  
BETTER LIFE DISC, INC. AND NOT  
INDIVIDUALLY

Date: Oct. 10, 2018

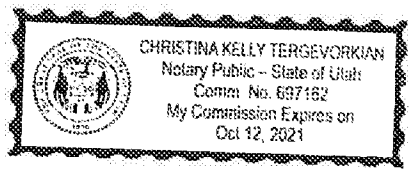
By *Paul N. Shields*  
PAUL N. SHIELDS  
Title: Managing Director *ps*

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

On this 10 day of October, 2018, before me personally appeared PAUL N. SHIELDS of BERKELEY RESEARCH GROUP, LLC, to me known to be the person described in, and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same for the uses and purposes therein set forth.

*Christina Tergevorkian*  
Notary Public

My Appointment Expires: October 12, 2021



ASSIGNEE:

GARAGE FLOORING LLC OF COLORADO

Date: 10/10/18

By [Signature]  
JUSTIN KRAUSS  
Title: Manager

STATE OF COLORADO           )  
  ) ss.  
COUNTY OF MESA             )

On this 10<sup>th</sup> day of October, 2018, before me personally appeared JUSTIN KRAUSS of GARAGE FLOORING LLC OF COLORADO, to me known to be the person described in, and who executed the foregoing instrument, and who duly acknowledged to me that he executed the same for the uses and purposes therein set forth.

[Signature]  
Notary Public

My Appointment Expires: 4/2/2021

SANDRA S. FORSGREN  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID #20014010289  
My Commission Expires April 2, 2021

SCHEDULE A  
MARKS

MARK	Country	Application No.	Filing Date	Registration No.	Registration Date
1. TRUCONTAIN	USA	87667977	11/1/2017	5486238	6/5/2018
2. THE GARAGE RACK	USA	86441002	11/31/2014	4745440	5/26/2013

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
TENTH JUDICIAL CIRCUIT**

Opus Bank, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 Better Life Technology, L.L.C., Garage )  
 Flooring LLC, and Better Life Disc, Inc., )  
 )  
 Defendants. )  
 )  
 )

Case No. 18-CV-04721  
Division 14

**ORDER APPOINTING RECEIVER**

This matter came before the Court on the Motion for Appointment of Receiver filed by Opus Bank (“Opus”). The Court having reviewed the records and files herein, including but not limited to the above-described Motion, the supporting petition, and other matters of record, having heard argument of counsel and good cause having been shown, the Court finds that it has jurisdiction over the parties and the subject matter; the statutory prerequisites for the appointment of a receiver have been met; and that equity will be served by the appointment of a receiver. The Court further finds that Berkeley Research Group, LLC is qualified to serve as a receiver, and has signed the necessary Oath required by the statute.

Therefore, it is by the Court

HEREBY ORDERED as follows:

**APPOINTMENT OF RECEIVER**

1. Berkeley Research Group, LLC (“Receiver” or “BRG”), with Paul N. Shields as its agent, is hereby immediately appointed as receiver in this action over all property of Defendants Better Life Technology, L.L.C., Garage Flooring LLC, and Better Life Disc, Inc. (“Borrowers”)



as more specifically described below (the “Receivership Estate”), pursuant to the agreement of the parties set forth in Section 7.4 of the Agreement, the Borrowers’ Consent to Appointment of Receiver, K.S.A. § 60-1301, and this Order.

2. The appointment of the Receiver as the receiver is effective as of the date of this order.

3. Receiver, as an officer of this Court, shall immediately have and take possession, custody and control of all “Collateral” securing the obligations of Borrowers to Opus under the Loan Documents, as all are identified in the Petition, and as identified in greater detail below.

4. All property of the Borrowers is property of the Receivership Estate and is subject to the jurisdiction of this Court.

**TURN OVER AND COOPERATION**

5. Borrowers and any other party with actual or constructive notice of this Receivership Order who are subject to the jurisdiction of this Court, including, without limitation, the Borrowers, the Borrowers’ managers, officers, directors, employees, agents, representatives, attorneys, and consultants, and all persons or entities acting for or in concert with them, shall forthwith deliver to the Receiver, and Receiver shall immediately have and take possession, custody, and control of all of the following that are in the Borrowers’ possession or under their control with respect to the Receivership Estate, with the exception of any collateral held, controlled, or in the possession of Opus:

a. All collateral that secures the obligations of the Borrowers under the Loan Documents, as all are identified in the Petition including, without limitation, all personal and fixture property of every kind and nature including without limitation all goods

(including fixtures, inventory, equipment and any accessions thereto), instruments (including promissory notes), documents, accounts (including all receivables), chattel paper (whether tangible or electronic), deposit accounts, letter-of-credit rights (whether or not the letter of credit is evidenced by a writing), commercial tort claims, securities and all other investment property, supporting obligations, any other contract rights or rights to the payment of money, insurance claims and proceeds, and all general intangibles (including without limitation all payment intangibles, intellectual properties, licenses, patents, patent applications, registered copyrights, unregistered copyrights, trademarks, and trademark applications) (together, the “Collateral”).

b. All property of the Receivership Estate, including but not limited to the rents, income, profits and proceeds therefrom, and all other property incidental thereto or that is or may be necessary or useful to allow and assist the Receiver in collecting the Receivership Estate, including, but not limited to, all mail and other correspondence, all post office boxes, all keys to all locks, all codes to security systems, and the contracts, records, books of account, ledgers, files, and all business records for the Borrowers and the Receivership Estate or the income, profits or proceeds thereof, wherever located and whatever mode maintained (including, without limitation, information contained on computers and any and all software relating thereto as well as all banking records, statements, and canceled checks);

c. All documents which constitute or pertain to all contracts, leases, subleases, royalty payments, assignments, insurance policies, liens, security interests, licenses, permits or governmental approvals, or other agreements of any kind whatsoever,

whether currently in effect or lapsed, which relate to the Borrowers, to the extent such documents are related to the Receivership Estate, or to the Receivership Estate or any interest therein, or to the income, profits or proceeds therefrom;

d. All depository and financial accounts and all account numbers of accounts in which Collateral or proceeds of Collateral are held;

e. All fixtures, furnishings, and other personal property in which Opus holds a security interest;

f. All financial records with respect to the operation of the Receivership Estate;

g. All business records with respect to the operation of the Receivership Estate; and

h. Any other document or asset of the Receivership Estate that the Receiver may request in the performance of its duties pursuant to this Receivership Order.

Notwithstanding the foregoing or any other provision in this Order, the Receiver and Borrowers (or, to the extent applicable, the Borrowers' third party payroll provider) will coordinate to pay the Borrowers' pre-receivership employee compensation (which shall include the date upon which this Order is entered), benefits, and withholding taxes, including retirement related benefits such as 401K contributions, which remain unpaid as of the date of this Order, up to the amount of \$185,000, and, for the avoidance of doubt, such payment(s) are authorized and directed under this Order. Prior to making such payments, the Borrowers and Receiver shall consult with Opus as to the timing and ultimate amount of such payments.

6. If Borrowers or any other parties with actual or constructive notice of this Receivership Order who are subject to the jurisdiction of this Court, including, without limitation, the Borrowers' managers, officers, directors, employees, agents, representatives, attorneys and consultants, and all persons or entities acting for or in concert with them, shall fail to deliver any of the above, the Receiver shall be entitled to file a motion to compel such delivery with the Court, provided that, unless the circumstances warrant otherwise, the Receiver shall provide written notice to the party of its intent to file such motion at least three (3) days prior to the filing of the motion.

7. Except with respect to Opus, any bank, brokerage firm, mutual fund, or other financial institution or any other person, partnership, corporation, or other entity maintaining or having custody or control of: any brokerage or depository accounts or other assets of the Receivership Estate; or, accounts or assets under the direct or indirect control of the Borrowers who receive actual notice of this Order, shall:

- a. freeze such accounts, funds or assets;
- b. within five (5) business days of receipt of such notice, file with the Court and serve on the Receiver a certified statement setting forth, with respect to each such account or other assets, the balance in the account or the description of the assets as of the close of business on the date of the receipt of the notice;
- c. promptly cooperate with the Receiver to determine whether and to what extent any accounts, funds, or other assets are actually assets or proceeds of assets of the Receivership Estate; and

d. provide to the Receiver records of such funds, accounts, and assets and tender said funds and/or the assets to the Receiver. To the extent that there are assets about which a determination of ownership cannot be made, they shall be turned over to the Receiver to be held in escrow pending a determination of the ownership of such assets.

### **POWERS AND DUTIES OF THE RECEIVER**

8. The Receiver shall have all powers, duties, and authority as are provided by law to take possession of, use, operate, manage, and control the Collateral, to collect and receive any rents, profits, proceeds, and other income from the Collateral, to protect preserve, maintain and improve the Collateral, and to incur expenses that are necessary and appropriate toward those ends. Without limiting the foregoing, the Receiver's powers and duties shall specifically include the right and obligation, as the case may be:

a. to investigate the nature and extent of the Receivership Estate, and to make written reports to the Court and to the parties related thereto, including Opus, when deemed necessary by the Receiver, when requested by Opus, or when ordered by the Court;

b. to enter upon the premises of the Borrowers and gain access to the Collateral, and take possession, custody, and control of all property of the Receivership Estate, and to operate the same so as to preserve and maximize the value of the assets and the business;

c. to take possession of and/or obtain copies of all business records pertaining to the Collateral, including but not limited to computer records, ledgers,

financial statements, financial reports, bank records, statements, budgets, personnel records, sales records, and any other record required to be turned over pursuant to this Order in whatever form and however stored;

d. to operate, manage, and control the Collateral, including without limitation the power to enter into contracts and leases that the Receiver in its business judgment reasonably believes necessary for the operation and management of the Collateral;

c. to seize any and all funds or other assets which constitute income, proceeds, or profits of the Receivership Estate, including any bank accounts, other cash accounts or cash equivalents, and lock box funds, and to change the signatory authority on such accounts;

f. to demand an inventory regarding the identity of all depository and financial accounts and all account numbers in which Collateral or proceeds of Collateral are held;

g. to demand, collect, and receive any rents, income profits, or proceeds of the Collateral and any part thereof from any third person;

h. to use Borrowers' tax identification numbers and any other similar numbers used by Borrowers with the state, local, and federal taxing authorities for the preservation, protection, maintenance, operation, management, and control of the Collateral; *provided however*, Receiver shall be under no obligation to prepare, complete, or file tax returns of any kind on behalf of Borrowers.

i. to prepare and execute any and all documents and to perform any and all acts that are necessary to fulfilling Receiver's duties, including preserving, protecting, maintaining, operating, managing, and controlling the Collateral;

j. to present for payment any checks, money orders, or other forms of payment made payable to any the Borrowers, to the extent such payment is property of the Receivership Estate, which constitute profits, income, or proceeds of any of the Receivership Estate, endorse the same and collect the proceeds thereof, such proceeds to be held, used, and maintained as elsewhere provided herein;

k. to open or utilize existing bank accounts for receivership funds relating to the Receivership Estate and the Receiver's administration of the Collateral, at Opus, unless Opus agrees or the Court orders otherwise;

l. the Receiver shall have no obligation to have any funds on deposit in amounts in excess of \$250,000 separately bonded or insured;

m. to operate, manage, control, and conduct the Collateral, the Receivership Estate, and its business and incur the reasonable expenses necessary in such operation, management, control, and conduct in the ordinary and usual course of business, and do all other things ordinarily done, and incur the risks and obligations ordinarily incurred by owners, managers, and operators of similar businesses, and no such risks or obligations so incurred shall be the personal risk or obligation of Receiver, but shall be a risk or obligation of the Receivership Estate;

n. to have access to and to evaluate all contracts or agreements to which any of the Borrowers is a party and which relate to or affect the Receivership Estate, and

upon either written consent of Opus or by order of the Court after notice and a hearing, (i) modify or terminate such contracts or agreements, and/or (ii) take whatever other action the Receiver reasonably deems necessary and prudent with regard to such contracts or agreements to preserve and protect the value of the Receivership Estate;

o. to collect income, proceeds, or other profits generated by or from the property of the Receivership Estate, and to deposit the same into one or more accounts controlled by the Receiver;

p. to open any mail directed to the Borrowers, to the extent such mail is related to the Receivership Estate, at the Borrowers' business addresses and to redirect mail of the Borrowers to the Receiver as the Receiver, in its business judgment deems necessary;

q. to take any and all other actions with respect to the Borrowers, to the extent such actions are related to the administration of the Receivership Estate, and the Receivership Estate, including their management, employees, assets, vendors, creditors, debtors, rents, income and profits, as the Receiver reasonably deems necessary and prudent to preserve and protect the Receivership Estate, and to maximize the income, profits, and value of the Receivership Estate, which may include, but is not limited to, the following:

i. expending any cash or other income generated from the Receivership Estate necessary to preserve and protect the property of the Receivership Estate, provided, however, that any cash collateral of Opus may only be used in accordance with the Approved Budget, as defined below;



- ii. paying for maintenance, operating expenses, and taxes;
- iii. prosecuting and defending, and when appropriate, settling legal actions in respect of the Receivership Estate;
- iv. upon consultation with Opus, employing those person(s) or firm(s) necessary to collect, manage, maintain, improve, process, prosecute, sell, or lease real or personal property, with the costs of such employment to be paid out of the Receivership Estate;
- v. upon consultation with Opus, employing attorneys, accountants, investigators, consultants, and any other persons or entities deemed necessary to assist the Receiver in the discharge of the Receiver's duties under this Receivership Order, (each of whom may hereinafter be referred to as a "Professional") with the costs of such services to be paid out of the Receivership Estate, so long as the fees charged for such services are usual and customary and do not exceed the amounts provided for in the Approved Budget. The Receiver's retention of the law firm, Spencer Fane LLP, is hereby approved by the Court;
- vi. purchasing merchandise, materials, supplies, and services as the Receiver deems necessary and advisable to assist it in performing its duties hereunder and to pay therefore the ordinary and usual rates and prices;
- vii. transferring, disposing of, selling and/or abandoning any tangible and intangible assets of the Receivership Estate, including licenses, accounts, inventory, equipment, real property, leasehold interests, trade secrets, trade processes, trademarks and other intellectual property, and business lines;

*provided, however,* that the Receiver shall be required to (a) consult with Opus as to the procedures that the Receiver intends to employ in marketing the property and conducting the disposition of the property, and (b) obtain Opus's written consent to the disposition of the property; *provided further, however,* that if an agreement cannot be reached related to the Receiver's proposed procedures and/or to the disposition of the property, the Receiver must obtain prior approval of the proposed procedures from this Court after notice and a hearing; *provided further, however,* that in any disposition of property of the Receivership Estate, Opus has an absolutely unqualified right to credit bid its claims against Borrowers, in whole or in part, as against all other bidders;

viii. investigating the nature and value of assets and liabilities of the Borrowers, to the extent such assets and liabilities are related to the Receivership Estate, and, when deemed necessary by the Receiver, when requested by Opus, or when ordered by the Court, preparing a report or reports of the same to the Court and parties in interest, including Opus;

ix. entering into or modifying contracts affecting any part or all of the Receivership Estate, including, without limitation, employment contracts, independent contractor agreements, leases, and service agreements; *provided, however,* that the Receiver shall consult with Opus and obtain Opus's consent with respect to any such actions taken with respect to contracts where the aggregate costs of the contracts or the modifications over their term are reasonably expected by the Receiver or Opus to be greater than \$10,000.00;

*provided further, however*, that if Opus's consent cannot be obtained as to any actions contemplated in this Section, the Receiver must obtain an order of the Court approving such actions after notice and a hearing;

x. paying and discharging out of funds coming into the Receiver's hands all of the costs and expenses of this receivership relating the Receivership Estate; *provided, however*, that, absent prior approval of the Court, all such expenditures must be in compliance with the Approved Budget, as defined below,

xi. applying for, obtaining, and paying any reasonable fees for lawful license, permit or other governmental approval relating to the Borrowers and the Receivership Estate;

xii. confirming the existence of and, to the extent permitted by law, exercising the privileges of any existing license or permit; and doing all things necessary to protect and maintain such licenses, permits and approvals, subject to the further provisions of this Receivership Order;

xiii. hiring, firing, selecting, and retaining employees and independent contractors of the Borrowers as the Receiver deems reasonable or necessary to preserve and maintain the value of the Receivership Estate; and

xiv. presenting a certified copy of this Receivership Order as proof of the Receiver's authority hereunder.

r. Nothing in this Receivership Order shall preclude the Receiver, after consultation with Opus, from hiring professionals and third-party providers or vendors to assist the Receiver in the performance of the Receiver's duties under this Receivership

Order, so long as the fees charged for such services are usual and customary in the locality where the services are to be found, and do not exceed the amounts provided for in the Approved Budget, as defined below; The Receiver shall:

- i. be compensated at the rate of \$355 per hour for the Receiver Paul Shields and \$170 to \$305 for BRG Professionals that assist him, plus actual out of pocket expenses, for services as Receiver herein; *provided however*, that the Receiver shall submit to Opus monthly invoices itemizing its fees and expenses, as well invoices itemizing the fees and expenses of any and all Professionals employed by it in this case, which fees and expenses may be paid from the assets of the Receivership Estate subject to the provisions of this Order, *provided further, however*, that Opus shall have twenty (20) business days to object to the amounts invoiced, and in the event that any objection by Opus to the invoices cannot be resolved, the Receiver must file an application seeking approval of the objectionable fees and expenses; *provided further, however*, that no payments shall be made to the Receiver or any Professional employed by the Receiver on account of any fees and expenses unless and until such fees and expenses have been approved by Opus, or in the case of unresolved and disputed fees and expenses, approved by this Court after notice to the parties in interest;
- ii. prepare reports regarding the administration and/or finances of the Receivership Estate when so requested by Opus or when otherwise ordered by this Court;

iii. retain originals and/or legible copies of all writings and other documents which were used or referenced in order to prepare the statements under the foregoing paragraphs of this Receivership Order, including, but not limited to, checks, contracts, agreements, and invoices; and

iv. record a certified copy of this Receivership Order in the County Recorder's Offices of any County where the Receiver determines real property belonging to the Receivership Estate is located.

s. The Receiver shall be empowered to serve as "Manager" of the Collateral and Receivership Estate, and shall be authorized to take any action necessary to perform its duties as Manager of the Receivership Estate including, without limitation, executing any required titles, deeds, or bills of sale.

t. The Receiver is further empowered and authorized to generally do such other things as may be necessary or incidental to the specific powers, directions, and general authorizations set out in this Receivership Order, including any actions permitted by K.S.A. §§ 60-1301 through 1305, and/or any other applicable law, and further may take actions relating to the Receivership Estate beyond the scope contemplated by the provisions set forth above; *provided, however*, that the Receiver must obtain prior approval from Opus or this Court for any actions beyond the scope contemplated herein.

#### **RECEIVERSHIP ADVANCES**

9. As set forth in paragraph 8(q)(i), Collateral of Opus may only be used in accordance with the Approved Budget, defined below. To the extent the cash assets of the Receivership Estate are inadequate to pay for the operating expenses of the receivership, including payment of

Receiver's reasonable fees and expenses and the fees and expenses of any Professionals employed by the Receiver as permitted by this Order, Opus may advance such additional and further cash to the Receivership Estate as may be necessary to cover any such shortfall, and, all such advances by Opus to Receiver shall be deemed to have priority over all other obligations of the Receivership Estate, except the Receiver's fees, and shall be evidenced by one or more "Receiver Certificates" acknowledging receipt by Receiver of such funds. Notwithstanding the foregoing, Opus shall not be obligated to make any such advances, and the decision to make such advances rests solely with Opus, *provided, however*, if the cash from operations are insufficient to pay the Receiver's fees and expenses, which includes the fees and expenses of Professionals employed by the Receiver, and such fees and expenses are included in the Approved Budget, as defined below, then to the extent the Approved Budget has been approved by Opus and not ordered by the Court after Opus has declined to approve the budget, Opus shall pay such fees and expenses. At Opus's sole discretion, any advance(s) made by Opus to Receiver, for any purpose permitted under this Order, may be considered costs and fees necessary to enforce Opus's rights pursuant to the Loan Documents and added to the amounts due under the same.

10. In the event Opus declines to make an advance to pay for operating expenses, including the fees and expenses of the Receiver and its Professionals, the Receiver, no earlier than thirty (30) days after the provision of notice to Opus, may borrow the necessary funds, from a third party at the then prevailing interest rates for the purpose of performing its duties hereunder upon the Court's entry of an order approving such loan. The Receiver shall file with this Court one or more Receiver Certificates to evidence such borrowing and the Receiver shall be permitted to repay any such loan evidenced by a Receiver Certificate from the cash assets of

the Receivership Estate. The principal and interest evidenced by each such Receiver Certificate shall have priority over all other obligations of the Receivership Estate, including any security instruments executed by Borrowers in favor of Opus. To avoid accruing interest expense, the Receiver, in its business judgment, may repay any advances made to the Receivership Estate by Opus or from any third party from the assets of the Receivership Estate as and when funds are available to do so.

**OPUS'S ACCESS TO COLLATERAL**

11. Opus and its respective officers, employees, and agents shall have access to inspect the Collateral (upon reasonable advance notice to the Receiver) to enable them to review the same from time to time during the pendency of this Receivership, and to inspect the same for purposes of appraisal.

**FURTHER ORDERS**

12. The Receiver or the parties hereto may at any time apply to this Court for any further orders or other instructions and powers necessary to enable the Receiver to perform the Receiver's duties properly.

**NON-INTERFERENCE WITH RECEIVER**

13. It is hereby further ordered that the Borrowers and any other parties with actual or constructive notice of this Receivership Order who are subject to the jurisdiction of this Court, including, without limitation, the Borrowers' managers, officers, directors, employees, agents, creditors, shareholders, representatives, attorneys and consultants, and all persons or entities for or acting in concert with them, are enjoined and restrained from:

- a. interfering, directly or indirectly, with the Receiver's custody and control the Receivership Estate;
- b. interfering, directly or indirectly, with the Receiver's effort to collect or take possession of the Receivership Estate, or the income, profits or proceeds thereof;
- c. collecting or attempting to collect the Receivership Estate, or the income, profits or proceeds thereof, other than at the written direction of the Receiver;
- d. extending, dispersing, transferring, assigning selling, conveying, devising, pledging, mortgaging, creating a security interest in, or disposing of the whole or any part of the assets of the Receivership Estate or the rents, income, profits or proceeds thereof, without the prior written consent of the Receiver and Opus; and
- e. doing any act which will, or which will tend to, impair, defeat, divert, prevent, or prejudice the preservation of the Receivership Estate and the rents, income, profits or proceeds thereof, or this Court's jurisdiction over the Receivership Estate.

14. Receiver, in its business judgment, shall be entitled to engage locksmiths for the purposes of gaining entry to any property that is the subject of this Receivership Estate, and to gain access to any security system, in order to obtain any property or documents to which the Receiver is entitled pursuant to this Order or otherwise perform the Receiver's duties under this Order or as otherwise may be ordered by this Court; the Receiver may also have locks or security codes changed, or have keys created that will work for any existing locks.

15. Receiver, in its business judgment, shall be entitled to engage the assistance of law enforcement officials when taking possession of the Collateral and Receivership Estate, or at any



other time during the course of the receivership, if such assistance is necessary to preserve the peace and protect the Receivership Estate, without further order of this Court.

16. A public utility providing service to the Collateral or property included in or under the control of the Receivership Estate may not alter, refuse, or discontinue service to such property without first giving the Receiver fifteen (15) days' notice, or such other notice as may be required by the rules of the public service commission for a customer of that class, of any default or intention to alter, refuse, or discontinue service to the property. Nothing in this Order prohibits the Court, upon motion by the Receiver, to prohibit the alteration or cessation of utility service if the Receiver can furnish adequate assurance of payment in the form of deposit or other security for service to be provided after entry of this Order.

#### **SUBORDINATION OF LIENS AND CLAIMS**

17. The rights and claims of any unsecured creditors of or interests in the Borrowers shall be subordinate to the rights and powers of the Receiver provided for herein, and to the costs and expenses of the Receivership Estate.

18. Within thirty (30) days after entry of this Receivership Order, the Receiver shall serve on Opus and all known creditors of the Borrowers:

- a. a copy of this Receivership Order; and
- b. a copy of a proposed interim three-month budget (the "Interim Budget"), approved first by Opus or, if such approval cannot be obtained, as approved by the Court after notice and a hearing, respecting the operation of the Receivership Estate and corresponding use of Opus's Collateral during the period commencing with the entry of this Receivership Order.

19. At least thirty (30) days prior to the end of the term of the Interim Budget, the Receiver must obtain approval of Opus, or if such approval cannot be obtained, approval by the Court after notice and a hearing, of any subsequent budget that may be required by Opus (together with the Interim Budget the subsequent budget shall be known as the “Approved Budget”). Such subsequent budgets need not be served on any other creditors or parties in interest, unless expressly requested in a written notice to the Receiver and Opus.

20. Any sale, disposition, further pledge or other transfer of the Collateral (a) shall require either (i) written consent from Opus, or absent such consent (ii) entry of a prior Order from the Court, after appropriate notice to Opus and after affording Opus any and all rights to object and/or to credit bid all or any portion of its claims against the Borrowers, and (b) liens of all secured creditors shall attach to the proceeds from any such sale, disposition, pledge, or transfer to the same extent as such liens attached to the Collateral, subject to Paragraph 17 above.

21. Any secured creditor whose security interest is duly perfected under applicable law shall receive the proceeds from the disposition of property of the Receivership Estate that secures the Claim of such secured creditor, according to the secured creditor’s lien priority under applicable law. However, the Receiver, upon notice and hearing, and after Court approval, may recover from such property or the proceeds thereof the reasonable and necessary expenses of preserving or disposing of such property to the extent of any benefit to the duly perfected secured creditor.

**INTERIM DISTRIBUTION OF NET PROCEEDS OF THE RECEIVERSHIP ESTATE**

22. After prior consultation with Opus, upon notice to Opus and any other parties in interest that the Court may direct, the Receiver may, in its sole discretion, make an interim

distribution of the net proceeds from the liquidation of the Receivership Estate to Opus, to the extent such proceeds are proceeds of Collateral of Opus. Except as allowed in accordance with the Approved Budget, any distributions to parties other than Opus shall be made only as authorized by order of the Court, entered after notice to Opus and any other parties in interest that the Court may direct, and a hearing. Nothing in this Paragraph requires the Receiver to make such an interim distribution, and the Receiver is authorized to maintain a cash reserve in an amount up to \$15,000.00 to pay future costs of administering the Receivership Estate.

**FINAL DISTRIBUTION OF NET PROCEEDS OF THE RECEIVERSHIP ESTATE**

23. After prior consultation with Opus, upon notice to Opus and any other parties in interest that the Court may direct, and after paying all obligations of the Receivership Estate, the Receiver shall pay the net proceeds from the liquidation of the Receivership Estate, which shall exclude any burdensome property that is abandoned by the Receiver, to Opus, to the extent such net proceeds are proceeds of Collateral of Opus. Any final distributions to parties other than Opus shall be made only as authorized by order of the Court, entered after notice to Opus and any other parties in interest that the Court may direct, and a hearing.

**GENERAL PROVISIONS RELATED TO RECEIVER**

24. No person or entity shall file suit against the Receiver, or take other action against the Receiver, without an order of this Court permitting the suit or action; *provided, however*, that no prior court order is required to file a motion in this action to enforce the provisions of this Order or any other order of this Court in this action. The Receiver, the Receiver's attorneys and their agents (i) may rely on any and all outstanding court orders, judgments, decrees, and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order,

judgment, decree, or rule of law; (ii) may rely on, and shall be protected in any action upon, any resolution, certificate, statement, opinion, report, notice, consent, or other documents believed by them to be genuine and to have been signed or presented by the proper parties; (iii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as a Receiver, or as attorneys or agents for the Receiver; (iv) shall not be liable to anyone for their acts or omissions, unless such acts or omissions were outside the scope of their duties or were grossly negligent or constitute malfeasance. Except for acts or omissions that were outside the scope of the duties of the Receiver, the Receiver's attorneys, or their agents, or that were grossly negligent or constitute malfeasance, persons dealing with the Receiver shall only look to the receivership assets and bond posted by the Receiver, if any, to satisfy any liability, and neither the Receiver nor his attorneys or his agents shall have any personal liability to satisfy such obligations.

25. The Receivership Estate and its employees, agents, attorneys, and all professionals and management companies retained by the Receiver shall not be held liable for any claim, obligation, liability, action, causes of action, cost, expense, or debt incurred by Borrowers.

26. The Receiver, the Professionals, and the Receiver's employees, agents, and attorneys shall have no personal liability, and they shall have no claim asserted against them relating to the Receiver's duties under this Order, without prior authority from this Court as stated in paragraph 21 above. The Receiver, and its employees, agents, attorneys and all professionals and management companies retained by the Receiver shall not be liable for any obligation of Borrowers that arose prior to the Effective Date of this Order, including without limitation, any contingent or unliquidated obligations, taxes of any kind, assessments, utility

charges, or goods or services provided to Borrowers, nor shall Opus or the Receiver be obligated to advance any funds to pay any expense of maintenance or other liability of the Borrowers.

27. The Receiver and any employees, agents, attorneys and all Professionals and management companies retained by the Receiver shall have no liability to any party for any claims, actions, or causes of action arising out or relating to events or circumstances occurring prior to the Effective Date of this Order. This protection of the Receiver from liability shall include, but is not limited to, any liability from the performance of services rendered by third parties on behalf of Borrowers, and any liability to which Borrowers is currently or may ultimately be exposed under any applicable laws pertaining to the ownership and use of the Collateral, or the operations of Borrowers' business.

28. Notwithstanding anything to the contrary herein or otherwise, the liability of the Receiver and any employees, agents, attorneys and all Professionals and management companies retained by the Receiver on account of any services contemplated by this Order or performed in connection with the Receivership are limited to the assets of the Receivership Estate and the bond, if any, posted by the Receiver.

29. The Receiver shall have no obligation to file any federal or state income tax return on behalf of Borrowers. The Receiver, and any professional retained by the Receiver, shall cooperate with Borrowers and furnish any information and documents requested by Borrowers in connection with the preparation or filing of any federal or state tax return(s). The Receivership Estate shall bear the expense for the preparation and filing of the tax returns for the Receivership Estate to maintain compliance with Internal Revenue Service deadlines and avoid liens from being established against the assets of the Receivership Estate.

30. Following the Receiver's appointment, the Receiver shall not be deemed in any way to be an owner of the Collateral. Except as may otherwise be set forth in this Order, the Receiver and its employees, agents, attorneys, Professionals, and management companies shall have no liability as to any claim, actions, or causes of action of any third parties who have or would have claims against the owner, lessee, operator, or manager of the Collateral or the business of Borrowers; *provided, however*, the Receiver may be liable for (i) the Receiver's own negligence or misconduct that is intentional or willful; and (ii) actions taken by the Receiver that are not authorized by the terms of this Order.

31. The Receiver shall have no duty to remediate any environmental issue with respect to any real property that is part of or under control of the Receivership Estate and shall be held harmless by the Borrowers with respect to such issues.

32. Except as specifically set forth in Paragraph 5 of this Order, the Receiver shall not be responsible for the Borrowers' or any other parties' employee compensation, benefits or withholding taxes including, without limitation, retirement related benefits such as 401K contributions. Finally, the Receiver will not be required to give or post any notice or take any other action that may be required under the Worker Adjustment and Retraining Notification Act ("WARN") or its state law equivalent and all such obligations, if any, shall remain with the Borrowers; provided, however, that Receiver will be responsible for compliance with such laws with respect to any employees that the Receiver may seek to retain after the entry of this Order.

33. Neither Opus, nor the Receiver, shall be obligated to obtain any environmental report, appraisal, or other independent valuation of the Collateral or any other property that is

part of or under the control of the Receivership Estate unless as otherwise further ordered by this Court.

**DISCHARGE**

34. After (a) all property of the Receivership Estate has been liquidated and all of the Collateral has been distributed to Opus and (b) Opus consents, the Receiver will file with the Court and serve on Opus and the Borrowers a notice of termination of receivership. At that time, the Receiver shall be discharged from all further duties, liabilities and responsibilities relating to the Receivership Estate or any such portion thereof, except for the preparation and filing of a final report and account.

35. Not later than thirty days after the filing of the notice of termination, Receiver shall file, serve, and set for hearing its final report and account. Notice must be given to Opus, the Borrowers, and all persons of whom Receiver is aware have potential claims against the Receivership Estate or the Borrowers.

**MODIFICATION OF ORDER**

36. This Court shall retain jurisdiction of this action for all purposes.

37. The Court may modify this Order as the Court deems appropriate, including as to the proper amount of any Bond required of the Receiver. During the pendency of this action the Receiver shall have the right to apply to this Court for further instructions or directions. Further, this Order is without prejudice to (a) Opus, the Receiver or any other party in interest, during the pendency of this action, seeking modification of this Order including, without limitation, the shortening or expanding any of the time frames specified herein or the expansion, modification, or limitation of the Receiver's powers, authorities and duties as set forth in this Order or by

applicable law; or (b) any party opposing such modification. To the extent that a party seeks to modify this Order, such party must provide reasonable notice to Opus, Borrowers, and the Receiver. The Party seeking modification shall have the burden of proof with respect to the same.

38. This Order will remain in effect until modified by further order of this Court.

IT IS SO ORDERED.

Dated: \_\_\_\_\_.

/s/ KEVIN P MORIARTY  
Dated: 08/30/18

\_\_\_\_\_  
Judge of the District Court

APPROVED BY:

HINKLE LAW FIRM LLC

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*Attorneys for Defendants*

**IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS  
TENTH JUDICIAL CIRCUIT**

Opus Bank,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 18-CV04721
	)	Div. 14
Better Life Technology, L.L.C., Garage Flooring LLC, and Better Life Disc, Inc.,	)	
	)	
Defendants.	)	

**ORDER AND DECREE AUTHORIZING SALE OF RECEIVERSHIP PROPERTY**

This matter comes before the Court upon the *Motion for an Order Authorizing Sale of Receivership Property* (the "Sale Motion") filed by Berkeley Research Group, LLC, the duly appointed receiver (the "Receiver") of Better Life Technology, LLC, Garage Flooring, LLC, and Better Life Disc, Inc. (collectively, "Borrowers") pursuant to the Order for the Appointment of Receiver dated August 30, 2018 (the "Receivership Order").

The Sale Motion requests entry of an order, *inter alia*, authorizing the Receiver to sell and convey, outside the ordinary course of business the Purchased Assets.<sup>1</sup> To the extent not withdrawn, any objections to the Sale Motion are hereby deemed overruled.

**FOR THE REASONS STATED IN THE MOTION, AND THOSE DETAILED IN THIS ORDER, THE COURT FINDS AND DETERMINES THAT:**

A. On August 23, 2018, Opus Bank ("Opus") commenced this action by filing its Petition (the "Petition") against Borrowers. On August 30, 2018, the Court entered the Receivership Order in this matter. Pursuant to the Receivership Order, the Receiver was appointed receiver over certain property of Borrowers and a receivership estate was thereby

<sup>1</sup> All capitalized terms used but not defined herein shall have the meaning ascribed to them

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created pursuant to Kansas law ("Receivership Estate").

B. The Court has jurisdiction to hear and determine the Sale Motion and venue is proper pursuant to relevant law.

C. The relief requested by the Sale Motion is predicated upon KSA § 60-1303 and Receivership Order § 8.

D. As evidenced by the *Certificate of Service* for the Sale Motion, the Sale Motion was served via the Court's electronic filing system on those parties receiving electronic notice by such system, by electronic mail, by U.S. Mail/Postage Prepaid, Express Mail, and/or Federal Express to all persons claiming an interest of record in the Purchased Assets. The Court finds the scope and manner of notice and service to be proper, timely, adequate, and sufficient. No further notice of the Sale Motion is or shall be required except as set forth in Paragraph 25 of this Order.

E. A reasonable opportunity to object or to be heard regarding the relief requested in the Sale Motion has been afforded to all parties in interest and to all persons claiming an interest of record in the Purchased Assets.

F. Garage Flooring LLC of Colorado or its assigns ("Purchaser") is approved as the buyer for the Purchased Assets as set forth in the executed Asset Purchase Agreement by and among Purchaser and the Receiver attached and hereby incorporated by reference as Exhibit A (the "Sale Contract").

G. The Receiver has full power and authority to execute the Sale Contract and all other documents referenced in or contemplated by the Sale Contract or that are necessary or appropriate to effectuate the sale of the Purchased Assets as contemplated under the Sale Contract. All actions contemplated by the Sale Contract have been duly and validly authorized by all necessary action of the Receiver and this Court. The Receiver has the full power and

authority to consummate the transactions contemplated by the Sale Contract including, without limitation, consent of Opus. No further consents or approvals, other than entry of this Order, are required for the Receiver or Purchaser to consummate the transactions contemplated in the Sale Contract.

H. Approval of the Sale Contract and the Use Agreement and consummation of the transactions contemplated therein are in the best interests of the Receivership estate, its creditors and interest holders.

I. The Receiver has demonstrated good, sufficient, and sound business purpose and justification for the sale of the Purchased Assets.

J. The Sale Contract and Use Agreement was negotiated, proposed, and entered into by the Receiver and Purchaser in good faith, without collusion, and was the result of arm's-length bargaining with the parties represented by independent counsel. Purchaser is a good faith purchaser of the Purchased Assets and, as such, is entitled to all of the protections afforded thereby. Purchaser has acted in good faith prior to entry of this Order and the Purchaser may rely on entry of this Order and this good faith determination in closing such transactions.

K. The sale and use of the Purchased Assets to Purchaser pursuant to the Sale Contract and Use Agreement is reasonable and appropriate under the circumstances.

L. The Receiver is authorized to sell the Purchased Assets. The transfers of the Purchased Assets to Purchaser pursuant to the Sale Contract will be legal, valid, and effective transfers of the Receivership Property, and will vest Purchaser with fee simple title, free and clear of all liens, claims, rights, titles or interests (collectively, the "Liens"), which have, or could have, been asserted by the Borrowers, their creditors, or other holders of such Liens with such Liens attaching to the consideration to be received by the Receiver in the same priority and

subject to the same defenses, if any, as before the sale.

M. The Receiver has not granted any lien or security interest in the Purchased Assets to any person. Except for any express warranties made by Receiver to Purchaser set forth in the Sale Contract, the Receiver makes no representation or warranty, express or implied, regarding any aspect of the Purchased Assets.

N. This Order shall be effective and enforceable immediately upon entry. This Order does not resolve all the claims in the underlying action or the Receivership, specifically Opus's claims against the Borrowers, and those claims are reserved and await further order of this Court. Pursuant to KSA § 60-254(b), the Court expressly determines that there is no just reason for delay and that this Order is a final judgment as to the matters specifically addressed herein including, without limitation, the Receiver's sale of the Purchased Assets. This Order, however, is without prejudice to the Borrowers' defenses against the claims being asserted by Opus in the underlying action.

O. To the extent any finding of fact later shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law later shall be determined to be a finding of fact, it shall be so deemed.

**BASED ON THE FOREGOING FINDINGS, GOOD CAUSE EXISTS FOR ENTRY OF THE FOLLOWING ORDER. IT IS THEREFORE ORDERED:**

1. The notice of the Sale Motion is approved as being fair, reasonable and adequate under the circumstances of these cases, and any additional notice as may otherwise be required under state and federal law is hereby deemed satisfied.

2. The Sale Motion is **GRANTED** as set forth herein and the sale of the Purchased Assets is hereby authorized as set forth in this Order.

3. All objections to the Sale Motion that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby **OVERRULED** on the merits.

4. The Sale Contract and Use Agreement, all exhibits and schedules thereto, and all of the terms and conditions thereof are hereby approved in all respects.

5. The Court notes that the sale was conducted in a commercially reasonable manner, adequate notice of the sale, sale procedures, and details of the proposed sale was provided, there is no relationship between Purchaser and Receiver, the sale is an arm's length transaction, and Opus, as the party asserting a first priority lien as to the Purchased Assets, has consented to the proposed sale.

6. The Receiver is authorized and directed to consummate the sale of the Receivership Property, pursuant to and in accordance with the terms and conditions of the Sale Contract, including, without limitation, to convey to Purchaser the Purchased Assets.

7. Without need for any additional Court order, the Receiver is authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement the Sale Contract, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Sale Contract, and to take all further actions as may be reasonably requested by Purchaser (subject to any consent rights of Opus under the Receivership Order) or as otherwise required under the Sale Contract.

8. The consideration to be provided by Purchaser for the purchase of the Purchased Assets under the Sale Contract constitutes reasonably equivalent value, fair value, and fair consideration therefor under the Uniform Fraudulent Transfer Act, and any other applicable state, federal or international law.

9. The transfer of the Purchased Assets to Purchaser pursuant to the Sale Contract

shall (a) be a valid, legal, binding, and effective transfer, and (b) vest Purchaser with fee simple title, free and clear all liens, claims, rights, titles or interests in and to the Purchased Assets effective as of the time of the transfer under the Sale Contract.

10. Pursuant to Receivership Order § 20, the liens of all secured creditors shall attach to the proceeds from the sale of the Purchased Assets to the same extent as such liens attached to the Purchased Assets.

11. Pursuant to relevant law, all persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Receiver to transfer the Purchased Assets to Purchaser in accordance with this Order and the terms of the Sale Contract, or otherwise interfere with Purchaser's title to or use and enjoyment of the Purchased Assets.

12. On and after the closing date of the Sale Contract, except as otherwise set forth herein or in the Sale Contract, the Receiver shall have no liability or responsibility for Purchased Assets.

13. The Receiver is authorized to execute such other necessary documents and take other necessary actions in connection therewith.

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

15. Each and every state and local governmental agency or department is hereby directed to accept for filing and/or recording, and approve as necessary, any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Sale Contract.

16. The transactions contemplated by the Sale Contract are undertaken by Purchaser

in good faith. Accordingly, the reversal or modification of the authorization provided herein to consummate the transactions contemplated herein shall not affect the validity of the sale of the Purchased Assets to Purchaser, unless such authorization is duly stayed.

17. The consideration to be provided by Purchaser for the Purchased Assets under the Sale Contract and Use Agreement is fair and reasonable.

18. The terms and conditions of the Sale Contract, the Use Agreement, and this Order shall be binding in all respects and shall inure to the benefit of the Receiver, the Receivership Estate and Borrower's creditors and interest holders, successors, and assigns and Purchaser, and its respective affiliates, successors and assigns notwithstanding any subsequent appointment of any receiver(s), as to which receiver(s) such terms and provisions likewise shall be binding.

19. The Sale Contract and any related agreements, documents or other instruments may be modified, amended, supplemented, or waived by the parties thereto, with the prior written consent of Opus, in a writing signed by both parties, and in accordance with the terms thereof, without further order of the Court, provided that such modification, amendment, supplement, or waiver shall not have a material adverse effect on the Receivership Estate.

20. The provisions of this Order are non-severable and mutually dependent.

21. In the event of any inconsistency between the terms and provisions of this Order, any pleading, the Sale Contract and the Use Agreement, the terms and provisions of this Order shall control unless explicitly provided otherwise herein.

22. Except as expressly set forth herein, nothing herein shall waive, limit, or otherwise modify any rights of Opus. The Sale shall not affect the validity or the enforceability of any lien asserted by Opus on property other than the Purchased Assets in this proceeding, or any deficiency or other monetary obligation that continues to be owed by the Borrowers to Opus



or any other party following the Sale. This Order is without prejudice to the Borrowers' defenses with respect to the underlying claims being asserted by Opus and/or any resulting deficiency from such claims.

23. This Court retains jurisdiction to construe, enforce, and implement the terms and provisions of this Order, any waivers and consents thereunder, and of each of the agreements executed in connection therewith in all respects, including, but not limited to, retaining jurisdiction to (i) compel delivery of the Purchased Assets to Purchaser, (ii) resolve any disputes arising under or related to the terms of this Order, and (iii) interpret, implement, and enforce the provisions of this Order.

24. This Court may supplement this Order with one or more additional orders within the scope of this Order, with or without additional notice or opportunity for a hearing to other parties depending upon the facts and circumstances as determined by the Court at the time the Court is requested to enter such separate order(s).

25. Counsel for Receiver shall serve a copy of this Order by mail to all interested parties who were not served electronically within two business days after entry of this Order.

26. The Use Agreement is hereby approved and all actions taken pursuant to the Use Agreement and the corresponding rights and remedies related to such agreement, are hereby ratified and approved by the Court *nunc pro tunc* to the Effective Date of the Use Agreement.

27. This Order does not resolve all the claims in the underlying action or in the Receivership and all such claims are reserved and await further order of this Court. Pursuant to KSA § 60-254(b), as this is an Order on fewer than all of the claims for relief, the Court expressly determines that there is no just reason for delay and that this Order will be a final judgment as to the matters specifically addressed herein including, without limitation, the

Receiver's sale of the Purchased Assets.

**SO ORDERED.**

Dated: \_\_\_\_\_

/s/ KEVIN P MORIARTY

Dated: 10/05/18

\_\_\_\_\_  
Judge of the District Court

Submitted and Approved by:

/s/ Eric L. Johnson

Eric L. Johnson      KS #20542

Andrea M. Chase      KS #26307

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EXECUTION VERSION

**ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement, dated as of September 17, 2018, is entered into between Garage Flooring LLC of Colorado, a Colorado limited liability company ("**Purchaser**"), and Berkeley Research Group, LLC, solely in its capacity as court-appointed receiver over the property of Better Life Technology, L.L.C., a Kansas limited liability company ("**BLT**"), Garage Flooring LLC, a Colorado limited liability company ("**GF**"), and Better Life Disc, Inc., a Kansas corporation ("**BLDF**"), pursuant to that certain Order Appointing Receiver entered on or about August 30, 2018 in the District Court of Johnson County, Kansas, No. 18-CV-4721 ("**Receiver**" or "**Seller**").

WHEREAS, Opus Bank, a California commercial bank ("**Opus**"), has filed, with the consent of BLT, GF, and BLDF (collectively, the "**Borrowers**"), a Petition pursuant to K.S.A 60-1301 for the appointment of receiver and for Breach of Agreement ("**Petition**") for relief, in the District Court of Johnson County, Kansas (the "**District Court**") styled *Opus Bank v. Better Life Technology, L.L.C. et al.*, No. 18-CV-4721 ("**Receivership Case**");

WHEREAS, the Receivership Order provides that all property of the Borrowers is property of the Receivership Estate (as defined in the Receivership Order) and subject to the District Court;

WHEREAS, the Receivership Order provides that the Receiver's powers include the right to operate, manage, and control the collateral securing the obligations of the Borrowers to Opus (the "**Collateral**"), including without limitation the power to enter into contracts and leases that the Receiver in its business judgment reasonably believes necessary for the operation and management of the Collateral;

WHEREAS, the Receivership Order also provides that the Receiver's power includes the right to take any and all actions to maximize the income, profits, and value of the Receivership Estate including the selling of any tangible or intangible assets of the Receivership Estate;

WHEREAS, the Receivership Order also provides that the Receiver may take actions relating to the Receivership Estate beyond the scope contemplated by Receivership Order after obtaining consent from Opus;

WHEREAS, upon the terms and subject to the conditions set forth in this Agreement, and as authorized under applicable law, Seller wishes to sell to Purchaser, and Purchaser (or Purchaser's assignee or assignees) wishes to purchase from Seller, the Purchased Assets (as hereinafter defined);

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the District Court and will be consummated only pursuant to a Sale Approval Order and such further orders to be entered by the District Court and pursuant to applicable law; and

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable

consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATION

**Section 1.1. Definitions.** As used in this Agreement, the following terms have the meanings set forth below:

- (a) "**Business Day**" means any day except Saturday, Sunday or a Legal Holiday as defined in KSA §60-206(a)(6).
- (b) "**Deposit**" means, collectively, the Initial Deposit and the Remaining Deposit as those terms are defined in Section 3.1.
- (c) "**Excluded Assets**" means (i) all cash on hand and in banks and cash equivalents (including marketable securities and short term investments) that relate to the Borrowers, that are in possession or control of the Seller, or that are in possession or control of Opus; (ii) any pension plan, profit sharing plan, or other plan or program providing benefits to employees of the Borrowers; (iii) any property or assets that are not Receivership Property; (iv) Excluded Causes of Action; (v) the issued and outstanding membership interests in the Borrowers to the extent owned by another Borrower; (vi) any and all assets of BLT and BLDI; and (vii) all other property or assets not described as Purchased Assets.
- (d) "**Excluded Causes of Action**" means causes of action or claims (i) that are not assignable under applicable law; (ii) against Opus; (iii) any directors and officers liability claims including claims for breach of fiduciary duty; or (iv) that are not described as Purchased Assets.
- (e) "**Final Order**" means an Order (i) as to which the time to appeal, petition for certiorari or move for review or rehearing has expired and as to which no appeal, petition for certiorari or other proceeding for review or rehearing is pending, or (ii) if an appeal, writ of certiorari, reargument or rehearing has been filed or sought, the Order has been affirmed by the highest court to which such Order was appealed or certiorari has been denied, or reargument or rehearing shall have been denied or resulted in no modification of such Order and the time to take any further appeal or to seek certiorari or further reargument or rehearing has expired.
- (f) "**Government Entity**" means any government or political subdivision or regulatory authority, whether federal, state, local or foreign, or any agency or instrumentality of any such government or political subdivision or regulatory authority, or any federal, state, local or foreign court including, without limitation, the District Court, or arbitrator or mediator.
- (g) "**Order**" means any order, judgment, injunction, award, decree, ruling, charge, writ, assessment, arbitration award or other requirement of any Governmental Entity.

- (h) **“Receivership Assets”** means those assets that are part of and included in the Receivership Estate pursuant to the Receivership Order.
- (i) **“Receivership Estate”** means the estate created pursuant to the Receivership Order.
- (j) **“Receivership Order”** means the Order entered on August 30, 2018 by the District Court, as modified or amended, appointing the Receiver.
- (k) **“Sale Approval Order”** means the Order or Orders of the District Court, in a form reasonably acceptable to Seller, Purchaser, and Opus, authorizing and approving, among other things, (i) the sale, transfer and assignment of the Purchased Assets to Purchaser in accordance with the terms and conditions of this Agreement, free and clear of all claims and liens, (ii) that Purchaser is a good faith purchaser entitled to the protections of the provisions of applicable Law.
- (l) **“Sale Motion”** means the motion seeking entry of the Sale Approval Order.
- (m) **“Tax”** or **“Taxes”** means all (i) taxes, charges, fees, duties, levies, penalties or other assessments imposed by any federal, state, local or foreign Government Entity, including income, gross receipts, excise, property, sales, gain, use, license, custom duty, unemployment, capital stock, transfer, franchise, payroll, withholding, social security, minimum estimated, profit, gift, severance, value added, disability, premium, recapture, credit, occupation, service, leasing, employment, stamp and other taxes, any amounts attributable thereto or attributable to any failure to comply with any requirement regarding Tax Returns, (ii) liability for the payment of any Taxes as a result of being or having been on or before the Closing Date a member of an affiliated, consolidated, combined or unitary group or other association, and (iii) any transferee or secondary Liability in respect of Taxes, and, in each case, any interest or penalty thereon or addition thereto, whether disputed or not.
- (n) **“Use Agreement”** means the Use and Adequate Protection Agreement entered into between the Seller and Purchaser effective as of September 8, 2018 related to the use of Receivership Assets prior to the Closing Date.

**Section 1.2. Rules of Construction.** Unless the context otherwise clearly indicates, in this Agreement:

- (a) The singular includes the plural;
- (b) “includes” and “including” are not limiting;
- (c) “may not” is prohibitive and not permissive; and
- (d) “or” is not exclusive.

**ARTICLE II**  
**PURCHASE AND SALE OF ASSETS**

**Section 2.1. Purchase and Sale of Assets.** On the terms and subject to the conditions set forth herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver (or cause to be sold, conveyed, transferred, assigned and delivered) to Purchaser, and Purchaser shall purchase from Seller, all of Seller's right, title and interest in, to and under the following assets held by GF and as they exist on the Closing Date (collectively, the "**Purchased Assets**"), whether tangible or intangible, real, personal or mixed that are in Seller's possession, actual or constructive, as of the Closing Date, but only to the extent such assets constitute Receivership Assets, in each case free and clear of all claims and liens, as approved for sale, transfer and assignment pursuant to the Sale Approval Order:

- (a) all GF accounts receivable;
- (b) GF accounts with (i) PayPal, (ii) Amazon.com (Amazon, Amazon Pay and Amazon Canada), (iii) Walmart, (iv) Shopify, and (v) ebay.com, less \$16,990.59 (which represents the collective balance in these accounts at the close of business on September 7, 2018);
- (c) all GF inventory and materials including, without limitation, inventory in transit, raw materials, work in process, recycled materials, demo and evaluation inventory, finished products, inventoriable supplies, and non-capital spare parts and used or held for use primarily in the operation or conduct of GF's business ("**Inventory**"), and any rights of GF to the warranties received from suppliers and any related claims, credits, rights of recovery and set-off with respect to such Inventory, but only to the extent such rights are assignable;
- (d) all (i) registered and unregistered trademarks, service marks, brand names, certification marks, collective marks, d/b/as, logos, symbols, trade dress, fictitious names, trade names and other indicia of origin, in each case, including all applications and registrations for the foregoing, all renewals of same, and any and all goodwill associated with any of the foregoing that are owned or held by GF (collectively, "**Trademarks**"); (ii) patentable GF inventions and discoveries and all patents, registrations, invention disclosures and applications therefor held by GF, including divisions, continuations, continuations-in-part and renewal applications, and including renewals, extensions and reissues; (iii) GF trade secrets, confidential information and non-public know-how, including processes, schematics, business methods, formulae, drawings, prototypes, models, designs, customer lists and supplier lists (collectively, "**Trade Secrets**"); (iv) copyrightable published and unpublished GF works of authorship (including databases and other compilations of information), including computer software and documentation, registered and unregistered copyrights, registrations and applications therefor, and all renewals, extensions, restorations and reversions thereof (collectively, "**Copyrights**"); (v) GF internet domain names and registrations thereof; (vi) GF software; and (vii) any other similar type of intellectual property right (items (i)-(vii) being collectively referred to as the "**Intellectual Property**");
- (e) all books, ledgers, files, reports, plans, records, manuals, and other materials (in any form or medium) related to the business conducted by GF ("**Books and Records**");

- (f) all furniture, furnishings, vehicles, equipment, computer equipment, tools and other tangible personal property located at any real property used GF as of the Closing Date, including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person ("**Fixtures and Equipment**");
- (g) credits, prepaid expenses, deferred charges, security deposits, prepaid items and duties to the extent related to a Purchased Asset;
- (h) all telephone or facsimile numbers used by GF in connection with business conducted by GF;
- (i) to the extent permitted by Law, all permits, concessions, grants, franchises, licenses, variances, exemptions, exceptions, clearances, registrations, qualifications, filings and other authorizations and approvals required or issued by any Government Entity to GF ("**Permits**") and held by Seller to the extent primarily related to the Purchased Assets;
- (j) all signage, marketing materials, art and collectables relating to a Purchased Asset;
- (k) all rights to receive mail and other communications addressed to Seller that pertains to the Purchased Assets, including any mail and communication from trustees, customers, suppliers, distributors and their respective representatives;
- (l) all GF client lists, customer lists, supplier lists, mailing lists, do not call lists and other data related to the Purchased Assets, including service and warranty records, operating guides and manuals, studies, and correspondence (electronic or otherwise);
- (m) to the extent transferable, all lock boxes and safes related to the Purchased Assets;
- (n) to the extent transferable, all guaranties, warranties, indemnities and similar rights in favor of Seller to the extent related to any Purchased Asset;
- (o) the goodwill and other intangible assets related to the Purchased Assets;
- (p) to the extent assignable, the Lease Agreement dated May 1, 2016 between GF and JA1, LLC, and the rights thereunder, regarding the premises located at 632 W. Gunnison Avenue, Grand Junction, Colorado 81501, subject to the terms and conditions thereof
- (q) all rights of and benefits accruing under the Purchased Assets identified in subsections (a)-(o) of this Section 2.1; and
- (r) the causes of action, lawsuits, judgments, refunds, choses in action, rights of recovery, rights of set-off, rights of recoupment, counterclaims, demands and any other rights or claims constituting or related to GF and to the Purchased Assets identified in subsections (a)-(p) of this Section 2.1.

**Section 2.2. Excluded Assets.** Notwithstanding anything herein to the contrary, Seller will not sell, assign, convey, transfer or deliver to Purchaser, and Purchaser will not purchase, acquire or assume or take assignment or delivery of, Excluded Assets or any and all assets, contracts or rights that are not expressly Purchased Assets.



**Section 2.3. Post-Closing Asset Deliveries.** If Seller or Purchaser, in its reasonable discretion, determines after the Closing that any Books and Records or other materials or assets constituting Purchased Assets are still in the possession of Seller, Seller shall promptly deliver them to Purchaser at no additional cost or expense to Purchaser, or shall cause the prompt delivery of the same.

**Section 2.4. Closing.** Subject to the terms and conditions of this Agreement, the closing (the "**Closing**") of the transactions contemplated hereby shall take place at the offices of Spencer Fane LLP, 9401 Indian Creek Parkway, Suite 700, Overland Park, Kansas, on the second Business Day following the date on which the conditions set forth in Sections 8.1, 8.2 and 8.3 (other than those conditions that by their nature can be satisfied only at the Closing but subject to the fulfillment or waiver of those conditions) have been satisfied or waived or at such other time and place as the parties hereto may mutually agree (the "**Closing Date**"). At the Closing, Purchaser shall deliver the Purchase Price in accordance with Sections 2.7 and 3.1, the transfer of title to the Purchased Assets shall take place, and the appropriate parties shall take all actions required under Sections 2.6, 2.7 and 2.8 and all other actions not previously taken but required to be taken hereunder at or prior to the Closing Date. It is a condition of the Closing that all matters of payment and the execution and delivery of documents by any party to the others pursuant to the terms of this Agreement be concurrent requirements, and that nothing will be complete at the Closing until everything required as a condition precedent to the Closing has been paid, executed and delivered, as the case may be.

**Section 2.5. Ancillary Agreements.** At the Closing, and as approved and ordered by the District Court, Seller shall duly execute and deliver to Purchaser, and Purchaser shall duly execute and deliver to Seller, as applicable, each of the following agreements ("Ancillary Agreements"):

- (a) Bills of Sale;
- (b) Assignment and Assumption Agreements, if applicable;
- (c) Assignment and Assumption of Lease Agreements, if applicable;
- (d) Intellectual Property Assignment Agreement(s);
- (e) Transfer Tax forms, if applicable, in the form required by Law;
- (f) such other agreements as may be entered into between the parties in connection with this Agreement;
- (g) all instruments or documents necessary to change the names of the individuals who have access to or are authorized to make withdrawals from or dispositions of all bank accounts, other accounts, safe deposit boxes, lock boxes and safes related to the Purchased Assets (together with all keys and combinations to all safe deposit boxes, lock boxes and safes related to the Purchased Assets); and
- (h) and any other documents that may be required by the Sale Approval Order or pursuant to any other direction by the District Court to be effected on or prior to the Closing.

**Section 2.6. Deliveries by Purchaser.** At the Closing, Purchaser shall deliver to Seller the following:

- (a) that portion of the Purchase Price required for Closing pursuant to this Agreement, in immediately available funds by wire transfer to an account or accounts designated by Seller at least one Business Day prior to the Closing Date (less the sum of the Deposit as applied in accordance with Sections 3.1 and 3.3);
- (b) the Promissory Note as described in Section 3.1;
- (c) the Security Agreement as described in Section 3.1;
- (d) the Guaranty as described in Section 3.1;
- (e) the certificate to be delivered pursuant to Section 8.2(c);
- (f) Ancillary Agreements duly executed by Purchaser; and
- (g) such other customary instruments of transfer and assumption and other instruments or documents, in form and substance reasonably acceptable to Seller, as may be necessary to effectuate the assignment of any Purchased Assets or to give effect to this Agreement or any Ancillary Agreement.

**Section 2.7. Deliveries by Seller.** At the Closing, Seller shall deliver, or cause to be delivered, to Purchaser the following:

- (a) the certificates to be delivered pursuant to Section 8.3(d);
- (b) a receipt acknowledging payment of the Purchase Price payable in accordance with Section 3.1;
- (c) Ancillary Agreements duly executed by the Seller;
- (d) a certified copy of the Sale Approval Order; and
- (e) such other customary instruments of transfer and assumption and other instruments or documents as may be reasonably requested, in form and substance reasonably acceptable to Purchaser and Seller, as may be reasonably necessary to effect this Agreement, including Seller's assignment of the Purchased Assets to Purchaser (or its assignee), or as may be required to give effect to any Ancillary Agreement.

**Section 2.8. "As Is, Where Is" Transaction.** Purchaser hereby acknowledges and agrees that, except as expressly set forth in this Agreement, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets. Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets. Purchaser further acknowledges that it is proceeding with its acquisition of the Purchased Assets based solely upon its independent inspections and investigations. Accordingly, except as expressly set forth in this Agreement, Purchaser will accept the Purchased Assets on the Closing Date "AS IS" and "WHERE IS".

**ARTICLE III  
PURCHASE PRICE; ADJUSTMENT; ALLOCATION**

② ll  
\$246,986  
② ll  
\$146,986

**Section 3.1. Purchase Price; Payment of Purchase Price.** Subject to the terms and conditions of this Article III, as aggregate consideration for the Purchased Assets, Purchaser will pay ~~\$250,000~~ (USD) (the "**Purchase Price**") as provided in this Section 3.1. The Purchase Price shall consist of the following: (i) \$30,000 initial cash deposit due within two (2) Business Days after execution of this Agreement ("**Initial Deposit**"); (ii) \$70,000 cash deposit (the "**Remaining Deposit**") within two business days of entry of the Sale Approval Order; and (iii) a promissory note, in form acceptable to the Seller, to be delivered at Closing in the principal amount of ~~\$150,000~~ with an interest rate of 7.0% per annum ("**Promissory Note**"). The Promissory Note shall provide for payments of principal and interest as follows: (1) the first payment of \$33,357.47 shall be due and payable on the 30th calendar day after Closing, (2) the second payment of \$33,167.89 shall be due and payable on the 60th calendar day after Closing (3) a third payment of \$32,978.25 shall be due and payable on the 90th calendar day after Closing and (4) a final payment of \$50,496.39 (the "**Final Payment**") shall be due on or before March 31, 2019. Should Purchaser in its discretion pay on or before the 90th calendar day after Closing, an additional amount of \$30,469.39 for the Final Payment, then Purchaser shall receive an early payment discount of \$20,000. The Promissory Note and Purchaser's obligations thereunder shall be secured by a security interest in and to the Purchased Assets evidenced by a security agreement ("**Security Agreement**") and personal guaranty of Justin Krauss (the "**Guaranty**"), each in a form acceptable to the Seller. Purchaser shall receive a credit against the Purchase Price for: (i) any and all cash received into the GF Opus Bank account between September 11, 2018 at 8:00 am EDT and the Closing Date, for which the ultimate source of the cash received is the sale of GF products, less \$16,990.59.

**Section 3.2. Allocation of the Purchase Price for Tax Purposes.** Purchaser and Seller shall allocate the Purchase Price among the Purchased Assets as agreed by the parties at Closing (the "**Allocation Schedule**"). The allocations will be based on the relative fair market values of the Purchased Assets in accordance with the requirements of Section 1060 of the Internal Revenue Code, as amended. The Parties shall file all tax returns and reports, including Internal Revenue Service Form 8594, in accordance with such allocation and shall not take any position inconsistent therewith unless required to do so pursuant to a "determination" as such term is defined in Section 1313 of the Internal Revenue Code of 1986, as amended. If the allocation set forth on the Allocation Schedule is disputed by any Government Entity with taxing authority, the party receiving notice of such dispute shall promptly notify the other party hereto concerning the existence of, material developments regarding, and resolution of such dispute; *provided, however,* any reporting obligation by the Seller shall be discharged upon its discharge by the District Court as Receiver.

**Section 3.3. Deposit.** Within two (2) Business Days after the execution of this Agreement, Purchaser will deliver the Initial Deposit to Receiver in immediately available funds. Within two Business Days following the entry of the Sale Approval Order, Purchaser shall deliver the Remaining Deposit to Receiver in immediately available funds. For the avoidance of doubt, the Deposit shall not be the property of Seller during such time that the same are held by the Receiver, except as otherwise provided in the Use Agreement. The Deposit shall be held by the Receiver to be released as follows:

- (a) Effect of Closing. If the Closing occurs, the Deposit shall be credited against the Purchase Price.
- (b) Effect of Termination or Breach By Seller. Except as provided in the Use Agreement, the Receiver shall refund the Deposit immediately upon Purchaser's demand in the event: (i) Opus Bank fails to make the advances constituting any condition of Borrowers' consent to the Receivership; (ii) any condition to Purchaser's obligations under this Agreement are not satisfied as of October 16, 2018 and such conditions have not been waived or released; or (iii) Seller materially defaults under this Agreement and such default is not waived or released. If this Agreement is terminated pursuant to a right granted herein to any party, or breached by Seller, the Receiver shall refund the Deposit to Purchaser subject to the terms and conditions of the Use Agreement.
- (c) Effect of Breach By Purchaser. If this Agreement is materially breached by Purchaser and such breach is not waived, the Deposit shall not be refundable to Purchaser and shall become an asset of the Receivership Estate without further action by the Receiver.

The Deposit shall also serve as a deposit for the continued use of the Purchased Assets by the Purchaser prior to the Closing Date, pursuant to the Use Agreement. To the extent that any provision in this Agreement conflicts with the Use Agreement as it relates to the Deposit, the Use Agreement shall control.

#### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser, as of the date hereof and as of the Closing Date (except to the extent any such representations and warranties shall have been expressly made as of a particular date, in which case such representations and warranties shall be made only as of such date), as follows:

**Section 4.1. Validity of Agreement.** Seller is the duly appointed receiver in the Receivership Case and, subject to any necessary authorization from the District Court and consents required by the Receivership Order, has full power and authority to execute and deliver any documents necessary to consummate the transactions contemplated hereby and thereby.

**Section 4.2. As-Is, Where-Is.** Purchaser is purchasing the Purchased Assets in reliance upon Purchaser's personal inspection and knowledge of the Purchased Assets and in an "as-is" and "where-is" condition. Seller makes no warranties or representations, express or implied, of any kind or nature, written, oral or otherwise. Without limiting the generality of the foregoing disclaimer, Seller makes NO warranties or representations of MERCHANTABILITY, or FITNESS FOR A PARTICULAR PURPOSE of the Purchased Assets and no warranties or representations against patent infringement or the like.

#### ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller, as of the date hereof and as of the Closing Date (except to the extent any such representations and warranties shall have been expressly made as of a particular date, in which case such representations and warranties shall be made only as of such date), as follows:

**Section 5.1. Organization and Authority.** Purchaser has been duly incorporated, and is validly existing and in good standing under the Laws of its jurisdiction of incorporation, has all corporate power and authority to execute and deliver this Agreement and the Ancillary Agreements to which it is a party and to consummate the transactions contemplated hereby and thereby, and has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of this Agreement and the Ancillary Agreements. This Agreement has been, and the Ancillary Agreements to which it is a party will be, duly and validly executed and delivered by Purchaser and this Agreement constitutes, and each of the Ancillary Agreements to which it is a party will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as such enforceability may be limited by the Enforceability Exceptions.

**Section 5.2. Non-Contravention.** The execution, delivery and performance of this Agreement and the Ancillary Agreements by Purchaser and the consummation of the transactions contemplated hereby and thereby and the compliance by Purchaser with the applicable terms and conditions hereof or thereof, do not and will not conflict with or violate, result in a material breach of or default (or an event which with notice or the passage of time or both would become a material breach or default) under, give rise to a right of termination, cancellation, acceleration of any material obligation or loss of any material benefit under (i) the organizational or governing documents of Purchaser or (ii) assuming all Consents, declarations, filings or registrations have been obtained or made, as applicable, any Law or Order applicable to Purchaser.

**Section 5.3. Financing.** Purchaser has available cash or immediately available funds sufficient to enable it to consummate the transactions contemplated hereby. Purchaser will have funds sufficient to pay the Deposit as of the date this Agreement is executed.

**Section 5.4. Sophistication.** Purchaser represents that it has such knowledge and experience in business and financial matters as to be capable of evaluating the Purchased Assets and the proposed activities thereof and contemplated in this Agreement, and of making an informed decision therein.

**Section 5.5. Non-reliance.** Purchaser has not relied and is not relying on any representations, warranties or other statements whatsoever, whether written or oral (from or by the Seller, or any Person acting on their behalf) other than those expressly set out in this Agreement (or other related documents referred to herein) and acknowledges and agrees that, except for any fraud claim, it will not have any right or remedy rising out of any representation, warranty or other statement not expressly set out in this Agreement.

**Section 5.6. Brokers, Finders and Financial Advisors.** No agent, broker, investment banker, financial advisor or other firm or Person is or will be entitled to any brokers' or finder's fee or any other commission or similar fee in connection with the transactions contemplated hereby as a result of any action taken by Purchaser.

**ARTICLE VI**  
**PRE-CLOSING MATTERS AND OTHER COVENANTS**

**Section 6.1. Subsequent Actions; Further Assurances.** Seller and Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements as promptly as practicable, including, (i) opposing any objections to, appeals from or Petition to reconsider or reopen any such approval by Persons not a party to this Agreement and (ii) obtaining any Orders approving the transactions contemplated by this Agreement or the Ancillary Agreements, if required. If at any time after the Closing, Purchaser shall consider or be advised that any assurances or any other actions or things are necessary or desirable (a) to vest, perfect or confirm ownership (of record or otherwise) in Purchaser, as applicable, its title or interest in the Purchased Assets or (b) otherwise to carry out this Agreement or the Ancillary Agreements, Seller shall use commercially reasonable efforts to execute and deliver all documents or instruments and take and do all such other actions and things as may be reasonably requested by Purchaser, in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Purchased Assets.

**Section 6.2. Access to Information; Interim Financial Information.** From and after the date of this Agreement until the Closing Date, Seller shall afford to Purchaser and its accountants, counsel, environmental consultants, financing sources and other representatives reasonable access, upon reasonable notice during normal business hours, to the personnel, properties, books, Contracts, Tax Returns and records of Seller (to the extent related to the Purchased Assets) and during such period shall furnish to Purchaser any information concerning the Purchased Assets and Borrowers (to the extent relating to the Purchased Assets) that is reasonably available to Seller, as Purchaser may reasonably request; provided, however, that such access shall not unreasonably disrupt the activities of Seller and that nothing herein will obligate Seller to violate any applicable Law.

**Section 6.3. Interim Operations of the Business.** Seller covenants and agrees that, after the date hereof and prior to the Closing, except as expressly provided in or as a result of the consummation of this Agreement, ordered by the District Court, provided in the Use Agreement, or as may be otherwise agreed in writing by Purchaser:

- (a) Seller shall maintain commercially reasonable procedures for protection of the Purchased Assets including entering into the Use Agreement;
- (b) Seller shall not release or assign any material rights or claims under any contracts material to the Purchased Assets except as otherwise allowed under the Use Agreement;
- (c) Seller shall not transfer, sell, lease, license, mortgage, pledge, surrender, encumber, divest, cancel, abandon, subject to any lien or allow to lapse or expire, permit the destruction of, or material damage or loss to, or otherwise dispose of any of the Purchased Assets, other than immaterial amounts of personal property sold or otherwise disposed for fair value in the ordinary course of business and as otherwise allowed under the Use Agreement;

- (d) Seller shall not take, or agree to or commit to take, any action that would or is reasonably likely to result in any of the conditions set forth in Article VIII, not being satisfied, or would make any representation or warranty of Seller contained herein inaccurate in any material respect at, or as of any time prior to, the Closing Date or that would materially impair the ability of Seller or Purchaser to consummate the Closing in accordance with the terms hereof or materially delay such consummation;
- (e) Seller shall not accelerate the rate of collection of accounts receivable related to the Purchased Assets other than in the ordinary course of business; and
- (f) Seller shall not enter into any contract to do any of the foregoing.

**Section 6.4. Employee Matters; Books and Records.**

- (a) Subject to the Use Agreement, Seller shall not preclude Purchaser from offering employment to any employee of Borrowers. Prior to the Closing Date, Purchaser may, in its sole and absolute discretion, provide each employee of the Borrowers with an offer (the "**Employment Offer**") of employment, effective as of the later of the Closing Date or the date such employee accepts such Employment Offer. Each employee who accepts Purchaser's offer of employment and who becomes an employee of Purchaser shall be a "**Transferred Employee.**"
- (b) Seller's employment obligations are limited to any obligations set forth in the Receivership Order.
- (c) Purchaser shall make Transferred Employees and any books and records that constitute Purchased Assets reasonably available to the Seller in order carry out the Seller's duties under the Receivership Order. Before destroying any books and records, Purchaser must give Seller at least 30 days' notice, or as such other time as the parties agree to in writing, in order to secure and make alternative arrangements with respect to the preservation of the books and records.

**Section 6.5. Notices of Certain Events.** From the date hereof until the Closing Date, Seller shall promptly notify Purchaser of:

- (a) any written notice or other written communication from any Person (including any notices or communications filed with the District Court other than notices or other written communications that provide for a copy to be provided to Purchaser) alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement, or objecting to the consummation of any of the transactions contemplated by this Agreement;
- (b) any written notice or other written communication from any Government Entity in connection with the transactions contemplated by this Agreement; and
- (c) any change or fact with respect to any of Seller's representations, warranties or obligations hereunder of which Seller becomes aware that, with notice or lapse of time or both, will or is reasonably expected to result in a material breach by Seller of this

Agreement or otherwise result in any of the conditions set forth in Article VIII becoming incapable of being satisfied.

**Section 6.6. Tax Matters.**

- (a) Seller shall pay and be responsible for all Transfer Taxes imposed in connection with the closings of the transactions contemplated hereby. Seller and Purchaser shall cooperate to timely prepare, and Seller shall file or cause to be filed any returns or other filings relating to such Transfer Taxes (unless Purchaser is required by applicable Law to file the return), including any claim for exemption or exclusion from the application or imposition of any Transfer Taxes.
- (b) Seller and Purchaser shall reasonably cooperate with each other and furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information (including access to books and records) and assistance relating to the Purchased Assets as is reasonably requested for the preparation or filing of any Tax Returns and for the satisfaction of legitimate Tax or accounting requirements.

**Section 6.7. Insurance.** Purchaser and Seller shall not take any action that may adversely affect the rights of the other with respect to any outstanding claims made or for new claims that may be made against insurance policies purchased or maintained by Purchaser for the benefit of itself and its Subsidiaries and Affiliates that the other may or will have as of the Closing Date and shall use commercially reasonable efforts to cooperate with the other in the settlement or other resolution of such claims.

**Section 6.8. Receivership Actions.**

- (a) Subject to the consent of Opus, and any other required consents or authorizations under the Receivership Order, Seller and Purchaser shall enter into the Use Agreement.
- (b) Seller shall comply with all of the obligations of Seller under the Sale Approval Order (after the entry of such Order by the District Court).
- (c) Seller shall use reasonable efforts to comply (or obtain an order from the District Court waiving compliance) with all known requirements under applicable Law in connection with obtaining approval of the transactions contemplated by this Agreement. Seller shall serve on all required Persons in the Receivership Case, including (i) all Persons who are known to possess or assert a claim or lien against or interest in any of the Purchased Assets, (ii) the IRS, (iii) all applicable state attorneys general, and local Government Entities, (iv) all applicable state and local Government Entities with taxing authority, (v) all other Persons required by any order of the District Court, and (vi) and any other Persons that Purchaser reasonably may request, any notice of the Motion for Sale Approval Order, the hearing on the same, the Sale Approval Order, and all objection deadlines in accordance with all applicable Law.



**Section 6.9. Post-Closing Amounts Received and Paid.** All amounts that are received by Seller in respect of any of the Purchased Assets with respect to a period following the Closing shall be received by such Person as agent, in trust for and on behalf of Purchaser, and following the Closing, Seller shall, on a monthly basis, pay, or cause to be paid, by wire transfer of immediately available funds to Purchaser all such amounts received by or paid to Seller, and shall provide Purchaser with information as to the nature and source of all such payments, including any invoice related thereto. All amounts that are received by Purchaser or any of its Affiliates following the Closing in respect of any Excluded Assets with respect to a period prior to the Closing shall be received by such Person as agent, in trust for and on behalf of Seller, and Purchaser shall, on a monthly basis, pay or cause to be paid all such amounts over to Seller, or the Seller's designee, by wire transfer of immediately available funds and shall provide Seller with information as to the nature and source of all such payments, including any invoice relating thereto.

## **ARTICLE VII DISTRICT COURT MATTERS**

**Section 7.1. Entry of Sale Approval Order.** This Agreement, and Seller's and Purchaser's obligations hereunder, are subject to entry of the Sale Approval Order by the District Court.

**Section 7.2. District Court Filings.** As promptly as practicable, but no later than two Business Days following the execution of this Agreement, Seller shall file the Sale Motion. Thereafter Seller shall pursue diligently the entry of the Sale Approval Order, including resolving any objections lodged. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Sale Approval Order including furnishing affidavits or other documents or information for filing with the District Court.

## **ARTICLE VIII CONDITIONS**

**Section 8.1. Conditions to Obligations of Purchaser and Seller.** The respective obligations of each party to consummate the Closing shall be subject to the satisfaction, or waiver by Purchaser and Seller, on or prior to the Closing Date of all of the following conditions precedent:

- (a) Sale Approval Order. The Sale Approval Order (i) shall have been entered by the District Court and not be subject to any stay of effectiveness, and (ii) shall not have been modified or amended in any manner adverse to Purchaser unless agreed to in writing by Purchaser in its sole discretion.
- (b) No Law, Judgments, Etc. No Government Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law or any decree, judgment, injunction or other Order, which is in effect and that specifically restricts, prevents, prohibits, makes illegal or enjoins the consummation of the transactions contemplated by this Agreement. No proceeding or investigation by any Government Entity or other Person shall have been instituted that restricts, prevents, prohibits, makes illegal, enjoins

or results in material damages in respect of the consummation of the transactions contemplated by this Agreement or any Ancillary Agreement.

- (c) Injunctions. No Government Entity shall have issued an Order enjoining, restraining or prohibiting the completion of the transactions contemplated hereby and no suit, action or proceeding shall have been instituted by a Government Entity or any other Person that would reasonably be expected to have a material adverse effect on the Purchased Assets or enjoin, restrain, prohibit or otherwise challenge the transactions contemplated by this Agreement, or that would be reasonably likely to prevent or make illegal the consummation of the transactions contemplated by this Agreement, and no Government Entity shall have notified Purchaser or Seller in writing that this Agreement or the consummation of the transactions contemplated by this Agreement would in any manner constitute a violation of any Law and that it intends to commence any suit, action, or proceeding to restrain, enjoin or prohibit the transactions contemplated by this Agreement.
- (d) Opus Consent. The written consent of Opus to the terms of this Agreement and the Use Agreement.

**Section 8.2. Conditions to Obligations of Seller.** The obligations of Seller to consummate the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing Date, of the following conditions:

- (a) Warranties of Purchaser True as of Closing Date. The representations and warranties of Purchaser contained herein that are qualified by materiality or Material Adverse Effect shall be accurate, true and correct in all respects, and all other representations and warranties of Purchaser contained herein shall be accurate, true and correct in all material respects, in each case on and as of the date hereof and as of the Closing Date as though made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date).
- (b) Compliance with Covenants. Purchaser shall have performed and complied in all material respects with each of the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date.
- (c) Certificate. Seller shall have received a certificate, signed by a duly authorized officer of Purchaser and dated the Closing Date, to the effect that the conditions set forth in Sections 8.2(a) and 8.2(b) have been satisfied.

**Section 8.3. Conditions to Obligations of Purchaser.** The obligations of Purchaser to consummate the Closing shall be subject to the satisfaction or waiver, at or prior to the Closing Date of each of the following conditions:

- (a) Marketable Title. Entry of the Sale Approval Order, which shall include the order of the Court transferring to Purchaser good, valid and marketable title to, or, with respect to leased or licensed assets, as the case may be, a valid lease or license interest in, the Purchased Assets free and clear of any claim or lien and finding that Purchaser is a good faith purchaser entitled to the protections of the provisions of applicable Law.

- (b) Warranties of Seller True as of Closing Date. The representations and warranties of Sellers contained herein that are qualified by materiality or Material Adverse Effect shall be accurate, true and correct in all respects, and all other representations and warranties of Sellers contained herein shall be accurate, true and correct in all material respects, in each case on and as of the date hereof and as of the Closing Date as though made at and as of such time (except to the extent expressly made as of an earlier date, in which case as of such date).
- (c) Compliance with Covenants. Seller shall have performed and complied in all material respects with each of the covenants and agreements contained in this Agreement required to be performed and complied with by it on or prior to the Closing Date.
- (d) Certificate. Purchaser shall have received certificates, signed by the Receiver and dated the Closing Date, to the effect that the conditions set forth in Sections 8.3(a) and 8.3(b) have been satisfied.

#### ARTICLE IX TERMINATION AND SURVIVAL

**Section 9.1. Termination.** Notwithstanding anything to the contrary contained in this Agreement, this Agreement may be terminated and the transactions contemplated hereby abandoned at any time on or prior to the Closing Date:

- (a) by the mutual written consent of Seller and Purchaser;
- (b) by Seller or Purchaser if any court of competent jurisdiction shall have issued an Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order shall have become a Final Order unless such Final Order or action was issued or taken at the request or with the support of the party seeking to terminate this Agreement (or any of its Affiliates); it being agreed that the parties, hereto shall promptly appeal any such adverse order or other determination that is appealable (and argue such appeal with reasonable diligence);
- (c) by Purchaser:
  - (i) upon written notice to Seller, if any condition to the obligations of Purchaser set forth in Sections 8.1 and 8.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;
  - (ii) upon written notice to Seller, if there has been a material violation or breach by any Seller of any covenant, agreement, representation or warranty contained in this Agreement, which violation or breach (A) has not been cured within ten Business Days following the delivery of written notice of such violation or breach or (B) is not capable of being cured within a ten Business Day period;
  - (iii) the Seller does not file the Sale Motion within two Business Days after execution of this Agreement;

- (iv) the Sale Hearing does not occur within 30 days following the execution of this Agreement;
  - (v) the Sale Approval Order, once entered, is changed in a manner that is adverse to Purchaser without the consent of Purchaser in its sole discretion; or
  - (vi) Seller seeks to have the District Court enter an order dismissing the Receivership Case as to GF or converting it to a case under the Bankruptcy Code, or if the District Court enters an order dismissing the Receivership Case as to GF or converting the Receivership Case as to GF to a case under the Bankruptcy Code, or appoints a fiduciary other than the Receiver in the Receivership Case or an examiner with enlarged powers relating to the operation of GF's business, and such dismissal, conversion or appointment is not reversed or vacated within three business days after the entry thereof;
- (d) by Seller:
- (i) if in good faith and after receiving an evaluation by its respective professionals, that it or the Receivership Estate will incur detrimental tax consequences as a result of this transaction;
  - (ii) upon written notice to Purchaser, if any condition to the obligations of Purchaser set forth in Sections 8.1 and 8.2 shall have become incapable of fulfillment other than as a result of a breach by Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by Seller; or
  - (iii) upon written notice to Purchaser, if there has been a material violation or breach by Purchaser or any covenant, agreement, representation or warranty contained in this Agreement, which violation or breach (A) has not been cured within ten Business Days following the delivery of written notice of such violation or breach or (B) is not capable of being cured within a ten Business Day period;
- (e) By Seller or Purchaser in the event of the termination or expiration of the Use Agreement pursuant to its terms; or
- (f) by Seller or Purchaser if the Closing shall not have occurred on or before October 16, 2018 (or such later date as mutually agreed to by Seller and Purchaser) (the "**Outside Closing Date**").

**Section 9.2. Survival.** Seller and Purchaser agree that all of the representations, warranties and covenants of Seller and Purchaser contained in this Agreement, or any instrument delivered pursuant to this Agreement, shall terminate at the Closing Date, except that the covenants that by their terms survive the Closing Date shall survive the Closing Date.

**Section 9.3. Effect of Termination or Breach; Denial of Sale Motion.** If the transactions contemplated hereby are not consummated, this Agreement shall become null and void and of no further force and effect, except for the provisions of Sections 3.3, 9.3, 9.4 and Article X hereof. If the District Court declines to approve the sale as contemplated herein, then this Agreement will be deemed terminated and become null and void, except for the provisions of Sections 3.3,

9.3, 9.4 and Article X upon entry of a Final Order denying the proposed sale. The Seller shall have no obligation to appeal an Order denying sale and the decision to appeal such an Order shall be in the Seller's absolute discretion and business judgment.

**Section 9.4. Disposition of Receivership Property upon Termination or Denial of Sale Motion.** If the transactions contemplated hereby are not consummated or if the District Court declines to approve the sale as contemplated herein, then all cash and cash equivalents (which includes any and all balances at (i) Opus Bank, (ii) PayPal, (iii) Amazon.com (Amazon, Amazon Pay and Amazon Canada), (iv) Walmart, (v) Shopify and (vi) ebay.com), accounts receivable, invoiced or otherwise, Inventory, inventory in transit, equipment and any other Receivership Property contemplated by this Agreement or the Use Agreement shall remain with the Seller. Notwithstanding the foregoing or any contrary provision, Purchaser anticipates purchasing inventory from Haining Greenup Tarpaulin Industry Co., Ltd. (the "*Haining Inventory*") with non Receivership Property in connection with Purchaser's Use during the Use Period as defined in the Use Agreement. Any such Haining Inventory so acquired shall remain Purchaser's property, shall not constitute Inventory or Receivership Property.

#### ARTICLE X MISCELLANEOUS

**Section 10.1. Expenses.** Except as otherwise provided in this Agreement, the Use Agreement or the Sale Approval Order, all costs and expenses incurred in connection with this Agreement and the consummation of the transaction hereunder, shall be paid by the party incurring such expenses.

**Section 10.2. Amendment; Waiver.** This Agreement may be amended, modified or supplemented only in writing signed by each of the parties hereto. Any provisions of this Agreement may be waived, but only if such waiver is in writing and signed by the party against whom the waiver is to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**Section 10.3. Notices.** Any written notice to be given hereunder shall be deemed given: (a) when received if given in person or by nationally recognized courier; (b) on the date of transmission if sent by telecopy, e-mail or other wire transmission (receipt confirmed in each case); (c) three Business Days after being deposited in the U.S. mail, certified or registered mail, postage prepaid, return receipt requested; and (d) if sent by an internationally recognized overnight delivery service, the second Business Day following the date given to such overnight delivery service (specified for overnight delivery and receipt confirmed). All notices shall be addressed as follows:

(a) if to Seller, to:

Berkeley Research Group, LLC  
Attn: Paul Shields  
201 South Main Street, Suite 450

Salt Lake City, UT 84111

with copies to (which copies shall not constitute notice):

Eric L. Johnson  
Spencer Fane LLP  
1000 Walnut St., Suite 1400  
Kansas City, MO 64106  
816-474-8100  
ejohnson@spencerfane.com

(b) if to Purchaser, to:

Garage Flooring LLC of Colorado  
Attn: Justin Krauss, Manager  
632 W. Gunnison Avenue  
Grand Junction, Colorado 81501  
[Justin@garageflooringllc.com](mailto:Justin@garageflooringllc.com)

with copies to (which copies shall not constitute notice):

Hoskin Farina & Kampf, Professional Corporation  
Attn: John T. Howe  
200 Grand Avenue, Suite 400  
Post Office Box 40  
Grand Junction, Colorado 81502  
970-986-3400  
jhowe@hfak.com

**Section 10.4. Waivers.** The failure of a party to require performance of any provision hereof shall not affect its right at a later time to enforce the same. No waiver by a party of any term, covenant, representation or warranty contained herein shall be effective unless in writing. No such waiver in any one instance shall be deemed a further or continuing waiver of any such term, covenant, representation or warranty in any other instance.

**Section 10.5. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed copies of this Agreement and other Ancillary Agreements delivered by facsimile transmission or via .pdf shall be deemed good delivery and the facsimile/.pdf signatures set forth thereon shall, as between the Parties, be enforceable as original signatures.

**Section 10.6. Applicable Law; WAIVER OF JURY TRIAL; Venue and Retention of Jurisdiction.**

(a) This Agreement shall be governed by and construed in accordance with the Laws of the State of Kansas without regard to any conflicts of law principles thereof or any other jurisdiction that would apply the law of another jurisdiction.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, AND THE TRANSACTIONS CONTEMPLATED HEREBY.

(c) Without limiting any party's right to appeal any order of the District Court, (i) the District Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes that may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the District Court, and the parties hereby consent to and submit to the jurisdiction and venue of the District Court and shall receive notices at such locations as indicated in Section 10.3 hereof; provided, however, that if the Receivership Case has closed, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the District Court of Johnson County, Kansas and any appellate court from thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(d) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 10.3.

**Section 10.7. Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns; provided that no assignment of either party's rights or obligations may be made without the written consent of the other party, which consent shall not be unreasonably withheld or delayed; provided, however, that Purchaser shall remain obligated to fulfill its obligations pursuant to this Agreement and for any damages arising from an unlawful breach hereof. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

**Section 10.8. No Third-Party Beneficiaries.** Except as provided in Article IX, this Agreement is solely for the benefit of the parties hereto, and no provision of this Agreement shall be deemed to confer any remedy, claim or right upon any third party, including any employee or former employee of Seller or any participant or beneficiary in any benefit plan, program or arrangement.

**Section 10.9. Severability.** Any term or provision of this Agreement that is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. If the final judgment of a court of competent jurisdiction or other authority declares that any term or provision hereof is invalid, void or unenforceable, the parties agree that the court making such determination shall have the power to reduce the scope,

duration, area or applicability of the term or provision, to delete specific words or phrases, or to replace any invalid, void or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Agreement shall be enforceable as so modified.

**Section 10.10. Waiver of Bulk Transfer Laws.** Seller and Purchaser agree to waive compliance with Article 6 of the Uniform Commercial Code as adopted in each of the jurisdictions in which any of the Purchased Assets are located to the extent that such Article is applicable to the transactions contemplated hereby and any other bulk sale or bulk transfer or similar Law.

**Section 10.11. Personal Liability.** This Agreement shall not create or be deemed to create or permit any personal liability or obligation on the part of any officer, director, employee, representative or investor of any party hereto, except, as expressly provided pursuant to any personal guarantees given by Purchaser or its manager Justin Krauss, or any other person. Further, any liability to the Seller shall be limited to Seller in its capacity as Receiver and not in its individual capacity.

**Section 10.12. Computation of Time.** In computing any time period specified in this Agreement, (a) exclude the day of the event that triggers the period; (b) count every day, including intermediate non-Business Days; and (c) include the last day of the period, but if the last day is a non-Business Day, the period continues to run until the end of the next Business Day.

**Section 10.13. Headings.** The headings contained in this Agreement are included for purposes of convenience only and do not affect the meaning or interpretation of this Agreement.

**Section 10.14. Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless the context clearly indicates otherwise: (a) each definition herein includes the singular and the plural, and (b) each reference herein to any gender includes the masculine, feminine and neuter where appropriate.

**Section 10.15. Entire Agreement.** This Agreement, together with the Ancillary Agreements, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both oral and written, between the parties with respect to the subject matter hereof.

[SIGNATURES ON FOLLOWING PAGE]



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

GARAGE FLOORING, LLC OF COLORADO

By 

Name: Justin Krauss

Title: Manager

BERKELEY RESEARCH GROUP, LLC,  
COURT-APPOINTED RECEIVER FOR  
BETTER LIFE TECHNOLOGY, L.L.C.,  
GARAGE FLOORING, LLC, AND BETTER LIFE DISC, INC., AND NOT INDIVIDUALLY

By 

Name: Paul N. Shields

Title: Managing Director